11. The client-plan and MSTC will agree to the fee MSTC will receive for its services as lending agent prior to the commencement of any lending activity. The agreement by MSTC to provide securities lending services to a clientplan will be in writing and subject to the prior written approval of a fiduciary of the client-plan who is independent of the MS Group and MSTC.3 The Basic Loan Agreement will allow termination by the client-plan without penalty to the plan within five business days of written notice. Before entering into an agreement, MSTC will provide the client-plan with any reasonably available information which it believes is necessary for the plan to make a determination whether to enter into or renew the agreement and such other information as the plan may request.

12. Each time a client-plan loans securities to the MS Group pursuant to the Basic Loan Agreement, the MS Group will execute a designation letter specifying the material terms of the loan, including the securities to be loaned, the required level of collateral, the fee or rebate payable, and any special delivery instructions. The terms of each loan will be at least as favorable to the client-plan as those of a comparable arm's-length transaction between unrelated parties.

MSTC will credit to the account of the client-plan all interest, dividends and the like received on the loaned securities during the loan period, including distributions and rights of any kind. The Basic Loan Agreement will provide that the client-plan may terminate any loan at any time. Upon a termination, the MS Group will return the loaned securities to the client-plan within five business days of written notification. If the MS Group fails to return the securities within the designated time, the client-plan has certain rights that it may exercise under the Basic Loan Agreement.

14. MSTC will establish each day separate written schedules of lending fees and rebate rates to assure uniformity of treatment among borrowing brokers and to limit the discretion MSTC would have in negotiating securities loans to the MS Group. Loans to all borrowers of a given security on that day will be made at rates or lending fees on the relevant daily schedules or at rates or lending fees which may be more advantageous to the client-plans. In no case will loans

be made to the MS Group at rates or lending fees less advantageous to the client-plan than those on the schedule. The daily schedule of rebate rates will be based on the current value of the clients' reinvestment vehicles and on market conditions, as reflected by demand for securities by borrowers other than the MS Group. As with rebate rates, the daily schedule of lending fees will also be based on market conditions, as reflected by demand for securities by borrowers other than the MS Group, and will generally track the rebate rates with respect to the same security or class of securities.

15. MSTC will adopt maximum daily rebate rates for cash collateral payable to the MS Group on behalf of a lending plan. Separate maximum daily rebate rates will be established with respect to loans of designated classes of securities such as U.S. government securities, U.S. equities and corporate bonds, international fixed income securities and international equities. With respect to each designated class of securities, the maximum rebate rate will be the lower of (i) the 7 day LIBOR rate, minus a stated percentage of such LIBOR rate and (ii) the client's actual reinvestment rate for the relevant cash collateral, minus a stated percentage of such reinvestment rate, as pre-approved by the independent fiduciary. Thus, when cash is used as collateral, the daily rebate rate will always be lower than the rate of return to the client-plans from authorized investments for cash collateral by such stated percentage as shall be pre-approved by the independent fiduciary. MSTC will submit the formula for determining the maximum daily rebate rates to an independent fiduciary of the client-plan for approval before lending any securities to the MS Group on behalf of the plan.

MSTC will also adopt minimum daily lending fees for non-cash collateral payable by the MS Group to MSTC on behalf of a plan. Separate minimum daily lending fees will be established with respect to loans of designated classes of securities, such as U.S. government securities, U.S. equities and corporate bonds, international fixed income securities and international equities. With respect to each designated class of securities, the minimum lending fee will be stated as a percentage of the principal value of the loaned securities. MSTC will submit such minimum daily lending fees to an independent fiduciary to the client-plan for approval before initially lending any securities to the MS Group on behalf of the plan.

17. For collateral other than cash, the lending fees charged the previous day are reviewed by MSTC for competitiveness. Based on the demand of the marketplace, this daily fee tends to remain constant and, with respect to domestic securities and international debt securities, is currently at least one tenth of one percent of the principal value of the loaned securities. With respect to international equity securities, the daily fee is currently one fifth of one percent of the principal value of the loaned securities. Because 50 percent or more of securities loans by client-plans will be to unrelated brokers or dealers,⁴ the competitiveness of MSTC's fee schedule will be continuously tested in the marketplace. Accordingly, loans to the MS Group should result in a competitive rate of income to the lending client-plan.

18. Should MSTC recognize prior to the end of a business day that, with respect to new and/or existing loans, it must change the rebate rate or lending fee formula in the best interest of clientplans, it may do so (i) with respect to borrowers other than the MS Group, at the end of such business day, and (ii) with respect to the MS Group, upon MSTC's receipt of a written approval of the client-plan's independent fiduciary.⁵

MSTC may propose a change in the lending fee or rebate rate determination. as applicable, with respect to an outstanding loan by delivering written notice of the effective date and the new determination pursuant to which a lending fee or rebate rate, as the case may be, may be determined at least five business days before the date of the proposed change. In the event that the client-plan does not consent to such change by not providing MSTC acknowledgement of its consent in writing by such means that will ensure receipt by MSTC prior to 10:00 a.m. New York time, on the effective date of the change, then MSTC will not make such change. The applicants represent that allowing MSTC to request a modification to the lending fee or the rebate rate formula with respect to an existing loan to the MS Group when market conditions change will be beneficial to the client-plans. According to the applicants, in the absence of the ability to make such modification, the MS Group may be forced by market conditions to terminate the loan and seek better terms elsewhere. Such termination may then force the client-

³This closely parallels conditions c and d of PTE 82–63 which require that the payment of compensation to a "lending fiduciary" is made under a written instrument and is subject to prior written authorization of an independent "authorizing fiduciary".

⁴This 50 percent requirement applies regardless of the type of collateral used to secure the loan.

⁵MSTC represents that it will not initiate any modification in such rates or fees which would be detrimental to the client-plans.