

insurance company or registered investment advisor, or (b) the employee benefit plan has total assets in excess of \$5 million, or (c) the employee benefit plan is a self-directed plan with investment decisions made solely by persons that are "accredited investors" as defined in Rule 501(a)(1) of Regulation D of the Securities Act of 1933, as amended. The term "major U.S. institutional investor" is defined as a person that is a U.S. institutional investor that has total assets in excess of \$100 million or accounts managed by an investment adviser registered under section 203 of the Investment Advisers Act of 1940 that has total assets under management in excess of \$100 million.¹⁰ The Applicant represents that the intermediation of the U.S. registered broker-dealer imposes upon the foreign broker-dealer the requirement that the securities transaction be effected in accordance with a number of U.S. securities laws and regulations applicable to U.S. registered broker-dealers.

6. The Applicant represents that under Rule 15a-6, a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security by a U.S. institutional or major U.S. institutional investor in accordance with Rule 15a-6¹¹ must, among other things:

(a) Consent to service of process for any civil action brought by, or proceeding before, the SEC or any self-regulatory organization;

(b) Provide the SEC with any information or documents within its possession, custody or control, any testimony of any such foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the SEC requests and that relates to the transactions effected pursuant to the Rule;

(c) Rely on the U.S. registered broker-dealer through which the transactions with the U.S. institutional and major U.S. institutional investors are effected to (among other things):

(1) Effect the transactions, other than negotiating the terms;

(2) Issue all required confirmations and statements;

(3) As between the foreign broker-dealer and the U.S. registered broker-dealer, extend or arrange for the extension of credit in connection with the transactions;

(4) Maintain required books and records relating to the transactions, including those required by SEC Rules 17a-3 (Records to be Made by Certain Exchange Members) and 17a-4 (Records to be Preserved by Certain Exchange Members, Brokers and Dealers) of the 1934 Act;

(5) Receive, deliver, and safeguard funds and securities in connection with the transactions on behalf of the U.S. institutional investor or major U.S. institutional investor in compliance with Rule 15c3-3 of the 1934 Act (Customer Protection-Reserves and Custody of Securities); and

(6) Participate in certain oral communications (e.g., telephone calls) between the foreign associated person and the U.S. institutional investor (not the major U.S. institutional investor), and accompany the foreign associated person on certain visits with both U.S. institutional and major U.S. institutional investors. Under certain circumstances, the foreign associated person may have direct communications and contact with the U.S. Institutional Investor. (See April 9, 1997 No-Action Letter.)

7. An institutional investor, such as a pension fund, lends securities in its portfolio to a broker-dealer or bank in order to earn a fee while continuing to enjoy the benefits of owning the securities (e.g., from the receipt of any interest, dividends, or other distributions due on those securities and from any appreciation in the value of the securities). The lender generally requires that the securities loan be fully collateralized, and the collateral usually is in the form of cash or high quality liquid securities, such as U.S. Government or Federal Agency obligations or irrevocable bank letters of credit. If the Borrower deposits cash collateral, and the lender invests the collateral, then the applicable borrowing agreement may provide that the lender pay the Borrower a previously-agreed upon amount or rebate fee and keep the excess of the earnings on the collateral over the rebate fee as compensation. If the Borrower deposits government securities, the Borrower is entitled to the earnings on its deposited securities and may pay the lender a lending fee. If the Borrower deposits irrevocable bank letters of credit as collateral, the Borrower pays the lender a fee as compensation for the loan of its securities. These fees, defined below as the Transaction Lending Fee, may be

determined in advance or pursuant to an objective formula, and may be different for different securities or different groups of securities subject to the Borrowing Agreement.

Securities Lending Between Plans and the Borrower

8. SEB requests exemptive relief, effective October 23, 2002, for the lending of securities, equivalent to that provided under the terms and conditions of PTE 81-6, a class exemption permitting certain loans of securities by Plans. However, since PTE 81-6 provides an exemption only for U.S. registered broker-dealers and U.S. banks, the securities lending transactions at issue herein (with the Borrower, acting as principal, and engaging in the borrowing and lending of securities, typically foreign securities from institutions, including Plans) may fall outside the scope of relief provided by PTE 81-6.

9. The Borrower represents that it will utilize borrowed securities to either satisfy its own trading requirements or to re-lend to other affiliates and entities which need a particular security for a certain period of time. The Applicant represents that in the United States, as described in the Federal Reserve Board's Regulation T, borrowed securities are often used to meet delivery obligations in the case of short sales or the failure to receive securities that the Borrower is required to deliver, and SEB represents that foreign broker-dealers and banks are the most likely entities that seek to borrow foreign securities. Thus, the proposed exemption will increase the lending demand for such securities and provide the Plans with increased securities lending opportunities.

10. Neither the Borrower nor any of its affiliates has or shall have discretionary authority or control with respect to the investment of Plan assets involved in a transaction or render investment advice within the meaning of 29 CFR 2510.3-21(c) with respect to such assets.

11. Each Plan will receive, from the Borrower, either by physical delivery, book entry in a securities depository located in the United States, wire transfer or similar means, by the close of business on the day the loaned securities are delivered to the Borrower, collateral consisting of U.S. currency, securities issued or guaranteed by the U.S. Government or its agencies, irrevocable U.S. bank letters of credit issued by persons other than the Borrower (or any of its affiliates) or any combination thereof, having, as of the close of trading on the preceding business day, a market value (or, in the

¹⁰ Note that the categories of entities that qualify as "major U.S. institutional investors" has been expanded by a Securities and Exchange Commission No-Action letter. See SEC No-Action Letter issued to Cleary, Gottlieb, Steen & Hamilton on April 9, 1997, expanding the definition of "Major U.S. Institutional Investor" (the April 9, 1997 No-Action Letter).

¹¹ If it is determined that applicable regulation under the 1934 Act does not require SEB or the Borrower to comply with Rule 15a-6, both entities will, nevertheless, comply with subparagraphs (a) and (b) of Representation 6.