By letter dated July 21, 1995, the Maine Human Rights Commission requested that the Department of Justice (Department) certify that the Maine Human Rights Act, 5 MRSA § 4553 *et seq.*, as implemented by the Maine Accessibility Regulations (together, the Maine law), meets or exceeds the new construction and alterations requirements of title III of the ADA.

The Department has analyzed the Maine law and has preliminarily determined that it meets or exceeds the new construction and alterations requirements of title III of the ADA. By letter dated September 23, 1997, the Department notified the Maine Human Rights Commission of its preliminary determination of equivalency.

Effect of Certification

The certification determination will be limited to the version of the Maine law that has been submitted to the department. The certification will not apply to amendments or interpretations that have not been submitted and reviewed by the Department.

Certification will not apply to buildings constructed by or for State or local government entities, which are subject to title II of the ADA. Nor does certification apply to accessibility requirements that are addressed by the Maine law that are not addressed by the ADA Standards for Accessible Design.

Finally, certification does not apply to variances or waivers granted under the Maine law. Therefore, if a builder receives a variance, waiver, modification, or other exemption from the requirements of the Maine law for any element of construction or alternations, the certification determination will not constitute evidence of ADA compliance with respect to that element.

Procedure

The department will hold informal hearings in Washington, D.C. and Augusta, Maine to provide an opportunity for interested persons, including individuals with disabilities, to express their views with respect to the preliminary determination of equivalency of the Maine law. Interested parties who wish to testify at a hearing should contact Tito Mercado at (202) 307–0663 (Voice/TDD). This is not a toll-free number.

The hearing sites will be accessible to individuals with disabilities. Individuals who require sign language interpreters or other auxiliary aids should contact Tito Mercado at (202) 307–0663 (Voice/TDD). This is not a toll-free number.

Dated: September 22, 1997.

Isabelle Katz Pinzler,

Acting Assistant Attorney General for Civil Rights.

[FR Doc. 97–25993 Filed 10–1–97; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

Office of the Assistant Attorney General for Civil Rights

Certification of the Maine Human Rights Act Under the Americans With Disabilities Act

AGENCY: Office of the Assistant Attorney General for Civil Rights, Department of Justice.

ACTION: Notice of hearings.

SUMMARY: The Department of Justice will hold informal hearings on the proposed certification that the Maine Human Rights Act, 5 MRSA § 4553 *et seq.*, as implemented by the Maine Accessibility Regulations, meets or exceeds the new construction and alterations requirements of title III of the Americans with Disabilities Act (ADA) in Washington, D.C. and Augusta, Maine.

DATES: The hearing in Augusta, Maine is scheduled for Friday, October 17, 1997 at 10:00 AM, Eastern Time. The hearing in Washington, D.C. is scheduled for Tuesday, December 2, 1997, at 2:00 PM, Eastern Time.

ADDRESSES: The hearings will be held at:

Augusta, Maine: Room 113, State Office Building, Augusta, Maine.

Washington, D.C.: Disability Rights Section, 1425 New York Avenue, N.W., Suite 4039, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: John L. Wodatch, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, D.C. 20035–6738. Telephone number (800) 514–0301 (Voice) or (800) 514–0383 (TDD).

Copies of this notice are available in formats accessible to individuals with vision impairments and may be obtained by calling (800) 514–0301 (Voice) or (800) 514–0383 (TDD).

SUPPLEMENTARY INFORMATION: Elsewhere in this issue of the **Federal Register**, the Department of Justice (Department) is publishing a notice in the **Federal Register** announcing that it had preliminarily determined that the State of Maine Human Rights Act, 5 MRSA § 4533 *et seq.*, as implemented by the Maine Accessibility Regulations (together, the Maine law), meets or exceeds the new construction and alterations requirements of title III of the ADA. The Department also noted that it intended to issue final certification of the Maine law and requested written comments on the preliminary determination and the proposed final certification. Finally, the Department noted that it intended to hold informal hearings in Washington, D.C. and Augusta, Maine.

The purpose of the informal hearings is to provide an opportunity for interested persons, including individuals with disabilities, to express their views with respect to the preliminary determination of equivalency of the Maine law. Interested parties who wish to testify at a hearing should contact Tito Mercado at (202) 307–0663 (Voice/TDD). This is not a toll-free number.

The meeting sites will be accessible to individuals with disabilities. Individuals who require sign language interpreters or other auxiliary aids should contact Tito Mercado at (202) 307–-0663 (Voice/TDD). This is not a toll-free number.

Dated: September 22, 1997.

Isabelle Katz Pinzler,

Acting Assistant Attorney General for Civil Rights.

[FR Doc. 97–25994 Filed 10–1–97; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10159, et al.]

Proposed Exemptions; State Street Bank and Trust

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

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

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone

number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

State Street Bank and Trust Company Located in Boston, Massachusetts

[Application No. D–10159]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a)(1) (A) through (D) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code,[1] shall not apply to the lending of securities to State Street Bank and Trust Company (State Street), acting through its Financial Markets Group (FMG) (formerly the Money Market Division of the Capital Markets Area) or acting through any other division or U.S. affiliate of State Street that is a successor to the activities of FMG; and shall not apply to the lending of securities to any U.S. registered broker-dealers affiliated with State Street (the Affiliated Broker Dealers)[2] by employee benefit plans (the Client Plans or the Client Plan), including commingled investment funds holding plan assets for which State Street, through its Master Trust Services Division (the Trust Division) acts as directed trustee or custodian, and for which State Street, through its Global Securities Lending Division or any other similar division of State Street or U.S. affiliate of State Street or of its parent (collectively, GSL) acts as securities lending agent (or sub-agent); and shall not apply to the receipt of compensation by GSL in connection with the proposed transactions, provided that the following conditions are met:

a. Neither State Street, the SSB Group, GSL, nor any other division or affiliate of State Street has or exercises discretionary authority or control with respect to the investment of the assets of Client Plans involved in the transaction (other than with respect to the investment of cash collateral after securities have been loaned and collateral received) or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to such assets, including decisions concerning a Client Plan's acquisition or disposition of securities available for loan;

b. Before a Client Plan participates in a securities lending program and before any loan of securities to the SSB Group is effected, the fiduciary of such plan who is independent of State Street, GSL, the SSB Group, and any other division or affiliate of State Street must have:

(1) Authorized and approved the securities lending authorization agreement with GSL (the Agency Agreement), where GSL is acting as the direct securities lending agent; or

(2) Authorized and approved the primary securities lending authorization agreement (the Primary Lending Agreement) with the primary lending agent, where GSL is lending securities under a sub-agency arrangement with the primary lending agent[3]; and

(3) Approved the general terms of the securities loan agreement (the Loan Agreement) between such Client Plan and the borrower, the SSB Group, the specific terms of which are negotiated and entered into by GSL;

c. A Client Plan may terminate the Agency Agreement or the Primary Lending Agreement at any time, without penalty to such plan, on five (5) business days notice;

d. The Client Plan will receive from the SSB Group (either by physical delivery or by book entry in a securities depository, wire transfer or similar means) by the close of business on or before the day the loaned securities are delivered to the SSB Group, collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, or irrevocable bank letters of credit issued by a person other than State Street or an affiliate thereof, or any combination thereof, or other collateral permitted under PTCE 81–6 (as amended from time to time or, alternatively, any additional or superseding class exemption that may be issued to cover securities lending by employee benefit plans);

e. The market value of the collateral must, as of the close of business on the

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

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

[3] The Department, herein, is not providing relief for securities lending transactions engaged in by primary lending agents, other the GSL, beyond that provided, pursuant to Prohibited Transaction Class Exemption 81–6 (PTCE 81–6) and Prohibited Transaction Class Exemption 82–63 (PTCE 82–63). PTCE 81–6 was granted 46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987. The Notice of Proposed Exemption for application numbers D–5598 and D–5776 was published at 46 FR 10570, February 3, 1981. PTCE 82–63 was granted 47 FR 14804, April 6, 1982. The Notice of Proposed Class Exemption was published at 46 FR 7518, January 23, 1981, as amended at 46 FR 10570, February 3, 1981.

preceding business day, initially equal at least 102 percent (102%) of the market value of the loaned securities. If the market value of the collateral falls below 100 percent (100%) (or such greater percentage agreed to by the parties) of the loaned securities, GSL will require the SSB Group to deliver additional collateral by the close of business on the following day such that the market value of the collateral will again equal at least 102 percent (102%). The Loan Agreement will give the Client Plans a continuing security interest in, title to, or the rights of a secured creditor with respect to the collateral and a lien on the collateral. GSL will monitor the level of the collateral daily;

f. All GSL's procedures regarding the securities lending activities will at a minimum conform to the applicable provisions of PTCE 81–6 and PTCE 82–63;

g. State Street will agree to indemnify and hold harmless each lending Client Plan (including the sponsor and fiduciaries of such Client Plan) against any and all damages, losses, liabilities, costs, and expenses (including attorneys' fees) which the Client Plan may incur or suffer directly arising out of the lending of the securities of such Client Plan to the SSB Group;

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

i. Prior to any Client Plan's approval of the lending of its securities to the SSB Group, a copy of this Notice of Proposed Exemption and a copy of the final exemption, if granted, will be provided to the Client Plan;

j. Only Client Plans with total assets having an aggregate market value of at least $50 million will be permitted to lend securities to the SSB Group;

k. The terms of each loan of securities by the Client Plans to the SSB Group will be at least as favorable to such plans as those of a comparable arm's-length transaction between unrelated parties;

l. Each Client Plan will receive monthly reports on the transactions, including but not limited to the information described in paragraph 26 below, so that an independent fiduciary of such plan may monitor the securities lending transactions with the SSB Group;

m. Before entering into the Loan Agreement and before a Client Plan lends any securities to the SSB Group, an independent fiduciary of such Client Plan will receive sufficient information, concerning the financial condition of State Street, including but not limited to audited and unaudited financial statements of State Street's parent corporation; and

n. The SSB Group will provide to a Client Plan prompt notice at the time of each loan by such plan of any material adverse changes in State Street's financial condition, since the date of the most recently furnished financial statements.

Summary of Facts and Representations

1. State Street is a wholly-owned subsidiary of State Street Boston Corporation, a bank holding company organized in 1970 under the laws of the Commonwealth of Massachusetts. As a Massachusetts trust company and a member bank of the Federal Reserve System, State Street is a ''bank,'' as defined in both section 202(a)(2) of the Investment Advisers Act of 1940 and section 581 of the Code. As of December 31, 1994, State Street's total assets were $21.7 billion, of which $16 billion (or 74%) were investment securities and money market assets and $3.2 billion (or 15%) were loans.

2. State Street, through its Trust Division, provides custodial services, trustee, and related fiduciary services to its customers. In this regard, the Trust Division has more than $1.6 trillion of assets under custody and, as custodian, services $664 billion of pension and other assets for U.S. pension plans, government plans, and other tax exempt investors in North American. In addition, with $675 billion of mutual fund assets under custody, it is represented that the Trust Division services 36 percent (36%) of registered funds. It is represented that at year-end 1994, the Trust Division also had $210 billion of bonds under trusteeship and $160 billion of assets under management.

3. State Street, acting through GSL, also provides securities lending services to many of State Street's institutional clients. GSL, on behalf of State Street's securities lending clients, negotiates the terms of loans with borrowers, pursuant to a client-approved form of loan agreement the terms of which may be modified from time to time with the approval of the client, and otherwise acts as a liaison between the lender and the borrower to facilitate the lending transaction. As securities lending agent, GSL also has responsibility for monitoring receipt of all required collateral and for marking such collateral to market daily, so that adequate levels of collateral are maintained. To the extent agreed upon with the client, GSL is also responsible for investing the cash collateral after securities have been loaned and collateral received. GSL also monitors and evaluates on a continuing basis the performance and creditworthiness of the borrowers of securities.

GSL also may be retained from time to time by primary securities lending agents to provide securities lending services in a sub-agency capacity with respect to portfolio securities of the clients of such primary lending agents. As securities lending sub-agent, GSL's role in the lending transaction (*i.e.*, negotiating the terms of loans with borrowers, pursuant to a client-approved form of loan agreement the terms of which may be modified from time to time with the approval of the client, monitoring receipt of collateral, marking to market required collateral, and investing cash collateral) parallels the role under lending transactions in which GSL acts as primary lending agent on behalf of its clients.

The borrowers with whom GSL usually transacts as agent for the lender are typically broker-dealers who use borrowed securities to satisfy their trading requirements or to ''re-lend'' securities to other broker-dealers, and others who need a particular security for various periods of time. All such borrowing by broker-dealers is required to conform to the Federal Reserve Board's Regulation T. Borrowing purposes which are permitted, pursuant to Regulation T, include the delivery of securities in the case of short sales, the failure of a broker to receive securities it is required to deliver, or other similar situations.

4. State Street itself, however, acting through the SSB Group, is also a borrower of securities, and indeed acts in this capacity, after full disclosure and consent, with respect to many of GSL's institutional clients, such as public pension plans which are not covered by the Act. The SSB Group, as borrower, uses borrowed securities to meet its obligations to deliver securities in connection with its short sales, trade fails, or other similar situations, and to engage in repurchase transactions with third parties.[4] Acting as principal, the SSB

Group actively engages in the borrowing and lending of securities, with a daily outstanding loan volume averaging $2 billion.

5. It is represented that GSL currently does not lend to the SSB Group the

[4] It is represented that Regulation T of the Federal Reserve Board does not apply to the borrowing of securities by the SSB Group, because the SSB Group is part of a bank.

securities of any of State Street's trust or custody clients covered by the Act, although as noted above, after full disclosure and consent, GSL does lend U.S. government securities to the SSB Group for certain of its clients who are *not* covered by the Act. It is represented that the SSB Group and GSL have each developed an accounting system and safeguards to service the needs of its respective client base. It is represented that whenever trades are effected between GSL, acting as securities lending agent, and the SSB Group, as borrower, such trades are accomplished in the same manner as between completely independent third parties. In this regard, such trades take place pursuant to an established protocol, primarily over the telephone and through computer trading screens used by all participants in the industry.

6. State Street proposes to offer to Client Plans, for which the Trust Division of State Street serves as directed trustee or custodian, and GSL serves as securities lending agent (or sub-agent), the opportunity to lend securities to the SSB Group.[5] In addition, State Street proposes that GSL and the SSB Group receive compensation in connection with such securities lending transactions. It is represented that State Street is a party in interest and a fiduciary with respect to the Client Plans, pursuant to section 3(14)(A) of the Act, and a service provider to such plans, pursuant to section 3(14)(B) of the Act. Because the Trust Division, GSL, and the SSB Group are all part of the same legal entity, State Street, the lending of securities to the SSB Group by Client Plans for which the Trust Division serves as directed trustee or custodian and for which GSL serves as securities lending agent (or sub-agent) could be deemed to be a prohibited transaction under section 406(a)(1) (A) through (D) of the Act for which exemptive relief would be necessary. In addition, because State Street, through GSL, would be acting as securities lending agent (or sub-agent) and, through the SSB Group, would be the borrower of securities from the Client Plans, the proposed transactions could be deemed to be prohibited under section 406 (b)(1) and (b)(2) of the Act, as well.

[5] For the sake of simplicity, future references to GSL's performance of services as securities lending agent should be deemed to include its parallel performance as securities lending sub-agent and references to Client Plans should be deemed to refer to plans for which GSL is acting as sub-agent with respect to securities lending activities, unless otherwise indicated specifically or by the context of the reference.

7. With respect to various prohibited transactions which arise in certain situations involving securities lending, there are two relevant class exemptions, PTCE 81–6 and PTCE 82–63. PTCE 81–6 provides an exemption under certain conditions from section 406(a)(1) (A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to certain broker-dealers or banks which are parties in interest. In this regard, condition number one of PTCE 81–6 requires, in part, that neither the borrower nor an affiliate of the borrower has discretionary authority or control with respect to the investment of the plan assets involved in the transaction. PTCE 82–63 provides an exemption under specified conditions from section 406(b)(1) of the Act and section 4975(c)(1)(E) of the Code for the payment of compensation to a plan fiduciary for services rendered in connection with loans of plan assets that are securities. In this regard, PTCE 82–63 permits the payment of compensation to a plan fiduciary for the provision of securities lending services, only if the loan of securities itself is not prohibited under section 406(a) of the Act (*i.e.* a loan of securities to a non-party in interest).

Under the proposed arrangement, because GSL would have discretion to lend securities of the Client Plans to the SSB Group, and because both GSL and the SSB Group are divisions of State Street, the lending of securities to the SSB Group by the Client Plans for which GSL serves as securities lending agent (or sub-agent) may be outside the scope of relief provided by PTCE 81–6 and by PTCE 82–63. Accordingly, State Street has requested the Department to grant relief from section 406(a)(1) (A) through (D), (b)(1), and (b)(2) of the Act and the corresponding provisions of the Code which would permit the SSB Group to borrow securities from those Client Plans for which State Street, through its Trust Division will be acting as directed trustee or custodian, and through GSL will be acting as securities lending agent (or sub-agent).

In addition, State Street has requested relief from section 406(a)(1) (A) through (D), (b)(1), and (b)(2) and the corresponding provisions of the Code which would permit GSL and the SSB Group to receive compensation from a Client Plan in connection with the proposed securities lending transactions. In this regard, it is represented that the SSB Group will be compensated as any other independent borrower of Client Plan securities would be (*e.g.*, by receiving an agreed rebate payment). In no event, will rates paid to the SSB Group be less favorable to the Client Plan than a loan of such securities made at the same time and under the same circumstances to an unaffiliated borrower.

8. If the requested exemption is granted, GSL represents that it intends to employ the same procedures currently used in the case of securities loans to unrelated third party borrowers and which GSL has already incorporated into similar arrangements with institutional clients not covered by the Act. Specifically, it is represented that State Street will adopt and implement procedural safeguards that all trades affected will take place at the same ''arms'' length'' prices that would have been negotiated with similarly-situated third party borrowers. In this regard, it is represented that the SSB Group, as borrower, will receive a rebate fee comparable to the fee received by independent borrowers, and GSL, as lender's agent for Client Plans, will receive a fee specified in the agreement with such plans for securities lending services. In this regard, it is represented that such securities lending services will include monitoring the collateral and acting appropriately to protect the interest of the lender in the event of default by the borrower. It is further represented that with respect to each Client Plan to which the proposed exemption would apply, neither State Street, the SSB Group, GSL, nor any other division or affiliate of State Street has or exercises discretionary authority or control with respect to the investment of the assets of the plan involved in the transaction (other than with respect to the investment of cash collateral after securities have been loaned and collateral received), or renders investment advice (within the meaning of 29 CFR 2510.3–21(c) with respect to those assets, including decisions concerning a Client Plan's acquisition or disposition of securities available for loan. Accordingly, it is represented that GSL will not be in a position to influence the portfolio holdings of its Client Plans in a manner that might increase or decrease the securities available for lending to the SSB Group (or any other borrower). In addition, State Street represents that the proposed lending program incorporates the relevant conditions contained in class exemptions PTCE 81–6 and PTCE 82–63.

9. Several safeguards, described more fully below, are incorporated into this exemption in order to ensure the protection of the assets of the Client Plans involved in the proposed transactions. In this regard, where GSL

is the direct securities lending agent, a fiduciary of a Client Plan who is independent of State Street, GSL, the SSB Group, and any other division or affiliate of State Street will sign the Agency Agreement before such Client Plan participates in a securities lending program. The Agency Agreement will, among other things, describe the operation of the lending program, prescribe the form of the Loan Agreement to be entered into on behalf of the Client Plan with borrowers, specify the securities which are available to be loaned, and prescribe that a borrower (including the SSB Group) is required to deliver collateral having a value in excess of the value of the loaned securities (*i.e.* not less than 102% or, in some cases, a higher agreed-upon percentage). In addition, the Agency Agreement will provide that the securities will be marked-to-market daily and provide a list of permissible borrowers, including the SSB Group.

The Agency Agreement will also set forth the basis and the method for GSL's compensation from a Client Plan for the performance of securities lending services. As set forth more fully below, the basis for GSL's compensation will be its fixed percentage share of the return, if any, on cash collateral or the applicable interest due on a non-cash collateral loan. The actual rate of return that will be divided between the Client Plan and GSL in such pre-agreed percentage will vary each day (and indeed during the day from time to time) according to the investment performance from each loan of securities. It is represented that GSL's share with respect to each Client Plan will be negotiated with such Client Plan and thereafter set forth in the Agency Agreement on the date such agreement is executed.

10. The Agency Agreement will contain provisions to the effect that if the SSB Group is designated by a Client Plan as an approved borrower, (i) such Client Plan will acknowledge that the SSB Group, GSL, and the Trust Division are, or may be deemed to be, the same legal entity, and (ii) GSL will represent to such Client Plan that each and every loan made to the SSB Group on behalf of such plan will be at market rates and will in no event be less favorable to such Client Plan than a loan of such securities, made at the same time and under the same circumstances, to an unaffiliated borrower.

11. When GSL is lending securities under a sub-agency arrangement, the primary lending agent will enter into a Primary Lending Agreement with a fiduciary of a Client Plan, before such plan participates in the securities lending program. It is represented that it is the responsibility of the primary lending agent to obtain the approval of the fiduciary of the Client Plan to such Primary Lending Agreement. It is represented that the primary lending agent will be independent of GSL and the SSB Group. As State Street will not be a party to the Primary Lending Agreement, it is represented that the sub-agency arrangement between GSL and the primary lending agent will obligate the primary lending agent to provide assurance that the primary lending agent was independent of the fiduciary of the Client Plan.

The Primary Lending Agreement will contain substantive provisions akin to those in the Agency Agreement relating to the description of the operation of the lending program, use of an approved form of Loan Agreement, specification of securities which are available to be loaned, prescription that a borrower is required to deliver collateral having a specified value in excess of the value of the loaned securities, and a list of approved borrowers (including the SSB Group). The Primary Lending Agreement will specifically authorize the primary lending agent to appoint sub-agents, including GSL, to facilitate its performance of securities lending agency functions. Where GSL is appointed to act as such a sub-agent, GSL would require that the primary lending agent represent to GSL that the primary lending agent has received prior approval of or has the authority to make the decision to hire GSL.

The Primary Lending Agreement will also set forth the basis and the method for the primary lending agent's compensation from the Client Plan for the performance of securities lending services and will authorize the primary lending agent to pay a portion of its fee, as the primary lending agent determines in its sole discretion, to any sub-agent(s) it retains pursuant to the authority granted under such agreement.

Pursuant to its authority to appoint sub-agents, the primary lending agent will enter into a securities lending sub-agency agreement (the Sub-Agency Agreement) with GSL under which the primary lending agent will retain and authorize GSL, as sub-agent, to lend the securities of the primary lending agent's Client Plans, in a manner consistent with the terms and conditions as specified in the Primary Lending Agreement. It is represented that the Primary Lending Agreement and the Sub-Agency Agreement will not necessarily have identical terms, because the procedures that State Street uses in operating its lending program will be spelled out in its form agreement, and these may not be identical to how the primary lending agent operates its own program. For example, State Street may require that its Sub-Agency Agreement contain certain specific provisions which the primary lending agent may not have requested from the Client Plan. One such requirement is that collateral initially equal 102 percent (102%) of the value of the loaned securities, whereas the primary lending agent may have been authorized to make loans of securities at less than 102 percent (102%) collateral. State Street may also require recordkeeping in addition to that specified in the Primary Lending Agreement and may require different notice provisions.

GSL represents that the Sub-Agency Agreement will contain provisions which are in substance comparable to those described in paragraphs 9 and 10 above, which would appear in an Agency Agreement in situations where GSL is the primary lending agent. In this regard, GSL will make representations in the Sub-Agency Agreement, as described in paragraph 10 above, with respect to arm's-length dealing with the SSB Group. The Sub-Agency Agreement will also set forth the basis and method for GSL's compensation to be paid by the primary lending agent.

12. In all cases, GSL will maintain records sufficient to assure compliance with its representation that all loans to the SSB Group are effectively at arm's-length terms. Such records will be provided to the appropriate independent fiduciary of a Client Plan in the manner and format agreed to with such fiduciary and without charge to such Client Plan. A Client Plan may terminate the Agency Agreement at any time, without penalty to such plan, on five (5) business days notice. It is further represented that the Primary Lending Agreement may be subject to a similar termination provision, if the primary lending agent is relying on PTCE 81–6.

13. GSL, on behalf of the Client Plans, will enter into a Loan Agreement with the SSB Group that is in substantially similar form to the one used from time to time, with all other borrowers. It is represented that the Loan Agreement cannot be identical to that used with an unrelated party, in part because, special disclosures must be made to Client Plans, regarding the relationship between GSL, the SSB Group, and the Trust Division, as operations divisions of State Street. However, it is represented that the economic terms and procedures required by the Loan Agreement will be identical to those negotiated with unrelated borrowers.

Although GSL will negotiate with the SSB Group the terms of any specific loan, the general terms of the Loan Agreement, pursuant to which any loan is effected will be approved by a fiduciary of the Client Plan who is independent of State Street. The Loan Agreement will specify, among other things, the right of the Client Plan, acting through GSL, to terminate a loan at any time and such plan's rights in the event of any default by the SSB Group. The Loan Agreement will explain the basis for compensation to the Client Plan for lending securities to the SSB Group under each category of collateral. The Loan Agreement also will contain a requirement that the SSB Group must pay all transfer fees and transfer taxes related to the loans of securities.

14. Before entering into the Loan Agreement, State Street will furnish its most recent available audited and unaudited financial statements of its parent, State Street Boston Corporation, to GSL, and in turn such statements will be made available to each Client Plan before such plan is asked to approve the terms of the Loan Agreement. The Loan Agreement will contain a requirement that the SSB Group must provide to the Client Plan prompt notice at the time of a loan by such plan of any material adverse changes in State Street's financial condition, since the date of the most recently furnished financial statements. If any such changes have taken place, GSL will not make any further loans to the SSB Group, unless an independent fiduciary of such Client Plan has approved the loan in view of the changed financial condition.

15. As noted in paragraph 9 and 10, the agreement by GSL to provide securities lending services, as agent, to a Client Plan will be embodied in the Agency Agreement. The Client Plan and GSL will, prior to the commencement of any lending activity, agree to the fee arrangement, as described in paragraph 9 above, under which GSL will be compensated for its services as lending agent. Such agreed upon fee arrangement will be set forth in the Agency Agreement and thereby will be subject to the prior written approval of a fiduciary of such Client Plan who is independent of the SSB Group and GSL.

Similarly, with respect to such arrangements under which GSL is acting as securities lending sub-agent, the agreed upon fee arrangement of the primary lending agent will be set forth in the Primary Lending Agreement, and such agreement will specifically authorize the primary lending agent to pay a portion of the fee, as the primary lending agent determines in its sole discretion, to any sub-agent, including GSL, which is to provide securities lending services to the Client Plans.[6] A Client Plan will be provided with any reasonably available information which is necessary for the independent fiduciary of such plan to make a determination whether to enter into or continue to participate under the Agency Agreement (or the Primary Lending Agreement) and any other reasonably available information which such fiduciary may reasonably request.

16. Each time a Client Plan loans securities to the SSB Group, pursuant to the Loan Agreement, GSL will reflect in its records the material terms of the loan, including the securities to be loaned, the required level of collateral, and the fee or rebate payable. When a loan is collateralized with cash, the cash will be invested for the benefit of and at the risk of the Client Plan, and resulting earnings (net of a rebate rate to the borrower *and* the fee to the lending agent) comprise the compensation to such plan with respect to the loan. Where the collateral consists of obligations other than cash, the borrower will pay a fee (loan premium) directly to the Client Plan. The terms of each loan will be at least as favorable to the Client Plan as those of a comparable arm's-length transaction between unrelated parties.

17. The Client Plan will receive the equivalent of all distributions made to holders of the borrowed securities during the term of any loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities, or other distributions. The Loan Agreement will provide that the Client Plan may terminate any loan at any time. Upon a termination, the SSB Group will be contractually obligated to return the loaned securities to the Client Plan within five (5) business days of notification (or such longer period of time permitted pursuant to PTCE 81–6, as amended or superseded). If the SSB Group fails to return the securities within the designated time, the Client Plan will have the right under the Loan Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price and any other expenses of such plan associated with the sale and/or purchase.

18. GSL will establish each day separate written schedules of lending fees and rebate rates to assure uniformity of treatment among borrowing brokers and to limit the discretion that GSL would have in negotiating securities loans to the SSB Group. Loans to all borrowers of a given security on that day will be made at rates or lending fees on the relevant daily schedules or at rates or lending fees which may be more advantageous to the Client Plans. It is represented that in no case will loans be made to the SSB Group at rates or lending fees less advantageous to the Client Plans than those on the schedule. The daily schedule of rebate rates will be based on the current value of the clients' reinvestment vehicles and on market conditions, as reflected by demand for securities by borrowers other than the SSB Group. As with rebate rates, the daily schedule of lending fees will also be based on market conditions, as reflected by demand for securities by borrowers other than the SSB Group, and will generally track the rebate rates with respect to the same security or class of security.

19. GSL will adopt maximum daily rebate rates for cash collateral payable to the SSB Group on behalf of a lending Client Plan. Separate maximum daily rebate rates will be established with respect to loans of designated classes of securities such as U.S. government securities, U.S. equities and corporate bonds, international fixed income securities, and international equities. With respect to each designated class of securities, the maximum rebate rate will be the lower of: (i) The one month LIBOR rate, minus a stated percentage of such LIBOR rate and, (ii) the client's actual reinvestment rate for the relevant cash collateral, minus a stated percentage of such reinvestment rate, as pre-approved by the independent fiduciary of the Client Plan. Thus, when cash is used as collateral, the daily rebate rate will always be lower than the rate of return to the Client Plans from authorized investments for cash collateral by such stated percentage as shall be pre-approved by the independent fiduciary. GSL will submit the formula for determining the maximum daily rebate rates to an independent fiduciary of the Client Plan for approval before lending any securities to the SSB Group on behalf of such plan.

20. GSL will also adopt minimum daily lending fees for non-cash collateral payable by the SSB Group to

[6] The foregoing provisions describe arrangements comparable to conditions (c) and (d) of PTCE 82–63 which require that the payment of compensation to a ''lending fiduciary'' is made under a written instrument and is subject to prior written authorization of an independent ''authorizing fiduciary.'' In the event that a commingled investment fund participates in the securities lending program, the special rule applicable to such funds concerning the authorization of the compensation arrangement, as set forth in paragraph (f) of PTCE 82–63, must be satisfied.

GSL on behalf of the Plan. Separate minimum daily lending fees will be established with respect to loans of designated classes of securities, such as U.S. government securities, U.S. equities and corporate bonds, international fixed income securities, and international equities. With respect to each designated class of securities, the minimum lending fee will be stated as a percentage of the principal value of the loaned securities. GSL will submit such minimum daily lending fees to an independent fiduciary of the Client Plan for approval before initially lending any securities to the SSB Group on behalf of such plan.

21. For collateral other than cash, the lending fees charged the previous day will be reviewed by GSL for competitiveness. Based on the demand of the marketplace, this daily fee tends to remain constant and, with respect to domestic securities and international debt securities, is currently at least one twentieth of one percent of the principal value of the loaned securities. With respect to international equity securities, the daily fee is currently one fifth of one percent of the principal value of the loaned securities. Because 50 percent (50%) or more of securities loans by Client Plans will be to unrelated brokers or dealers,[7] the competitiveness of GSL's fee schedule will be continuously tested in the marketplace. Accordingly, loans to the SSB Group should result in a competitive rate of income to the lending Client Plan.

The method of determining the daily securities lending rates (fees and rebates), the minimum lending fees payable by the SSB Group and the maximum rebate payable to the SSB Group will be specified in an exhibit attached to the Agency Agreement to be executed between the independent fiduciary of the Client Plan and GSL in cases where GSL is the direct securities lending agent.

22. Should GSL recognize prior to the end of a business day that, with respect to new and/or existing loans, it must change the rebate rate or lending fee formula in the best interest of Client Plans, it may do so (i) with respect to borrowers other than the SSB Group, at the end of such business day, and (ii) with respect to the SSB Group, upon GSL's receipt of a written approval of the Client Plan's independent fiduciary.[8]

GSL may propose a change in the lending fee or rebate rate determination, as applicable, with respect to an outstanding loan by delivering written notice of the effective date and the new determination pursuant to which a lending fee or rebate rate, as the case may be, may be determined at least five (5) business days before the date of the proposed change. In the event that the Client Plans does not consent to such change by not providing GSL with acknowledgment of its consent in writing by such means that will ensure receipt by GSL prior to 10:00 A.M. New York time, on the effective date of the change, then GSL will not make such change. The applicant represents that allowing GSL to request a modification to the lending fee or the rebate rate formula with respect to an existing loan to the SSB Group when market conditions change will be beneficial to the Client Plans. According to the applicants, in the absence of the ability to make such modification, the SSB Group may be forced by market conditions to terminate the loan and seek better terms elsewhere. Such termination may then force the Client Plan to seek new borrowers for its securities who, in light of the changed market conditions, are likely to negotiate for the lending fee or rebate rate which the SSB Group would have received or paid had GSL had the written authority from the independent fiduciary of the Client Plan to decrease the lending fee or increase the rebate rate.

23. While GSL will normally lend securities to requesting borrowers, including, for these purposes, the SSB Group, on a ''first come, first served'' basis, as a means of assuring uniformity of treatment among borrowers, it should be recognized that in some cases it may not be possible to adhere to a ''first come, first served'' allocation. This can occur, for instance, where (a) the credit limit established for such borrower by GSL and/or the Client Plan has already been satisfied; (b) the ''first in line'' borrower is not approved as a borrower by the particular Client Plan whose securities are sought to be borrowed; or (c) the ''first in line'' borrower cannot be ascertained, as an operational matter, because several borrowers spoke to different GSL representatives at or about the same time with respect to the same security. In situations (a) and (b), loans would normally be effected with the ''second in line.'' In situation (c), securities would be allocated equitably among all eligible borrowers.

24. Under the Loan Agreement, State Street will agree to indemnify and hold harmless each lending Client Plan (including the sponsor and fiduciaries of such Client Plan) against any and all damages, losses, liabilities, costs, and expenses (including attorneys' fees) which the Client Plan may incur or suffer directly arising out of the lending of the securities of such Client Plan to the SSB Group. Accordingly, State Street will assure the Client Plan that the rate of return on each loan will at a minimum equal the transactional cost to the plan of lending securities to the SSB Group. The applicants contend that, as a result of this indemnity, the rate of return earned by Client Plans from lending to the SSB Group will, in total, exceed the return from lending securities to other brokers.

25. The Client Plan will receive collateral from the SSB Group by physical delivery, book entry in a securities depository, wire transfer, or similar means by the close of business on or before the day the loaned securities are delivered to the SSB Group. The collateral will consist of cash, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities or irrevocable bank letters of credit (issued by a person other than State Street or its affiliates) or any combination thereof, or such other types of collateral which might be permitted by the Department under PTCE 81–6, as amended or superseded, relating to securities lending activities. The market value of the collateral on the close of business on the day preceding the day of the loan will be at least 102 percent (102%) of the market value of the loaned securities. The Loan Agreement will give the Client Plan a continuing security interest in, title to, or the rights of a secured creditor with respect to the collateral and a lien on the collateral. GSL will monitor the level of the collateral daily. If the market value of the collateral falls below 100 percent (100%) (or such greater percentage agreed to by the parties) of that of the loaned securities, GSL will require the SSB Group to deliver by the close of business the next day sufficient additional collateral to bring the level back to at least 102 percent (102%).

26. Each Client Plan participating in the lending program will be sent a monthly transaction report which will provide a list of all security loans outstanding and closed for a specified period. The report will identify for each open loan position, the securities involved, the value of the security for collateralization purposes, the current value of the collateral, the rebate or loan premium (as the case may be) at which the security is loaned, and the number of days the security has been on loan.

[7] It is represented that this 50 percent (50%) requirement applies regardless of the type of collateral used to secure the loan.

[8] GSL represents that it will not initiate any modification in such rates or fees which would be detrimental to the Client Plans.

In order to provide the means for monitoring lending activity, rates on loans to the SSB Group compared with loans to other brokers, and the level of collateral on the loans, it is represented that the monthly report will show, on a daily basis, the market value of all outstanding security loans to the SSB Group and to other borrowers as compared to the total collateral held for both categories of loans. Further, the monthly report will state the daily fees where collateral other than cash is utilized and will specify the details used to establish the daily rebate payable to all brokers where cash is used as collateral. The monthly report also will state, on a daily basis, the rates at which securities are loaned to the SSB Group compared with those at which securities are loaned to other brokers. This statement will give an independent fiduciary information which can be compared to that contained in the daily rate schedule.

27. With respect to the proposed transactions, GSL will make and retain for six (6) months tape recordings evidencing all securities loan transactions with the SSB Group. Also, if requested by the lending customer, GSL shall provide daily confirmations of securities lending transactions; and GSL shall provide to lending customers monthly account reports, or if requested by the customer, weekly, or daily reports, setting forth for each transaction made or outstanding during the relevant reporting period the loaned securities, the related collateral, rebates and loan premiums, and such other information in such format as shall be agreed to by the parties.

28. Only Client Plans with total assets having an aggregate market value of at least $50 million will be permitted to lend securities to the SSB Group. This restriction is intended to assure that any lending to the SSB Group will be monitored by an independent fiduciary of above average experience and sophistication in matters of this kind.

29. State Street represents that the proposed transactions are in the interest of the Client Plans in that the lending of securities is an attractive investment opportunity. In this regard, a Client Plan which participates in securities lending is able to earn a fee for lending the securities to the borrower while continuing to receive the economic benefits of receiving dividends, interest payments, and other distributions made with respect to the loaned securities.

It is represented that failure to grant the requested exemption will limit the number of companies to whom the Client Plans can lend securities by excluding the SSB Group, an active securities borrower that currently borrows securities in lending transactions or in connection with reverse repurchase agreements worth in excess of $5 billion daily.

30. It is represented that the proposed exemption is administratively feasible, in that it will not require any ongoing involvement by the Department. In this regard, it is represented that compliance with the requirements of the exemption can be readily monitored by the independent fiduciaries of the Client Plans, as well as by State Street's own internal audit and compliance personnel. Further, it is represented that State Street will bear the cost of filing the application for exemption and the costs associated with the transfers of the loaned securities.

31. In summary, the applicants represent that the described transactions will satisfy the statutory criteria of section 408(a) of the Act because:

(a) Neither State Street, the SSB Group, GSL, nor any other division or affiliate of State Street will have or exercise discretionary authority or control with respect to the investment of plan assets involved in the transaction (other than with respect to the investment of cash collateral after securities have been loaned and collateral received), or render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets, including decisions concerning a Client Plan's acquisition or disposition of securities available for loan;

(b) Before a Client Plan participates in a securities lending program and before any loan of securities is effected, the fiduciary of such plan who is independent of State Street, GSL, the SSB Group, and any other division or affiliate of State Street will authorize and approve the Agency Agreement or the Primary Lending Agreement, as appropriate, and will approve the general terms of the Loan Agreement between the Client Plan and the SSB Group;

(c) a Client Plan may terminate the Agency Agreement at any time, without penalty to such plan, on five (5) business days notice;

(d) the Client Plans will receive from the SSB Group a continuing security interest in, title to, or the rights of a secured creditor with respect to the collateral and a lien on various forms of collateral on each loan to the SSB Group which initially will be worth at least 102 percent (102%) of the market value of the loaned securities, and which will be monitored daily by GSL to insure that the market value of the collateral never falls below 100 percent (100%) of the market value of the loaned securities (or such greater percentage agreed to by the parties);

(e) all the procedures under the proposed transactions will, at a minimum, conform to the applicable provisions of PTCE 81–6 and PTCE 82–63;

(f) State Street will indemnify and hold harmless each lending Client Plan (including the sponsor and fiduciaries of such Client Plan) against any and all damages, losses, liabilities, costs, and expenses (including attorneys' fees) which the Client Plan may incur or suffer directly arising out of the lending of the securities of such Client Plan to the SSB Group;

(g) the lending arrangements will permit the Client Plans to lend to the SSB Group, a major borrower of securities, and will enable such plans to diversify the list of eligible borrowers and earn additional income from the loaned securities on a secured basis, while continuing to receive any dividends, interest payments and other distributions due on those securities;

(h) prior to any Client Plan's approval of the lending of its securities to the SSB Group, a copy of this Notice of Proposed Exemption and a copy of the final exemption, if granted, will be provided to the Client Plan;

(i) only Client Plans with total assets having an aggregate market value of at least $50 million will be permitted to lend securities to the SSB Group;

(j) the terms of each loan of securities between the Client Plans and the SSB Group will be at least as favorable to such plans as those of a comparable arm's-length transaction between unrelated parties;

(k) the Client Plans will receive monthly reports, so that an independent fiduciary of such plans may monitor the securities lending transactions with the SSB Group;

(l) Before entering into the Loan Agreement and before a Client Plan lends any securities to the SSB Group, an independent fiduciary of such Client Plan will receive sufficient information, concerning the financial condition of State Street, including but not limited to audited and unaudited financial statements of State Street's parent corporation; and

(m) The SSB Group will provide to a Client Plan prompt notice at the time of each loan by such plan of any material adverse changes in State Street's financial condition, since the date of the most recently furnished financial statements.

Notice to Interested Persons

Included among those persons who may be interested in the pendency of the proposed exemption are the investment committee(s) or trustee(s) of any Client Plan(s) which are interested in lending securities to the SSB Group. It is represented that the applicant will furnish at its cost these various classes of interested persons with a copy of the Notice of Proposed Exemption (the Notice), plus a copy of the supplemental statement (Supplemental Statement), as required, pursuant to 29 CFR 2570.43(b)(2) within fifteen (15) calendar days of publication of the Notice in the **Federal Register**. Notification will be provided to all the investment committee(s) or trustee(s) of any Client Plan(s) which are interested in lending securities to the SSB Group either by hand delivery or by mailing first class of a copy of the Notice, plus a copy of the Supplemental Statement. It is represented that the applicant will at its cost provide a copy of such Notice and a copy of the final exemption, if granted, to Client Plans after the final exemption has been issued and prior to any Client Plan's approval of the lending of securities to the SSB Group.

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

Franklin & Davis, P.C. Profit Sharing Plan (the Plan) Located in Troy, Michigan

[Application No. D–10450]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to two proposed loans (the Loans) totaling $229,000 to Franklin & Davis, P.C. (F&D), the Plan's sponsor and a disqualified person with respect to the Plan, by the individual account (the Account) of Bruce W. Franklin (Mr. Franklin), provided the following conditions are satisfied: (a) The terms of the Loans are at least as favorable to the Plan as those obtainable in arm's-length transactions with an unrelated party; (b) the Loans do not exceed 25% of the assets of the Account; (c) the first Loan (Loan 1) is secured by a second mortgage on certain real property (the Property) which has been appraised by a qualified independent appraiser to have a fair market value not less than 150% of the amount of Loan 1 plus the balance of the first mortgage which it secures; (d) the second Loan (Loan 2) is secured by certain securities (the Securities) which have a fair market value not less than 200% of Loan 2; and (e) the fair market value of the collateral remains at least equal to the percentages described in conditions (c) and (d), above, throughout the duration of the Loans.[9]

Summary of Facts and Representations

1. F&D is a corporation located in Troy, Michigan, which is engaged in the practice of law. The Plan is a defined contribution plan with one participant, Mr. Franklin, who is also the Plan's trustee. As of March 31, 1997, Mr. Franklin's Account balance was approximately $916,000.

2. F&D wishes to borrow $229,000 from the Account, which represents 25% of the current fair market value of the Account. The money will be loaned to F&D in two separate Loans. The Loans will each be amortized over a 10 year period, with equal monthly payments of principal and interest over the 10 year term. The interest rate for each Loan will be 9.5% per annum. The total monthly payments for the Loans will be $2,963.20 per month. Ms. Linda Walden, Vice President of First Citizens Bank (the Bank) of Newnan, Georgia, has represented in a letter dated June 26, 1997 that the Bank would lend money to F&D at the same terms as those of the Loans.

3. Loan 1 will be secured by the Property, which consists of Mr. and Mrs. Franklin's residence, which is located at 3631 Brookside, Bloomfield Township, Michigan. The Property has been appraised by Mr. James Valiquett, an independent appraiser in Farmington, Michigan, to have a fair market value of $720,000 as of October 8, 1996. The Property has a first mortgage in the amount of $335,136. Loan 1 would be secured by a second mortgage on the Property in the amount of $144,864. Thus, the appraised fair market value of the Property would represent 150% of the total outstanding principal amount of debt secured by the Property. The applicant represents that the mortgage to the Plan will be duly recorded.

4. Loan 2, which will be in the principal amount of $84,136, will be secured by the Securities. The Securities are publicly traded stock owned by Mr. and Mrs. Franklin, and consist of 257,084 shares of Royal Silver Mines, Inc. which is traded on the NASDAQ stock exchange. The Securities are currently valued at $192,813, which represents approximately 230% of the principal amount of Loan 2. The applicant represents that the Plan's security interest in the Securities will be duly recorded.

5. In summary, the applicant represents that the proposed transactions satisfy the criteria contained in section 4975(c)(2) of the Code for the following reasons: (a) The Loans represent not more than 25% of the assets of the Account; (b) the terms of the Loans will be at least as favorable to the Plan as those obtainable in arm's-length transactions with an unrelated party, as demonstrated by the letter from the Bank; (c) Loan 1 will be secured by a second mortgage on the Property, which has been determined by a qualified, independent appraiser to have a fair market value of not less than 150% of the total principal amount of the loans that it will secure; (d) Loan 2 will be secured by the Securities, which are publicly traded securities with a current fair market value of approximately 230% of Loan 2; and (e) Mr. Franklin is the only participant in the Plan to be affected by the transactions, and he desires that the transactions be consummated.

NOTICE TO INTERESTED PERSONS: Since Mr. Franklin is the only Plan participant to be affected by the proposed transactions, the Department has determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due within 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

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

The Sperry Rail, Inc. Retirement Plan (the Plan) Located in Danbury, Connecticut

[Application No. D–10452]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55

[9] Since Mr. Franklin is the sole owner of F&D and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed loan (the Loan) by the Plan of $965,000 to Sperry Rail, Inc. (Sperry), the Plan sponsor and a party in interest with respect to the Plan, provided the following conditions are satisfied: (a) The Loan does not exceed 25% of the assets of the Plan; (b) the Loan is at terms not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party; (c) the Loan is secured by personal property (the Property) that has been appraised by an independent appraiser as having a fair market value not less than 200% of the principal amount of the Loan; (d) an independent fiduciary has reviewed the proposed Loan on behalf of the Plan and has determined that the Loan is in the best interest of the Plan and its participants and beneficiaries; and (e) the Plan's independent fiduciary will monitor the Loan throughout its duration to ensure that it remains in the best interest of the Plan and continues to meet the conditions of the exemption proposed herein.

Summary of Facts and Representations

1. Sperry, the Plan sponsor, is in the railroad track inspection business and maintains its executive offices in Danbury, Connecticut. Sperry is a member of a controlled group of corporations. The other members of the controlled group are Sperry's parent corporation, Longview Holdings, Inc. (LHI), and Longview Inspection, Inc., another subsidiary of LHI. The Plan is a defined benefit plan that has approximately 192 participants and assets of $4,062,320 as of July 1, 1997.

2. Sperry has requested the exemption proposed herein to permit it to borrow $965,000 from the Plan. The Loan is to be repaid over a period of 15 years. The interest rate for the Loan is to be 1.5% plus the yield on 30 year Treasury Bonds on the outstanding balance, which is currently approximately 6.90% (which, when added to the 1.5% yields approximately 8.40%). For the first three years of the Loan, Sperry will make equal monthly payments of principal and interest in the amount of $5,361.11. The interest rate (and monthly payment amount) will be adjusted every 3 years to an amount equal to 1.5% above the then-current yield on 30 year U.S. Treasury Bonds. The applicant represents that when the interest rate is reset, it shall never be less than the interest rate applicable at the start of the Loan. Mr. J. Scott Bognar, Vice President of Putnam Trust (the Bank), a subsidiary of Bank of New York, has reviewed the proposed terms of the Loan and has determined that they constitute fair market value terms and are commercially reasonable.

3. The Loan will be secured by the Property, which consists of a Sperry Induction Detector Car bearing registration number: SRS 148, and Sperry spare parts inventory, together with all accessions, accessories, attachments, parts, equipment and repairs which may be affixed to or used in connection with the Property. The applicant represents that the Plan will have a first priority interest in the Property, and Sperry will execute such financing statements as are necessary to perfect the Plan's interest in the Property. The Property has been appraised by R.L. Banks & Associates, Inc. (Banks), Transportation Economists and Engineers, an independent expert with offices in Washington, D.C. Banks has determined that as of December 27, 1996, the fair market value of Car Number 148 was $803,720, and the value of the Sperry spare parts inventory was $1,500,000. Thus, Banks has appraised the Property to have a total fair market value of $2,303,720 as of December 27, 1996. This would represent approximately 2.4 times the principal amount of the Loan.

4. Mr. Paul Mishkin, a certified public accountant has been retained by the Plan to be its independent fiduciary with respect to the proposed Loan. Mr. Mishkin represents that he has more than 25 years' experience in both private industry and public accounting working with large publicly-held corporations as well as significant private companies. He has spent a substantial portion of that time analyzing corporate structures and evaluating financial alternatives. Mr. Mishkin represents that he has no financial interest in Sperry or its related entities, nor does he provide any services to Sperry or its affiliates. Mr. Mishkin has reviewed the terms of the proposed Loan and has determined that they are equal or more favorable to the Plan than those obtainable from an unrelated borrower. Mr. Mishkin represents that the Loan is appropriate for the Plan and in the best interest of the Plan's participants and beneficiaries and protective of their rights.

5. Mr. Mishkin represents that he will monitor and enforce compliance with the terms of the Loan. He will monitor monthly payments made by Sperry. In the event payments are not made on a timely basis, he will explore all avenues of recovery, including the right to sell the Property. Additionally, Mr. Mishkin will periodically inspect the condition of the Property, including obtaining current appraisals at Sperry's expense, to insure that the collateral maintains a value of 200% of the outstanding Loan amount at all times. If the collateral value falls below 200%, Mr. Mishkin has the authority to require Sperry to add additional collateral to restore the Plan's secured interest to 200%. Alternatively, Mr. Mishkin has the authority to accelerate repayments of principal consistent with any collateral shortfall.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (a) The Loan represents not more than 25% of the assets of the Plan; (b) the Loan is at terms not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party, as demonstrated by the representation from the Bank; (c) the Loan is secured by the Property, which has been appraised by an independent appraiser as having a fair market value approximately 240% of the principal amount of the Loan; (d) Mr. Mishkin, the Plan's independent fiduciary, has reviewed the proposed Loan on behalf of the Plan and has determined that the Loan is in the best interest of the Plan and its participants and beneficiaries; and (e) the Plan's independent fiduciary will monitor the Loan throughout its duration to ensure that it remains in the best interest of the Plan and continues to meet the conditions of the exemption proposed herein.

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

Crown American Properties L.P. Retirement Savings Plan (the Plan) Located in Johnstown, Pa.

[Application No. D–10454]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2), and section 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the purchase, holding or sale by participant-

directed accounts in the Plan of shares of Crown American Realty Trust (the Crown REIT), an affiliate of Crown American Properties L.P. (Crown American), the Plan's sponsor and, as such, a party in interest with respect to the Plan, provided that the following conditions are met:

(A) Any purchase or sale of the Crown REIT shares by a participant account (an Account) is made solely in accordance with the directions of the participant whose account is making the purchase or sale;

(B) Immediately following any purchase of the Crown REIT shares by an Account, the percentage of the total value of the Account invested in the Crown REIT shares does not exceed 25 percent, as measured based on the value of the assets held by such Account as of the close of the prior business day;

(C) Compliance with the terms and conditions of this proposed exemption, including the 25 percent limit described in Paragraph (B) above, is monitored by PNC Bank, National Association, as the Plan's trustee, which is independent of the Crown REIT and Crown American or any affiliate thereof;

(D) With respect to any decisions made by a Plan participant for a purchase or sale of Crown REIT shares by an Account, neither Crown American, PNC, nor any of their affiliates has discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, other than as required for PNC to monitor and enforce compliance with the 25 percent limit described in Paragraph (C) above, or renders any investment advice [within the meaning of 29 CFR 2510.3–21(c)] with respect to those assets;

(E) All purchases and sales of the Crown REIT shares by the Plan are executed:

(1) for cash;

(2) on the national exchange on which the Crown REIT shares are primarily traded (the Primary Exchange); and

(3) at the prevailing market price for the Crown REIT shares on the Primary Exchange at the time of the transaction;

(F) Notwithstanding the provisions contained in (E) above, purchases and sales of the Crown REIT shares may occur between the Accounts within the Plan in order to avoid brokerage commissions and other transaction costs, provided that the price received by each Account is equal to the closing price for the Crown REIT shares on the NYSE on the date of the transaction;

(G) Crown American maintains for a period of six years the records necessary to enable the persons described below in paragraph (H) to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Crown American, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than Crown American or an affiliate shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975 (a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (H) below; and

(H)(1) Except as provided below in paragraph (H)(2) and notwithstanding any provisions of section 504(a)(2) of the Act, the records referred to in paragraph (G) 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 Internal Revenue Service,

(ii) Any fiduciary of the Plan or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of the Plan or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (H)(1) (ii) and (iii) shall be authorized to examine trade secrets of Crown American, or commercial or financial information which is privileged or confidential.

Summary of Facts and Representations

1. The Plan is a defined contribution plan sponsored by Crown American. The Plan is a profit sharing plan that allows for elective deferral contributions by Plan participants in accordance with section 401(k) of the Code. Elective deferrals may not exceed 15 percent of a participant's compensation. In addition, Crown American may make matching contributions and employer contributions.

As of June 30, 1997, the Plan had approximately $5.6 million in assets and covered 449 participants and beneficiaries.

The trustee of the Plan is PNC, a banking corporation with its principal place of business in Pittsburgh, Pennsylvania. PNC is independent of Crown American and its affiliates.

Plan participants are responsible for determining how their contributions and account balances are to be allocated among the investment options available under the Plan. The eleven current investment options are an investment contract fund, two fixed income funds, two balanced funds, an S&P 500 Index Fund, two growth funds, a small-capitalization equity fund, and two international funds.

2. Crown American is a Delaware limited partnership through which the Crown REIT conducts its business operations. Crown American currently has about 400 employees who are engaged in executive, asset and property management, leasing, development, construction, financial, legal and administrative operations relating to the shopping center businesses owned by the Crown REIT.

The sole general partner of Crown American is the Crown REIT, which also owned a 74.47 percent interest in Crown American as of August 31, 1996. The other 25.53 percent interests are limited partnership interests owned by Crown Investment Trust, a Delaware business trust, and Crown American Investment Company, a Delaware corporation, each owned by the persons who developed the Crown REIT. The Crown REIT, as sole general partner, controls the management of Crown American, although Crown Investment Trust and Crown American Investment Company have approval rights over certain decisions.

3. The Crown REIT is a Maryland real estate investment trust that owns interests in a number of enclosed shopping mall properties. The Crown REIT conducts its business activities through two partnerships, one of which is Crown American.

The Crown REIT was created in 1993. The Crown REIT has one class of equity interests, entitled ''Common Shares of Beneficial Interest'' (i.e. the Shares). There were 27,667,636 Shares outstanding as of April 15, 1997. The Shares are traded on the New York Stock Exchange (NYSE), which is currently considered the Primary Exchange for purposes of the proposed exemption (see Condition (E)(2) and (E)(3) above).

The average trading volume for the Shares is currently approximately 300,000 Shares per week. The applicant states that the average daily trading volume during 1996 was 96,100 Shares, and the annual trading volume during that year was 18,696,300 Shares, or approximately $148.6 million at the current stock price of $8 per share, as of July 1997. The applicant states further that during the period from July 1996 until June 1997, the price per share of the Shares fluctuated from a low of $7.25 to a high of $8.75.[10]

[10] The applicant states that based on current Plan assets of $5.6 million, the maximum amount that could be transferred into the Shares as an

4. Crown American, as the named fiduciary of the Plan, has determined that it would be prudent and in the interests of the Plan's participants and beneficiaries to make the Shares available as an investment option under the Plan, to supplement the eleven current investment options. Crown American states that the Shares are the equivalent of ''employer securities'' [11] with respect to the Plan (see discussion in Paragraph 5 below). Therefore, Crown American believes that having the Shares available as an investment option would allow the Plan participants to share in the growth of their employer's business. Crown American represents that since the Shares are currently traded daily on the NYSE, they should be considered a liquid investment that can be easily valued on a daily basis.

If the proposed exemption is granted, Plan participants will decide, as an additional investment option under the Plan, whether to invest any of their account balances (i.e. Accounts) in the Shares. Participants will be allowed to: (a) allocate a specified percentage of their elective deferral contributions to an investment in the Shares, and/or (b) transfer amounts from their investments in other Plan investment options to the Shares. The Plan will require that a Plan participant could not invest more than 25 percent of the assets in the Account in the Shares, measured at the time of any proposed investment in Shares using the Account values as of the previous business day.

Compliance with the 25 percent limitation will be monitored by PNC, the Plan's trustee, as an independent plan fiduciary. If more than 25 percent of an Account is already invested in Shares, or if a directed investment would cause the Account to exceed the 25 percent limit, PNC will not permit any additional investment by that Account in the Shares.

Purchases and sales of Shares by the Plan, which would result solely from participant contributions or investment transfer decisions, will be executed on the NYSE at the prevailing market price (subject to applicable brokerage commissions) at the time of such transactions. However, to avoid brokerage commissions and other transaction costs, purchases and sales will be made between the Accounts to the extent possible (i.e. ''netted'' transactions). Any such ''netted'' transactions will be valued at the closing market price for the Shares on the NYSE on the date of the transaction and would be executed in a non-discretionary, mechanical manner. [12] All purchases and sales of the Shares by the Plan will be for cash.

PNC will not be providing brokerage services to the Plan. PNC will place all trades of the Shares for execution through an independent broker-dealer.

Crown American states that it would not render any investment advice, within the meaning of section 3(21)(A)(ii) of the Act, to any participant regarding the investment of that participant's Account in the Shares.

5. Crown American is the employer of the employees covered by the Plan. Crown American represents that because the Crown REIT owns a 75.6 percent interest in Crown American, the Crown REIT would be considered an ''affiliate'' of Crown American within the meaning of the Act.[13]

Crown American states that the Shares are ''securities'' within the meaning of section 2(1) of the Securities Act of 1933, and as such are ''securities'' for purposes of Title I of the Act (see section 3(20) of the Act defining the term ''security''). Crown American states further that the Shares, as securities issued by the Crown REIT, would be securities issued by an affiliate of an employer of employees covered by the Plan, and thus ''employer securities'' with respect to the Plan under section 407(d)(1) of the Act (as noted previously in Footnote 1). However, under section 407(a)(1)(A), a Plan may acquire and hold only those employer securities that are ''qualifying employer securities''. In order to be a ''qualifying employer security'' (QES), section 407(d)(5) requires that an employer security must be either stock, a marketable obligation, or an interest in certain types of publicly-traded partnerships (as defined in section 7704(b) of the Code).

The applicant states that the Shares are not marketable obligations (as defined under section 407(e) of the Act) or interests in a ''publicly-traded partnership,'' as defined under the Code,[14] which would allow such Shares to meet the definition of QES under section 407(d)(5)(C) of the Act.[15] In addition, the applicant represents that it is not clear whether the Shares would be considered ''stock'' within the meaning of section 407(d)(5) of the Act because, under Maryland law, a ''share'' of a real estate investment trust is defined as a transferable unit of beneficial interest in a real estate investment trust, without any reference to the term ''stock''.[16] The applicant notes that the term ''stock'' is used under Maryland law solely in

investment option for the Plan would be $1.4 million (25 percent of $5.6 million). This amount would represent approximately .8 percent of the annual trading volume. The maximum annual projected new funds that could be invested in the Shares, based on 25 percent of annual Plan contributions, could not exceed $260,000 at current contribution rates, which would be just under .2 percent of the annual trading volume. Thus, the applicant does not anticipate that trading by the Plan in the Shares will exceed one (1) percent of annual trading volume during the first year, or .2 percent of annual trading volume during subsequent years. Since not all participants will be investing up to 25 percent of their Accounts in the Shares, and because trading will be spread out over time with transactions being netted between Accounts when possible, the applicant states that the actual percentages are likely to be much lower. Therefore, the projected impact of the Plan's trading on overall trading activity and the market value of the Shares is expected to be negligible.

[11] Section 407(d)(1) of the Act states that an ''employer security'' is a security issued by an employer of employees covered by the plan, or by an affiliate of such employer.

[12] The applicant states that purchases and sales between the Accounts would be considered intra-Plan transactions that would not create separate prohibited transactions under section 406 of the Act. In this regard, the Department is providing no opinion in this proposed exemption as to whether cross-trades of employer securities between participant accounts within a plan would violate any provisions of Part 4 of Title I of the Act. However, the Department notes that section 406(b)(2) of the Act prohibits a plan fiduciary from acting, in his individual or in any other capacity, in any transaction on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan *or the interests of its participants and beneficiaries.* [emphasis added]

[13] Section 407(d)(7) of the Act states that a person other than a corporation is treated as an ''affiliate'' of another person to the extent provided by regulation. The applicant states that the Department has taken the position that in the absence of regulations, a 50 percent ownership test, which is the threshold for determining affiliation of corporations, should be used for determining whether a corporation would be an ''affiliate'' of a partnership or joint venture under section 407(d)(7). See DOL Info. Ltr. To Gary Quintiere, WSB File No. DL0398 at 2 (Feb. 25, 1994); see also ERISA Adv. Op. 80–55A (where a joint venture owning 65 percent of the interests in a corporation was considered an affiliate of the corporation). Therefore, the applicant states that the same 50 percent threshold should apply for purposes of determining affiliation among non-corporate entities. In this regard, the Department is providing no opinion herein as to whether such non-corporate entities would be considered ''affiliates'' of one another.

[14] The applicant notes that a real estate investment trust such as the Crown REIT, takes the form of a corporation, trust or association, each of which is distinguished in the Code from a partnership (see section 856(a) of the Code).

[15] The applicant also notes that to meet the requirements of section 407(d)(5)(C) of the Act, a partnership must be an ''existing partnership'' as defined in section 10211(c)(2)(A) of the Revenue Act of 1987. This provision requires that the partnership have existed or have applied for existence as a publicly-traded partnership as of December 17, 1987. Because the Crown REIT was not established until 1993, it cannot meet this definition.

[16] See Md. Corp. & Assoc. Sec. 8–101(c).

connection with describing interests in a corporation, whereas a real estate investment trust takes the form of an unincorporated trust.

The applicant states that if the Shares are not considered to be QES, the Plan cannot rely on the statutory exemption under section 408(e) of the Act to obtain relief for the prohibitions of section 406 and 407 relating to transactions involving employer securities that are QES.[17] Therefore, the applicant requests an exemption under section 408(a) of the Act to enable the Accounts in the Plan to acquire, hold, or dispose of the Shares, subject to the conditions discussed herein.

6. PNC will be retained as an independent fiduciary for the Plan for purposes of the proposed exemption. PNC represents that it is independent of Crown American and its affiliates, including the Crown REIT. PNC does have business relationships with Crown American and the Crown REIT, including certain banking services and commercial loans. However, PNC states that to the extent it has provided services to Crown American or an affiliate in the past, its annual gross income for such services was less than one-tenth of one (1) percent of its total annual gross income. In addition, PNC has made, and may continue to make, certain construction or permanent loans to the Crown REIT along with other banks in connection with properties owned by the Crown REIT. PNC states that such loans represent a de minimis percentage of PNC's outstanding loan portfolio. PNC does not expect that any such loans will affect its independence for purposes of its duties and responsibilities as an independent fiduciary for the Plan in connection with the proposed transactions involving the Shares.[18] Moreover, as discussed further in Paragraph 9, PNC is not providing any recommendations or other investment advice as a fiduciary to the Plan participants regarding whether to invest in the Shares.

7. PNC represents that it is an experienced fiduciary which currently serves as trustee of a number of participant-directed employee pension plans subject to the Act, including plans that invest in employer securities. In addition, PNC represents that it has had experience with transactions involving publicly-traded shares of a real estate investment trust.

PNC has submitted a statement, dated April 15, 1997, whereby it acknowledges that it will be acting as a fiduciary to the Plan under the Act for purposes of the proposed transactions involving the Shares, and that it understands its duties, liabilities and responsibilities under the Act.

8. The applicant has submitted a letter agreement between Crown American and PNC (the I/F Agreement), which describes the duties of PNC as the Plan's independent fiduciary in connection with the proposed transactions. The I/F Agreement states that it shall be PNC's responsibility to monitor compliance by the Accounts with all of the conditions of this proposed exemption.

PNC will purchase and sell the Shares, as the Plan's trustee, in accordance with participant instructions. PNC will execute all transactions on the NYSE at the prevailing market price for the Shares, except to the extent such transactions can be accomplished through transfers between Accounts using the NYSE closing price to value the Shares. PNC will value the Shares for the Accounts on a daily basis using the NYSE prices.

PNC will ensure that following any purchase of Shares by an Account, the percentage of the total value of the Account invested in Shares does not exceed 25 percent, as measured based on the value of the assets held by the Account as of the close of the prior business day. In this regard, PNC's recordkeeping system will monitor whether an initial investment allocation or contribution allocation would cause the Account to exceed the 25 percent limit, and will not permit the allocation if that would be the result. Any other participant-initiated transaction involving the Shares, such as a reallocation among Plan investments or reallocation of future contributions, will be requested using a paper form. The completed form will be reviewed initially by Crown and then by the responsible Client Service Officer at PNC to ensure that the 25 percent limit will not be exceeded as a result of the particular transaction. The Client Service Officer at PNC will approve the transaction as complying with this requirement before it is processed by PNC, as the Plan's trustee. However, the 25 percent limitation under the proposed exemption will not be violated if an Account's investment in Shares exceeds 25 percent of the value of the Account solely by reason of an increase in value of the Shares or a decrease in value of the other assets in the Account after such Shares are acquired by the Account.

9. PNC represents that it would be appropriate for Crown to add the Shares as an investment option for participants of the Plan for the following reasons:

(a) Participants will be able to decide whether or not to invest their Account balances in the Shares, and how much of their Account balances to invest in or transfer from such Shares. They are familiar with the issuer because they work for Crown, and they will receive quarterly financial statements and annual reports of the issuer just as any other shareholder;

(b) The Shares will be one of a series of diverse and varied investment options available to Plan participants, and as a real estate equity investment will help complement the other options as part of an overall, well-diversified portfolio;

(c) The Shares are traded on the NYSE, so that (i) participants will be able to follow any changes in the price of the Shares each business day in newspapers of general circulation, and (ii) the Plan will have a readily available avenue for purchasing or selling the Shares as determined by participant investment decisions; and

(d) A participant's investment in the Shares could not exceed 25 percent of his or her total Account balance at time of purchase, preventing the Account from becoming unduly concentrated in the Shares.

However, PNC states further that its statements regarding the Shares do not constitute a recommendation or investment advice as to whether any Plan participant should invest in the Shares as an investment option under the Plan. Thus, PNC's role as the Plan's independent fiduciary under the proposed exemption is limited to enforcing the terms and conditions stated herein and does not extend to the underlying investment decisions made by Plan participants as to whether the Shares are an appropriate investment for particular Accounts.

The applicant states that a communication statement will be sent by Crown and PNC to each Plan participant regarding the addition of the Shares as an investment option for the Plan and describing how this investment option will operate. The communication statement will describe, among other things, the information that Plan participants will receive about their Share investments on an ongoing basis and the relationships that exist between PNC and Crown or its affiliates.

10. In summary, the applicant represents that the proposed transactions will meet the statutory

[17] The Department is providing no opinion herein as to whether the proposed transactions could meet the conditions necessary for relief under section 408(e) of the Act and the regulations thereunder.

[18] The Department notes that section 404(a) of the Act requires, among other things, that a plan fiduciary act prudently and solely in the interests of the plan and its participants and beneficiaries.

criteria of section 408(a) of the Act because: (a) Plan participants will be able to invest in ''equity'' interests of the Crown REIT (i.e. the Shares), which will allow them to share in the growth of their employer's business; (b) no Plan participant will be able to invest more than 25 percent of his or her Account in the Shares, so that an Account's assets will not be unduly concentrated in Shares; (c) compliance with the terms and conditions of the proposed exemption, including the 25 percent limitation, will be monitored by an independent Plan fiduciary (i.e. PNC); (d) the Shares will be acquired and sold for cash by the Accounts; (e) the acquisition and disposition of the Shares will occur on the NYSE, except to the extent that such transactions can be ''netted'' between the Accounts to avoid brokerage commissions and other transaction costs; (f) all transactions involving the Shares will be either (i) executed on the open market at the then-current NYSE prices, or (ii) ''netted'' between the Accounts using the NYSE closing price for the Shares on the date of the transaction, as determined by PNC, as the Plan's independent fiduciary; (g) Plan participants will decide whether or not to invest their Account balances in the Shares, and how much of their Account balances to invest in or transfer from such Shares (subject to the 25 percent limit required herein), and will receive quarterly financial statements and annual reports of the issuer just as any other shareholder; and (h) PNC, as the Plan's independent fiduciary, has determined that it would be appropriate for Crown to add the Shares as an investment option for the Plan's participants to complement other investment options as part of an overall, well-diversified portfolio, but is not providing any recommendations or investment advice to Plan participants in connection with their proposed investments in the Shares.

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

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

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

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 26th day of September, 1997.

Ivan Strasfeld,

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

[FR Doc. 97–26072 Filed 10–1–97; 8:45 am]

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–142]

National Environmental Policy Act; X–33 Program: Vehicle Design and Flight Demonstration

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of the final environmental impact statement (FEIS) for the X–33 Advanced Technology Demonstrator Vehicle program.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), and NASA policy and procedures (14 CFR Part 1216 Subpart 1216.3), NASA has prepared and issued an FEIS for continuation of Phase II of the X–33 Program, which involves the development and demonstration of the X–33 test vehicle. The FEIS addresses environmental issues associated with the testing of the X–33 technology demonstrator spaceplane, and preparation of the flight operations (launch) and landing sites. The purpose of the proposed test program is to demonstrate the feasibility of technology which could result in commercially viable Reusable Launch Vehicles (RLVs).

The reasonable alternative launch sites are located within Edwards Air Force Base (AFB) near Lancaster, California. Reasonable alternative landing sites evaluated for segments of the flight test activities are located at Silurian Lake, near Baker, California; China Lake Naval Air Weapon Station, near Ridgecrest, California; Dugway Proving Ground, near Tooele, Utah; Grant County Airport, Moses Lake, Washington; and Malmstrom AFB, Great Falls, Montana. NASA's preferred launch site is the Haystack Butte site at Edwards AFB. The preferred landing sites are at Silurian Lake, Dugway Proving Ground, and Malmstrom AFB.

NASA is the lead agency in the preparation of the environmental impact statement. The U.S. Department of Defense; the U.S. Department of the Interior, Bureau of Land Management; and the U.S. Department of Transportation, Federal Aviation Administration are acting as cooperating agencies.

DATE: NASA will take no final action on the proposed Phase II of the X–33 Program before November 3, 1997 or 30 days from the date of publication in the **Federal Register** of the U.S. Environmental Protection Agency's notice of availability of the X–33 FEIS, whichever is later.

ADDRESSES: The FEIS may be reviewed at the following locations:

(a) NASA Headquarters, Library, Room 1J20, 300 E Street SW, Washington, DC 20546.

(b) NASA, Marshall Space Flight Center, Library, Building 4200, Huntsville, AL 35812.