plan to seek new borrowers for its securities who, in light of the changed market conditions, are likely to negotiate for the lending fee or rebate rate which the MS Group would have received or paid had MSTC had the written authority from the independent fiduciary to decrease the lending fee or increase the rebate rate.

19. While MSTC will normally loan securities to requesting borrowers on a first come, first served basis, as a means of assuring uniformity of treatment among borrowing brokers, it should be recognized that in some cases it may not be possible to adhere to a first come, first served allocation. This can occur, for example, in instances where (a) the credit limit established for a "first in line" borrower by the client-plan has already been satisfied; (b) the "first in line" borrower is not approved as a borrower by the particular client-plan whose securities are sought to be borrowed; or (c) the "first in line" borrower cannot be ascertained, as an operational matter, because several borrowers spoke to differed MSTC representatives at or about the same time with respect to the same security. In situation (a) and (b), loans would normally be effected with the "second in line" borrower. In situation (c) securities would be allocated equitably among all eligible borrowers.

20. MS&Co will indemnify each lending client-plan against any losses due directly to the lending of such plan's securities to the MS Group. Accordingly, MS&Co will assure the client-plan that the rate of return on each loan will at a minimum equal the transactional cost to the plan of lending securities to The MS Group. The applicants contend that, as a result of this indemnity, the rate of return earned by client-plans from lending to the MS Group will, in total, exceed the return from lending securities to other brokers.

21. By the close of business on the day the loaned securities are delivered to the MS Group, MSTC will receive from the MS Group non-cash collateral by physical delivery or book entry in a securities depository, or, cash collateral by wire transfer or book entry. At the discretion of the client-plan, cash collateral may be managed either by the plan, by its designated agent or by MSTC. If a client-plan chooses to manage its cash collateral, MSTC will promptly forward the cash collateral to the client-plan. The non-cash collateral will consist of securities issued or guaranteed by the U.S. Government or its agencies or irrevocable bank letters of credit (issued by a person other than MS&Co or its affiliates) or other collateral permitted under PTE 81-6 or

any successor. The market value of the collateral on the day the loan settles will be at least 102 percent of the market value of the loaned securities. The Basic Loan Agreement will give the client-plan a continuing security interest in and a lien on the collateral. MSTC will monitor the level of the collateral daily. If the market value of the collateral falls below 100 percent of that of the loaned securities, MSTC will require the MS Group to deliver by the close of business the next day sufficient additional collateral to bring the level back to at least 102 percent.

22. A client-plan that loans securities to the MS Group will receive a weekly report with which to monitor lending activity, rates on loans to the MS Group compared with loans to other brokers, and the level of collateral on the loans. The weekly report will show, on a daily basis, the market value of all outstanding security loans to the MS Group and to other borrowers as compared to the total collateral held for both categories of loans.

23. The weekly report will state the daily fees where collateral other than cash is utilized and will specify the details used to establish the daily rebate payable to all brokers where cash is used as collateral. The weekly report also will state, on a daily basis, the rates at which securities are loaned to the MS Group compared with those at which securities are loaned to other brokers. This statement will give an independent fiduciary information which can be compared to that contained in the daily rate schedule.

24. MSTC will send a monthly transaction report to each client-plan participating in the lending program. The monthly report will provide a list of all security loans outstanding and closed for a specified period. The report will identify for each open loan position, the securities involved, the value of the security for collateralization purposes, the current value of the collateral, the rate at which the security is loaned, and the number of days the security has been on loan.

25. Only client-plans with assets having an aggregate market value of at least \$50 million will be permitted to lend securities to the MS Group. The applicants maintain that this restriction is intended to assure that any lending to the MS Group will be monitored by an independent fiduciary of above average experience and sophistication in matters of this kind.

26. MSTC will record on audio tape all telephone traffic between its securities lending department and all borrowers, including the MS Group. The telephone tapes will be retained for a

period of at least six months. This recording procedure will enable client-plans and the Department to review MSTC's adherence to its policy of lending securities to the first interested borrower at rates or lending fees on the daily schedule, or at rates or lending fees which are more advantageous to the client-plans.

27. Plan B. MS&Co will directly negotiate "exclusive borrowing" agreements with fiduciaries of plans, including plans for which MSTC serves as custodian or in the future may serve as directed trustee, where such fiduciary is independent of the MS Group and MSTC. Under such an agreement, the MS Group will have exclusive access for a specified period of time to borrow certain securities of the plan pursuant to certain conditions. MSTC will not participate in the negotiation of the agreement. The involvement of MSTC, if any, will be limited to such activities as holding securities available for lending, handling the movement of borrowed securities and collateral and investing or depositing any cash collateral and supplying the plans with certain reports. The applicants represent that, under the exclusive borrowing agreement, neither the MS Group nor MSTC will perform for client-plans the functions which constitute the essential functions of a securities lending agent.

28. Upon delivery of loaned securities to the MS Group, MSTC, or another custodian, on behalf of a client-plan, will receive from the MS Group, the same day by wire transfer or book entry cash collateral or, by physical delivery or book entry in a securities depository, collateral consisting of securities issued or guaranteed by the U.S. Government or its agencies, irrevocable bank letters of credit, or other non-cash collateral permitted under PTE 81-6. The market value of the collateral on the day the loan settles will be at least 102 percent of the market value of the loaned securities. MSTC or such other custodian will monitor the level of the collateral daily and, if its market value falls below 100 percent, the MS Group will deliver sufficient additional collateral on the following day such that the market value of all collateral will equal at least 102 percent of the market value of the loaned securities. The MS Group or, in the case of some client plans, MSTC, will provide a weekly report to the plan showing, on a daily basis, the aggregate market value of all outstanding security loans to the MS Group and the aggregate market value of the collateral.

29. Before entering into an exclusive borrowing agreement, the MS Group will furnish to the plan the most recent