

case of letters of credit, a stated amount equal to same) equal to or not less than 100 percent of the then market value of the securities lent. (The collateral referred to in this Representation will be in U.S. dollars or dollar-denominated securities or U.S. bank irrevocable letters of credit and will be held in the United States.)

12. Each loan will be made pursuant to a written Loan Agreement which may be in the form of a master agreement covering a series of securities lending transactions. The terms of the Loan Agreement will be at least as favorable to the Plan as those the Plan could obtain in a comparable arm's length transaction with an unrelated party. The Loan Agreement will also contain a requirement that the Borrower pay all transfer fees and transfer taxes relating to the securities loans.

13. In return for lending securities, each Plan will either (a) receive a reasonable fee which is related to the value of the borrowed securities and the duration of the loan or (b) have the opportunity to derive compensation through the investment of cash collateral. In the latter case, the Plan may pay a loan rebate or similar fee to the Borrower if such fee is not greater than what the Plan would pay in a comparable arm's length transaction with an unrelated party.

14. Each Plan shall receive at least the equivalent of all distributions made to holders of the borrowed securities during the term of the 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 that the Plan would have received (net of tax withholdings). The Department notes the Applicant's representation that dividends and other distributions on foreign securities payable to a lending Plan may be subject to foreign tax withholdings and the Borrower will always put the Plan back in at least as good a position as it would have been in had it not lent the securities and remained the record owner of such securities.

15. If the market value of the collateral as of the close of trading on a business day in a certain transaction falls below 100 percent of the market value of the borrowed securities as of the close of trading on that day, the Borrower will deliver additional collateral, by the close of business on the following business day to bring the level of the collateral back to at least 100 percent. Notwithstanding the foregoing, part of the collateral may be returned to the Borrower if the market value of the collateral exceeds 100 percent of the

market value of the borrowed securities, as long as the market value of the remaining collateral equals at least 100 percent of the market value of the borrowed securities. Matters relating to the return of the collateral, the substitution of collateral and the termination of loans, will be determined by applicable provisions of the Loan Agreement.

16. Prior to the making of any securities loan, the Borrower will furnish to the independent fiduciary for the Plan who makes decisions on behalf of the Plan with respect to lending of securities (a) the most recently available audited and unaudited statements of such entity's financial condition, and (b) a representation from the Borrower that, as of each time such entity borrows securities, there has been no material change in the financial condition of such entity since the date of the most recently furnished financial statement that has not been disclosed to the Plan.

17. The Loan Agreement and/or any securities loan outstanding may be terminated by the Plan at any time, whereupon the Borrower will deliver securities identical to the borrowed securities (or the equivalent thereof in the event of a reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within the time period specified by PTE 81-6 as it may be amended from time to time.

18. In the event that a loan is terminated and the Borrower fails to return the borrowed securities, or the equivalent thereof, within the time described in Representation 18 above, the Plan may purchase securities identical to the borrowed securities, or the equivalent thereof, and may apply the collateral to the payment of the purchase price, any other obligations of the Borrower under the Loan Agreement and any expenses associated with replacing the borrowed securities. The Borrower shall indemnify the Plan with respect to the difference, if any, between the replacement cost of the borrowed securities and the market value of the collateral on the date the loan is declared in default, together with expenses not covered by the collateral plus applicable interest at a reasonable rate.

Notwithstanding the foregoing, the Borrower may, in the event it fails to return borrowed securities as described above, replace non-cash collateral with an amount of cash not less than the current market value of the collateral, provided that, such replacement is approved by the independent Plan fiduciary.

19. Each Plan will maintain the situs of the Loan Agreement in accordance with the indicia of ownership requirements of section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)-1. However, the Borrower will not be subject to the civil penalty which 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 Plan fails to comply with the requirements of 29 CFR 2550.404(b)-1.21.

#### *Exclusive Borrowing Arrangements Between Plans and the Borrower*

20. The Borrower also requests an exemption for the lending of securities, under certain exclusive borrowing arrangements, by Plans with respect to which SEB or any of its affiliates is a party in interest, for example, by virtue of its providing investment management, custodial, or other services to such Plans. For each Plan, neither the Borrower nor any of its affiliates will have discretionary authority or control over the Plan's investment in the securities available for loan, nor will they render investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets.<sup>12</sup> However, because the Borrower, by exercising its contractual rights under the proposed exclusive borrowing arrangements, will have discretion with respect to whether there is a loan of particular Plan securities to the Borrower, the lending of securities to the Borrower may be outside the scope of relief provided by PTE 81-6.

Generally, the Borrower is a party in interest with respect to Plans, if at all, solely by reason of providing services to the Plan, or solely by reason of a relationship to a service provider under section 3(14)(F), (G), (H), or (I) of the Act.

21. For each Plan, the Borrower will directly negotiate a Borrowing Agreement with a Plan fiduciary which is independent of the Borrower. Under the Borrowing Agreement, the Borrower will have exclusive access for a specified period of time to borrow certain securities of the Plan pursuant to certain conditions. The Borrowing Agreement will specify all material terms of the agreement, including the basis for compensation to the Plan under each category of securities available for loan. The Borrowing Agreement will also contain a requirement that the Borrower pay all

<sup>12</sup> Condition 1 of PTE 81-6 requires, in part, that neither a borrower nor an affiliate of the borrower may have discretionary authority or control over the investment of the applicable plan assets involved in the transaction.