

operation of the Securities Lending Program.³

5. Securities loans generally are collateralized by U.S. Government securities, cash or letters of credit. When the collateral is cash, the lender invests the cash collateral during the loan period and, after paying the borrower an agreed upon interest rate, retains the remainder thereof, which is usually shared with the securities lending agent. If the collateral is a U.S. Government security or letter of credit, the borrower pays a lending fee, which is usually shared between the lender and the securities lending agent.

6. The applicants request relief to permit: (a) The Lending Funds to pay Neuberger Berman, or an entity controlling, controlled by, or under common control with Neuberger Berman, a fee based on a share of the revenue derived from securities lending activities; and (b) the Lending Funds to lend portfolio securities to Neuberger Berman and any broker-dealer, other than NBMI, that controls, is controlled by, or is under common control with, Neuberger Berman (collectively, the "Affiliated Broker-Dealers").

Applicants' Legal Analysis

A. Payment of Lending Agent Fees

1. Section 17(d) of the Act and rule 17d-1 thereunder prohibit any affiliated person of or principal underwriter for a registered investment company or any affiliated person of such person or principal underwriter, acting as principal, from effecting any transaction in connection with any joint enterprise or other joint arrangement or profit-sharing plan, in which the investment company participates unless the Commission has approved the transaction. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include the investment company's adviser. As the Lending Funds' sub-adviser, Neuberger Berman may be deemed to be an affiliated person of the Lending Funds. Because a fee arrangement between a lending agent and a Lending Fund, under which compensation is based on a percentage of the revenue generated by securities lending transactions, may be a joint enterprise or other joint arrangement or profit sharing plan within the meaning of section 17(d) and rule 17d-1, applicants request an order to permit each Lending Fund to pay,

and Neuberger Berman to accept, such fees in connection with services provided by Neuberger Berman to a Lending Fund.

2. Applicants propose that each Lending Fund adopt the following procedures to ensure that the proposed fee arrangement and the other terms governing the relationship with the NB Securities Lending Group will meet the standards of rule 17d-1:

a. In connection with the approval of the NB Securities Lending Group as lending agent for the Lending Funds, and implementation of the proposed fee arrangement, a majority of the Board of each Lending Fund (including a majority of the trustees or directors of each Lending Fund who are not "interested persons" as defined in section 2(a)(19) of the Act (the "Independent Trustees/Directors")) will determine that (i) The contract with the NB Securities Lending Group is in the best interests of the Lending Fund and its shareholders; (ii) the services to be performed by the NB Securities Lending Group are appropriate for the Lending Fund; (iii) the nature and quality of the services to be provided by the NB Securities Lending Group are at least equal to those provided by others offering the same or similar services; and (iv) the fees for the NB Securities Lending Group's services are fair and reasonable in light of the usual and customary charges imposed by others for services of the same nature and quality.

b. In connection with the approval of the NB Securities Lending Group as lending agent for the Lending Funds and the initial implementation of the proposed fee arrangement, the Board of each Lending Fund will review competing quotes with respect to lending agency fees from at least three independent lending agents to assist the Board in making the findings referred to in paragraph (a) above.

c. Each Lending Fund's contract with the NB Securities Lending Group for lending agent services will be reviewed annually and will be approved for continuation only if a majority of the Board, including a majority of the Independent Trustees/Directors, makes the findings referred to in paragraph (a) above.

d. The Board, including a majority of the Independent Trustees/Directors, will (i) determine at each regular quarterly meeting on the basis of reports submitted by the NB Securities Lending Group that the loan transactions during the prior quarter were effected in compliance with the conditions and procedures set forth in the application and (ii) review not less frequently than

annually the conditions and procedures for continuing appropriateness.

e. Each Lending Fund will (i) Maintain and preserve permanently in an easily accessible place a written copy of the procedures and conditions described in the application and (ii) maintain and preserve for a period not less than six years from the end of the fiscal year in which any loan transaction pursuant to the Securities Lending Program occurred, the first two years in an easily accessible place, a written record of each loan transaction setting forth a description of the security loaned, the identity of the person on the other side of the loan transaction, the terms of the loan transaction, and the information or materials upon which the determination was made that each loan was made in accordance with the procedures set forth above and the conditions to the application.

B. Lending to Affiliated Broker-Dealers

1. Section 17(a)(3) of the Act makes it unlawful for any affiliated person of or principal underwriter for a registered investment company, or an affiliated person of such a person ("second-tier affiliate"), acting as principal, to borrow money or other property from the registered investment company. Applicants state that because Neuberger Berman is sub-adviser to the Lending Funds, and the other Affiliated Broker-Dealers are under common control with Neuberger Berman and NBMI, an Affiliated Broker-Dealer may be considered an affiliated person, or a second-tier affiliate, of a Lending Fund. Accordingly, section 17(a)(3) would prohibit the Affiliated Broker-Dealers from borrowing securities from the Lending Funds.

2. As noted above, section 17(d) and rule 17d-1 generally prohibit joint transactions involving registered investment companies and their affiliates unless the Commission has approved the transaction. Applicants request relief under sections 6(c) and 17(b) of the Act exempting them from section 17(a)(3), and under section 17(d) and rule 17d-1 to permit the Lending Funds to lend portfolio securities to Affiliated Broker-Dealers.

3. Applicants state that each loan to an Affiliated Broker-Dealer by a Lending Fund will be made with a spread that is no lower than that applied to comparable loans to unaffiliated broker-dealers.⁴ In this regard, applicants state

³ The personnel of the NB Securities Lending Group who will provide day-to-day lending agency services to the Lending Funds do not and will not provide investment advisory services to the Lending Funds, or participate in any way in the selection of portfolio securities or other aspects of the management of the Lending Funds.

⁴ A "spread" is the compensation earned by a Lending Fund from a securities loan, which compensation is in the form either of a lending fee payable by the borrower to the Lending Fund (when non-cash collateral is posted) or of the excess retained by the Lending Fund over a rebate rate