

(c) The Borrower directly negotiates an exclusive borrowing agreement (the Borrowing Agreement) with a Plan fiduciary which is independent of the Borrower and its affiliates.

(d) The terms of each loan of securities by a Plan to the Borrower are at least as favorable to such Plan as those of a comparable arm's length transaction between unrelated parties, taking into account the exclusive arrangement.

(e) In exchange for granting the Borrower the exclusive right to borrow certain securities, each Plan will receive from the Borrower either (1) a flat fee (which may be equal to a percentage of the value of the total securities subject to the Borrowing Agreement from time to time); (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) (collectively, the Exclusive Fee). If the Borrower deposits cash collateral, all the earnings generated by such cash collateral shall 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 a percentage of the earnings on the collateral may be retained by the Plan or the Plan may agree to pay the Borrower a rebate fee and retain the earnings on the collateral (the Shared Earnings Compensation). If the Borrower deposits non-cash collateral, all earnings on the non-cash collateral shall be returned to the Borrower; provided that the Borrower may, but shall not be obligated to, agree to pay the applicable Plan a lending fee (the Lending Fee, together with the Shared Earnings Compensation, the Transaction Lending Fee). The Transaction Lending Fee, if any, shall be either in addition to the Exclusive Fee or an offset against such Exclusive Fee. The Exclusive Fee and 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. Any change in the Exclusive Fee or the Transaction Lending Fee that the Borrower pays to the Plan with respect to any securities loan requires the prior written consent of the independent fiduciary of the Plan, except that consent is presumed where the Exclusive Fee or the Transaction Lending Fee changes pursuant to an objective formula. Where the Exclusive Fee or the Transaction Lending Fee changes pursuant to an objective formula, the independent fiduciary of the Plan must be notified at least 24 hours in advance of such change and

such independent Plan fiduciary must not object in writing to such change, prior to the effective time of such change.

(f) The Borrower may, but shall not be required to, agree to maintain a minimum balance of borrowed securities subject to each Borrowing Agreement. Such minimum balance may be a fixed U.S. dollar amount, a flat percentage or other percentage determined pursuant to an objective formula.

(g) By the close of business on or before the day the loaned securities are delivered to the Borrower, each Plan shall receive from the Borrower (by physical delivery, book entry in a securities depository located in the United States, wire transfer, or similar means) collateral consisting of U.S. currency, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, irrevocable bank letters of credit issued by a U.S. bank other than SEB or any affiliate thereof, or any combination thereof, or other collateral permitted under Prohibited Transaction Exemption 81-6, as amended or superseded. Such collateral will be deposited and maintained in an account which is separate from the Borrower's accounts and will be maintained with an institution other than the Borrower. For this purpose, the collateral may be held on behalf of a Plan by an affiliate of the Borrower that is the trustee or custodian of such Plan.

(h) The market value (or in the case of a letter of credit, the stated amount) of the collateral initially equals at least 102 percent of the market value of the loaned securities on the close of business on the day preceding the day of the loan, and, if the market value of the collateral at any time falls below 100 percent (or such higher percentage as the Borrower and the independent fiduciary of a Plan may agree upon) of the market value of the loaned securities, the Borrower delivers additional collateral on the following day to bring the level of the collateral back to at least 102 percent. The level of the collateral is monitored daily by each Plan or its designee, which may be SEB or any of its affiliates which provides custodial or directed trustee services in respect of the securities covered by the applicable Borrowing Agreement. Such Borrowing Agreement shall give the applicable Plan title to the collateral until such collateral is redelivered to SEB pursuant to the terms of the Borrowing Agreement.

(i) Before entering into any Borrowing Agreement, the Borrower furnishes to the applicable Plan the most recent

publicly available audited and unaudited statements of its financial condition, as well as any publicly available information which it believes is necessary for the independent fiduciary to determine whether the Plan should enter into or renew the Borrowing Agreement.

(j) Each Borrowing Agreement contains a representation by the Borrower that as of each time it borrows securities, there has been no material adverse change in its financial condition since the date of the most recently furnished statements of financial condition.

(k) Each Plan receives at least the equivalent of all distributions made during the applicable loan period, 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)⁶ had it remained the record owner of the securities.

(l) Each Borrowing Agreement and any outstanding securities loans with respect thereto may be terminated by either party at any time without penalty (except for, if a Plan has terminated its Borrowing Agreement, the return to the Borrower of a pro rata portion of the Exclusive Fee paid by the Borrower to the Plan), whereupon the Borrower returns any borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the applicable Plan within the lesser of five business days of written notice of termination or the customary settlement period for such securities.

(m) In the event that the Borrower fails to return securities in accordance with a Borrowing Agreement, the applicable Plan will have the right under the Borrowing Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price. If the collateral is insufficient to satisfy the Borrower's obligation to return the Plan's securities, the Borrower will indemnify the Plan in the U.S. with respect to the difference between the replacement cost of the securities and the market value of the collateral on the date the loan is declared in default, together with expenses incurred by the Plan plus applicable interest at a reasonable rate, including reasonable attorneys' fees incurred by the Plan for legal action arising out of default on the loans, or failure by the Borrower to properly

⁶ See Footnote 4, *infra*.