

jurisdiction of the courts of the United States.

(b) Prior to entering into a transaction involving a Foreign Broker-Dealer or Foreign Bank either:

(1) The Foreign Broker-Dealer or Foreign Bank agrees to submit to the jurisdiction of the United States; agrees to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent); consents to service of process on the Process Agent; and agrees that any enforcement by a plan of its rights under the securities lending agreement will, at the option of the plan, occur exclusively in the United States courts; or

(2) The Lending Fiduciary, if domiciled in the United States, agrees to indemnify and hold harmless each plan against any shortfall in the collateral, (as clearly set forth in the applicable lending agreement), plus interest and any transaction costs incurred (including attorney's fees of the plan arising out of the default on the loans or the failure to indemnify properly under this provision) which the plan may incur or suffer directly arising out of the lending of securities of such plan to a Foreign Broker-Dealer or Foreign Bank.

IV. Specific Conditions for Transactions Described in Section II(c)

(a) The loan of securities is not prohibited by section 406(a) of ERISA or otherwise satisfies the conditions of this exemption.

(b) The Lending Fiduciary is authorized to engage in securities lending transactions on behalf of the plan.

(c) The compensation is reasonable and is paid in accordance with the terms of a written instrument, which may be in the form of a master agreement covering a series of securities lending transactions.

(d) Except as otherwise provided in section IV(f), the arrangement under which the compensation is paid: (1) is subject to the prior written authorization of a plan fiduciary (the "authorizing fiduciary"), who is (other than in the case of a plan covering only employees of the Lending Fiduciary or any affiliates of such fiduciary) independent of the Lending Fiduciary and of any affiliate thereof, and (2) may be terminated by the authorizing fiduciary within (A) the time negotiated for such notice of termination by the plan and the Lending Fiduciary, or (B) five business days, whichever is less, in either case without penalty to the plan.

(e) No such authorization is made or renewed unless the Lending Fiduciary shall have furnished the authorizing fiduciary with any reasonably available

information which the Lending Fiduciary reasonably believes to be necessary to determine whether such authorization should be made or renewed, and any other reasonably available information regarding the matter that the authorizing fiduciary may reasonably request; and

(f) (Special Rule for Commingled Investment Funds) In the case of a pooled separate account maintained by an insurance company qualified to do business in a state or a common or collective trust fund maintained by a bank or trust company supervised by a state or federal agency, the requirements of section IV(d) of this exemption shall not apply, provided that:

(1) The information described in section IV(e) (including information with respect to any material change in the arrangement) shall be furnished by the Lending Fiduciary to the authorizing fiduciary described in section IV(d) with respect to each plan whose assets are invested in the account or fund, not less than 30 days prior to implementation of the arrangement or material change thereto, and, where requested, upon the reasonable request of the authorizing fiduciary;

(2) In the event any such authorizing fiduciary submits a notice in writing to the Lending Fiduciary objecting to the implementation of, material change in, or continuation of the arrangement, the plan on whose behalf the objection was tendered is given the opportunity to terminate its investment in the account or fund, without penalty to the plan, within such time as may be necessary to effect such withdrawal in an orderly manner that is equitable to all withdrawing plans and to the non-withdrawing plans. In the case of a plan that elects to withdraw pursuant to the foregoing, such withdrawal shall be effected prior to the implementation of, or material change in, the arrangement; but an existing arrangement need not be discontinued by reason of a plan electing to withdraw; and

(3) In the case of a plan whose assets are proposed to be invested in the account or fund subsequent to the implementation of the compensation arrangement and which has not authorized the arrangement in the manner described in sections IV(f)(1) and IV(f)(2), the plan's investment in the account or fund shall be authorized in the manner described in section IV(d)(1).

V. Definitions

For purposes of this exemption:

(a) The term "U.S. Broker-Dealer" means a broker-dealer registered under the Securities Exchange Act of 1934 (the

1934 Act) or exempted from registration under section 15(a)(1) of the 1934 Act as a dealer in exempted government securities (as defined in section 3(a)(12) of the 1934 Act).

(b) The term "U.S. Bank" means a bank as defined in section 202(a)(2) of the Investment Advisers Act.

(c) The term "Foreign Broker-Dealer" means 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.

(d) The term "Foreign Bank" means an institution having substantially similar powers to a bank as defined in section 202(a)(2) of the Investment Advisers Act, is subject to regulation 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.

(e) The term "U.S. Collateral" means U.S. currency, securities issued or guaranteed by the United States government or its agencies or instrumentalities, or irrevocable letters of credit issued by a U.S. Bank other than the borrower or an affiliate thereof, or any combination, thereof.

(f) The term "Foreign Collateral" means the currency of the United Kingdom, Euros, securities issued or guaranteed by the government of the United Kingdom or one of its agencies or instrumentalities, sovereign debt of a member country of the EMU that is denominated in Euros, or irrevocable letters of credit issued by a Foreign Bank, other than the borrower or an affiliate thereof, which has a counterparty rating of investment grade or better as determined by a nationally recognized statistical rating organization.

(g) The term "affiliate" of another person means: (1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such person; (2) any officer, director, partner, employee, or relative (as defined in section 3(15) of ERISA) of such other person; and (3) any corporation or partnership of which such other person is an officer, director, partner or employee.

(h) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(i) The term "Eligible Securities Depository" means an eligible securities depository as that term is defined under