

PTE 81–6 have been amended to permit additional types of collateral to be used for the loan.<sup>9</sup> Section I(b) of the proposal expands PTE 81–6 by permitting the lending of securities that are assets of an employee benefit plan to a Foreign Broker-Dealer or a Foreign Bank. A Foreign Broker-Dealer or a Foreign Bank must meet both the general conditions set forth in section II of the proposed exemption, as well as the specific conditions described in section III. Section I(c) permits the payment to a lending fiduciary of compensation for services rendered in connection with loans of plan assets that are securities, provided that the conditions set forth in section IV are met. The conditions found in section IV mirror the conditions currently found in PTE 82–63. Although the relief provided by section I(c) would apply to a broader range of lending activities, no changes are being proposed with respect to any of the conditions that are contained in PTE 82–63.

Under the proposal, U.S. Banks and U.S. Broker-Dealers would now be permitted to give plans Foreign Collateral for securities loans. Section V(f) defines Foreign Collateral as the currency of the United Kingdom or Euros, securities issued or guaranteed by the government of the United Kingdom or one of its agencies or instrumentalities, sovereign debt of the member countries of the EMU denominated in Euros or irrevocable letters of credit issued by a Foreign Bank, other than the borrower, which has a counter-party rating of investment grade or better as determined by a nationally recognized statistical rating organization. Further, section II(b) requires that the plan receive from the borrower: (a) U.S. Collateral having, as of the close of business on the preceding business day, a market value or, in the case of letters of credit, a stated amount, equal to not less than 100 percent of the then market value of the securities lent, or (b) Foreign Collateral having, as of the close of the preceding business day, a market value or, in the case of letters of credit, a stated amount, equal to not less than: (1) 102 percent of the then market value of the securities lent on a recognized securities exchange (as defined in section V(j)) or an automated trading system (as defined in section V(k)) on which the securities are primarily traded if the collateral posted is denominated in the same currency as the securities lent; or (2) 105 percent of

the then market value of the securities lent on a recognized securities exchange or an automated trading system on which the securities are primarily traded if the collateral posted is denominated in a different currency than the securities lent. The Department notes that, after consideration of the applicant's suggestion for an appropriate level of Foreign Collateral, it was determined that the plan's interests will be better protected if the amount of collateral is increased when Foreign Collateral is offered to the plan.

The securities lending agreement also must describe any fees to be received by a plan in connection with the lending of securities, whether the payment will be made in the same currency as the collateral, in the currency of the securities lent or in U.S. dollars. Lastly, the securities lending agreement must give the plan a continuing security interest in, title to, or the rights of a secured creditor with respect to the collateral received by the plan.

As an additional safeguard, the Department is requiring that when the plan receives Foreign Collateral or U.S. Collateral from a foreign bank or broker-dealer, the collateral itself must be maintained on behalf of the plan at an "Eligible Securities Depository" as defined in Rule 17f–7 of the Investment Company Act of 1940 [15 U.S.C. 80a]. Rule 17f–7 governs the custody of assets of registered management investment companies with custodians outside the United States. Rule 17f–7 permits a fund to maintain assets with a foreign securities depository if, among other things, the depository is an eligible securities depository. The term "Eligible Securities Depository" is defined in section [17 CFR Part 270] 2710.17f–7(b)(1) as a system for the central handling of securities that:

(i) Acts as or operates a system for the central handling of securities or equivalent book-entries in the country where it is incorporated, or a transnational system for the central handling of securities or equivalent book-entries;

(ii) Is regulated by a foreign financial regulatory authority as defined under section 2(a)(50) of the Act (15 U.S.C. 80a–2(a)(50))<sup>10</sup>;

<sup>10</sup> 15 U.S.C. 80a–2(a)(50) states that "foreign financial regulatory authority" means any (A) foreign securities authority, (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts or sale of a commodity for future delivery, or other instrument traded on or subject to the rules of a contract market, board of trade or foreign equivalent or other financial activities, or (C) membership organization,

(iii) Holds assets for the custodian that participates in the system on behalf of the Fund under safekeeping conditions no less favorable than the conditions that apply to other participants;

(iv) Maintains records that identify the assets of each participant and segregates the system's own assets from the assets of participants;

(v) Provides periodic reports to its participants with respect to its safekeeping of assets, including notices of transfers to or from any participant's account; and

(vi) Is subject to periodic examination by regulatory authorities or independent accountants.

The Department notes that the proposed exemption also permits collateral to be physically delivered to the Plan. In addition, where the borrower is a U.S. Bank or Broker-Dealer, the current requirements (with respect to where the collateral must be held on behalf of the plan) of PTE 81–6 have been incorporated into the proposal.

The Department also notes that section II(c) requires that, in the case of a Foreign Broker-Dealer or Foreign Bank, the borrower shall have furnished the Lending Fiduciary with its most recent available audited statement of its financial condition as audited by a firm which is eligible for appointment as a company auditor under the laws of the United Kingdom.

For purposes of this proposed class exemption, section V(c) defines the term "Foreign Broker-Dealer" as a broker-dealer registered and regulated under the laws of the Financial Services Authority in the United Kingdom that has as of the last day of its most recent fiscal year, equity capital which is equivalent of no less than \$200 million. Section V(d) defines the term "Foreign Bank" as an institution having substantially similar powers to a bank which is described in section 202(a)(2) of the Investment Advisers Act, is subject to authorization by the Financial Services Authority in the United Kingdom and has as of the last day of its most recent fiscal year, equity capital which is equivalent of no less than \$200 million.

The Department notes that, the proposed relief for Foreign Broker-Dealers and Foreign Banks is limited to UK Broker-Dealers and UK Banks as RMA has requested. Nevertheless, this proposal does not foreclose consideration by the Department of extending relief to broker-dealers and

a function of which is to regulate the participation of its members in activities listed above.

<sup>9</sup> The following discussion of proposed conditions is limited to conditions which are new or have been modified from the conditions of PTE 81–6.