

structures described herein is in the interests of the Plans because the Plans will then be able to choose among an expanded number of competing exclusive borrowers, as well as maximizing the volume of securities lent and the return on such securities.

Supplemental Requirements

31. In addition to the conditions set forth in Parts One and Two of the proposal, all loans involving the Borrower must satisfy the following supplemental requirements:

(a) The Borrower is a bank which is subject to regulation by the SFSA.

(b) The Borrower is in compliance with all applicable provisions of Rule 15a-6 under the 1934 Act which provides foreign broker-dealers a limited exception from United States registration requirements.

(c) 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in U.S. dollar-denominated securities or letters of credit, or other collateral permitted under PTE 81-6 (as amended or superseded).

(d) All collateral is held in the United States and the situs of the 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.

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

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

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

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

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

32. The Applicant represents that only English or New York law securities lending agreements will be used. Such agreements provide for submission to English or New York courts. As a result, the Applicant expects judgments to be obtained under English law or New York law, depending on the form of securities lending agreement used.

According to the Applicant, if collateral provided by SEB in connection with the relevant securities lending transaction is located in the United States, the Plan can exercise its set-off rights under a securities lending agreement governed by English law, or it may foreclose on the collateral and apply the proceeds of such foreclosure

to satisfy SEB's obligations under a securities lending agreement governed by New York law. All collateral pertaining to this exemption will be held in the United States.

If for any reason there is no collateral available in connection with the relevant securities lending transaction, the Applicant states that the Plan may seek to enforce a judgment from a New York court or English court against the assets located in the United States of SEB's New York branch. A judgment from a New York court can be enforced in New York, or any sister state pursuant to the "Full Faith and Credit" clause of the U.S. Constitution and the Implementing Act of 1790. Almost all states have adopted the Uniform Enforcement of Foreign Judgments Act, which provides for either filing or registration of sister state judgments.

The Applicant represents that a foreign money judgment from an English court can be enforced in any state where the property of SEB or SEB's New York branch may be attached as a basis of jurisdiction. Foreign judgments are recognized and enforced pursuant to the relevant state law which will either be based on common law or the Uniform Foreign Money-Judgments Recognition Act, which provides that foreign country money judgments that are final, conclusive, and enforceable where rendered will be enforceable in the same manner as a judgment of a court of a sister state which is entitled to "Full Faith and Credit." The State of New York, as well as 30 other states, has adopted the Uniform Foreign Money-Judgments Recognition Act. Thus, the Applicant concludes that the Plan can bring an enforcement action, under an expedited procedure, on a foreign money judgment in New York to attach the assets of SEB's New York branch located in New York.

33. In addition to the protections cited above, the Borrower will maintain, or cause to be maintained, within the United States for a period of six years from the date of a transaction, such records as are necessary to enable the Department and others to determine whether the conditions of the exemption have been met.

34. In summary, the Applicant represents that the transactions have satisfied or will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Borrower has negotiated or will directly negotiate a Borrowing Agreement with an independent fiduciary of each Plan;

(b) The Plans have been permitted or will be permitted to lend to the Borrower, a major securities borrower

who will be added to an expanded list of competing exclusive borrowers, enabling the Plans to earn additional income from the loaned securities on a secured basis, while continuing to enjoy the benefits of owning the securities;

(c) In exchange for granting the Borrower the exclusive right to borrow certain securities, the Borrower has paid or will pay each Plan the Exclusive Fee, which as discussed above may be either (1) a flat fee (which may be equal to a percentage of the value of the total securities subject to the applicable Borrowing Agreement), (2) a periodic payment that is equal to a percentage of the value of the total balance of outstanding borrowed securities, or (3) any combination of (1) and (2). If the Borrower deposits cash collateral, all the earnings generated by such cash collateral have been returned or will be returned to the Borrower; provided that the Borrower may, but shall not be obligated to, agree with the independent fiduciary of the applicable Plan that such Plan receive Shared Earnings Compensation, which as discussed above may be a percentage of the earnings on the collateral and may be retained by such Plan or the excess of the earnings on the collateral over the rebate fee paid by such Plan to the Borrower. The Shared Earnings Compensation, if any, shall be in addition to the Exclusive Fee or an offset against such Exclusive Fee. The Exclusive Fee and the Shared Earnings Compensation 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 applicable Borrowing Agreement;

(d) Any change in the Exclusive Fee or Shared Earnings Compensation that the Borrower pays to the Plan with respect to any securities loan has required or will require the prior written consent of the independent fiduciary, except that consent will be presumed where the Exclusive Fee or Shared Earnings Compensation changes pursuant to an objective formula specified in the Borrowing Agreement and the independent fiduciary is notified at least 24 hours in advance of such change and does not object in writing thereto, prior to the effective time of such change;

(e) The Borrower has provided or will provide sufficient information concerning its financial condition to a Plan before a Plan lends any securities to the Borrower;

(f) The collateral posted with respect to each loan of securities to the Borrower initially has been or will be at least 102 percent of the market value of