

entity is engaged in securities lending arrangements with the Borrower, the foregoing \$50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of \$50 million (excluding the assets of any Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Has full investment responsibility with respect to plan assets invested therein; and

(ii) Has total assets under its management and control, exclusive of the \$50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of \$100 million. (In addition, none of the entities described above are formed for the sole purpose of making loans of securities.)

(p) Prior to any Plan's approval of the lending of its securities to the Borrower, a copy of this exemption, if granted (and the notice of pendency), are provided to the Plan, and the Borrower informs the independent fiduciary that the Borrower is not acting as a fiduciary of the Plan in connection with its borrowing securities from the Plan.<sup>7</sup>

(q) The independent fiduciary of each Plan receives monthly reports with respect to the securities lending transactions, including but not limited to the information set forth in the following sentence, so that an independent Plan fiduciary may monitor such transactions with the relevant Borrower. The monthly report will list for a specified period all outstanding or closed securities lending transactions. 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 premium (if applicable) at which the

security is loaned, and the number of days the security has been on loan. At the request of a Plan, such a report will be provided on a daily or weekly basis, rather than a monthly basis. Also, upon request of a Plan, the relevant Borrower will provide the Plan with daily confirmations of securities lending transactions.

#### Section IV. General Conditions

(a) In addition to the conditions set forth above in sections II and III of this proposed exemption, all loans involving the Borrower must satisfy the following supplemental requirements:

(1) The Borrower is a bank which is subject to regulation by the Swedish Financial Supervisory Authority (Finansinspektionen) (the SFSA).

(2) The Borrower is in compliance with all applicable provisions of Rule 15a-6 (17 CFR 240.15a-6) under the Securities Exchange Act of 1934, as amended (the 1934 Act) which provides foreign broker-dealers a limited exception from United States registration requirements.

(3) All collateral is maintained in United States dollars or in U.S. dollar-denominated securities or letters of credit, or other collateral permitted under PTE 81-6 (as amended or superseded).

(4) All collateral is held in the United States and the situs of the applicable Borrowing Agreement is maintained in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)-1.

(5) Prior to entering into a transaction involving the Borrower, the Borrower must:

(i) Agree to submit to the jurisdiction of the United States;

(ii) Agree to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(iii) Consent to the service of process on the Process Agent; and

(iv) Agree that enforcement by a Plan of the indemnity provided by the Borrower will occur in the United States courts.

(b) The Borrower maintains, or causes to be maintained, within the United States for a period of six years from the date of such transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described in paragraph (c)(1) to determine whether the conditions of the 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 SEB and/or its affiliates, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than the Borrower 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 below by paragraph (c)(1). (c)(1) Except as provided in subparagraph (c)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (b) are unconditionally available at their customary location or examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission (the SEC);

(ii) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(iii) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(iv) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in subparagraphs (c)(1)(ii)-(c)(1)(iv) of this paragraph (c)(1) are authorized to examine the trade secrets of SEB or its affiliates or commercial or financial information which is privileged or confidential. (d) Prior to any Plan's approval of any transaction with the Borrower, the Plan is provided copies of the proposed and final exemptions covering the exemptive relief described herein.

#### Section V. Definitions

(a) An "affiliate" of a person means:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person. (For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual);

(2) Any officer, director, employee or relative (as defined in section 3(15) of the Act) of any such other person or any partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director

<sup>7</sup> The Department notes the SEB representation that, under the proposed exclusive borrowing arrangements, neither the Borrower nor any of its affiliates will perform the essential functions of a securities lending agent, *i.e.*, SEB will not be the fiduciary who negotiates the terms of the Borrowing Agreement on behalf of the Plan, the fiduciary who identifies the appropriate borrowers of the securities or the fiduciary who decides to lend securities pursuant to either a general securities lending arrangement or an exclusive borrowing arrangement. However, SEB or its affiliates may monitor the level of collateral and the value of the loaned securities.