

affiliate of State Street has or exercises discretionary authority or control or renders investment advice in connection with an index fund (the Index Fund(s)), as defined, below, in section III(d) of this exemption, or a model-driven fund (the Model-Driven Fund(s)), as defined, below, in section III(e) of this exemption, managed by State Street or any division or U.S. affiliate of State Street in which Client Plans invest. An Index Fund or a Model-Driven Fund with multiple Client Plan investors is referred to herein as a commingled Index Fund or a commingled Model-Driven Fund (the Commingled Index Fund(s) or the Commingled Model-Driven Fund(s));

(b) Except as otherwise provided, below, in section II(q) of this exemption with respect to Commingled Index Funds or Commingled Model-Driven Funds, before a Client Plan participates in a securities lending program, and before any loan of securities to the SSB Group or the Clearing Broker is effected, pursuant to this exemption, the fiduciary of the plan who is independent of State Street, GSL, the SSB Group, the Clearing Broker, and any other division or affiliate of State Street or the Clearing Broker must have:

(1) Authorized and approved the securities lending authorization agreement with GSL (the Agency Agreement), where GSL is acting as the direct securities lending agent; or

(2) Authorized and approved the primary securities lending authorization agreement (the Primary Lending Agreement) with the primary lending agent, where GSL is lending securities under a sub-agency arrangement with the primary lending agent;⁹ and

(3) Approved the general terms of the securities loan agreement (the Loan Agreement) between the plan and the SSB Group or the Clearing Broker, as applicable, the specific terms of which are negotiated and entered into by GSL;

(c)(1) Each Client Plan may terminate the Agency Agreement or the Primary Lending Agreement at any time, without penalty to such Client Plan, on five business days notice, whereupon the borrower shall deliver certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the Client

Plan within: (A) The customary delivery period for such securities, (B) five business days, or (C) the time negotiated for such delivery by the Client Plan and the borrower, whichever is lesser. With respect to a Commingled Index Fund or a Commingled Model-Driven Fund in which a Client Plan invests, termination is pursuant to the procedure, as set forth, below, in section II(q) of this exemption;

(2) If any event of default occurs (e.g., a loan is terminated and the borrower fails to return the borrowed securities or the equivalent thereof within the time described, above, in section II(c)(1) of this exemption), to the extent that (A) liquidation of the pledged collateral, or (B) additional cash received from the SSB Group or the Clearing Broker, as applicable, does not provide sufficient funds on a timely basis, a Client Plan, including a Commingled Index Fund or a Commingled Model-Driven Fund in which a Client Plan invests, will have the right under the terms of the Loan Agreement to purchase securities identical to the borrowed securities (or their equivalent as discussed above) and may apply the collateral to the payment of the purchase price, any other obligations of the borrower under the agreement, and any expenses associated with the sale and/or purchase. If the collateral is insufficient to accomplish such purchase, State Street will indemnify the Client Plan, including a Client Plan invested in a Commingled Index Fund or Commingled Model-Driven Fund, pursuant to section II(g) of this exemption;

(d) Each Client Plan or Commingled Index Fund or Commingled Model-Driven Fund in which a Client Plan invests will receive from the SSB Group or the Clearing Broker, as applicable, (either by physical delivery, or by book entry in a securities depository, wire transfer or similar means) by the close of business on or before the day the loaned securities are delivered to the SSB Group or the Clearing Broker, as applicable, collateral consisting of U.S. currency, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, an irrevocable bank letter of credit issued by a person other than State Street, the Clearing Broker, or an affiliate thereof, or any combination thereof, or other collateral permitted under PTE 81-6 (as amended from time to time or, alternatively, any superseding class exemption that may be issued to cover securities lending by employee benefit plans). The collateral will be held on behalf of a Client Plan in a manner that causes such collateral to be (i) segregated from and not commingled

with the general assets of State Street, the Clearing Broker, or any of their affiliates, and (ii) identifiable and reachable by such Client Plan;

(e) The market value of the collateral (or in the case of a letter of credit the stated amount) must, as of the close of business on the preceding business day, initially equal at least 102 percent (102%) of the market value of the loaned securities. If the market value of the collateral, on the close of trading on a business day, is less than 100 percent (100%) (or such greater percentage as agreed to by the parties) of the market value of the loaned securities at the close of business on that day, the SSB Group or the Clearing Broker, as applicable, is required to deliver by the close of business on the following day sufficient additional collateral such that the market value of the collateral will again equal at least 102 percent (102%). The applicable Loan Agreement will give Client Plans or a Commingled Index Fund or Commingled Model-Driven Funds in which a Client Plan invests a continuing security interest in, title to, or the rights of a secured creditor with respect to the collateral and a lien on the collateral. GSL will monitor the level of the collateral daily;

(f) All GSL's procedures regarding securities lending activities will at a minimum conform to PTE 81-6 and PTE 82-63 (as amended from time to time or, alternatively, any superseding class exemption that may be issued to cover securities lending by employee benefit plans);

(g) State Street will agree to indemnify and hold harmless each lending Client Plan (including the sponsor and fiduciaries of each Client Plan) and any Client Plan invested in a Commingled Index Fund or Commingled Model-Driven Fund against any and all damages, losses, liabilities, costs, and expenses (including attorneys' fees) which such plans may incur or suffer directly arising out of the lending of the securities to the SSB Group or the Clearing Broker, as applicable; provided that this condition does not require State Street to indemnify a plan against any potential investment losses associated with the investment of cash collateral received by such Client Plan (or by such Commingled Index Fund or Commingled Model-Driven Fund) in connection with such securities lending transactions;

(h) Each Client Plan, including a Commingled Index Fund or Commingled Model-Driven Fund in which a Client Plan invests, will receive the equivalent of all distributions made to holders of the borrowed securities during the term of any loan, including,

⁹ The Department, herein, is not providing relief for securities lending transactions engaged in by primary lending agents, other than GSL, beyond that provided, pursuant to Prohibited Transaction Exemption 81-6 (PTE 81-6) (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) and Prohibited Transaction Exemption 82-63 (PTE 82-63) (47 FR 14804, April 6, 1982).