

## รายการอ้างอิง

### ภาษาไทย

กรมร่างกฎหมาย. เอกสารร่างประมวลกฎหมายแพ่งและพาณิชย์ว่าด้วยพันธะธรรม มาตรา 1-387 ต้นฉบับตรวจแก้ครั้งที่ 2 (18 พฤษภาคม - 18 สิงหาคม 2464, อ้างถึงใน โชติกร ลือสัมพันธ์. ปัญหากฎหมายเกี่ยวกับมรดกจำ วิทยานิพนธ์ปริญญาโทมหาบัณฑิต ภาควิชานิติศาสตร์ บัณฑิตวิทยาลัย จุฬาลงกรณ์มหาวิทยาลัย, 2535

กระทรวงการคลัง, ธนาคารแห่งประเทศไทย, สำนักงานคณะกรรมการกำกับหลักทรัพย์และตลาดหลักทรัพย์. แผนพัฒนาระบบการเงิน (1 มีนาคม 2538- 29 กุมภาพันธ์ 2543). กรุงเทพมหานคร : กระทรวงการคลัง, 2538. (อัดสำเนา)

จิต เศรษฐบุตร. ความรู้เบื้องต้นแห่งกฎหมายแพ่งและพาณิชย์ ว่าด้วยยืม ฝากทรัพย์. กรุงเทพฯ : โรงพิมพ์เรือนแก้วการพิมพ์, 2528.

ชนินทร์ พิทยาวิธ. ตลาดการเงินในประเทศไทย. กรุงเทพมหานคร. อมรินทร์พริ้นติ้งกรุ๊ป, 2534.

โชติกร ลือสัมพันธ์. ปัญหากฎหมายเกี่ยวกับมรดกจำ. วิทยานิพนธ์ปริญญาโทมหาบัณฑิต ภาควิชานิติศาสตร์ บัณฑิตวิทยาลัย จุฬาลงกรณ์มหาวิทยาลัย.

ตลาดหลักทรัพย์แห่งประเทศไทย. ตลาดหุ้นในประเทศไทย. กรุงเทพมหานคร : วัชรการพิมพ์, 2526.

ฝ่ายวิจัยและพัฒนา ตลาดหลักทรัพย์แห่งประเทศไทย. บทศึกษาและข้อเสนอแนะเรื่อง Short Sale และ Securities Lending ในประเทศไทย. กรุงเทพมหานคร : ตลาดหลักทรัพย์แห่งประเทศไทย, 2539 (อัดสำเนา).

พิลาศลักษณ์ ยุคเกษมวงศ์. รายงานการค่างาน Securities Lending และ Short Selling ณ ประเทศฮ่องกง. กรุงเทพมหานคร : ตลาดหลักทรัพย์แห่งประเทศไทย, 2538. (อัดสำเนา).

พิเศษ เสตเสถียร. กฎหมายหลักทรัพย์และตลาดหลักทรัพย์. กรุงเทพมหานคร : บริษัทพิมพ์ดี, 2536

เพชร ชุมทรัพย์. หลักการลงทุน. กรุงเทพมหานคร : โรงพิมพ์มหาวิทยาลัยธรรมศาสตร์, 2520.

ไพจิตร ปุญญพันธ์. คำอธิบายประมวลกฎหมายแพ่งและพาณิชย์ ว่าด้วย ขายฝาก. กรุงเทพมหานคร : โรงพิมพ์แสงสิทธิการพิมพ์, 2525.

สภานิติบัญญัติแห่งชาติ. รายงานการประชุมคณะกรรมการพิจารณาร่างพระราชบัญญัติหลักทรัพย์และตลาดหลักทรัพย์ พ.ศ. .... ร่างพระราชบัญญัติการประกอบธุรกิจเงินทุนธุรกิจหลักทรัพย์ ธุรกิจเครดิตฟองซิเอร์ (ฉบับที่ ...) พ.ศ. .... ร่างพระราชบัญญัติบริษัทมหาชน พ.ศ. ... ร่างพระราชบัญญัติแก้ไขเพิ่มเติมประมวลกฎหมายแพ่งและพาณิชย์ (ฉบับที่ ...) พ.ศ. ... 23 มกราคม 2535 ณ รัฐสภา กรุงเทพมหานคร.

สมบูรณ์ รู้กิจการพานิช. ปัญหาและอุปสรรคการบังคับใช้กฎหมายมาตรา 115 แห่งพระราชบัญญัติล้มละลาย พุทธศักราช 2483 ว่าด้วยการเพิกถอนการให้เปรียบแก่เจ้าหนี้ วิทยานิพนธ์ปริญญาโทมหาบัณฑิต สาขาวิชานิติศาสตร์ บัณฑิตวิทยาลัย มหาวิทยาลัยธรรมศาสตร์.

สมศรี ลิ่มสว่าง. ปัญหาการโอนหุ้นที่ซื้อขายในตลาดหลักทรัพย์ วิทยานิพนธ์ปริญญาโทมหาบัณฑิต สาขาวิชานิติศาสตร์ บัณฑิตวิทยาลัย มหาวิทยาลัยธรรมศาสตร์.

เสนีย์ ปราโมช, ม.ร.ว.. คำอธิบายประมวลกฎหมายแพ่งและพาณิชย์ บรรพ 3 ว่าด้วยคำประกัน  
จำนอง จำน่า. กรุงเทพมหานคร : โรงพิมพ์แสงสุทธิการพิมพ์, 2525.

อุกฤษ มงคลนาวิน. ความสงบเรียบร้อยและศีลธรรมอันดีของประชาชน. สารานุกรมกฎหมาย  
แพ่งและพาณิชย์ (2537) : 7.

### ภาษาอังกฤษ

American Stock Exchange. American Stock Exchange Constitution and Rules. Chicago :  
 Commerce Clearing House, Inc., 1988.

Alison Brooks. International Securities Lending book 1. Greenwich : Asset International  
 handbooks., 1992.

\_\_\_\_\_ . International Securities Lending book 2. Greenwich : Asset International  
 handbooks., 1992.

\_\_\_\_\_ . A loan, a loan my kingdom for a loan. Global Custodian (Summer 1994)  
 : P. 86.

David Hopton. Equity Trading. London : St. Edmundsburg, 1991.

Federal reserve Bank of New York. Securities Lending. New York : Federal reserve Bank  
 of New York, 1989. (Mimeographed)

Frank Soudor. International Securities Lending book 1. Greenwich : Asset International  
 handbooks, 1994.

\_\_\_\_\_ . International Securities Lending book 2. Greenwich : Asset International handbooks, 1994.

Gary L. Gastinane. Dictionary of Financial Risk Management. Cambridge : Probus publishing company, 1992.

Group of thirty. Clearance and Settlement Systems Status Reports : Autumn 1992. Washington DC : Group of thirty, 1992.

Inland Revenue Department of Hong Kong : Stamp office interpretation & practice notes no. 2 relief for stock borrowing and lending transaction. Hong Kong : Inland Revenue Department of Hong Kong, 1994. (Mimeographed)

Italian Stock Exchange Council. FIBV survey on stock lending. FIVB working committee on stock lending facilitate and procedure on member stock exchange 28-29 November 1994 : 1

John Downess and Jodan Elliott Godman. Barron's Dictionary of Finance and Investment Term 2 nd ed. New York : Barron's Educational Series, Inc., 1990.

Joanna Wrighton. The importance of knowing your counterparty. International Securities Lending (Fourth Quater) : p. 17.

Matthew Lee. US regulation of securities lending. International Securities Lending (September 1993) : p. 44-47.

New York Stock Exchange. New York Stock Exchange Constitution and Rules Chicago : Commerce Clearing House, Inc., 1988.

Simon Perless and Andrew Breyton. Taxation and Accounting for Financial Instrument.

London : Total Graphics Ltd., 1991.

The Stock Exchange of Hong Kong Limited. Seminar notes on engaging in short selling and relatated financial rules requirements. 8 March 1996.



ศูนย์วิทยพัชกร  
จุฬาลงกรณ์มหาวิทยาลัย



ภาคผนวก

ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

[NB. This model agreement is intended primarily for securities borrowing in Hong Kong Stock (as defined in Stamp Duty Ordinance), but may be adapted for general securities borrowing.]

MODEL SECURITIES LOAN AGREEMENT

THIS AGREEMENT is made on the                      day of                      , 19

BETWEEN

(hereinafter referred to as the "Lender") whose [registered] [principal] office is located at  
and

(hereinafter referred to as the "Borrower") whose [registered] [principal] office is located at

WHEREAS

The Lender is desirous of lending securities and the Borrower is desirous of borrowing securities and they have agreed to enter into securities borrowing and lending transactions subject to the terms and conditions of this Agreement.

NOW IT IS HEREBY AGREED AS FOLLOWS: -

1.0. Definitions

1.1. In this Agreement unless the context otherwise requires: -

"Business Day" shall mean any day recognised as a trading day by The Stock Exchange of Hong Kong Limited.

"Collateral" shall mean: -

- (a) cash in such currency as may be agreed and
- takes the form of a deposit of currency [or by the action of the HKSCC debiting the

Borrower's cash account and crediting the Lender's cash account];

- (b) securities acceptable to the Lender as represented by certificates [or a credit to the Lender's account at HKSCC] together with duly executed stock transfer forms and such other documents to enable the Lender to obtain full right title and interest in such securities;
- (c) an unconditional, irrevocable letter of credit for the benefit of the Lender; or
- (d) such other Collateral as is acceptable to the parties hereto.

If and to the extent that such Collateral consists of securities that are partly paid or, during the term of any Loan in respect of which such Collateral is provided, are converted, subdivided, consolidated, redeemed, made the subject of a takeover, capitalization issue or rights issue or event similar to any of the foregoing, "Collateral" shall be deemed to mean: (a) in the case of conversion, subdivision or consolidation, the securities into which the relevant Collateral has been converted, subdivided or consolidated; (b) in the case of redemption, a sum of money equivalent to the proceeds of the redemption; (c) in the case of a takeover, a sum of money or securities, being the consideration or alternative consideration which the Borrower has directed the Lender to accept; (d) in the case of a call on partly paid securities, the paid-up securities, provided that the Borrower shall have paid to the



Lender the sum due; (e) in the case of a capitalization issue, the relevant Collateral, together with the securities allotted by way of a bonus thereon; (f) in the case of a rights issue, the relevant Collateral, together with the securities allotted thereon, which the Borrower has directed the Lender to take up, provided that the Borrower shall have paid to the Lender all and any sum due in respect thereof; and (g) in the case of any event similar to any of the foregoing, the relevant Collateral together with or replaced by a sum of money or securities equivalent to that received in respect of such Collateral resulting from such event.

Any Collateral given or delivered by the Borrower to the Lender from time to time in pursuance of this Agreement, and any other property provided by way of substitution for Collateral originally delivered or previously substituted in accordance with Clause 4.5 shall be referred to as Collateral.

"Equivalent Collateral"

means Collateral of an identical type, nominal value, description and amount as any Collateral provided and includes any certificates and other documents of or evidencing title thereto and transfer thereof.

"Equivalent Securities"

means securities of an identical type, nominal value, description and amount as any Loaned Securities and includes any certificates and other documents of or evidencing title thereto and transfer thereof.

"Event of Default"

shall mean any one or more of the events in Clause 11.

- "HIBOR" shall mean the Hong Kong Interbank Offered Rate as quoted in the South China Morning Post for the business day preceding the date on which such determination is made. If more than one rate is so quoted, HIBOR shall be the mean of the rates so quoted.
- "HKSCC" means the Hong Kong Securities Clearing Company Limited.
- "Loan" shall mean a loan of securities under this Agreement.
- "Loan Fee" shall mean a fee payable by the Borrower to the Lender in respect of any non-cash Collateral.
- "Loan Rebate Fee" shall mean a fee payable by the Lender to the Borrower in respect of Collateral in the form of cash.
- "Loaned Securities" means any securities delivered under a Loan hereunder and includes the certificates and other documents of or evidencing title and transfer thereof. If and to the extent that such securities consists of securities that are partly paid or have been converted, subdivided, consolidated, redeemed, made the subject of a takeover, capitalization issue, rights issue or event similar to any of the foregoing, the expression shall have the following meaning: (a) in the case of conversion, subdivision or consolidation the securities into which the Loaned Securities has been converted, subdivided or consolidated; (b) in the case of redemption, a sum of money equivalent to the proceeds of the redemption; (c) in the case of a takeover, a sum of money or securities,

being the consideration or alternative consideration which the Lender has directed the Borrower to accept; (d) in the case of a call on partly paid securities, the paid-up securities provided that the Lender shall have paid to the Borrower the sum due; (e) in the case of a capitalization issue, the Loaned Securities together with the securities allotted by way of a bonus thereon; (f) in the case of a rights issue, the Loaned Securities together with the securities allotted thereon, which the Lender has directed the Borrower to take up provided that the Lender shall have paid to the Borrower all and any sum due in respect thereof; and (g) in the case of any event similar to any of the foregoing, the Loaned Securities together with or replaced by a sum of money or securities equivalent to that received in respect of such Loaned Securities resulting from such event.

**"Market Value"**

means, at any time, (a) with respect to Loaned Securities, Equivalent Securities, securities Collateral or Equivalent Collateral in the form of securities, the value of such securities determined on the basis of the last (or latest available) mid-price on the principal market on which the Loaned Securities is traded at such time or, if not so traded, the mean of the most recent bid and asked prices plus accrued interest, if any, (b) with respect to cash Collateral, the principal amount of such cash and (c) with respect to a letter of credit, the face value thereof.

**"Specified Purpose"**

means a specified purpose as set out in Section 19(16) of the Stamp Duty Ordinance.

- 1.2. Notwithstanding the use of expressions such as "borrow", "lend", "Collateral", "re-deliver" etc. which are used to reflect terminology used in the market for transactions of the kind provided for in this Agreement, title to Loaned Securities "borrowed" or "lent" and "Collateral" provided in accordance with this Agreement shall pass from one party to another as provided for in this Agreement, the party obtaining such title being obliged to re-deliver Equivalent Securities or Equivalent Collateral as the case may be.
  
- 2.0. Loans of Securities
  
- 2.1. No Loan shall be made other than for one or more of the Specified Purposes and the duration of the Loan shall not exceed that allowed in the definition of "stock return" under Section 19(16) of the Stamp Duty Ordinance.
  
- 2.2. Subject to the terms and conditions of this Agreement either the Lender or the Borrower may orally initiate a transaction whereby the Lender may, from time to time, lend securities to the Borrower. The parties shall agree orally on the terms of each Loan, which shall be confirmed subsequently in a contract note conforming with that specified in Section 75 of the Securities Ordinance (Cap. 333). Such contract note shall form part of this Agreement and shall include the issuer of the securities, the descriptions and amount of securities to be lent, the terms of compensation (including the rate and the minimum period for which compensation will be paid), and the amount of Collateral to be delivered by the Borrower, (subject as provided in Clause 4 hereof), the duration of the Loan (which shall be no longer than that allowed in the definition of "stock return" under Section 19(16) of the Stamp Duty Ordinance), the purpose of the borrowing (which shall be one or more of the Specified Purposes), the place and method of delivery of the Loaned Securities and the Collateral and such other terms as the parties may deem necessary at the time in relation to a Loan which terms may be amended during the Loan upon agreement of the parties hereto.

2.3. Notwithstanding the provisions in this Agreement with respect to when a Loan occurs, a Loan hereunder shall not occur until both the Loaned Securities and the Collateral therefor shall have been delivered to the Borrower and the Lender respectively.

3.0. Delivery of Loaned Securities

The Lender shall deliver Loaned Securities to the Borrower by: -

- (a) delivering certificates representing the Loaned Securities together with duly executed stock transfer forms and such other instruments as may be requisite to vest full right, title and interest thereto in the Borrower;
- (b) causing the Loaned Securities to be credited to the Borrower's account and debited to the Lender's account at HKSCC and such crediting and debiting shall result in notice of the transaction being given to the Borrower;
- (c) any other method of delivery as shall be agreed upon by both parties.

4.0. Collateral

4.1. Concurrently with the receipt of the Loaned Securities, but in any event no later than the close of business on the day the Loaned Securities is delivered, the Borrower shall in accordance with Clause 4.2 deliver to the Lender Collateral in an amount equal to the percentage of the Market Value of the Loaned Securities as agreed to by the parties (which shall not be less than 100% of the Market Value of the Loaned Securities).

4.2. The Borrower shall deliver the Collateral to the Lender by:

- (a) In the case of securities Collateral: -

- (i) delivering certificates representing the Collateral together with duly executed securities transfer forms and such other instruments as may be requisite to vest thereto in the Lender;
  - (ii) causing the Collateral to be credited to the Lender's account and debited to the Borrower's account at HKSCC and such crediting and debiting shall result in notice of the transaction being given to the Lender;
  - (iii) any other method of delivery as shall be agreed upon by both parties.
- (b) In the case of other Collateral by any other method of delivery as shall be agreed upon by both parties.

4.3. Any cash Collateral received shall be held by the Lender until Equivalent Securities are re-delivered subject to Clause 8, the Lender shall be under no obligation to return the cash Collateral to the Borrower \*[until such time]/at the same time as the Borrower \*[shall have first re-delivered]/re-delivers Equivalent Securities to the Lender and the Borrower shall not assign, charge, dispose of or otherwise deal with its rights in respect of the cash Collateral. If the Borrower fails to comply with its obligations for such re-delivery of Equivalent Securities the Lender shall have the right to apply the cash Collateral by way of set-off in accordance with Clause 12.

(\*Delete as appropriate)

4.4. The Lender may use or invest the cash Collateral at its own risk and may commingle the cash Collateral with its own assets and with other cash Collateral.

4.5. The Borrower may from time to time call for the repayment or re-delivery of Collateral equivalent to any Collateral delivered hereunder; provided that at the time of such repayment or re-delivery the Borrower delivers Collateral which shall have a Market Value equal to such percentage of the Market Value of the Loaned

Securities as shall be agreed by the parties and which is acceptable to the Lender.

5.0. Rights and Title

The parties hereto shall execute and deliver all necessary documents and give all necessary instructions to procure that all right, title and interest in:

- (i) any Loaned Securities borrowed pursuant to Clause 2;
- (ii) any Equivalent Securities re-delivered pursuant to Clause 9;
- (iii) any Collateral delivered pursuant to Clause 4;
- (iv) any Equivalent Collateral re-delivered pursuant to Clause 9;

shall pass from one party to the other on delivery or re-delivery of the same in accordance with this Agreement, free from all liens, charges and encumbrances. The party acquiring such right title and interest shall have no obligation to return or re-deliver any of the assets so acquired but, in so far as any Loaned Securities are borrowed or any Collateral is delivered to such party, such party shall be obliged, subject to the terms of this Agreement, to re-deliver Equivalent Securities and Equivalent Collateral.

6.0. Loan Rebate Fee and Loan Fee

- 6.1. In respect of any cash Collateral delivered by the Borrower pursuant to Clause 4, the Lender agrees to pay to the Borrower a Loan Rebate Fee computed daily for each Loan on the cash Collateral value in respect of such Loan.
- 6.2. The amount of the Loan Rebate Fee shall be computed to include (as may be agreed upon by both parties): -

- (a) the first business day that the Borrower or its agent makes delivery of the cash Collateral to the Lender or its agent; or
  - (b) (where the first day is not included) the day that the cash Collateral is re-delivered to the Borrower or its agent after termination of the Loan thereof in accordance with Clause 9 hereof.
- 6.3. The amount of the Loan Rebate Fee shall be computed by multiplying the rate of the Loan Rebate Fee in respect of the transaction by the amount of the cash Collateral by the number of days the cash Collateral is held by the Lender in a given month and the fraction 1/360.
- 6.4. All accrued Loan Rebate Fees shall be paid by the Lender by the earlier of;
- (a) the date of termination of this Agreement; or
  - (b) as to each Loan which was in effect for all or any part of a month, on the [seventh] business day after receipt of the Borrower's fee statement.
- 6.5. In respect of the non-cash Collateral, the Borrower agrees to pay the Lender a Loan Fee computed daily for each Loan based on the daily Market Value of the Loaned Securities. The amount of the Loan Fee shall be computed to include the first business day that the Lender makes delivery of the Loaned Securities to the Borrower but not the day that the Loaned Securities is returned to the Lender.
- 6.6. The Loan Fee shall be computed by multiplying the appropriate rate specified in respect of the transaction by the Market Value of the Loaned Securities by the number of days the Loaned Securities was loaned in a given month and the fraction 1/360.



- 6.7. All accrued Loan Fees shall be paid by the Borrower by the earlier of;
- (a) the date of termination of this Agreement; or
  - (b) as to each Loan which was in effect for all or any part of a month, the [seventh] business day after receipt of the Lender's fee statement.
- 6.8. All accrued Loan Rebate Fees and Loan Fees shall be paid in Hong Kong dollars or in such other currency as shall be agreed upon by the parties hereto.
- 7.0. Dividends and Distributions
- 7.1. The Lender shall be entitled to receive such amounts as are equal to the amounts of all dividends or other distributions of any kind whatsoever made on or in respect of the Loaned Securities on the payment dates or record dates (as the case may be) for which are during the term of the Loan.
- 7.2. Subject to Clause 12, any cash dividends, distributions, or interest made on or in respect of the Loaned Securities, which the Lender is entitled to receive pursuant to this Clause, shall be paid to the Lender by the Borrower on the date of payments of the dividend or distribution, or such other date as the Lender and the Borrower may from time to time agree (the "Relevant Payment Date"). Non-cash distributions on the Loaned Securities shall be added to the Loaned Securities and shall be considered such for all purposes, except that if the Loan has terminated, the Borrower shall forthwith deliver the same to the Lender.
- 7.3. The Borrower shall be entitled subject to Clause 12 to receive such amounts as are equal to the amounts of all dividends or other distributions made on or in respect of non-cash Collateral. Any distributions made on or in respect of such Collateral which the Borrower is entitled to receive hereunder shall be paid or delivered by the Lender to the Borrower on the Relevant Payment Date.

7.4. Each party hereby undertakes to use its best endeavours to procure that all reasonable instructions received from the other party in respect of conversions, subdivisions, consolidations, redemptions, takeovers, pre-emptions, options or other rights, are complied with in respect of such Loaned Securities and/or non-cash Collateral provided that each party shall use its best endeavours to notify the other of its instructions in writing no later than [seven] business days prior to the date upon which such actions is to be taken.

8.0. Marking to Market

8.1. In the event that the Market Value of the Collateral becomes less than 100% (or such higher percentage of Market Value as may be agreed upon) of the Market Value of the Loaned Securities at the close of trading on any business day (currency conversions being made on basis of the closing rates quoted by the Hongkong and Shanghai Banking Corporation Ltd. or a mutually agreed upon source of exchange rates), the Lender may upon notification to the Borrower demand that the Borrower shall prior to the close of trading on the next business day deposit further Collateral which, together with the Collateral then held, equals 100% (or such higher percentage of Market Value as may be agreed upon) of the Loaned Securities at the close of trading on the preceding business day.

8.2. If the Market Value of the Collateral (calculated in accordance with Clause 8.1 hereof) is greater than such percentage of such aggregate Market Value of the Loaned Securities at the close of trading on a business day, the Borrower may, by notice to the Lender, demand that the Lender shall prior to the close of trading on the next business day release Collateral or an amount under a letter of credit in excess of such percentage of Market Value of the Loaned Securities. Such released Collateral should be delivered by the same method as set out in Clause 4 hereof.

9.0. Re-delivery of Equivalent Securities

- 9.1. Subject to Clause 12 hereof and the terms of each Loan as agreed upon by the parties pursuant to Clause 2.2., the Lender may call for the re-delivery of all or any Equivalent Securities at any time in the ordinary course of business upon notice of not less than the standard settlement time for such Equivalent Securities on The Stock Exchange of Hong Kong. The Borrower shall re-deliver such Equivalent Securities not later than the expiry of such notice in accordance with the Lender's instructions. Simultaneously with the re-delivery of the Equivalent Securities in accordance with such call, the Lender shall repay any cash Collateral and re-deliver Equivalent Collateral to the Borrower.
- 9.2. If the Borrower does not re-deliver Equivalent Securities in accordance with such call, the Lender may elect to continue the Loan provided that if the Lender does not elect to continue the Loan the Lender may by notice to the Borrower elect to terminate the Loan. Upon the expiry of such notice the provisions of Clause 12 shall apply.
- 9.3. In the event that as a result of the failure of the Borrower to re-deliver Equivalent Securities to the Lender in accordance with this Agreement, the Lender shall have the option (but is not obliged) to exercise a "buy-in". Provided that reasonable notice has been given to the Borrower of the likelihood of such a "buy-in", the Borrower shall reimburse to the Lender for the total costs and expenses reasonably incurred by the Lender as a result of such "buy-in".
- 9.4. The Borrower shall be entitled at any time to terminate a particular Loan and to re-deliver all and any Equivalent Securities due and outstanding to the Lender in accordance with the Lender's instructions. The Lender shall accept such re-delivery and simultaneously therewith shall repay to the Borrower any cash Collateral or, as the case may be, re-deliver Equivalent Collateral to the Borrower.
- 9.5. Where a letter of credit is provided by way of Collateral, the obligation to re-deliver Equivalent Collateral is satisfied by the Lender re-delivering for cancellation the letter of credit so provided, or where the letter of credit is provided in respect of more than

one Loan, by the Lender consenting to a reduction in the value of the letter of credit.

10.0. Cost and Other Expenses

10.1. All transfer or similar duties, levies chargeable in connection with the transfer of the Loaned Securities and securities Collateral by the Lender to the Borrower and by Borrower to the Lender, respectively, shall be paid by the Borrower. The Borrower shall indemnify the Lender in respect of any cost, claim, liability or expense incurred by the Lender as a result of the Borrower's failure to pay any such taxes or costs.

11.0. Events of Default

11.1. Each of the following events shall be an Event of Default for the purpose of Clause 12: -

- (a) if the Loan shall be found to be made for a purpose other than one of the Specified Purposes;
- (b) if Equivalent Securities shall not be delivered to the Lender on the specified termination date of the Loan;
- (c) if Equivalent Collateral shall not be delivered to the Borrower on the specified termination date of the Loan;
- (d) if either party shall fail to make the payment of distributions as required by Clause 7 hereof and such default if not cured within [six (6)] business days of notice of such failure to the Borrower or the Lender, as the case may be;
- (e) if either party shall fail to deliver or re-deliver Collateral or Equivalent Collateral as the case may be, as required by Clause 9 hereof;
- (f) if either party ceases or threatens to cease to carry on its business;

- \* (g) a floating charge over the assets or any part of the assets of either party crystallising;
- (h) if either party shall make a general assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts as they become due and payable, or shall file a petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file a petition seeking reorganization, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or shall seek, consent to or acquiesce in the appointment of any trustee, receiver or liquidator of it or any material part of its properties;
- (i) if any petition is filed against either party hereto (other than by the other party to this Agreement in respect of the obligations under this Agreement) in any court or before any agency alleging the bankruptcy or insolvency of such party or seeking any reorganization, arrangement, composition, re-adjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or the appointment of a receiver, liquidator or trustee of all or any material part of such party's property, and such petition or appointment is not vacated or stayed within thirty (30) days; or
- (j) if either party shall have been suspended or expelled from membership or participation in any securities exchange, clearing house or association or other self-regulatory organization or if it is suspended from dealing in securities by any governmental agency.

In respect of an event mentioned in sub-clauses (f), (g), (h), (i) or (j) above in relation to a party, the non-defaulting party has served written notice on such defaulting party stating that such event shall be treated as an Event of Default for the purposes of this Agreement.

11.2. Each party shall notify the other if an Event of Default occurs in relation to it.

12.0. Set-off

12.1. On the date and time (the "Performance Date") that Equivalent Securities are required to be re-delivered by the Borrower in accordance with the provisions of this Agreement the Lender shall simultaneously re-deliver the Equivalent Collateral and repay any cash Collateral held to the Borrower. Neither party shall be obliged to make delivery (or make a payment as the case may be) to the other unless it is satisfied that the other party will make such delivery (or make an appropriate payment as the case may be) to it simultaneously. If it is not so satisfied (whether because an Event of Default has occurred in respect of the other party or otherwise), it shall notify the other party and unless that other party has made arrangements which are sufficient to assure full delivery (or the appropriate payment as the case may be) to the notifying party, the notifying party shall (provided it is itself in a position, and willing, to perform its own obligations) be entitled to withhold delivery (or payment, as the case may be) to the other party (the "Defaulting Party").

12.2. In such an event: -

- (i) the Relevant Value (as hereinafter defined) of all securities to be delivered (or payment to be made, as the case may be) by each party shall be established in accordance with Clause 12.3; and
- (ii) on the basis of the Relevant Values so established, an account shall be taken (as at the Performance Date) of what is due from each party to the other and the sums due from one party shall be set-off against the sums due from the other and only the balance of the account shall be payable (by the party having the claim valued at the lower amount pursuant to the foregoing) and such balance shall be payable on the Performance Date.

2.3. For the purpose of Clause 12.2 the Relevant Value: -

- (a) of any cash payment obligation shall equal its par value in the agreed currency;

- (b) of any securities to be delivered by the Defaulting Party shall equal the amount it would cost the other party to purchase a like amount of such securities at such time on the principal market for such securities, plus all brokers' fees, commissions, stamp duty, stamp duty reserve tax, other transfer tax, and all other reasonable costs, fees and expenses that would be incurred in connection with such purchase; and
- (c) of any securities to be delivered to the Defaulting Party shall equal the amount that would be received by the other party on a sale of a like amount of such securities at the best available bid price thereof at such time on the principal market for such securities, less all brokers' fees, commissions, stamp duty, stamp duty reserve tax, other transfer tax, and all other reasonable costs, fees and expenses that would be incurred in connection with selling or otherwise realising such securities.

12.4. For the purposes of Clause 12.3, the Relevant Value of any securities shall be calculated at the close of business in the relevant principal market for such securities on the Performance Date.

12.5. If an Event of Default occurs in respect of any party (or if any party has breached any of its warranties or obligations under any of Clause 13 and the other party has served written notice on it thereof), that party's delivery and payment obligations (and any other obligations it has under this Agreement) shall be accelerated so as to require performance thereof at the time an Event of Default occurs or such notice is served (as the case may be).

### 13.0. Representations

13.1. Each of the Lender and the Borrower warrants and represents to the other that during the term of any Loan hereunder: --

- (a) it is duly incorporated, established or constituted (as the case may be) and validly existing under the laws of its country of incorporation, establishment or constitution (as the case may be);
  - (b) it has the power to execute and deliver this Agreement;
  - (c) it has the power to enter into the Loans contemplated hereby and to perform its obligations hereunder;
  - (d) it has taken all necessary action to authorize such execution, delivery and performance;
  - (e) this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with its terms; and
  - (f) as to all Loaned Securities (in the case of the Lender) and all securities Collateral (in the case of the Borrower), it is absolutely entitled to pass full legal and beneficial ownership of such Loaned Securities or securities Collateral (as the case may be) provided by it hereunder to the Lender or the Borrower (as the case may be) free and clear of all liens, charges or encumbrances.
- 13.2. Each party hereto accepts liability as principal with respect to its obligations hereunder.
- 13.3. Each party hereto represents and warrants that the execution, delivery and performance by it of this Agreement and each Loan hereunder will to its knowledge comply with all applicable laws, rules and regulations including those of The Stock Exchange of Hong Kong Ltd, HKSCC and Securities and Futures Commission.

14.0. Miscellaneous



14.1. This Agreement shall not be assignable by either party without the prior written consent of the other party and shall be binding upon and shall ensure to the benefit of the parties hereto and their respective successors and assigns.

14.2. This Agreement shall not be remedied, amended or cancelled (subject only to fulfilment of any obligations then outstanding) except by notice in writing signed by each of the parties hereto.

15.0. Remedies

15.1. No delay or omission on the Lender's or the Borrower's part in exercising any right, power, privilege or remedy hereunder shall impair such right, power, privilege or remedy or be construed as a waiver thereof nor shall any single or partial exercise of any such right, power, privilege or remedy preclude any further exercise thereof or the exercise of any other right, power, privilege or remedy.

15.2. The rights, powers, privileges and remedies herein provided are cumulative and not exclusive of any rights, powers, privileges or remedies provided by law. All remedies hereunder shall survive the termination of the relevant Loan, re-delivery of Equivalent Securities or Collateral and termination of this Agreement.

16.0. Notice

Notice shall be in writing and all notices pursuant hereto shall be sufficient if delivered by registered or certified post or by telex, telegram, telefax or by hand to the party entitled thereto at the following addresses:

If to the Borrower, to it at

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention \_\_\_\_\_

If to the Lender, to it at

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention \_\_\_\_\_

or to such other address as either party may from time to time provide to the other by notice.

17.0. Governing Law

This Agreement and all rights obligations and liabilities hereunder shall be governed by and construed in accordance with the Laws of Hong Kong and the parties hereby irrevocably submit to the [non-] exclusive jurisdiction of the courts of Hong Kong.

IN WITNESS WHEREOF this Agreement has been entered into on the day and year above written.

SIGNED by [Name] )  
[for and on behalf of )  
the Lender] ) \_\_\_\_\_  
in the presence of : - ) [Signature]

[Witness name, address  
and occupation] \_\_\_\_\_  
[Witness Signature]

) SIGNED by [Name] )  
 [for and on behalf of )  
 the Borrower] )  
 in the presence of : - )

\_\_\_\_\_

[Signature]

[Witness name, address  
and occupation]

\_\_\_\_\_

[Witness Signature]



ศูนย์วิทยพัชกร  
จุฬาลงกรณ์มหาวิทยาลัย

)

**Stone, Forrest & Rivers**  
INCORPORATED

**Customer Margin Agreement / Loan Consent**

Name of Customer	Office Number
	Account Number

RR Number
-----------

Gentlemen:  
In consideration of your accepting and carrying for the undersigned one or more accounts (whether designated by name, number or otherwise) the undersigned hereby consents and agrees that:

**1. Applicable Rules and Statutes**

All transactions under this agreement shall be subject to the constitution, rules, regulations, customs and usage of the exchange or market, and its clearing house, if any, where the transactions are executed by you or your agents, applicable provisions of the federal securities laws, and the rules and regulations of the United States Securities and Exchange Commission, and the Board of Governors of the Federal Reserve System.

**2. Liens**

Any and all monies, securities, or property belonging to the undersigned or in which the undersigned may have an interest held by you or carried in any of my accounts (either individually or jointly with others) shall be subject to a general lien for the discharge of all of the undersigned's debts and obligations to you, wherever or however arising and without regard to whether or not you have made advances with respect to such property, and irrespective of the number of such accounts you shall have the right to transfer, and you are hereby authorized to sell and/or purchase any and all property in any such accounts without notice to satisfy such general line. You shall have the right to transfer monies, securities, and other property so held by you from or to any other of the accounts of the undersigned whenever in your judgment you consider such a transfer necessary for your protection. In enforcing your lien, you shall have the discretion to determine which securities and property are to be sold and which contracts are to be closed.

**3. Authority to Pledge**

Any or all securities or any other property, now or hereafter held by you, or carried by you for the undersigned (either individually or jointly with others), or deposited to secure the same, may from time to time and without notice to me, be carried in your general loans and may be pledged, re-pledged, hypothecated or re-hypothecated, separately or in common with other securities or any other property, for the sum due to you thereon or for a greater sum, and without retaining in your possession and control for delivery a like amount of similar securities.

**4. Authority to Borrow**

In case of the sale of any security or other property by you at the direction of the undersigned and your inability to deliver the same to the purchaser by reason of failure of the undersigned to supply you therewith, then and in such event, the undersigned authorizes you to borrow any security or other property necessary to make delivery thereof, and the undersigned hereby agrees to be responsible for any loss which you may sustain thereby and any premiums which you may be required to pay thereof, and for any loss which you may sustain by reason for your inability to borrow the security or other property sold.

**5. Maintenance of Margin**

The undersigned will at all times maintain margins for said accounts, as required by you from time to time.

**6. Payment of Indebtedness upon Demand**

The undersigned shall at all times be liable for the payment upon demand of any debit balance or other obligations owing in any of the accounts of the undersigned with you and the undersigned shall be liable to you for any deficiency remaining in any such accounts in the event of the liquidation thereof, in whole or in part, by you or by the undersigned; and, the undersigned shall make payment of such obligations and indebtedness upon demand.

The reasonable costs and expenses of collection of the debit balance and any unpaid deficiency in the accounts of the undersigned with you, including, but not limited to, attorney's fees, incurred and payable or paid by you shall be payable to you by the undersigned.

**7. Designation of Orders**

It is understood and agreed that the undersigned, when placing with you any sell order for short account, will designate it as such and hereby authorizes you to mark such order as being "short," and when placing with you any order for long account, will designate it as such and hereby authorizes you to mark such orders as being "long." Any sell order which the undersigned shall designate as being for long account as above provided, is for securities then owned by the undersigned and, if such securities are not then deliverable by you from any account of the undersigned, the placing of such order shall constitute a representation by the undersigned that it is impracticable for him then to deliver such securities to you but that he will deliver them as soon as it is possible for him to do so. It is understood that such delivery is due on or before the settlement date of the transaction.

**8. Capacity**

In all transactions between you and the undersigned, the undersigned understands that you are acting as the brokers of the undersigned, except when you disclose to the undersigned in the confirmation that you are acting as dealers for your own account or as brokers for some other person.

**9. Presumption of Receipt of Communications**

Communications may be sent to the undersigned at the address of the undersigned or at such other address as the undersigned may hereafter give you in writing, and all communications so sent, whether by mail, telegraph, messenger or otherwise, shall be deemed given to the undersigned personally, whether actually received or not.

**10. Reports and Statements**

Reports of executions of orders and statements of the account of the undersigned shall be conclusive if not objected to in writing, the former within five (5) days, the latter within ten (10) days, of the date on which such material was forwarded by you or your agents to the undersigned, by mail or otherwise.

**11. Free Credit Balances**

It is understood and agreed that any free credit balance in any account in which I have an interest is maintained in such account solely for the purpose of investment or reinvestment in securities or other investment instruments.

**12. Margin Interest Charges**

The undersigned acknowledges receipt of Truth-in-Lending Disclosure Statement. It is understood that interest will be charged on debit balances in accordance with the methods and procedures described in this statement or in any amendment or revision thereto which may be provided to me. Unless otherwise noted hereon, or unless I am provided notice to the contrary in accordance with the relevant provisions of this agreement, the following schedule shall set forth the maximum charges to be made on debit balances in the undersigned's accounts:

Average Debit Balance for Interest Period	Interest Charge Above Broker Call Loan Rate
\$ 0-15,000	2.6%
15,001-50,000	1.5%
50,001-and over	1.0%

**13. Agreement to Arbitrate Controversies**

It is agreed that any controversy between us arising out of your business or this agreement shall be submitted to arbitration conducted under the provisions of the Constitution and Rules of the Board of Governors of the New York Stock Exchange or pursuant to the Code of Arbitration of the National Association of Securities Dealers, as the undersigned may elect.

Figure 16-3a. A Margin Account Agreement. (front).

Arbitration must be commenced upon service of either a written demand for arbitration or a written notice of intention to arbitrate, therein electing the arbitration tribunal. In the event the undersigned does not make such designation within five (5) days of such demand or notice, then the undersigned authorizes you to do so on behalf of the undersigned.

**14. Extraordinary Events**

You shall not be liable for any loss caused directly or indirectly by government restrictions, exchange or market rulings, suspension of trading, war, strikes or other conditions beyond your control.

**15. Representation as to Capacity to Enter into Agreement**

The undersigned, if an individual, represents that the undersigned is of full age, that the undersigned is not an employee of any exchange, or of any corporation of which any exchange owns a majority of the capital stock, or of a member of any exchange, or of a member firm or member corporation registered on any exchange or of a bank, trust company, insurance company or of any corporation, firm or individual engaged in the business of dealing either as broker or as principal in securities, bills of exchange, bankers' acceptances or commercial paper or other forms of credit securities of instruments. The undersigned further represents that no one except the undersigned has an interest in the account or accounts of the undersigned with you.

**16. Joint and Several Liability**

If the undersigned shall consist of more than one individual, their obligations under this agreement shall be joint and several.

**17. Rights under Agreement**

Your failure to insist at any time upon strict compliance with this agreement or with any of its terms or any continued course of such conduct on your part shall in no event constitute or be considered a waiver by you of any of your rights or privileges. The undersigned hereby expressly agrees that you shall not be bound by any representation or agreement heretofore or hereafter made by any of your employees or agents which in any way purports to modify, affect or diminish your rights under this agreement, and that no representation or advice by you or your employees or agents regarding the purchase or sale by the undersigned of any securities, or other property bought or sold on the undersigned's order or carried or held in any manner for the undersigned's account shall be deemed to be a representation with respect to the future value or performance of such securities, or other property.

**18. Continuity of Agreement**

This agreement shall inure to the benefit of your successors and assigns, by merger, consolidation or otherwise, and you may transfer the account of the undersigned to any such successors or assigns.

This agreement and all the terms thereof shall be binding upon the undersigned's heirs, executors, administrators, personal representatives and assigns. In the event of the undersigned's death, incompetency, or disability, whether or not executors, administrators, committee or conservators of my estate and property shall have qualified or been appointed, you may cancel any open orders for the purchase or sale of any property, you may place orders for the sale of the property which you may be carrying for me and for which payment has not been made or buy any property of which my accounts may be short, or any part thereof, under the same terms and conditions as hereinabove stated, as though the undersigned were alive and competent without prior notice to the undersigned's heirs, executors, administrators, personal representatives, assigns, committee or conservators, without prior demand or call of any kind upon them or any of them.

**19. Headings are Descriptive**

The heading of each provision hereof is for descriptive purposes only and shall not be deemed to modify or qualify any of the rights or obligations set forth in each provision.

**20. Separability**

If any provision or condition of this agreement shall be held to be invalid or unenforceable by any court, or regulatory or self-regulatory agency or body, such invalidity or unenforceability shall attach only to such provision or condition. The validity of the remaining provisions and conditions shall not be affected thereby and this agreement shall be carried out as if such invalid or unenforceable provision or condition were not contained herein.

**21. Written Authority Required for Waiver or Modification**

Except as herein otherwise expressly provided, no provision of this agreement shall in any respect be waived, altered, modified or amended unless such waiver, alteration, modification or amendment is committed to writing and signed by an officer of your organization.

**22. The Laws of the State of New York Govern**

This agreement and its enforcement shall be governed by the laws of the State of New York, shall cover individually and collectively all accounts which the undersigned may open or reopen with you, and shall inure to the

benefit of your successors and assigns whether by merger, consolidation or otherwise, and you may transfer the accounts of the undersigned to your successors and assigns.

**23. Acknowledgement of Receipt of Agreement**

The undersigned has read this agreement in its entirety before signing, and acknowledges receipt of a copy of this agreement.

Dated \_\_\_\_\_

-----  
*INDIVIDUAL OR JOINT ACCOUNT SIGNATURE*

\_\_\_\_\_  
(Second Party, If Joint Account)

-----  
*PARTNERSHIP SIGNATURE*

\_\_\_\_\_  
(Name of Partnership)

By \_\_\_\_\_  
(A Partner)

-----  
*CORPORATION SIGNATURE*

\_\_\_\_\_  
(Name of Corporation)

By \_\_\_\_\_  
Title \_\_\_\_\_

**Lending Agreement**

You are hereby specifically authorized to lend to yourself, as principal or otherwise, or to others, any securities held by you on margin for any accounts of the undersigned or as collateral therefore, either separately or with other securities.

This agreement shall inure to the benefit of your successors and assigns, by merger, consolidation or otherwise, and you may transfer the account of the undersigned to any such successors or assigns.

Dated \_\_\_\_\_

-----  
*INDIVIDUAL OR JOINT ACCOUNT SIGNATURE*

\_\_\_\_\_  
(Second Party, If Joint Account)

-----  
*PARTNERSHIP SIGNATURE*

\_\_\_\_\_  
(Name of Partnership)

By \_\_\_\_\_  
(A Partner)

-----  
*CORPORATION SIGNATURE*

\_\_\_\_\_  
(Name of Corporation)

By \_\_\_\_\_  
Title \_\_\_\_\_

Figure 16-3b. Margin Account Agreement (back).

Public Securities Association  
40 Broad Street, New York, NY 10004-2373  
Telephone (212) 809-7000



MASTER SECURITIES LOAN AGREEMENT

Dated as of \_\_\_\_\_

Between:

\_\_\_\_\_  
and  
\_\_\_\_\_

This Agreement sets forth the terms and conditions under which one party ("Lender") may, from time to time, lend to the other party ("Borrower") certain securities against a pledge of collateral. Capitalized terms not otherwise defined herein shall have the meanings provided in Section 26.

The parties hereto agree as follows:

1. Loans of Securities.

1.1 Subject to the terms and conditions of this Agreement, Borrower or Lender may, from time to time, orally seek to initiate a transaction in which Lender will lend securities to Borrower. Borrower and Lender shall agree orally on the terms of each Loan, including the issuer of the securities, the amount of securities to be lent, the basis of compensation, and the amount of Collateral to be transferred by Borrower, which terms may be amended during the Loan.

1.2 Notwithstanding any other provision in this Agreement regarding when a Loan commences, a Loan hereunder shall not occur until the Loaned Securities and the Collateral therefor have been transferred in accordance with Section 16.

1.3 WITHOUT WAIVING ANY RIGHTS GIVEN TO LENDER HEREUNDER, IT IS UNDERSTOOD AND AGREED THAT THE PROVISIONS OF THE SECURITIES INVESTOR PROTECTION ACT OF 1970 MAY NOT PROTECT LENDER WITH RESPECT TO LOANED SECURITIES HEREUNDER AND THAT, THEREFORE, THE COLLATERAL DELIVERED TO LENDER MAY CONSTITUTE THE ONLY SOURCE OF SATISFACTION OF BORROWER'S OBLIGATIONS IN THE EVENT BORROWER FAILS TO RETURN THE LOANED SECURITIES.

2. Transfer of Loaned Securities.

2.1 Unless otherwise agreed, Lender shall transfer Loaned Securities to Borrower hereunder on or before the Cutoff Time on the date agreed to by Borrower and Lender for the commencement of the Loan.

2.2 Unless otherwise agreed, Borrower shall provide Lender, in each Loan in which Lender is a Customer, with a schedule and receipt listing the Loaned Securities. Such schedule and receipt may consist of (a) a schedule provided to Borrower by Lender and executed and returned by Borrower when the Loaned Securities are received, (b) in the case of securities transferred through a Clearing Organization which provides transferors with a notice evidencing such transfer, such notice, or (c) a confirmation or other document provided to Lender by Borrower.

### 3. Collateral.

3.1 Unless otherwise agreed, Borrower shall, prior to or concurrently with the transfer of the Loaned Securities to Borrower, but in no case later than the close of business on the day of such transfer, transfer to Lender Collateral with a market value at least equal to a percentage of the market value of the Loaned Securities agreed to by Borrower and Lender (which shall be not less than 100% of the market value of the Loaned Securities) (the "Margin Percentage").

3.2 The Collateral transferred by Borrower to Lender, as adjusted pursuant to Section 8, shall be security for Borrower's obligations in respect of such Loan and for any other obligations of Borrower to Lender. Borrower hereby pledges with, assigns to, and grants Lender a continuing first security interest in, and a lien upon, the Collateral, which shall attach upon the transfer of the Loaned Securities by Lender to Borrower and which shall cease upon the transfer of the Loaned Securities by Borrower to Lender. In addition to the rights and remedies given to Lender hereunder, Lender shall have all the rights and remedies of a secured party under the New York Uniform Commercial Code. It is understood that Lender may use or invest the Collateral, if such consists of cash, at its own risk, but that (unless Lender is a Broker-Dealer) Lender shall, during the term of any Loan hereunder, segregate Collateral from all securities or other assets in its possession. Lender may pledge, repledge, hypothecate, rehypothecate, lend, relend, sell or otherwise transfer the Collateral, or re-register Collateral evidenced by physical certificates in any name other than Borrower's, only (a) if Lender is Broker-Dealer or (b) in the event of a Default by Borrower. Segregation of Collateral may be accomplished by appropriate identification on the books and records of Lender if it is a "financial intermediary" or a "clearing corporation" within the meaning of the New York Uniform Commercial Code.

3.3 Except as otherwise provided herein, upon transfer to Lender of the Loaned Securities on the day a Loan is terminated pursuant to Section 5, Lender shall be obligated to transfer the Collateral (as adjusted pursuant to Section 8) to Borrower no later than the Cutoff Time on such day or, if such day is not a day on which a transfer of such Collateral may be effected under Section 16, the next day on which such a transfer may be effected.

3.4 If Borrower transfers Collateral to Lender, as provided in Section 3.1, and Lender does not transfer the Loaned Securities to Borrower, Borrower shall have the absolute right to the return of the Collateral; and if Lender transfers Loaned Securities to Borrower and Borrower does not transfer Collateral to Lender as provided in Section 3.1, Lender shall have the absolute right to the return of the Loaned Securities.

3.5 Borrower may, upon reasonable notice to Lender (taking into account all relevant factors, including industry practice, the type of Collateral to be substituted and the applicable method of transfer), substitute Collateral for Collateral securing any Loan or Loans; provided, however, that such substituted Collateral shall (a) consist only of cash, securities or other property that Borrower and Lender agreed would be acceptable Collateral prior to the Loan or Loans and (b) have a market value such that the aggregate market value of such substituted Collateral, together with all other Collateral for Loans in which the party substituting such Collateral is acting as Borrower, shall equal or exceed the agreed upon Margin Percentage of the market value of the Loaned Securities. Prior to the expiration of any letter of credit supporting Borrower's obligations hereunder, Borrower shall, no later than the Cutoff Time on the date such letter of credit expires, obtain an extension of the expiration of such letter of credit or replace such letter of credit by providing Lender with a substitute letter of credit in an amount at least equal to the amount of the letter of credit for which it is substituted.

3.6 Lender acknowledges that, in connection with Loans of Government Securities and as otherwise permitted by applicable law, some securities provided by Borrower as Collateral under this Agreement may not be guaranteed by the United States.

4. Fees for Loan.

4.1 Unless otherwise agreed, (a) Borrower agrees to pay Lender a loan fee (a "Loan Fee"), computed daily on each Loan to the extent such Loan is secured by Collateral other than cash, based on the aggregate par value (in the case of Loans of Government Securities) or the aggregate market value (in the case of all other Loans) of the Loaned Securities on the day for which such Loan Fee is being computed, and (b) Lender agrees to pay Borrower a fee or rebate (a "Cash Collateral Fee") on Collateral consisting of cash, computed daily based on the amount of cash held by Lender as Collateral, in the case of each of the Loan Fee and the Cash Collateral Fee at such rates as Borrower and Lender may agree. Except as Borrower and Lender may otherwise agree (in the event that cash Collateral is transferred by clearing house funds or otherwise), Loan Fees shall accrue from and including the date on which the Loaned Securities are transferred to Borrower to, but excluding, the date on which such Loaned Securities are returned to Lender, and Cash Collateral Fees shall accrue from and including the date on which the cash Collateral is transferred to Lender to, but excluding, the date on which such cash Collateral is returned to Borrower.

4.2 Unless otherwise agreed, any Loan Fee or Cash Collateral Fee payable hereunder shall be payable:

- (a) in the case of any Loan of securities other than Government Securities, upon the earlier of (i) the fifteenth day of the month following the calendar month in which such fee was incurred or (ii) the termination of all Loans hereunder (or, if a transfer of cash in accordance with Section 16 may not be effected on such fifteenth day or the day of such termination, as the case may be, the next day on which such a transfer may be effected); and
- (b) in the case of any Loan of Government Securities, upon the termination of such Loan.

Notwithstanding the foregoing, all Loan Fees shall be payable by Borrower immediately in the event of a Default hereunder by Borrower and all Cash Collateral Fees shall be payable immediately by Lender in the event of a Default by Lender.

5. Termination of the Loan. Unless otherwise agreed, (a) Borrower may terminate a Loan on any Business Day by giving notice to Lender and transferring the Loaned Securities to Lender before the Cutoff Time on such Business Day, and (b) Lender may terminate a Loan on a termination date established by notice given to Borrower prior to the close of business on a Business Day. The termination date established by a termination notice given by Lender to Borrower shall be a date no earlier than the standard settlement date for trades of the Loaned Securities entered into on the date of such notice, which date shall, unless Borrower and Lender agree to the contrary, be (i) in the case of Government Securities, the next Business Day following such notice and (ii) in the case of all other securities, the fifth Business Day following such notice. Unless otherwise agreed, Borrower shall, on or before the Cutoff Time on the termination date of a Loan, transfer the Loaned Securities to Lender; provided, however, that upon such transfer by Borrower, Lender shall transfer the Collateral (as adjusted pursuant to Section 8) to Borrower in accordance with Section 3.3.

6. Rights of Borrower in Respect of the Loaned Securities. Except as set forth in Sections 7.1 and 7.2 and as otherwise agreed by Borrower and Lender, until Loaned Securities are required to be redelivered to Lender upon termination of a Loan hereunder, Borrower shall have all of the incidents of ownership of the Loaned Securities, including the right to transfer the Loaned Securities to others. Lender hereby waives the right to vote, or to provide any consent or to take any similar action with respect to, the Loaned Securities in the event that the record date or deadline for such vote, consent or other action falls during the term of the Loan.



#### 4. Fees for Loan.

4.1 Unless otherwise agreed, (a) Borrower agrees to pay Lender a loan fee (a "Loan Fee"), computed daily on each Loan to the extent such Loan is secured by Collateral other than cash, based on the aggregate par value (in the case of Loans of Government Securities) or the aggregate market value (in the case of all other Loans) of the Loaned Securities on the day for which such Loan Fee is being computed, and (b) Lender agrees to pay Borrower a fee or rebate (a "Cash Collateral Fee") on Collateral consisting of cash, computed daily based on the amount of cash held by Lender as Collateral, in the case of each of the Loan Fee and the Cash Collateral Fee at such rates as Borrower and Lender may agree. Except as Borrower and Lender may otherwise agree (in the event that cash Collateral is transferred by clearing house funds or otherwise), Loan Fees shall accrue from and including the date on which the Loaned Securities are transferred to Borrower to, but excluding, the date on which such Loaned Securities are returned to Lender, and Cash Collateral Fees shall accrue from and including the date on which the cash Collateral is transferred to Lender to, but excluding, the date on which such cash Collateral is returned to Borrower.

4.2 Unless otherwise agreed, any Loan Fee or Cash Collateral Fee payable hereunder shall be payable:

- (a) in the case of any Loan of securities other than Government Securities, upon the earlier of (i) the fifteenth day of the month following the calendar month in which such fee was incurred or (ii) the termination of all Loans hereunder (or, if a transfer of cash in accordance with Section 16 may not be effected on such fifteenth day or the day of such termination, as the case may be, the next day on which such a transfer may be effected); and
- (b) in the case of any Loan of Government Securities, upon the termination of such Loan.

Notwithstanding the foregoing, all Loan Fees shall be payable by Borrower immediately in the event of a Default hereunder by Borrower and all Cash Collateral Fees shall be payable immediately by Lender in the event of a Default by Lender.

5. Termination of the Loan. Unless otherwise agreed, (a) Borrower may terminate a Loan on any Business Day by giving notice to Lender and transferring the Loaned Securities to Lender before the Cutoff Time on such Business Day, and (b) Lender may terminate a Loan on a termination date established by notice given to Borrower prior to the close of business on a Business Day. The termination date established by a termination notice given by Lender to Borrower shall be a date no earlier than the standard settlement date for trades of the Loaned Securities entered into on the date of such notice, which date shall, unless Borrower and Lender agree to the contrary, be (i) in the case of Government Securities, the next Business Day following such notice and (ii) in the case of all other securities, the fifth Business Day following such notice. Unless otherwise agreed, Borrower shall, on or before the Cutoff Time on the termination date of a Loan, transfer the Loaned Securities to Lender; provided, however, that upon such transfer by Borrower, Lender shall transfer the Collateral (as adjusted pursuant to Section 8) to Borrower in accordance with Section 3.3.

6. Rights of Borrower in Respect of the Loaned Securities. Except as set forth in Sections 7.1 and 7.2 and as otherwise agreed by Borrower and Lender, until Loaned Securities are required to be redelivered to Lender upon termination of a Loan hereunder, Borrower shall have all of the incidents of ownership of the Loaned Securities, including the right to transfer the Loaned Securities to others. Lender hereby waives the right to vote, or to provide any consent or to take any similar action with respect to, the Loaned Securities in the event that the record date or deadline for such vote, consent or other action falls during the term of the Loan.

7. Dividends, Distributions, Etc.

7.1 Lender shall be entitled to receive all distributions made on or in respect of the Loaned Securities which are not otherwise received by Lender, to the full extent it would be so entitled if the Loaned Securities had not been lent to Borrower, including, but not limited to: (a) cash and all other property, (b) stock dividends, (c) securities received as a result of split ups of the Loaned Securities and distributions in respect thereof, (d) interest payments, and (e) all rights to purchase additional securities.

7.2 Any cash distributions made on or in respect of the Loaned Securities, which Lender is entitled to receive pursuant to Section 7.1, shall be paid by the transfer of cash to Lender by Borrower, on the date any such distribution is paid, in an amount equal to such cash distribution, so long as Lender is not in Default at the time of such payment. Non-cash distributions received by Borrower shall be added to the Loaned Securities on the date of distribution and shall be considered such for all purposes, except that if the Loan has terminated, Borrower shall forthwith transfer the same to Lender.

7.3 Borrower shall be entitled to receive all cash distributions made on or in respect of non-cash Collateral which are not otherwise received by Borrower, to the full extent it would be so entitled if the Collateral had not been transferred to Lender. Any distributions of cash made on or in respect of such Collateral which Borrower is entitled to receive hereunder shall be paid by the transfer of cash to Borrower by Lender, on the date any such distribution is paid, in an amount equal to such cash distribution, so long as Borrower is not in Default at the time of such payment.

7.4 (a) Unless otherwise agreed, if (i) Borrower is required to make a payment (a "Borrower Payment") with respect to cash distributions on Loaned Securities under Sections 7.1 and 7.2 ("Securities Distributions"), or (ii) Lender is required to make a payment (a "Lender Payment") with respect to cash distributions on Collateral under Section 7.3 ("Collateral Distributions"), and (iii) Borrower or Lender, as the case may be ("Payor"), shall be required by law to collect any withholding or other tax, duty, fee, levy or charge required to be deducted or withheld from such Borrower Payment or Lender Payment ("Tax"), then Payor shall (subject to subsections (b) and (c) below), pay such additional amounts as may be necessary in order that the net amount of the Borrower Payment or Lender Payment received by the Lender or Borrower, as the case may be ("Payee"), after payment of such Tax equals the net amount of the Securities Distribution or Collateral Distribution that would have been received if such Securities Distribution or Collateral Distribution had been paid directly to the Payee.

(b) No additional amounts shall be payable to a Payee under subsection (a) above to the extent that Tax would have been imposed on a Securities Distribution or Collateral Distribution paid directly to the Payee.

(c) No additional amounts shall be payable to a Payee under subsection (a) above to the extent that such Payee is entitled to an exemption from, or reduction in the rate of, Tax on a Borrower Payment or Lender Payment subject to the provision of a certificate or other documentation, but has failed timely to provide such certificate or other documentation.

(d) Each party hereto shall be deemed to represent that, as of the commencement of any Loan hereunder, no Tax would be imposed on any cash distribution paid to it with respect to (i) Loaned Securities subject to a Loan in which it is acting as Lender or (ii) Collateral for any Loan in which it is acting as Borrower, unless such party has given notice to the contrary to the other party hereto (which notice shall specify the rate at which such Tax would be imposed). Each party agrees to notify the other of any change that occurs during the term of a Loan in the rate of any Tax that would be imposed on any such cash distributions payable to it.

7.5 To the extent that, under the provisions of Sections 7.1 through 7.4 (a) a transfer of cash or other property by Borrower would give rise to a Margin Excess (as defined in Section 8.3 below) or (b) a transfer of cash or other property by Lender would give rise to a Margin Deficit (as

defined in Section 8.2 below), Borrower or Lender (as the case may be) shall not be obligated to make such transfer of cash or other property in accordance with such Sections, but shall in lieu of such transfer immediately credit the amounts that would have been transferable under such Sections to the account of Lender or Borrower (as the case may be).

#### 8. Mark to Market.

8.1 Borrower shall daily mark to market any Loan hereunder and in the event that at the close of trading on any Business Day the market value of the Collateral for any Loan to Borrower shall be less than 100% of the market value of all the outstanding Loaned Securities subject to such Loan, Borrower shall transfer additional Collateral no later than the close of the next Business Day so that the market value of such additional Collateral, when added to the market value of the other Collateral for such Loan, shall equal 100% of the market value of the Loaned Securities.

8.2 In addition to any rights of Lender under Section 8.1, in the event that at the close of trading on any Business Day the aggregate market value of all Collateral for Loans by Lender shall be less than the Margin Percentage of the market value of all the outstanding Loaned Securities subject to such Loans (a "Margin Deficit"), Lender may, by notice to Borrower, demand that Borrower transfer to Lender additional Collateral so that the market value of such additional Collateral, when added to the market value of all other Collateral for such Loans, shall equal or exceed the agreed upon Margin Percentage of the market value of the Loaned Securities. Unless otherwise agreed, such transfer is to be made no later than the close of the next Business Day following the day of Lender's notice to Borrower.

8.3 In the event that at the close of trading on any Business Day the market value of all Collateral for Loans to Borrower shall be greater than the Margin Percentage of the market value of all the outstanding Loaned Securities subject to such Loans (a "Margin Excess"), Borrower may, by notice to Lender, demand that Lender transfer to Borrower such amount of the Collateral selected by Borrower so that the market value of the Collateral for such Loans, after deduction of such amounts, shall thereupon not exceed the Margin Percentage of the market value of the Loaned Securities. Unless otherwise agreed, such transfer is to be made no later than the close of the next Business Day following the day of Borrower's notice to Lender.

8.4 Borrower and Lender may agree, with respect to one or more Loans hereunder, to mark the values to market pursuant to Sections 8.2 and 8.3 by separately valuing the Loaned Securities lent and the Collateral given in respect thereof on a Loan-by-Loan basis.

8.5 Borrower and Lender may agree, with respect to any or all Loans hereunder, that the respective rights of Lender and Borrower under Sections 8.2 and 8.3 may be exercised only where a Margin Excess or Margin Deficit exceeds a specified dollar amount or a specified percentage of the market value of the Loaned Securities under such Loans (which amount or percentage shall be agreed to by Borrower and Lender prior to entering into any such Loans).

9. Representations. Each party to this Agreement hereby makes the following representations and warranties, which shall continue during the term of any Loan hereunder:

9.1 Each party hereto represents and warrants that (a) it has the power to execute and deliver this Agreement, to enter into the Loans contemplated hereby and to perform its obligations hereunder; (b) it has taken all necessary action to authorize such execution, delivery and performance; and (c) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with its terms.

9.2 Each party hereto represents and warrants that the execution, delivery and performance by it of this Agreement and each Loan hereunder will at all times comply with all applicable laws and regulations including those of applicable regulatory and self-regulatory organizations.

9.3 Each party hereto represents and warrants that it has not relied on the other for any tax or accounting advice concerning this Agreement and that it has made its own determination as to the tax and accounting treatment of any Loan and any dividends, remuneration or other funds received hereunder.

9.4 Borrower represents and warrants that it is acting for its own account. Lender represents and warrants that it is acting for its own account unless it expressly specifies otherwise in writing and complies with Section 10.3(b).

9.5 Borrower represents and warrants that (a) it has, or will have at the time of transfer of any Collateral, the right to grant a first security interest therein subject to the terms and conditions hereof, and (b) it (or the person to whom it relends the Loaned Securities) is borrowing or will borrow the Loaned Securities (except for Loaned Securities that qualify as "exempted securities" under Regulation T of the Board of Governors of the Federal Reserve System) for the purpose of making delivery of such securities in the case of short sales, failure to receive securities required to be delivered, or as otherwise permitted pursuant to Regulation T as in effect from time to time.

9.6 Lender represents and warrants that it has, or will have at the time of transfer of any Loaned Securities, the right to transfer the Loaned Securities subject to the terms and conditions hereof.

#### 10. Covenants.

10.1 Each party hereto agrees and acknowledges that (a) each Loan hereunder is a "securities contract," as such term is defined in Section 741(7) of Title 11 of the United States Code (the "Bankruptcy Code"), (b) each and every transfer of funds, securities and other property under this Agreement and each Loan hereunder is a "settlement payment" or a "margin payment," as such terms are used in Sections 362(b)(6) and 546(e) of the Bankruptcy Code, and (c) the rights given to Borrower and Lender hereunder upon a Default by the other constitute the right to cause the liquidation of a securities contract and the right to set off mutual debts and claims in connection with a securities contract, as such terms are used in Sections 555 and 362(b)(6) of the Bankruptcy Code. Each party hereto further agrees and acknowledges that if a party hereto is an "insured depository institution," as such term is defined in the Federal Deposit Insurance Act, as amended ("FDIA"), then each Loan hereunder is a "securities contract" and "qualified financial contract," as such terms are defined in the FDIA and any rules, orders or policy statements thereunder.

10.2 Borrower agrees to be liable as principal with respect to its obligations hereunder.

10.3 Lender agrees either (a) to be liable as principal with respect to its obligations hereunder or (b) to execute and comply fully with the provisions of Annex I (the terms and conditions of which Annex are incorporated herein and made a part hereof).

10.4 Promptly upon (and in any event within seven (7) Business Days after) demand by Lender, Borrower shall furnish Lender with Borrower's most recent publicly-available financial statements and any other financial statements mutually agreed upon by Borrower and Lender. Unless otherwise agreed, if Borrower is subject to the requirements of Rule 17a-5(c) under the Exchange Act, it may satisfy the requirements of this Section by furnishing Lender with its most recent statement required to be furnished to customers pursuant to such Rule.

10.5 Except to the extent required by applicable law or regulation or as otherwise agreed, Borrower and Lender agree that Loans hereunder shall in no event be "exchange contracts" for purposes of the rules of any securities exchange and that Loans hereunder shall not be governed by the buy-in or similar rules of any such exchange, registered national securities or other self-regulatory organization.

11. Events of Default. All Loans hereunder may, at the option of the non-defaulting party exercised by notice to the defaulting party (which option shall be deemed to have been exercised, even if no notice is given, immediately upon the occurrence of an event specified in subsection (e) below), be terminated immediately upon the occurrence of any one or more of the following events (individually, a "Default"):

- (a) if any Loaned Securities shall not be transferred to Lender upon termination of the Loan as required by Section 5;
- (b) if any Collateral shall not be transferred to Borrower upon termination of the Loan as required by Sections 3.3 and 5;
- (c) if either party shall fail to transfer Collateral as required by Section 8;
- (d) if either party (i) shall fail to transfer to the other party amounts in respect of distributions required to be transferred by Section 7, (ii) shall have received notice of such failure from the non-defaulting party, and (iii) shall not have cured such default by the Cutoff Time on the next day after such notice on which a transfer of cash may be effected in accordance with Section 16;
- (e) if (i) either party shall commence as debtor any case or proceeding under any bankruptcy, insolvency, reorganization, liquidation, dissolution or similar law, or seek the appointment of a receiver, conservator, trustee, custodian or similar official for such party or any substantial part of its property, (ii) any such case or proceeding shall be commenced against either party, or another shall seek such an appointment, or any application shall be filed against either party for a protective decree under the provisions of the Securities Investor Protection Act of 1970, which (A) is consented to or not timely contested by such party, (B) results in the entry of an order for relief, such an appointment, the issuance of such a protective decree or the entry of an order having a similar effect, or (C) is not dismissed within 15 days, (iii) either party shall make a general assignment for the benefit of creditors, or (iv) either party shall admit in writing its inability to pay its debts as they become due;
- (f) if either party shall have been suspended or expelled from membership or participation in any national securities exchange or registered national securities association of which it is a member or other self-regulatory organization to whose rules it is subject or if it is suspended from dealing in securities by any federal or state government agency thereof.
- (g) if either party shall have its license, charter, or other authorization necessary to conduct a material portion of its business withdrawn, suspended or revoked by any applicable federal or state government or agency thereof;
- (h) if any representation made by either party in respect of this Agreement or any Loan or Loans hereunder shall be incorrect or untrue in any material respect during the term of any Loan hereunder;
- (i) if either party notifies the other, orally or in writing, of its inability to or its intention not to perform its obligations hereunder or otherwise disaffirms, rejects or repudiates any of its obligations hereunder; or
- (j) if either party (i) shall fail to perform any material obligation under this Agreement not specifically set forth in clauses (a) through (i) above, including but not limited to the payment of fees as required by Section 4, and the payment of transfer taxes as required by Section 14, (ii) shall have received notice of such failure from the non-defaulting party and (iii) shall not have cured such failure by the Cutoff Time

on the next day after such notice on which a transfer of cash may be effected under Section 16.

12. Lender's Remedies. Upon the occurrence of a Default under Section 11 entitling Lender to terminate all Loans hereunder, Lender shall have the right (without further notice to Borrower), in addition to any other remedies provided herein or under applicable law, (a) to purchase a like amount of Loaned Securities ("Replacement Securities") in the principal market for such securities in a commercially reasonable manner, (b) to sell any Collateral in the principal market for such Collateral in a commercially reasonable manner and (c) to apply and set off the Collateral and any proceeds thereof (including any amounts drawn under a letter of credit supporting any Loan) against the payment of the purchase price for such Replacement Securities and any amounts due to Lender under Sections 4, 7, 14 and 17. In the event Lender shall exercise such rights, Borrower's obligation to return a like amount of the Loaned Securities shall terminate. Lender may similarly apply the Collateral and any proceeds thereof to any other obligation of Borrower under this Agreement, including Borrower's obligations with respect to distributions paid to Borrower (and not forwarded to Lender) in respect of Loaned Securities. In the event that (i) the purchase price of Replacement Securities (plus all other amounts, if any, due to Lender hereunder) exceeds (ii) the amount of the Collateral, Borrower shall be liable to Lender for the amount of such excess together with interest thereon at a rate equal to (A) in the case of purchases of Foreign Securities, LIBOR, (B) in the case of purchases of any other securities (or other amounts, if any, due to Lender hereunder), the Federal Funds Rate or (C) such other rate as may be specified in Schedule B, in each case as such rate fluctuates from day to day, from the date of such purchase until the date of payment of such excess. As security for Borrower's obligation to pay such excess, Lender shall have, and Borrower hereby grants, a security interest in any property of Borrower then held by or for Lender and a right of setoff with respect to such property and any other amount payable by Lender to Borrower. The purchase price of Replacement Securities purchased under this Section 12 shall include, and the proceeds of any sale of Collateral shall be determined after deduction of, broker's fees and commissions and all other reasonable costs, fees and expenses related to such purchase or sale (as the case may be). In the event Lender exercises its rights under this Section 12, Lender may elect in its sole discretion, in lieu of purchasing all or a portion of the Replacement Securities or selling all or a portion of the Collateral, to be deemed to have made, respectively, such purchase of Replacement Securities or sale of Collateral for an amount equal to the price therefor on the date of such exercise obtained from a generally recognized source or the most recent closing bid quotation from such a source. Subject to Section 19, upon the satisfaction of all obligations hereunder, any remaining Collateral shall be returned to Borrower.

13. Borrower's Remedies. Upon the occurrence of a Default under Section 11 entitling Borrower to terminate all Loans hereunder, Borrower shall have the right (without further notice to Lender), in addition to any other remedies provided herein or under applicable law, (a) to purchase a like amount of Collateral ("Replacement Collateral") in the principal market for such Collateral in a commercially reasonable manner, (b) to sell a like amount of the Loaned Securities in the principal market for such securities in a commercially reasonable manner and (c) to apply and set off the Loaned Securities and any proceeds thereof against (i) the payment of the purchase price for such Replacement Collateral (ii) Lender's obligation to return any cash or other Collateral and (iii) any amounts due to Borrower under Sections 4, 7 and 17. In such event, Borrower may treat the Loaned Securities as its own and Lender's obligation to return a like amount of the Collateral shall terminate; provided, however, that Lender shall immediately return any letters of credit supporting any Loan upon the exercise or deemed exercise by Borrower of its termination rights under Section 11. Borrower may similarly apply the Loaned Securities and any proceeds thereof to any other obligation of Lender under this Agreement, including Lender's obligations with respect to distributions paid to Lender (and not forwarded to Borrower) in respect of Collateral. In the event that (i) the sales price received from such Loaned Securities is less than (ii) the purchase price of Replacement Collateral (plus the amount of any cash or other Collateral not replaced by Borrower and all other amounts, if any, due to Borrower hereunder), Lender shall be liable to Borrower for the amount of any such deficiency, together with interest on such amounts at a rate equal to (A) in the case of Collateral consisting of Foreign Securities, LIBOR, (B) in the case of Collateral consisting of any other securities (or other amounts due, if any, to Borrower hereunder),

the Federal Funds Rate or (C) such other rate as may be specified in Schedule B, in each case as such rate fluctuates from day to day, from the date of such sale until the date of payment of such deficiency. As security for Lender's obligation to pay such deficiency, Borrower shall have, and Lender hereby grants, a security interest in any property of Lender then held by or for Borrower and a right of setoff with respect to such property and any other amount payable by Borrower to Lender. The purchase price of any Replacement Collateral purchased under this Section 13 shall include, and the proceeds of any sale of Loaned Securities shall be determined after deduction of, broker's fees and commissions and all other reasonable costs, fees and expenses related to such purchase or sale (as the case may be). In the event Borrower exercises its rights under this Section 13, Borrower may elect in its sole discretion, in lieu of purchasing all or a portion of the Replacement Collateral or selling all or a portion of the Loaned Securities, to be deemed to have made, respectively, such purchase of Replacement Collateral or sale of Loaned Securities for an amount equal to the price therefor on the date of such exercise obtained from a generally recognized source or the most recent closing bid quotation from such a source. Subject to Section 19, upon the satisfaction of all Lender's obligations hereunder, any remaining Loaned Securities (or remaining cash proceeds thereof) shall be returned to Lender. Without limiting the foregoing, the parties hereto agree that they intend the Loans hereunder to be loans of securities. If, however, any Loan is deemed to be a loan of money by Borrower to Lender, then Borrower shall have, and Lender shall be deemed to have granted, a security interest in the Loaned Securities and the proceeds thereof.

14. Transfer Taxes. All transfer taxes with respect to the transfer of the Loaned Securities by Lender to Borrower and by Borrower to Lender upon termination of the Loan shall be paid by Borrower.

15. Market Value.

15.1 Unless otherwise agreed, if the principal market for the securities to be valued is a national securities exchange in the United States, their market value shall be determined by their last sale price on such exchange on the preceding Business Day or, if there was no sale on that day, by the last sale price on the next preceding Business Day on which there was a sale on such exchange, all as quoted on the Consolidated Tape or, if not quoted on the Consolidated Tape, then as quoted by such exchange.

15.2 Except as provided in Section 15.3 or 15.4 or as otherwise agreed, if the principal market for the securities to be valued is the over-the-counter market, their market value shall be determined as follows. If the securities are quoted on the National Association of Securities Dealers Automated Quotations System ("NASDAQ"), their market value shall be the closing sale price on NASDAQ on the preceding Business Day or, if the securities are issues for which last sale prices are not quoted on NASDAQ, the closing bid price on such day. If the securities to be valued are not quoted on NASDAQ, their market value shall be the highest bid quotation as quoted in any of The Wall Street Journal, the National Quotation Bureau pink sheets, the Salomon Brothers quotation sheets, quotations sheets of registered market makers and, if necessary, dealers' telephone quotations on the preceding Business Day. In each case, if the relevant quotation did not exist on such day, then the relevant quotation on the next preceding Business Day in which there was such a quotation shall be the market value.

15.3 Unless otherwise agreed, if the securities to be valued are Government Securities, their market value shall be the average of the bid and ask prices as quoted on Prophecy at 3:30 P.M. New York time on the Business Day preceding the date on which such determination is made. If the securities are not so quoted on such day, their market value shall be determined as of the next preceding Business Day on which they were so quoted. If the securities to be valued are Government Securities that are not quoted on Prophecy, their market value shall be determined as of the close of business on the preceding Business Day in accordance with market practice for such securities.

15.4 Unless otherwise agreed, if the securities to be valued are Foreign Securities, their market value shall be determined as of the close of business on the preceding Business Day in accordance with market practice in the principal market for such securities.

15.5 Unless otherwise agreed, the market value of a letter of credit shall be the undrawn amount thereof.

15.6 All determinations of market value under Sections 15.1, 15.2, 15.3 and 15.4 shall include, where applicable, accrued interest to the extent not already included therein (other than any interest transferred to the other party pursuant to Section 7), unless market practice with respect to the valuation of such securities in connection with securities loans is to the contrary. All determinations of market value that are required to be made at the close of trading on any Business Day pursuant to Section 8 or otherwise hereunder shall be made as if being determined at the commencement of trading on the next Business Day. The determinations of market value provided for in this Section 15 shall apply for all purposes under this Agreement, except for purposes of Sections 12 and 13.

## 16. Transfers.

16.1 All transfers of securities hereunder shall be by (a) physical delivery of certificates representing such securities together with duly executed stock and bond transfer powers, as the case may be, with signatures guaranteed by a bank or a member firm of the New York Stock Exchange, Inc., (b) transfer on the books of a Clearing Organization, or (c) such other means as Borrower and Lender may agree. In every transfer of securities hereunder, the transferor shall take all steps necessary (i) to effect a "transfer" under Section 8-313 of the New York Uniform Commercial Code or, where applicable, under any U.S. federal regulation governing transfers of securities and (ii) to provide the transferee with comparable rights under any applicable foreign law or regulation.

16.2 All transfers of cash Collateral hereunder shall be by (a) wire transfer in immediately available, freely transferable funds or (b) such other means as Borrower and Lender may agree. All other transfers of cash hereunder shall be made in accordance with the preceding sentence or by delivery of a certified or official bank check representing next-day New York Clearing House Funds.

16.3 All transfers of a letter of credit from Borrower to Lender shall be made by physical delivery to Lender of an irrevocable letter of credit issued by a "bank" as defined in Section 3(a)(6)(A)-(C) of the Exchange Act. Transfer of a letter of credit from Lender to Borrower shall be made by causing such letter of credit to be returned or by causing the amount of such letter of credit to be reduced to the amount required after such transfer.

16.4 A transfer of securities, cash or letters of credit may be effected under this Section 16 on any day except (a) a day on which the transferee is closed for business at its address set forth in Schedule A hereto or (b) a day on which a Clearing Organization or wire transfer system is closed, if the facilities of such Clearing Organization or wire transfer system are required to effect such transfer.

## 17. Contractual Currency.

17.1 Borrower and Lender agree that: (a) any payment in respect of a distribution under Section 7 shall be made in the currency in which the underlying distribution of cash was made; (b) any return of cash shall be made in the currency in which the underlying transfer of cash was made and (c) any other payment of cash in connection with a Loan under this Agreement shall be in the currency agreed upon by Borrower and Lender in connection with such Loan (the currency established under clause (a), (b) or (c) hereinafter referred to as the "Contractual Currency"). Notwithstanding the foregoing, the payee of any such payment may, at its option, accept tender thereof in any other currency; provided, however, that, to the extent permitted by applicable law,



the obligation of the payor to make such payment will be discharged only to the extent of the amount of Contractual Currency that such payee may, consistent with normal banking procedures, purchase with such other currency (after deduction of any premium and costs of exchange) on the banking day next succeeding its receipt of such currency.

17.2 If for any reason the amount in the Contractual Currency received under Section 17.1, including amounts received after conversion of any recovery under any judgment or order expressed in a currency other than the Contractual Currency, falls short of the amount in the Contractual Currency due in respect of this Agreement, the party required to make the payment will (unless a Default has occurred and such party is the non-defaulting party) as a separate and independent obligation and to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall.

17.3 If for any reason the amount in the Contractual Currency received under Section 17.1 exceeds the amount in the Contractual Currency due in respect of this Agreement, then the party receiving the payment will (unless a Default has occurred and such party is the non-defaulting party) refund promptly the amount of such excess.

18. ERISA. Lender shall, if any of the securities transferred to the Borrower hereunder for any Loan have been or shall be obtained, directly or indirectly, from or using the assets of any Plan, so notify Borrower in writing upon the execution of the Agreement or upon initiation of such Loan under Section 1.1. If Lender so notifies Borrower, then Borrower and Lender shall conduct the Loan in accordance with the terms and conditions of Department of Labor Prohibited Transaction Exemption 81-6 (46 Fed. Reg. 7527, Jan. 23, 1981; as amended, 52 Fed. Reg. 18754, May 19, 1987), or any successor thereto (unless Borrower and Lender have agreed prior to entering into a Loan that such Loan will be conducted in reliance on another exemption, or without relying on any exemption, from the prohibited transaction provisions of Section 406 of the Employee Retirement Income Security Act of 1974, as amended, and Section 4975 of the Internal Revenue Code of 1986, as amended). Without limiting the foregoing and notwithstanding any other provision of this Agreement, if the Loan will be conducted in accordance with Prohibited Transaction Exemption 81-6, then:

- (a) Borrower represents and warrants to Lender that it is either (i) a bank subject to federal or state supervision, (ii) a broker-dealer registered under the Exchange Act or (iii) exempt from registration under Section 15(a)(1) of the Exchange Act as a dealer in Government Securities.
- (b) Borrower represents and warrants that, during the term of any Loan hereunder, neither Borrower nor any affiliate of Borrower has any discretionary authority or control with respect to the investment of the assets of the Plan involved in the Loan or renders investment advice (within the meaning of 29 C.F.R. Section 2510.3-21(c)) with respect to the assets of the Plan involved in the Loan. Lender agrees that, prior to or at the commencement of any Loan hereunder, it will communicate to Borrower information regarding the Plan sufficient to identify to Borrower any person or persons that have discretionary authority or control with respect to the investment of the assets of the Plan involved in the Loan or that render investment advice (as defined in the preceding sentence) with respect to the assets of the Plan involved in the Loan. In the event Lender fails to communicate and keep current during the term of any Loan such information, Lender rather than Borrower shall be deemed to have made the representation and warranty in the first sentence of this clause (b).
- (c) Borrower and Lender agree that:
  - (i) the term "Collateral" shall mean cash, securities issued or guaranteed by the United States government or its agencies or

instrumentalities, or irrevocable bank letters of credit issued by a person other than Borrower or an affiliate thereof;

- (ii) prior to the making of any Loans hereunder, Borrower shall provide Lender with (A) the most recent available audited statement of Borrower's financial condition and (B) the most recent available unaudited statement of Borrower's financial condition (if more recent than the most recent audited statement), and each Loan made hereunder shall be deemed a representation by Borrower that there has been no material adverse change in Borrower's financial condition subsequent to the date of the latest financial statements or information furnished in accordance herewith;
- (iii) the Loan may be terminated by Lender at any time, whereupon Borrower shall deliver the Loaned Securities to Lender within the lesser of (A) the customary delivery period for such securities; (B) five Business Days and (C) the time negotiated for such delivery between Borrower and Lender; provided, however, that Borrower and Lender may agree to a longer period only if permitted by Prohibited Transaction Exemption 81-6; and
- (iv) the Collateral transferred shall be security only for obligations of Borrower to the Plan with respect to Loans, and shall not be security for any obligation of Borrower to any agent or affiliate of the Plan.

19. Single Agreement. Borrower and Lender acknowledge that, and have entered into this Agreement in reliance on the fact that, all Loans hereunder constitute a single business and contractual relationship and have been entered into in consideration of each other. Accordingly, Borrower and Lender hereby agree that payments, deliveries and other transfers made by either of them in respect of any Loan shall be deemed to have been made in consideration of payments, deliveries and other transfers in respect of any other Loan hereunder, and the obligations to make any such payments, deliveries and other transfers may be applied against each other and netted. In addition, Borrower and Lender acknowledge that, and have entered into this Agreement in reliance on the fact that, all Loans hereunder have been entered into in consideration of each other. Accordingly, Borrower and Lender hereby agree that (a) each shall perform all of its obligations in respect of each Loan hereunder, and that a default in the performance of any such obligation by Borrower or by Lender (the "Defaulting Party") in any Loan hereunder shall constitute a default by the Defaulting Party under all such Loans hereunder, and (b) the non-defaulting party shall be entitled to set off claims and apply property held by it in respect of any Loan hereunder against obligations owing to it in respect of any other Loan with the Defaulting Party.

20. APPLICABLE LAW. THIS AGREEMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO THE CONFLICT OF LAW PRINCIPLES THEREOF.

21. Waiver. The failure of a party to this Agreement to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement. All waivers in respect of a Default must be in writing.

22. Remedies. All remedies hereunder and all obligations with respect to any Loan shall survive the termination of the relevant Loan, return of Loaned Securities or Collateral and termination of this Agreement.

23. Notices and Other Communications. Unless another address is specified in writing by the respective party to whom any notice or other communication is to be given hereunder, all such notices or communications shall be in writing or confirmed in writing and delivered at the respective addresses set forth in Schedule A attached hereto. All notices shall be effective upon actual receipt, provided, however, that if any notice shall be received by a party on a day on which such party is not open for business at its office located at the address set forth in Schedule A, such notice shall be deemed to have been received by such party at the opening of business on the next day on which such party is open for business at such address.

24. SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL.

24.1 EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY (A) SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR NEW YORK STATE COURT SITTING IN NEW YORK CITY, AND ANY APPELLATE COURT FROM ANY SUCH COURT, SOLELY FOR THE PURPOSE OF ANY SUIT, ACTION OR PROCEEDING BROUGHT TO ENFORCE ITS OBLIGATIONS HEREUNDER OR RELATING IN ANY WAY TO THIS AGREEMENT OR ANY LOAN HEREUNDER AND (B) WAIVES, TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO, ANY DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT AND ANY RIGHT OF JURISDICTION ON ACCOUNT OF ITS PLACE OF RESIDENCE OR DOMICILE.

24.2 EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ANY RIGHT THAT IT MAY HAVE TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

25. Miscellaneous. This Agreement supersedes any other agreement between the parties hereto concerning loans of securities between Borrower and Lender. This Agreement shall not be assigned by either party without the prior written consent of the other party and any attempted assignment without such consent shall be null and void. Subject to the foregoing, this Agreement shall be binding upon and shall ensure to the benefit of Borrower and Lender and their respective heirs, representatives, successors and assigns. This Agreement may be terminated by either party upon written notice to the other, subject only to fulfillment of any obligations then outstanding. This Agreement shall not be modified, except by an instrument in writing signed by the party against whom enforcement is sought. The parties hereto acknowledge and agree that, in connection with this Agreement and each Loan hereunder, time is of the essence. Each provision and agreement herein shall be treated as separate and independent from any other provision herein and shall be enforceable notwithstanding the unenforceability of any such other provision or agreement.

26. Definitions. For the purposes hereof:

26.1 "Broker-Dealer" shall mean any person that is a broker (including a municipal securities broker), dealer, municipal securities dealer, government securities broker or government securities dealer as defined in the Exchange Act, regardless of whether the activities of such person are conducted in the United States or otherwise require such person to register with the Securities and Exchange Commission or other regulatory body.

26.2 "Business Day" shall mean, with respect to any Loan hereunder, a day on which regular trading occurs in the principal market for the Loaned Securities subject to such Loan, provided, however, that for purposes of Section 15, such term shall mean a day on which regular trading occurs in the principal market for the securities whose value is being determined. Notwithstanding the foregoing, (i) for purposes of Section 8, "Business Day" shall mean any day on which regular trading occurs in the principal market for any Loaned Securities or for any securities Collateral under any outstanding Loan hereunder and "next Business Day" shall mean the next day on which a transfer of Collateral may be effected in accordance with Section 16; and (ii) in no event shall a Saturday or Sunday be considered a Business Day.

26.3 "Clearing Organization" shall mean The Depository Trust Company, or, if agreed to by Borrower and Lender, such other clearing agency at which Borrower (or Borrower's agent) and Lender (or Lender's agent) maintain accounts, or a book-entry system maintained by a Federal Reserve Bank.

26.4 "Collateral" shall mean, whether now owned or hereafter acquired and to the extent permitted by applicable law, (a) any property which Borrower and Lender agree shall be acceptable collateral prior to the Loan and which is transferred to Lender pursuant to Section 3 or 8 (including as collateral, for definitional purposes, any letters of credit mutually acceptable to Lender and Borrower), (b) any property substituted therefor pursuant to Section 3.5, (c) all accounts in which such property is deposited and all securities and the like in which any cash collateral is invested or reinvested, and (d) any proceeds of any of the foregoing. For purposes of return of Collateral by Lender or purchase or sale of securities pursuant to Section 12 or 13, such term shall include securities of the same issuer, class and quantity as the Collateral initially transferred by Borrower to Lender.

26.5 "Customer" shall mean any person that is a customer of Borrower under Rule 15c3-3 under the Exchange Act or any comparable regulation of the Secretary of the Treasury under Section 15C of the Exchange Act (to the extent that Borrower is subject to such Rule or comparable regulation).

26.6 "Cutoff Time" shall mean a time on a Business Day by which a transfer of cash, securities or other property must be made by Borrower or Lender to the other, as shall be agreed by Borrower and Lender in Schedule B or otherwise orally or in writing or, in the absence of any such agreement, as shall be determined in accordance with market practice.

26.7 "Default" shall have the meaning assigned in Section 11.

26.8 "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

26.9 "Federal Funds Rate" shall mean the rate of interest (expressed as an annual rate), as published in Federal Reserve Statistical Release H.15(519) or any publication substituted therefor, charged for federal funds (dollars in immediately available funds borrowed by banks on an overnight unsecured basis) on that day or, if that day is not a banking day in New York City, on the next preceding banking day.

26.10 "Foreign Securities" shall mean, unless otherwise agreed, securities that are principally cleared and settled outside the United States.

26.11 "Government Securities" shall mean government securities as defined in Section 3(a)(42)(A)-(C) of the Exchange Act.

26.12 "LIBOR" shall mean for any date, the offered rate for deposits in U.S. dollars for a period of three months which appears on the Reuters Screen LIBO page as of 11:00 A.M., London time, on such date (or, if at least two such rates appear, the arithmetic mean of such rates).

26.13 "Loan" shall mean a loan of securities hereunder.

26.14 "Loaned Security" shall mean any security which is a security as defined in the Exchange Act, transferred in a Loan hereunder until such security (or an identical security) is transferred back to Lender hereunder, except that, if any new or different security shall be exchanged for any Loaned Security by recapitalization, merger, consolidation or other corporate action, such new or different security shall, effective upon such exchange, be deemed to become a Loaned Security in substitution for the former Loaned Security for which such exchange is made. For purposes of return of Loaned Securities by Borrower or purchase or sale of securities pursuant to Section 12 or 13, such term shall include securities of the same issuer, class and quantity as the Loaned Securities, as adjusted pursuant to the preceding sentence.

26.15 "Plan" shall mean (a) any "employee benefit plan" as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974 which is subject to Part 4 of Subtitle B of Title I of such Act; (b) any "plan" as defined in Section 4975(e)(1) of the Internal Revenue Code of 1936, or (c) any entity the assets of which are deemed to be assets of any such "employee benefit plan" or "plan" by reason of the Department of Labor's plan asset regulation, 29 C.F.R. Section 2510.3-101.

By: \_\_\_\_\_


Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

## ANNEX I

### Lender Acting as Agent

This Annex sets forth the terms and conditions governing all transactions in which a party lending securities ("Agent") in a Loan is acting as agent for one or more third parties (each, a "Principal"). Unless otherwise defined, capitalized terms used in this Annex shall have the meanings assigned in the Securities Loan Agreement of which it forms a part (such agreement, together with this Annex and any other schedules or exhibits, referred to as the "Agreement") and, unless otherwise specified, all section references herein are intended to refer to sections of such Securities Loan Agreement.

1. Additional Representations and Warranties. In addition to the representations and warranties set forth in Section 9 of the Agreement, Agent hereby makes the following representations and warranties, which shall continue during the term of any Loan: Principal has duly authorized Agent to execute and deliver the Agreement on its behalf, has the power to so authorize Agent and to enter into the Loans contemplated by the Agreement and to perform the obligations of Lender under such Loans, and has taken all necessary action to authorize such execution and delivery by Agent and such performance by it.

2. Identification of Principals. Agent agrees (a) to provide Borrower prior to any Loan under the Agreement with a written list of Principals for which it intends to act as Agent (which list may be amended in writing from time to time with the consent of Borrower), and (b) to provide Borrower, before the close of business on the next Business Day after orally agreeing to enter into a Loan, with notice of the specific Principal or Principals for whom it is acting in connection with such Loan. If (i) Agent fails to identify such Principal or Principals prior to the close of business on such next Business Day or (ii) Borrower shall determine in its sole discretion that any Principal or Principals identified by Agent are not acceptable to it, Borrower may reject and rescind any Loan with such Principal or Principals, return to Agent any Loaned Securities previously transferred to Borrower and refuse any further performance under such Loan, and Agent shall immediately return to Borrower any Collateral previously transferred to Agent in connection with such Loan; provided, however, that (A) Borrower shall promptly (and in any event within one Business Day) notify Agent of its determination to reject and rescind such Loan and (B) to the extent that any performance was rendered by any party under any Loan rejected by Borrower, such party shall remain entitled to any fees or other amounts that would have been payable to it with respect to such performance if such Loan had not been rejected. Borrower acknowledges that Agent shall not have any obligation to provide it with confidential information regarding the financial status of its Principals; Agent agrees, however, that it will assist Borrower in obtaining from Agent's Principals such information regarding the financial status of such Principals as Borrower may reasonably request.

3. Limitation of Agent's Liability. The parties expressly acknowledge that if the representations and warranties of Agent under the Agreement, including this Annex, are true and correct in all material respects during the term of any Loan and Agent otherwise complies with the provisions of this Annex, then (a) Agent's obligations under the Agreement shall not include a guarantee of performance by its Principal or Principals and (b) Borrower's remedies shall not include a right of setoff against obligations, if any, of Agent arising in other transactions in which Agent is acting as principal.

4. Multiple Principals.

(a) In the event that Agent proposes to act for more than one Principal hereunder, Borrower and Agent shall elect whether (i) to treat Loans under this Agreement as transactions entered into on behalf of separate Principals or (ii) to aggregate such Loans as if they were transactions by a single Principal. Failure to make such an election in writing shall be deemed an election to treat Loans under this Agreement as transactions on behalf of separate Principals.

(b) In the event that Borrower and Agent elect (or are deemed to elect) to treat Loans under the Agreement as transactions on behalf of separate Principals, the parties agree that: (i) Agent will provide Borrower, together with the notice described in Section 2(b) of this Annex, notice specifying the portion of each Loan allocable to the account of each of the Principals for which it is acting (to the extent that any such Loan is allocable to the account of more than one Principal); (ii) the portion of any individual Loan allocable to each Principal shall be deemed a separate Loan under the Agreement; (iii) the mark to market obligations of Borrower and Lender under Section 8 of the Agreement shall be determined on a Loan-by-Loan basis (unless the parties agree to determine such obligations on a Principal-by-Principal basis); and (iv) Borrower's and Lender's remedies under the Agreement upon the occurrence of a Default shall be determined as if Agent had entered into a separate Agreement with Borrower on behalf of each of its Principals.

(c) In the event that Borrower and Agent elect to treat Loans under this Agreement as if they were transactions by a single Principal, the parties agree that (i) Agent's notice under Section 2(b) of this Annex need only identify the names of its Principals but not the portion of each Loan allocable to each Principal's account; (ii) the mark to market obligations of Borrower and Lender under Section 8 shall, subject to any greater requirement imposed by applicable law, be determined on an aggregate basis for all Loans entered into by Agent on behalf of any Principal; and (iii) Borrower's and Lender's remedies upon the occurrence of a Default shall be determined as if all Principals were a single Lender.

(d) Notwithstanding any other provision of the Agreement (including without limitation this Annex), the parties agree that any transactions by Agent on behalf of a Plan shall be treated as transactions on behalf of separate Principals in accordance with Section 4(b) of this Annex (and all mark to market obligations of the parties shall be determined on a Loan-by-Loan basis).

5. Interpretation of Terms. All references to "Lender" in the Agreement shall, subject to the provisions of this Annex (including among other provisions the limitations on Agent's liability in Section 3 of this Annex), be construed to reflect that (i) each Principal shall have, in connection with any Loan or Loans entered into by Agent on its behalf, the rights, responsibilities, privileges and obligations of a "Lender" directly entering into such Loan or Loans with Borrower under the Agreement, and (ii) Agent's Principal or Principals have designated Agent as their sole agent for performance of Lender's obligations to Borrower and for receipt of performance by Borrower of its obligations to Lender in connection with any Loan or Loans under the Agreement (including, among other things, as agent for each Principal in connection with transfers of securities, cash or other property and as agent for giving and receiving all notices under the Agreement). Both Agent and its Principal or Principals shall be deemed "parties" to the Agreement and all references to a "party" or "either party" in the Agreement shall be deemed revised accordingly (and any Default by Agent under paragraph (e) or any other applicable provision of Section 11 shall be deemed a Default by Lender).

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

จุฬาลงกรณ์มหาวิทยาลัย

Schedule A

## NAMES AND ADDRESSES FOR COMMUNICATIONS



ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย



Schedule B

## DEFINED TERMS AND SUPPLEMENTAL PROVISIONS

Cutoff Time[s]



ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

**EQUITY AND FIXED INTEREST STOCK LENDING AGREEMENT (1994)**

(For use by UK Lenders with Money Brokers and by Money Brokers with Market Makers for the lending of all securities (including overseas securities) other than gilt-edged securities)

THIS AGREEMENT is made the            day of            , 19

**BETWEEN:-**

(1)            a company incorporated in  
                  whose registered office is at  
                  and

(2)            a company incorporated in  
                  whose registered office is at

**WHEREAS:-**

- (A) The Parties hereto are desirous of agreeing a procedure whereby the Lender will make available to the Borrower from time to time Securities (as hereinafter defined) in order to enable the Borrower (if a Market Maker) subject to any Inland Revenue provisions then in force, to fulfil a contract to sell such Securities or to on lend such Securities to a third party to enable such party (if a Market Maker) to fulfil a contract to sell such Securities (in the case of Overseas Securities, as part of a chain of arrangements to enable the final party in such chain to fulfil a contract to sell such Securities) or to replace an existing loan of Securities to such third party.
- (B) Where the Parties are a Money Broker and a Market Maker, they are desirous of agreeing a procedure for lending and borrowing money from time to time to and from each other in the ordinary course of business.
- (C) All transactions carried out under this Agreement will be effected in accordance with the Rules (as hereinafter defined) TOGETHER WITH current market practices, customs and conventions.

**IT IS HEREBY AGREED AS FOLLOWS:-**

**1.    INTERPRETATION**

(A) In this Agreement:-

**"Act of Insolvency"** means in relation to either Party

- (i) its making a general assignment for the benefit of, or entering into a reorganisation, arrangement, or composition with creditors, or
- (ii) its admitting in writing its inability to pay its debts as they become due, or
- (iii) its seeking, consenting to or acquiescing in the appointment of any trustee, administrator, receiver or liquidator or analogous officer of it or any material part of its property, except in relation to a voluntary liquidation for the purpose of reconstruction or amalgamation on terms previously approved in writing by the other Party, or
- (iv) the presentation or filing of a petition in respect of it (other than by the other Party to this Agreement in respect of any obligation under this Agreement) in any court or before any agency alleging or for the bankruptcy, winding-up or other insolvency of such Party (or any analogous proceeding) or seeking any reorganisation, arrangement, composition, re-adjustment, administration, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such petition (except in the case of a petition for winding-up or any analogous proceeding) not having been stayed or dismissed within 30 days of its filing, or
- (v) the appointment of a receiver, administrator, liquidator or trustee or analogous officer of such Party over all or any material part of such Party's property;

**"Alternative Collateral"** means Collateral of a Value equal to the Collateral delivered pursuant to Clause 6 and provided by way of substitution for Collateral originally delivered or previously substituted in accordance with the provisions of Clauses 6(D) or 6(E);

**"Appropriate Tax Vouchers"** means:-

- (i) either such tax vouchers and/or certificates as shall enable the recipient to claim and receive from any relevant tax authority, in respect of interest, dividends, distributions and/or other amounts (including for the avoidance of doubt any manufactured payment) relating to particular Securities, all and any repayment of tax or benefit of tax credit to which the Lender would have been entitled but for the loan of Securities in accordance with this Agreement and/or to which the Lender is entitled in respect of tax withheld and accounted for in respect of any manufactured payment; or such tax vouchers and/or certificates as are provided by the Borrower which evidence an amount of overseas tax deducted which shall enable the recipient to claim and receive from any relevant tax authority all and any repayment of tax from the UK

Inland Revenue or benefits of tax credit in the jurisdiction of the recipient's residence; and

- (ii) such vouchers and/or certificates in respect of interest, dividends, distributions and/or other amounts relating to particular Collateral;

**"Assured Payment"** means a payment obligation of a Settlement Bank arising (under the Assured Payment Agreement) as a result of a transfer of stock or other securities to a CGO stock account of the member of the CGO for whom that Settlement Bank is acting;

**"Assured Payment Agreement"** means an agreement dated 24th October 1986 between the Bank of England and all the other banks which are for the time being acting as Settlement Banks in relation to the CGO regulating the obligations of such banks to make payments in respect of transfers of securities through the CGO as supplemented and amended from time to time;

**"Bid Price"** in relation to Equivalent Securities or Equivalent Collateral means the best available bid price thereof on the most appropriate market in a standard size;

**"Bid Value"** means:-

- (a) in relation to Equivalent Collateral at a particular time:-
  - (i) in relation to Collateral Types (A) (ix) and (C) (more specifically referred to in the Schedule) the Value thereof as calculated in accordance with such Schedule;
  - (ii) in relation to all other types of Collateral (more specifically referred to in the Schedule) the amount which would be received on a sale of such Collateral at the Bid Price thereof at such time less all brokers fees and commissions and all other costs, fees and expenses that would be incurred in connection with selling or otherwise realising such Equivalent Collateral, calculated on the assumption that the aggregate thereof is the least that could reasonably be expected to be paid in order to carry out such sale or realisation and adding thereto the amount of any interest, dividends, distributions or other amounts paid to the Lender prior to such time in respect of such Equivalent Collateral or the original Collateral held gross of all and any tax deducted or paid in respect thereof; and
- (b) in relation to Equivalent Securities at a particular time the amount which would be received on a sale of such Equivalent Securities at the Bid Price thereof at such time less all brokers fees and commissions and all other costs, fees and expenses that would be incurred in connection therewith, calculated on the assumption that

the aggregate thereof is the least that could reasonably be expected to be paid in order to carry out the transaction;

**"Borrower"** means the Party who acts as borrower under this Agreement, being a person approved to act as a Borrower of Securities by the Inland Revenue, being either a Money Broker or a Market Maker as hereinafter defined, as the case may be;

**"Borrowing Request"** means

- (a) in relation to loans of securities, a request made (by telephone or otherwise) pursuant to Clause 2(A) specifying the description, title and amount of the Securities required by the Borrower, the proposed Settlement Date and duration of such loan and in the case of Securities which are not designated by the Stock Exchange as eligible for settlement within the Talisman System the date, time, mode and place of delivery;
- (b) in relation to loans of money, a request made (by telephone or otherwise) pursuant to Clause 7 specifying:-
  - (i) the amount and currency of money;
  - (ii) the rate of interest thereon;
  - (iii) the date, time, mode and place of payment;
  - (iv) the type of Collateral to be provided; and
  - (v) the duration of the loan;

**"Business Day"** means a day on which Money Brokers and Market Makers are generally open for the settlement of business in London;

**"Cash Collateral"** means Collateral that takes the form of a deposit of currency;

**"Central Gilts Office"** or **"CGO"** means the computer based system managed by the Bank of England to facilitate the book-entry transfer of gilt-edged securities;

**"CGO Collateral"** shall have the meaning specified in paragraph 1(B) of the Schedule;

**"CGO Rules"** means the requirements of the CGO for the time being in force as defined in the membership agreement regulating membership of the CGO;

**"Close of Business"** means the time at which banks close in the business centre in which payment is to be made or Collateral is to be delivered;

**"Collateral"** means such securities or financial instruments or deposits of currency as are referred to in the Schedule hereto or any combination thereof which are delivered by the Borrower to the Lender in accordance with this Agreement and shall include the certificates and other documents of or evidencing title and transfer in respect of the foregoing (as appropriate), and shall include Alternative Collateral;

**"Distribution"** shall have the meaning given in Clause 4(B)(i).

**"Equivalent Collateral"** or **"Collateral equivalent to"** in relation to any Collateral provided under this Agreement means Collateral of an identical type, nominal value, description and amount to particular Collateral so provided and shall include the certificates and other documents of or evidencing title and transfer in respect of the foregoing (as appropriate). If and to the extent that such Collateral consists of securities that are partly paid or have been converted, subdivided, consolidated, redeemed, made the subject of a takeover, capitalisation issue or rights issue, the expression shall have the following meaning:

- (a) in the case of conversion, subdivision or consolidation the securities into which the relevant Collateral has been converted, subdivided or consolidated;
- (b) in the case of redemption, a sum of money equivalent to the proceeds of the redemption;
- (c) in the case of a takeover, a sum of money or securities, being the consideration or alternative consideration which the Borrower has directed the Lender to accept in accordance with Clause 4(B)(iii);
- (d) in the case of a call on partly paid securities, the paid-up securities PROVIDED THAT the Borrower shall have paid to the Lender the sum due;
- (e) in the case of a capitalisation issue, the relevant Collateral TOGETHER WITH the securities allotted by way of a bonus thereon;
- (f) in the case of a rights issue, the relevant Collateral TOGETHER WITH the securities allotted thereon, which the Borrower has directed the Lender to take up in accordance with Clause 4(B)(iii), PROVIDED THAT the Borrower shall have paid to the Lender all and any sum due in respect thereof;
- (g) in the event that a Distribution is made in respect of the relevant Collateral in the form of securities or a certificate which may at a future date be exchanged for securities or where an option is exercised in accordance with Clause 4(B)(iii) to take a Distribution in the form of securities or a certificate which may at a future date

be exchanged for securities, the relevant Collateral TOGETHER WITH securities or a certificate equivalent to those allotted;

- (h) in the case of any event similar to any of the foregoing, the relevant Collateral TOGETHER WITH or replaced by a sum of money or securities equivalent to that received in respect of such Collateral resulting from such event;

**"Equivalent Securities"** means securities of an identical type, nominal value, description and amount to particular Securities borrowed and such term shall include the certificates and other documents of or evidencing title and transfer in respect of the foregoing (as appropriate). If and to the extent that such Securities are partly paid or have been converted, subdivided, consolidated, redeemed, made the subject of a takeover, capitalisation issue or rights issue, the expression shall have the following meaning:

- (a) in the case of conversion, subdivision or consolidation the securities into which the borrowed Securities have been converted, subdivided or consolidated;
- (b) in the case of redemption, a sum of money equivalent to the proceeds of the redemption;
- (c) in the case of takeover, a sum of money or securities, being the consideration or alternative consideration which the Lender has directed the Borrower to accept in accordance with Clause 4(B)(iii);
- (d) in the case of a call on partly paid securities, the paid-up securities PROVIDED THAT the Lender shall have paid to the Borrower the sum due;
- (e) in the case of a capitalisation issue, the borrowed Securities TOGETHER WITH the securities allotted by way of a bonus thereon;
- (f) in the case of a rights issue, the borrowed Securities TOGETHER WITH the securities allotted thereon, which the Lender has directed the Borrower to take up in accordance with Clause 4(B)(iii), PROVIDED THAT the Lender shall have paid to the Borrower all and any sum due in respect thereof;
- (g) in the event that a Distribution is made in respect of the borrowed Securities in the form of securities or a certificate which may at a future date be exchanged for securities or where an option is exercised in accordance with Clause 4(B)(iii) to take a Distribution in the form of securities or a certificate which may at a future date be exchanged for securities, the borrowed Securities TOGETHER WITH securities or a certificate equivalent to those allotted;

- (h) in the case of any event similar to any of the foregoing, the borrowed Securities TOGETHER WITH or replaced by a sum of money or securities equivalent to that received in respect of such borrowed Securities resulting from such event;

**"Event of Default"** has the meaning given in Clause 14;

**"Lender"** means the Party who acts as lender under this Agreement, being either a person approved to act as a lender of Securities by the Inland Revenue, where the Borrower is a Money Broker, or a Money Broker where the Borrower is a Market Maker;

**"Manufactured Dividend"** shall have the meaning given in Clause 4(B)(i).

**"Margin"** in respect of:-

- (a) Clause 6, shall have the meaning specified in the Schedule hereto; and
- (b) a deposit of money pursuant to sub-clause 6(C), shall mean such sum as the Parties shall from time to time agree as additional to the Value of the borrowed Securities in respect of which such payment was made;

**"Market Maker"** means a member firm of the Stock Exchange registered as a market maker in Securities which are the subject of a borrowing, or as a traditional option dealer or a member of the London International Financial Futures and Options Exchange recognised as a principal trader or a market maker in individual equity option contracts relating to Securities which are the subject of a borrowing or any other Borrower (not being a Money Broker) of Overseas Securities which are the subject of a borrowing;

**"Money Broker"** means a Stock Exchange Money Broker or an Equity Only Money Broker approved as such by the Stock Exchange;

**"Nominee"** means an agent or a nominee appointed by either Party and approved (if appropriate) as such by the Inland Revenue to accept delivery of, hold or deliver Securities, Equivalent Securities, Collateral and/or Equivalent Collateral on its behalf whose appointment has been notified to the other Party;

**"Offer Price"** in relation to Equivalent Securities or Equivalent Collateral means the best available offer price thereof on the most appropriate market in a standard size;



**"Offer Value"** means:-

- (a) in relation to Collateral equivalent to Collateral types (A) (ix) and (C) (more specifically referred to in the Schedule hereto) the Value thereof as calculated in accordance with such Schedule; and
- (b) in relation to Equivalent Securities or Collateral equivalent to all other types of Collateral (more specifically referred to in the Schedule hereto) the amount it would cost to buy such Equivalent Securities or Equivalent Collateral at the Offer Price thereof TOGETHER WITH all brokers fees and commissions, stamp duty and stamp duty reserve tax and all other costs, fees and expenses that would be incurred in connection therewith, calculated on the assumption that the aggregate thereof is the least that could reasonably be expected to be paid in order to carry out the transaction;

**"Overseas Securities"** shall have the meaning specified in the Income Tax (Stock Lending) Regulations 1989 (S.I. 1989 No. 1299), as amended by the Income Tax (Stock Lending) (Amendment) Regulations 1990 (S.I. 1990 No. 2552), and 1993 (S.I. 1993 No. 2003) or any statutory modification or re-enactment thereof for the time being in force;

**"Parties"** means the Lender and the Borrower and "Party" shall be construed accordingly;

**"Reference Price"** means:

- (a) in relation to the valuation of Securities, Equivalent Securities, Collateral and/or Equivalent Collateral designated by the Stock Exchange as eligible for settlement within the TALISMAN System, such price as may be established by the Stock Exchange from time to time for use within the TALISMAN System, or, where such price is not available, the mid market quotation of such Securities, Equivalent Securities, Collateral and/or Equivalent Collateral as derived from the latest edition of the Daily Official List published by the Stock Exchange;
- (b) in relation to the valuation of Securities, Equivalent Securities, Collateral and/or Collateral equivalent to Collateral types (A) (ii), (viii), (x) and (xi) (more specifically referred to in the Schedule hereto) (not designated by the Stock Exchange as eligible for settlement within the TALISMAN System), such price (in sterling) as is equal to the mid market quotation of such Securities, Equivalent Securities, Collateral and/or Equivalent Collateral as derived from the latest edition of the Daily Official List published by the Stock Exchange or, if unavailable, such price as published in the latest edition of such other equivalent financial publication in the business centre in which payment is to be made or Collateral and/or Equivalent Collateral is to be delivered or redelivered (as the

case may be) or, in the case of Overseas Securities, such price as is equal to the mid market quotation of such Securities, Equivalent Securities, Collateral and/or Equivalent Collateral as derived from a reputable pricing information service (such as the services provided by Reuters, Extel Statistical Services and Telerate) reasonably chosen in good faith by the Lender or if unavailable the market value thereof as derived from the prices or rates bid by a reputable dealer for the relevant instrument reasonably chosen in good faith by the Lender, in each case at Close of Business on the previous Business Day;

- (c) in relation to the valuation of Collateral and/or Collateral equivalent to Collateral types (A) (iii), (iv), (v), (vi) and (vii) (more specifically referred to in the Schedule hereto), the market value thereof as derived from the rates bid by Barclays Bank PLC for such instruments or, in the absence of such a bid, the bid rate established by the London Discount Market Association for such instruments at Close of Business on the previous Business Day;

"**Relevant Payment Date**" shall have the meaning given in Clause 4(B)(i).

"**Required Notice**" shall have the meaning given in Clause 8(B);

"**Rules**" means the Rules and Regulations for the time being of the Stock Exchange and/or any other regulatory authority whose rules and regulations shall from time to time affect the activities of the Parties pursuant to this Agreement including but not limited to the stock lending regulations relating to both stock lending and manufactured interest and dividends for the time being in force of the Commissioners of the Inland Revenue (PROVIDED THAT in an Event of Default the rules and regulations of the Stock Exchange shall prevail);

"**Securities**" means equities and other securities which the Borrower is entitled to borrow from the Lender in accordance with the Rules and which are the subject of a loan pursuant to this Agreement and such term shall include the certificates and other documents of title in respect of the foregoing;

"**Settlement Bank**" means a settlement member of the CHAPS and Town Clearing systems who has entered into contractual arrangements with the CGO to provide Assured Payment facilities for members of the CGO;

"**Settlement Date**" means:-

- (a) in relation to a loan of Securities the date upon which such Securities are transferred to the Borrower in accordance with this Agreement;

- (b) in relation to a loan of money, the date upon which the advance of such money to the Borrower is made in accordance with this Agreement;

**"Stock Exchange"** means the International Stock Exchange of the United Kingdom and the Republic of Ireland Limited;

**"TALISMAN System"** means the computer based system of the Stock Exchange providing for the settlement of transactions in securities designated by the Stock Exchange as eligible for settlement in that system;

**"Third Party"** means a lender who lends Securities to a Money Broker;

**"Valuation Date"** in relation to borrowed Securities means the date upon which the Reference Price is established within the TALISMAN System or such other date as the Parties may from time to time agree;

**"Value"** at any particular time means:-

- (a) in respect of Securities, Equivalent Securities, Collateral and/or Equivalent Collateral designated by the Stock Exchange as eligible for settlement within the Talisman System and Securities and Equivalent Securities not so designated the aggregate worth of such Securities, Equivalent Securities, Collateral and/or Equivalent Collateral as calculated at the Reference Prices then current; and
- (b) in respect of Collateral or Equivalent Collateral not designated by the Stock Exchange as eligible for settlement within the Talisman System, such worth as determined in accordance with the Schedule hereto.
- (B) All headings appear for convenience only and shall not affect the interpretation hereof.
- (C) Notwithstanding the use of expressions such as "borrow", "lend", "Collateral", "redeliver" etc. which are used to reflect terminology used in the market for transactions of the kind provided for in this Agreement, title to Securities "borrowed" or "lent" and "Collateral" provided in accordance with this Agreement shall pass from one Party to another as provided for in this Agreement, the Party obtaining such title being obliged to redeliver Equivalent Securities or Equivalent Collateral as the case may be.

- (D) For the purposes of determining any prices or values of Securities, Collateral or Equivalent Collateral (including Cash Collateral) under this Agreement prices, values or amounts stated in currencies other than sterling shall be converted into sterling at the spot rate on the London market for the purchase of sterling with the currency concerned, at or about 11.00 a.m. London time on the day on which the calculation is to be made or, if that day is not a Business Day or the calculation needs to be made before 11.00 a.m. on that day, the immediately preceding Business Day.

## 2. LOANS OF SECURITIES

- (A) The Lender will lend Securities to the Borrower, and the Borrower will borrow Securities from the Lender in accordance with the terms and conditions of this Agreement and with the Rules PROVIDED THAT the Lender shall have received from the Borrower and accepted (by whatever means) a Borrowing Request.
- (B) The Borrower has the right to reduce the amount of Securities referred to in a Borrowing Request PROVIDED THAT the Borrower has notified the Lender of such reduction no later than midday on the day which is two Business Days prior to the Settlement Date, unless otherwise agreed between the parties, and the Lender shall have accepted such reduction (by whatever means).
- (C) In the event of the Lender being unable to lend such Securities on the date requested by the Borrower, the Lender shall advise the Borrower accordingly and may notify the Borrower of the amount and type of Securities available and/or an alternative date on which it is able to lend such Securities and the Borrower shall notify the Lender of its acceptance or refusal thereof as soon as reasonably practicable.

## 3. DELIVERY OF SECURITIES

- (A) In the case of Securities designated by the Stock Exchange as eligible for settlement within the TALISMAN System the Lender shall deliver or procure the delivery of such Securities to the Borrower in accordance with the Borrowing Request TOGETHER WITH appropriate instruments of transfer duly stamped where necessary and such other instruments as may be requisite to vest title thereto in the Borrower. Such Securities shall be deemed to have been delivered by the Lender to the Borrower when credited to the account (in the TALISMAN System) of a member firm of the Stock Exchange in accordance with the Borrower's instructions and the Rules.
- (B) In the case of Securities not designated by the Stock Exchange as eligible for settlement within the TALISMAN System the Lender shall deliver such Securities in accordance with the Borrowing Request TOGETHER WITH appropriate instruments of transfer duly stamped where necessary and such other instruments as may be requisite to vest title thereto in the

Borrower. Such Securities shall be deemed to have been delivered by the Lender to the Borrower on delivery to the Borrower, or as it shall direct, of the relevant instruments of transfer; or, in the case of securities held by an agent or a clearing or settlement system, on the effective instructions to such agent or the operator of such system to hold the Securities absolutely for the Borrower, or by such other means as shall be agreed.

4. **RIGHTS AND TITLE**

- (A) The Parties shall execute and deliver all necessary documents and give all necessary instructions to procure that all right, title and interest in:
- (i) any Securities borrowed pursuant to Clause 2;
  - (ii) any Equivalent Securities redelivered pursuant to Clause 8;
  - (iii) any Collateral delivered pursuant to Clause 6;
  - (iv) any Equivalent Collateral redelivered pursuant to Clauses 6 or 8;

shall pass from one Party to the other subject to the terms and conditions mentioned herein and in accordance with the Rules, on delivery or redelivery of the same in accordance with this Agreement, free from all liens, charges and encumbrances. In the case of Securities or Collateral title to which is established through a computer based system which provides for the recording and transfer of title to such Securities or Collateral by way of book entries, delivery and transfer of title shall take place in accordance with the rules and procedures of such system as in force from time to time. The Party acquiring such right, title and interest shall have no obligation to return or redeliver any of the assets so acquired but, in so far as any Securities are borrowed or any Collateral is delivered to such Party, such Party shall be obliged, subject to the terms of this Agreement, to redeliver Equivalent Securities and Equivalent Collateral.

- (B) (i) The Borrower shall, on the date of the payment or distribution of any interest, dividends or other distribution of any kind whatsoever (each a "Distribution") on or with respect to any borrowed Securities, or on such other date as the Parties may from time to time agree (the "Relevant Payment Date") pay and deliver a sum of money or property equivalent to the same (with any such endorsements or assignments as shall be customary and appropriate to effect the delivery) to the Lender or its Nominee, irrespective of whether the Borrower received the same. In the case of any Distribution comprising a payment, the amount (the "Manufactured Dividend") payable by the Borrower shall be equal to the amount of the relevant Distribution together with an amount equivalent to any deduction, withholding or payment for or on account of tax made by the relevant issuer (or on its behalf) in

respect of such Distribution together with an amount equal to any other tax credit associated with such Distribution (including for the avoidance of doubt a tax credit in respect of "avoir fiscal") unless a lesser amount is agreed between the Parties or an Appropriate Tax Voucher (together with any further amount which may be agreed between the Parties to be paid) is provided in lieu of such deduction, withholding or payment

PROVIDED THAT in the case of Overseas Securities where either the Borrower, or any person to whom the Borrower has on-lent the Securities, is unable to make payment of the Manufactured Dividend to the Lender without accounting to the Inland Revenue for any amount of relevant withholding tax (as defined in paragraph 4(5)(a) of Schedule 23A to the Income and Corporation Taxes Act 1988 and at the rate prescribed by Regulation 3 SI 1993/2004) and/or any amount of UK tax (if appropriate) the Borrower shall pay to the Lender or its Nominee, in cash, the Manufactured Dividend less amounts equal to such relevant withholding tax and UK tax. The Borrower shall at the same time, if requested, supply Appropriate Tax Vouchers to the Lender. In the event of the Borrower failing to remit either directly or by its Nominee the said sum, the Borrower hereby undertakes to pay a rate to the Lender (upon demand) on the amount due and outstanding at the rate provided for in Clause 15 hereof. Interest on such sum shall accrue daily commencing on and inclusive of the third Business Day after the Relevant Payment Date, unless otherwise agreed between the Parties.

- (ii) Each Party hereby undertakes to use its best endeavours to arrange for any voting rights attached to any borrowed Securities and/or Equivalent Securities held in respect thereof, or any Collateral and/or Equivalent Collateral held, to be exercised in accordance with the instructions of the Lender or Borrower (as the case may be) PROVIDED THAT each Party shall use its best endeavours to notify the other of its instructions in writing no later than seven Business Days prior to the date upon which such votes are exercisable or as otherwise agreed between the Parties. For the avoidance of doubt the Parties agree that subject as hereinbefore provided any voting rights attaching to such Securities, Equivalent Securities, Collateral and/or Equivalent Collateral shall be exercisable by the persons in whose name they are registered or in the case of Securities, Equivalent Securities, Collateral and/or Equivalent Collateral in bearer form, the persons by or on behalf of whom they are held, unless otherwise agreed between the Parties.
- (iii) Each Party hereby undertakes to use its best endeavours to procure that all reasonable instructions received from the other Party in respect of conversions, subdivisions, consolidations, redemptions, takeovers, pre-emptions, options (including an option to take a Distribution in the form of securities or a certificate which may at a future date be exchanged for securities) or other rights, including

those requiring election by the holder, are complied with in respect of such Securities, Equivalent Securities, Collateral and/or Equivalent Collateral PROVIDED THAT each Party shall use its best endeavours to notify the other of its instructions in writing no later than seven Business Days prior to the date upon which such action is to be taken, unless otherwise specified by the Stock Exchange rules or agreed between the Parties.

- (iv) This Clause shall not apply after Securities have been sold and sums of money remitted pursuant to Clause 8(D) hereof.
- (v) Any payment to be made by the Borrower under this Clause shall be made in a manner to be agreed between the Parties.

## 5. RATES

- (A) The Borrower shall pay to the Lender, in respect of each loan of Securities, such rate as shall be agreed between the Parties from time to time on the daily Value of Securities borrowed pursuant to this Agreement and in respect of which Equivalent Securities are not for the time being redelivered or otherwise accounted for to the Lender.
- (B) The Lender shall pay to the Borrower such rates as shall be agreed between the Parties from time to time on any Cash Collateral deposited with the Lender pursuant to this Agreement.
- (C) Where the Borrower is a Market Maker it shall pay to the Lender, being a Money Broker, the rates agreed between the Parties on any loans of money made by the Lender to the Borrower pursuant to Clause 7.
- (D) The payments referred to in sub-clauses (A), (B) and (C) hereof shall accrue daily in respect of the period commencing on and inclusive of the Settlement Day and terminating on and exclusive of the Business Day upon which Equivalent Securities are redelivered or Cash Collateral repaid or otherwise accounted for to the Lender in accordance with this Agreement and shall be made by the Borrower to the Lender or to the Borrower by the Lender (as the case may be) in arrears on the last Business Day of each calendar month or such other date as the Parties shall from time to time agree. Any payments due under this Clause may be set-off against one another.
- (E) Any monies paid pursuant to sub-clauses (A), (B) and (C) hereof may be in the form of a currency other than sterling paid in a manner and at a place to be agreed between the parties.

## 6. COLLATERAL

- (A) (i) Subject to sub-clauses (B) and (C) below the Borrower undertakes to deliver Collateral to the Lender (or in accordance with the Lender's instructions) TOGETHER WITH appropriate instruments of transfer duly stamped where necessary and such other instruments as may be requisite to vest title thereto in the Lender simultaneously with delivery of the borrowed Securities and in any event no later than Close of Business on the Settlement Date. Such Collateral shall be deemed to have been delivered by the Borrower to the Lender on delivery to the Lender, or as it shall direct, of the relevant instruments of transfer; or, in the case of Collateral held by an agent or a clearing or settlement system, on the effective instructions to such agent or the operator of such system to hold the Collateral absolutely for the Lender, or by such other means as shall be agreed. Collateral may be provided in any of the forms in the Schedule hereto (as agreed between the Parties);
- (ii) where Collateral is delivered to the Lender's Nominee any obligation under this Agreement to redeliver or otherwise account for Equivalent Collateral shall be an obligation of the Lender notwithstanding that any such redelivery may be effected in any particular case by the Nominee.
- (B) Where CGO Collateral is provided to the Lender or its Nominee:-
- (i) if such CGO Collateral is provided by member-to-member delivery or delivery-by-value in accordance with the provisions of the CGO Rules from time to time in force, the obligation of the Lender shall be to redeliver Equivalent Collateral through the CGO to the Borrower in accordance with this Agreement. Any references, (howsoever expressed) in this Agreement, the Rules, and/or any other agreement or communication between the Parties to an obligation to redeliver such Equivalent Collateral shall be construed accordingly. If the loan of Securities in respect of which such Collateral was provided has not been discharged when the Collateral is redelivered, the Assured Payment obligation generated on such redelivery shall be deemed to constitute a payment of money which shall be treated as Cash Collateral until the loan is discharged, or further Equivalent Collateral is provided later during that Business Day. This procedure shall continue daily where CGO Collateral is delivered-by-value for as long as the relevant loan remains outstanding;
- (ii) where CGO Collateral is provided by delivery-by-value to a Lender or its Nominee the Borrower may consolidate such Collateral with other CGO Collateral provided by the same delivery to a Third Party for whom the Lender or its Nominee is acting.



- (C) Where Cash Collateral is provided the sum of money so deposited, as such sum may be adjusted in accordance with Clause 6(B), shall be held by the Lender until Equivalent Securities (in respect of the Securities borrowed) are redelivered. In the case of a loan of Securities from a Money Broker to a Market Maker, the Borrower shall, simultaneously with the delivery of the borrowed Securities, deposit with the Lender (or in accordance with the Lender's instructions) Cash Collateral equivalent to the Value of those borrowed Securities TOGETHER WITH the Margin applicable thereto. Such Cash Collateral may be in the form of a foreign currency paid in a manner and at a place to be agreed between the Parties. Subject to Clause 6(F)(ii), the Cash Collateral shall be repaid at the same time as such redelivery of Equivalent Securities takes place and the Borrower shall not assign, charge, dispose of or otherwise deal with its rights in respect of the Cash Collateral. If the Borrower fails to comply with its obligations for such redelivery of Equivalent Securities the Lender shall have the right to apply the Cash Collateral by way of set-off in accordance with Clause 10.
- (D) The Borrower may from time to time call for the repayment of any Cash Collateral or the redelivery of Collateral equivalent to any Collateral delivered PROVIDED THAT at the time of such repayment or redelivery the Borrower delivers Alternative Collateral acceptable to the Lender.
- (E) Where Collateral is delivered in respect of which any interest, dividend or other distribution may become payable, the Borrower shall call for the redelivery of Collateral equivalent to such Collateral in good time to ensure that such Equivalent Collateral may be delivered prior to any such interest, dividend or other distribution becoming payable to the Lender, unless in relation to such Collateral the Parties are satisfied before the relevant Collateral is transferred that the condition set out in paragraph 5(1) of Schedule 23A of the Income and Corporation Taxes Act 1988 will be met. At the time of such redelivery the Borrower shall deliver Alternative Collateral acceptable to the Lender. Where the Lender receives any interest, dividend or other distribution in respect of Collateral in circumstances where the Parties are satisfied that the condition in paragraph 5(1) of Schedule 23A of the Income and Corporation Taxes Act 1988 will be satisfied, then the Lender shall, on the date on which the Lender receives such payment, pay and deliver a sum of money or property equivalent to the amount of such payment (with any such endorsements or assignments as shall be customary and appropriate to effect the delivery) to the Borrower and shall supply Appropriate Tax Vouchers (if any) to the Borrower.
- (F) The Value of the Collateral delivered to or deposited with the Lender or its nominated bank or depositary shall bear from day to day the same proportion to the Value of the borrowed Securities or the total sum of money lent pursuant to Clause 7 as the Collateral represented when it was originally provided. Accordingly unless otherwise agreed between the Parties:

- (i) the Collateral to be delivered or deposited while the loan of Securities or money continues shall be equivalent in Value to the aggregate of the Value of the borrowed Securities or the total sum of money lent and the Margin applicable thereto;
- (ii) if on any Business Day the Value of the Collateral exceeds the aggregate of the Value of the borrowed Securities or the total sum of money lent and the Margin applicable thereto, the Lender shall (on demand) repay such Cash Collateral or redeliver to the Borrower such Equivalent Collateral as is required to maintain the agreed Margin at Close of Business on the said Business Day;
- (iii) if on any Business Day the Value of the Collateral falls below the aggregate of the Value of the borrowed Securities or the total sum of money lent and the Margin applicable thereto, the Borrower shall (on demand) provide such further Collateral to the Lender as is required to maintain the agreed Margin at Close of Business on the said Business Day.

## 7. LOANS OF MONEY

- (A) When the Lender, being a Money Broker, has agreed to lend Securities to the Borrower, being a Market Maker, against Cash Collateral the Borrower may borrow money from the Lender in such amount as the Parties shall from time to time agree up to the amount of the Cash Collateral. The Lender may also agree to lend further sums of money to the Borrower in accordance with this Agreement PROVIDED THAT in respect of all and any loans of money made pursuant to this sub-clause (A) the Lender shall have received from the Borrower and accepted (by whatever means) a Borrowing Request.
- (B) Against a loan of money pursuant to sub-clause (A) hereof, the Borrower shall deliver Collateral to the Lender pursuant to Clause 6 of a Value equal to the amount of money borrowed TOGETHER WITH such Margin as the Parties may from time to time agree.
- (C) Unless otherwise agreed loans of money will be made on an overnight basis. At the same time as any money borrowed is repaid, the Lender shall redeliver the Equivalent Collateral provided as security for that loan.

## 8. REDELIVERY OF EQUIVALENT SECURITIES

- (A) The Borrower undertakes to redeliver Equivalent Securities in accordance with this Agreement, and the terms of the relevant Borrowing Request. For the avoidance of doubt any reference herein or in any other agreement or communication between the Parties (howsoever expressed) to an obligation to redeliver or account for or act in relation to borrowed Securities shall accordingly be construed as a reference to an obligation to redeliver or account for or act in relation to Equivalent Securities.

- (B) Subject to Clause 10 hereof and the terms of the relevant Borrowing Request, the Lender may call for the redelivery of all or any Equivalent Securities at any time in the ordinary course of business upon notice (the "Required Notice") of not less than
- (i) in the case of Overseas Securities, the standard settlement time for such Equivalent Securities on the exchange or in the clearing organisation through which the relevant borrowed Securities were originally delivered, or
  - (ii) in the case of any other Securities, five Business Days or one Business Day less than the standard settlement time whichever shall be the less, or
  - (iii) such other period as may be agreed between the Parties,

PROVIDED THAT the Lender shall give notice as soon as practicable after recall becomes necessary. The Borrower shall redeliver such Equivalent Securities not later than the expiry of such notice in accordance with the Lender's instructions. Simultaneously with the redelivery of the Equivalent Securities in accordance with such call, the Lender shall repay any Cash Collateral and redeliver to the Borrower Collateral equivalent to the Collateral delivered pursuant to Clause 6 in respect of the borrowed Securities PROVIDED THAT in respect of Securities designated by the Stock Exchange as eligible for settlement within the TALISMAN System the Borrower shall (if so requested by the Lender) procure the delivery of such Equivalent Securities to the account of another member firm of the Stock Exchange designated by the Lender. The Lender shall accept such action as redelivery and shall simultaneously therewith repay any Cash Collateral and redeliver Collateral equivalent to the Collateral delivered by the Borrower pursuant to Clause 6 in respect thereof. For the avoidance of doubt any reference herein or in any other agreement or communication between the Parties (however expressed) to an obligation to redeliver or account for or act in relation to Collateral shall accordingly be construed as a reference to an obligation to redeliver or account for or act in relation to Equivalent Collateral.

- (C) If the Borrower does not redeliver Equivalent Securities in accordance with such call, the Lender may elect to continue the loan of Securities PROVIDED THAT, if the Borrower is a Market Maker, the Lender, being a Money Broker shall forthwith cease to pay the Borrower a rate or rates in accordance with Clause 5 on all money deposited by the Borrower or with the Lender pursuant to Clause 6 in respect of those Securities and PROVIDED FURTHER THAT if the Lender does not elect to continue the loan or the Borrower fails to deposit the sums of money required under sub-clause (D) or (E) hereof with the Lender as appropriate, the Lender may by notice to the Borrower elect to terminate the loan. Upon the expiry of such notice the provisions of Clause 10 shall apply.

- (D) The Lender (not being a Money Broker) may sell all or any Equivalent Securities at any time before such Equivalent Securities have been redelivered (whether or not the Lender has called for such redelivery) in which event the Lender shall call for the redelivery of Equivalent Securities as soon as possible after such sale for such redelivery to take place by the date on which such sale is due for settlement. If the Equivalent Securities are not redelivered in accordance with such call, the Lender may require the Borrower (being a Money Broker) to remit a sum of money equal to the net proceeds of sale as evidenced by a contract note from the buying principal or selling broker. The Borrower shall make such payment on the date on which the Lender's sale is due for settlement PROVIDED THAT the call was made in sufficient time to give the Borrower the Required Notice to procure the redelivery. If the Lender's call is not given in sufficient time, such payment shall be made the same number of days as the Required Notice after the call. On making such payment the Borrower shall simultaneously therewith be entitled to the repayment of any Cash Collateral and the redelivery of Collateral equivalent to the Collateral delivered to the Lender in respect thereof. The Borrower shall redeliver Equivalent Securities as soon as they are available and simultaneously therewith the Lender shall repay the said sum of money. For the avoidance of doubt the Parties agree that such sum shall be treated as Cash Collateral for the purposes of the Agreement (otherwise than for the purposes of Clause 6(F)) and that all and any references to Cash Collateral shall be construed accordingly.
- (E) (i) This sub-clause applies only between the Lender (being a Money Broker) and the Borrower (being a Market Maker).
- (ii) Where the Lender (being a Money Broker) has received a call for the redelivery of Securities equivalent to the borrowed Securities from a Third Party in the circumstances described in Clause 8(D) above and has in turn called for the redelivery of Equivalent Securities from the Borrower (being a Market Maker) pursuant to Clause 8(B) and the Borrower does not redeliver Equivalent Securities then the Lender, PROVIDED THAT he has given the Required Notice to the Borrower of the remittance payable to that Third Party and the intended settlement date of the Third Party sale, together with confirmation of the net proceeds of sale, if required, may invoke the following provisions of this sub-clause in substitution for or in addition to the other clauses of this Agreement.
- (iii) Notwithstanding the provisions of Clause 8(C) above, the Lender shall, from the intended settlement date of the Third Party sale, pay to the Borrower a rate or rates in accordance with Clause 5 only on the amount (if any) of the Cash Collateral, together with any Margin, which exceeds the net proceeds of sale.
- (iv) The Borrower shall re-deliver Equivalent Securities as soon as they are available and, simultaneously with such re-delivery, the Lender

shall repay the Cash Collateral. In respect of Securities designated as eligible for settlement within the Talisman system, and where the loan has not been removed from that system, re-delivery may be as provided for in Clause 8(B).

- (v) In the event that the Value of the borrowed Securities decreases below the net proceeds of sale, and if the net proceeds of sale exceed the sum of £50,000, the Lender may give notice to the Borrower of that decrease and, on giving such notice, the following provisions shall also apply:-
- (a) In relation to any Securities designated by the Stock Exchange as eligible for settlement within the Talisman System, the Market Maker and the Money Broker shall forthwith do all things necessary to remove the loan of Securities from the Talisman System.
  - (b) Notwithstanding the provisions of Clause 6(F), the Borrower shall, on the Business Day which follows receipt of such notice, or immediately upon the removal of the loan from the Talisman system (where applicable), whichever is the later, deposit or procure the deposit of an additional sum of money being the difference between the Value as at the time of the deposit and the net proceeds of sale, together with the Margin applicable thereto, but subsequently shall not be under any obligation to deposit or procure the deposit of any additional sums pursuant to Clause 6(F)(ii); and the Lender shall not be under any obligation to repay or procure the repayment of any additional sums pursuant to Clause 6(F)(iii);

PROVIDED THAT in the event that the Value of the borrowed Securities subsequently increases such that it exceeds the net proceeds of sale, the Lender may give notice that Clause 6(F) shall reapply. In that event, Clause 6(F) shall apply in the usual way from the time of receipt of such notice, and the Borrower shall, on the Business Day which follows receipt of such notice, deposit or procure the deposit of an additional sum of money being the difference between the Values as at the time of receipt of such notice and the net proceeds of sale, together with the Margin applicable thereto. Such notice shall not prejudice any right the Lender may have to invoke the provisions of this Clause subsequently.

- (F) Where the Lender (being a Money Broker) calls for the redelivery of Equivalent Securities pursuant to Clause 8(B) and the Borrower (being a Market Maker) does not redeliver Equivalent Securities and the Lender elects to continue the loan of Securities pursuant to Clause 8(C) above and securities equivalent to the borrowed Securities have not been sold by a Third Party who could require the Lender to remit a sum of money

equal to the net proceeds of sale if a sale had taken place, then, notwithstanding the provisions of Clause 8(C) above, the Lender may, at its discretion, give notice that it will forthwith cease to pay to the Borrower a rate or rates in accordance with Clause 5 on all money deposited by the Borrower with the Lender pursuant to Clause 6 in respect of those Securities.

- (G) In the event that as a result of the failure of the Borrower to redeliver Equivalent Securities to the Lender in accordance with Clause 8(D) or 8(E) above a "buy-in" is exercised against the Lender or Third Party, as the case may be, in respect of the sale of the Securities then, PROVIDED THAT reasonable notice has been given to the Borrower of the likelihood of such a "buy-in", the Borrower shall account to the Lender or Third Party for the total costs and expenses reasonably incurred by the Lender or Third Party as a result of such "buy-in".
- (H) Subject to the terms of the relevant Borrowing Request, the Borrower shall be entitled at any time to terminate a particular loan of Securities and to redeliver all and any Equivalent Securities due and outstanding to the Lender PROVIDED THAT in respect of Securities designated by the Stock Exchange as eligible for settlement within the TALISMAN System such redelivery shall be made by the apportionment of Equivalent Securities to the Lender or its Nominee. In respect of other Securities redelivery shall be made in accordance with the Lender's instructions. The Lender shall accept such redelivery and simultaneously therewith shall repay to the Borrower any Cash Collateral and redeliver Collateral equivalent to the Collateral provided by the Borrower pursuant to Clause 6 in respect thereof.
- (I) Where a TALISMAN short term certificate (as described in paragraph 1(C) of the Schedule) is provided by way of Collateral, the obligation to redeliver Equivalent Collateral is satisfied by the redelivery of the certificate to the Borrower or its expiry as provided for in the Rules for such certificates.
- (J) Where a Letter of Credit is provided by way of Collateral, the obligation to redeliver Equivalent Collateral is satisfied by the Lender redelivering for cancellation the Letter of Credit so provided or, where the Letter of Credit is provided in respect of more than one loan, by the Lender consenting to a reduction in the value of the Letter of Credit.

#### 9. SUSPENDED SECURITIES

If dealings in any borrowed Securities are suspended by reason of the adverse financial position of the issuer, then the following provisions shall apply:-

- (i) where the Lender is a Money Broker, then either the Lender or the Borrower may give notice of the suspension to the other, in which event sub-paragraphs (ii) to (iv) below shall apply;

- (ii) where notice is given pursuant to sub-paragraph (i) the Lender (being a Money Broker) shall forthwith give notice of the suspension to the Third Party from whom it borrowed the suspended Securities;
- (iii) in relation to any Securities designated by the Stock Exchange as eligible for settlement within the Talisman System, the Lender and the Borrower shall forthwith do all things necessary to have the loan of Securities removed from the Talisman System, without prejudice to the obligations of the Parties in respect of the redelivery of Equivalent Securities in relation to the loan; and
- (iv) notwithstanding the definitions of Value and Reference Price appearing in this Agreement, the Lender and the Borrower shall enter into negotiations in good faith with the Third Party with a view to agreeing the Value of the borrowed Securities, each Party undertaking not to withhold his consent unreasonably to any such agreement, it being understood that in the absence of such agreement the definitions of Value and Reference Price will continue to apply, PROVIDED THAT if the Money Broker who is a Party to this Agreement has (where it is the Lender) called for the return of the borrowed Securities or (where it is the Borrower) been called upon by the Third Party for such return and the Money Broker is required by the terms of an agreement with the Third Party who has sold the borrowed Securities to remit a sum of money equal to the net proceeds of sale, then the Value shall not be less than the net proceeds of sale.
- (v) where the Borrower is a Money Broker then sub-paragraph (iv) shall apply as if the first reference therein to the Third Party was a reference to the Market Maker to whom the suspended Securities have been on-lent by the Money Broker.

#### 10. SET-OFF ETC

- (A) On the date and time (the "Performance Date") that Equivalent Securities are required to be redelivered by the Borrower in accordance with the provisions of this Agreement the Lender shall simultaneously redeliver the Equivalent Collateral and repay any Cash Collateral held (in respect of the Equivalent Securities to be redelivered) to the Borrower. Neither Party shall be obliged to make delivery (or make a payment as the case may be) to the other unless it is satisfied that the other Party will make such delivery (or make an appropriate payment as the case may be) to it simultaneously. If it is not so satisfied (whether because an Event of Default has occurred in respect of the other Party or otherwise) it shall notify the other party and unless that other Party has made arrangements which are sufficient to assure full delivery (or the appropriate payment as the case may be) to the notifying Party, the notifying Party shall (provided it is itself in a position, and willing, to perform its own

obligations) be entitled to withhold delivery (or payment, as the case may be) to the other Party (the "Defaulting Party") and in this event:-

- (i) the Relevant Value of the Securities to be delivered (or payment to be made, as the case may be) by each party shall be established in accordance with Clause 10(B); and
  - (ii) on the basis of the Relevant Values so established, an account shall be taken (as at the Performance Date) of what is due from each Party to the other and (on the basis that each Party's claim against the other in respect of delivery of Equivalent Securities or Equivalent Collateral or any cash payment equals the Relevant Value thereof) the sums due from one Party shall be set-off against the sums due from the other and only the balance of the account shall be payable (by the Party having the claim valued at the lower amount pursuant to the foregoing) and such balance shall be payable on the Performance Date.
- (B) For the purposes of Clause 10(A) the Relevant Value:-
- (i) of any cash payment obligation shall equal its par value in sterling (any conversion required in respect of any foreign currency obligation to be made at the spot rate for the purchase of sterling with the relevant currency quoted by Barclays Bank PLC on the Performance Date);
  - (ii) of any Securities to be delivered by the Defaulting Party shall, subject to paragraph (iv) below, equal the Offer Value thereof;
  - (iii) of any Securities to be delivered to the Defaulting Party shall, subject to paragraph (iv) below, equal the Bid Value thereof; and
  - (iv) of any Securities to be delivered, if an Event of Default has occurred or if either Party has breached any of its warranties or obligations under any of Clauses 12, 13 and 15 and (in the case of any such breach) the other Party has served written notice on it thereof, shall equal the Value thereof calculated at the time such Event of Default occurs or such notice is served (as the case may be) TOGETHER WITH any other sums then owing by such Party.
- (C) For the purposes of Clause 10(B) the Bid Value and Offer Value of any Securities shall be calculated at the close of business in the relevant market for such Securities on the Performance Date.
- (D) Any reference in this Clause 10 to Securities shall include any asset other than cash provided by way of Collateral.
- (E) If an Event of Default occurs, or if any Party has breached any of its warranties or obligations under any of Clauses 12, 13 and 15 and the



other Party has served written notice on it thereof, that Party's delivery and payment obligations (and any other obligations it has under this Agreement) shall be accelerated so as to require performance thereof at the time an Event of Default occurs or such notice is served (as the case may be).

- (F) If the Borrower or the Lender for any reason fail to comply with their respective obligations under Clauses 6(D) or 6(E) to call for the redelivery of or redeliver Equivalent Collateral or repay Cash Collateral the provisions of sub-paragraphs (i) and (ii) of Clause 10(A) and Clauses 10(B) and 10(C) shall apply and the Party who has failed to comply with its obligations shall be treated as the Defaulting Party for the purpose of such provisions.
- (G) Where, pursuant to the provisions of this Agreement, a Party performs an obligation in respect of the delivery of Securities or Collateral or the payment or transfer of money (by way of deposit or otherwise) at a time when the other Party, in accordance with this Agreement, is required to perform a similar obligation simultaneously with the performance of the first Party's obligation but, nevertheless, the second Party's obligation is not performed simultaneously, the second Party shall hold on trust for the first Party any assets (including cash) that it receives from the first Party prior to the performance of its own obligation being completed PROVIDED THAT the second Party shall be at liberty to dispose of any such assets to the extent such disposal occurs in the ordinary course of its business for the settlement of bargains and PROVIDED FURTHER THAT any such trust shall terminate upon the completion of the performance of the aforesaid obligations of the second Party or disposal of such assets as envisaged above whichever shall first occur.
- (H) Subject to and without prejudice to its rights under Clause 10(A) either Party may from time to time in accordance with market practice and in recognition of the practical difficulties in arranging simultaneous delivery of Securities, Collateral and cash transfers waive its right under this Agreement in respect of simultaneous delivery and/or payment PROVIDED THAT no such waiver in respect of one transaction shall bind it in respect of any other transaction.

## 11. TAXATION

- (A) The Borrower hereby undertakes promptly to pay and account for all transfer or similar duties or taxes chargeable in connection with any transaction effected pursuant to or contemplated by this or any contingent Agreement, and shall indemnify and keep indemnified the Lender against any liability arising in respect thereof as a result of the Borrower's failure to do so.
- (B) For the avoidance of doubt, in an event other than the redelivery of securities and/or collateral of the same kind and amount as the Securities

borrowed and/or the Collateral provided (as the case may be), the related loan of Securities and/or the provision of such Collateral may not be subject to the provisions of section 129 of the Income and Corporation Taxes Act 1988 or any statutory modification or re-enactment thereof for the time being in force.

12. **LENDER'S WARRANTIES**

The Lender hereby warrants and undertakes to the Borrower on a continuing basis to the intent that such warranties shall survive the completion of any transaction contemplated herein that:

- (A) the Lender has been approved as such, or as an approved Money Broker and approved UK intermediary as the case may be, by the Inland Revenue and will do nothing to prejudice such approved status;
- (B) the Lender's Nominee (if any and if appropriate) has been approved as such by the Inland Revenue;
- (C) the Lender is duly authorised and empowered to perform its duties and obligations under this Agreement;
- (D) neither the Lender nor its Nominee is or will be restricted under the terms of its constitution or in any other manner from making Securities available in accordance with this Agreement or from otherwise performing its obligations hereunder;
- (E) the Lender is absolutely entitled to pass full legal and beneficial ownership of all Securities provided by it hereunder to the Borrower free from all liens, charges and encumbrances.

13. **BORROWER'S WARRANTIES**

The Borrower hereby warrants and undertakes to the Lender on a continuing basis to the intent that such warranties shall survive the completion of any transaction contemplated herein that:

- (A) the Borrower is a member firm of the Stock Exchange and a member of The Securities and Futures Authority or is a member of the London International Financial Futures and Options Exchange (as the case may be) and will do nothing prejudicial to its continuing membership and is duly authorised and empowered to perform its duties and obligations under this Agreement;
- (B) the Borrower is not restricted under the terms of its constitution or in any other manner from borrowing Securities in accordance with this Agreement or from otherwise performing its obligations hereunder;

- (C) the Borrower has been approved by the Inland Revenue as an approved Money Broker and approved UK intermediary or an approved borrower as the case may be;
- (D) the Securities borrowed hereunder shall be used only to fulfil a contract to sell (if a Market Maker) such Securities or to on-lend such Securities to a Third Party to enable such party (if a Market Maker) to fulfil a contract to sell such Securities (in the case of Overseas Securities as part of a chain of arrangements to enable the final party in such chain to sell such Securities) or for such other purpose as may from time to time be in accordance with the Rules, and in any event in such manner as shall ensure that the provisions of section 129 of the Income and Corporation Taxes Act 1988 and section 271(9) of the Taxation of Chargeable Gains Act 1992 shall apply, and shall be treated by the Inland Revenue as applying, to each loan of Securities made or contemplated hereunder and to any transfer, disposal or acquisition of Securities, Collateral, Equivalent Collateral or Equivalent Securities hereunder;
- (E) the Borrower is absolutely entitled to pass full legal and beneficial ownership of all Collateral provided by it hereunder to the Lender free from all liens, charges and encumbrances;

#### 14. EVENTS OF DEFAULT

Each of the following events occurring in relation to either Party (the "Defaulting Party", the other Party being the "Non-Defaulting Party") shall be an Event of Default for the purpose of Clause 10:-

- (A) an Act of Insolvency occurring with respect to the Lender or the Borrower and (except in the case of an Act of Insolvency which is the presentation of a petition for winding up or any analogous proceeding or the appointment of a liquidator or analogous officer of the Defaulting Party in which case no such notice shall be required) the Non-Defaulting Party serves written notice on the Defaulting Party;
- (B) any representations made by the Lender or the Borrower being incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated, and the Non-Defaulting Party serves written notice on the Defaulting Party;
- (C) the Lender or the Borrower admitting to the other its inability to, or its intention not to, perform any of its obligations hereunder and/or in respect of any loan and the Non-Defaulting Party serves written notice on the Defaulting Party;
- (D) the Borrower being declared in default by the appropriate authority under the Rules or being suspended or expelled from membership of or participation in any securities exchange or association or other self-regulatory organisation, or suspended from dealing in securities by any government agency;

- (E) any of the assets of the Lender or the Borrower or the assets of investors held by or to the order of the Lender or the Borrower being transferred or ordered to be transferred to a trustee by a regulatory authority pursuant to any securities regulating legislation and the Non-Defaulting Party serves written notice on the Defaulting Party, or
- (F) the Lender or the Borrower failing to perform any other of its obligations hereunder and not remedying such failure within 30 days after the Non-Defaulting Party serves written notice relating to such failure on it.

Each Party shall notify the other if an Event of Default occurs in relation to it.

#### 15. OUTSTANDING PAYMENTS

In the event of either Party failing to remit either directly or by its Nominee sums in accordance with this Agreement such Party hereby undertakes to pay a rate to the other Party upon demand on the net balance due and outstanding of 1% above the Barclays Bank PLC base rate from time to time in force.

#### 16. TERMINATION OF COURSE OF DEALINGS BY NOTICE

Each Party shall have the right to bring the course of dealing contemplated under this Agreement to an end by giving not less than 15 Business Days notice in writing to the other Party (which notice shall specify the date of termination) subject to an obligation to ensure that all transactions which have been entered into but not discharged at the time such notice is given are duly discharged in accordance with this Agreement and with the Rules.

#### 17. GOVERNING PRACTICES

- (A) The Borrower shall use its best endeavours to notify the Lender (in writing) of any changes in legislation or practices governing or affecting the Lender's rights or obligations under this Agreement or the treatment of transactions effected pursuant to or contemplated by this Agreement.
- (B) The Borrower will notify the Lender (in writing) forthwith if either of the events specified in Clause 14 (D) above occurs.

#### 18. OBSERVANCE OF PROCEDURES

Each of the Parties hereto agrees that in taking any action that may be required in accordance with this Agreement it shall observe strictly the procedures and timetable applied by the Rules and, further, shall observe strictly any agreement (oral or otherwise) as to the time for delivery or redelivery of any money, Securities, Equivalent Securities, Collateral or Equivalent Collateral entered into pursuant to this Agreement.

19. **SEVERANCE**

If any provision of this Agreement is declared by any judicial or other competent authority to be void or otherwise unenforceable, that provision shall be severed from the Agreement and the remaining provisions of this Agreement shall remain in full force and effect. The Agreement shall, however, thereafter be amended by the Parties in such reasonable manner so as to achieve, without illegality, the intention of the Parties with respect to that severed provision.

20. **SPECIFIC PERFORMANCE**

Each Party agrees that in relation to legal proceedings it will not seek specific performance of the other Party's obligation to deliver or redeliver Securities, Equivalent Securities, Collateral or Equivalent Collateral but without prejudice to any other rights it may have.

21. **NOTICES**

All notices issued under this Agreement shall be in writing (and shall include telex or facsimile messages) and shall be deemed validly delivered if sent by prepaid first class post to or left at the addresses or sent to the telex or facsimile number of the Parties respectively or such other addresses or telex or facsimile numbers as each Party may notify in writing to the other.

22. **ASSIGNMENT**

Neither Party may charge, assign or transfer all or any of its rights or obligations hereunder without the prior consent of the other Party.

23. **NON-WAIVER**

No failure or delay by either Party to exercise any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege as herein provided.

24. **ARBITRATION AND JURISDICTION**

- (A) All claims, disputes and matters of conflict between the Parties arising hereunder shall be referred to or submitted for arbitration in London in accordance with English Law before a sole arbitrator to be agreed between the Parties or in default of agreement by an arbitrator to be nominated by the Chairman of the Stock Exchange on the application of either Party, and this Agreement shall be deemed for this purpose to be a submission to arbitration within the Arbitration Acts 1950 and 1979, or any statutory modification or re-enactment thereof for the time being in force.

- (B) This Clause shall take effect notwithstanding the frustration or other termination of this Agreement.
- (C) No action shall be brought upon any issue between the Parties under or in connection with this Agreement until the same has been submitted to arbitration pursuant hereto and an award made.

25. **TIME**

Time shall be of the essence of the Agreement.

26. **GOVERNING LAW**

This Agreement is governed by, and shall be construed in accordance with, English Law.

IN WITNESS WHEREOF this Agreement has been executed on behalf of the Parties hereto the day and year first before written.

SIGNED BY )  
 )  
 ON BEHALF OF )  
 )  
 IN THE PRESENCE OF: )

SIGNED BY )  
 )  
 ON BEHALF OF )  
 )  
 IN THE PRESENCE OF: )

ศูนย์วิทยพัชกร  
 จุฬาลงกรณ์มหาวิทยาลัย

COLLATERAL

1. Types

Collateral acceptable under this Agreement may include the following or otherwise, as agreed between the Parties from time to time whether transferable by delivery or within a book entry transfer system.

- (A) (i) British Government Stock and Sterling Issues by foreign governments (transferable through the CGO), in the form of an enfaced transfer deed or a long term collateral certificate or overnight collateral chit issued by the CGO accompanied (in each case) by an executed unenfaced transfer deed;
  - (ii) Corporation and Commonwealth Stock in the form of registered stock or allotment letters duly renounced;
  - (iii) UK Government Treasury Bills;
  - (iv) US Government Treasury Bills;
  - (v) Eligible Bank Bills;
  - (vi) Sterling Certificates of Deposit;
  - (vii) Foreign Currency Certificates of Deposit;
  - (viii) Local Authority Bonds;
  - (ix) Letters of Credit;
  - (x) Bonds or Equities in registrable form or allotment letters duly renounced;
  - (xi) Bonds or Equities in bearer form;
- (B) British Government Stock and other stock registered at the Bank of England which is transferable through the CGO to the Lender or its Nominee against an Assured Payment, hereinbefore referred to as CGO Collateral.
- (C) Unexpired TALISMAN short term certificates issued by the Stock Exchange.
- (D) Cash.

## 2. Valuation of Collateral

Collateral provided in accordance with this Agreement shall be evaluated by reference to the following, or by such means as the Parties may from time to time agree:-

- (A) in respect of Collateral types (A)(i) and (B), the current CGO value calculated by reference to the middle market price of each stock as determined daily by the Government Broker, adjusted to include the accumulated interest thereon, and rounded up or down to the nearest number (the CGO Reference Price);
- (B) in respect of Collateral types (A)(ii), (iii), (iv), (v), (vi), (vii), (viii), (x) and (xi) the Reference Price of those Securities;
- (C) in respect of Collateral types (A)(ix) and (C) the value specified therein.

## 3. Margin

The Value of the Collateral delivered pursuant to Clause 6 by the Borrower to the Lender under the terms and conditions of this Agreement shall on each Valuation Date represent not less than the Value of the borrowed Securities or the total sum of money lent pursuant to Clause 7 (as the case may be) TOGETHER WITH the following additional percentages hereinbefore referred to as "the Margin" unless otherwise agreed between the Parties:-

- (i) in the case of Collateral types (A)(i) to (ix), (B) and Collateral type (D):           % (for Certificates of Deposit the Margin shall be the accumulated interest thereon); or
- (ii) in the case of Collateral types (A)(x), (xi) and (C):           %

If the Value of the borrowed Securities includes any Margin over the mid market price of the borrowed Securities this shall be taken into account in determining the Margin applicable.



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## STOCK BORROWING AND LENDING COMMITTEE

### แนวทางปฏิบัติเบื้องต้นสำหรับการยืมและให้ยืมหลักทรัพย์

Code นี้ร่างขึ้นโดยคณะกรรมการการยืมและการให้ยืมหลักทรัพย์(The Stock Borrowing and Lending Committee) ซึ่งเป็นคณะกรรมการของผู้ที่ประกอบวิชาชีพในธุรกิจนี้(market practitioners) การร่าง Code นี้ก็เพื่อเป็นแนวทางปฏิบัติเบื้องต้นสำหรับการยืม/ให้ยืมหลักทรัพย์ของผู้ที่เกี่ยวข้อง(participants)โดยเกิดจากการสังเกต รวบรวมตามแนวปฏิบัติที่ดี(best practice)ที่ปฏิบัติกันใน UK สำหรับการยืม/ให้ยืมหลักทรัพย์ ทั้งในและนอก UK. Code นี้เกิดจากการสังเกตจากแนวปฏิบัติของ leading participants ที่ปฏิบัติกันในธุรกิจการยืม/ให้ยืมหลักทรัพย์ อย่างไรก็ตาม Code นี้ อาจถูก review ได้ภายใต้กฎเกณฑ์ที่เกี่ยวข้อง

Code นี้ไม่ได้มีขึ้นเพื่อใช้แทนระเบียบหรือกฎเกณฑ์ที่มีอยู่และไม่ได้เป็นการแสดงถึงระบบการควบคุม Code นี้ ไม่ใช่สิ่งที่แสดงถึงกฎเกณฑ์ของ UK ที่มีอยู่ทั้งหมดของ participants และไม่ใช่เป็นสิ่งที่ให้แสดงให้เห็นถึงความครอบคลุมของกฎเกณฑ์ที่มีอยู่สำหรับธุรกิจการยืม/ให้ยืมหลักทรัพย์ Code นี้ไม่ได้มีขึ้นเพื่อเข้าไปก้าวท้าวหรือขัดแย้งกับกฎภายในอื่นที่กำหนดขึ้นโดยเฉพาะสำหรับ transactions ของการยืมหรือให้ยืมหลักทรัพย์

#### A: Regulatory Framework

1. การจะเข้ามาในธุรกิจการยืม/ให้ยืมหลักทรัพย์นั้น participant จะต้องได้รับอนุญาตจาก Inland Revenue ก่อน
2. Transaction ของการยืมหลักทรัพย์นั้น participant จะต้องดำเนินการตามหลักเกณฑ์ในการดำเนินธุรกิจ เรื่องของภาษี และ Inland Revenue's Code of Conduct ที่บังคับใช้อยู่
3. การกำหนดกฎเกณฑ์ต่าง ๆ ของ participant ในส่วนของ Transaction การยืมหลักทรัพย์นั้น จะต้องได้รับอนุญาตจากหน่วยงานที่กำกับดูแลก่อน

<sup>1</sup> คำว่า การให้ยืม(lending) การยืม(borrowing) หลักประกัน(collateral) และคำอื่น ๆ ที่เกี่ยวข้องที่ใช้ใน Code นี้ เป็นศัพท์เฉพาะที่ใช้สำหรับธุรกิจดังกล่าว โดยกรรมสิทธิ์(title) ในหลักทรัพย์ที่ยืม(borrowed) หรือให้ยืม(lent) และรวมถึงหลักประกัน(collateral)นั้น จะถูกโอนจากคู่สัญญาฝ่ายหนึ่งไปยังอีกฝ่ายหนึ่ง โดยคู่สัญญาที่ได้รับกรรมสิทธิ์ดังกล่าวนั้นไปมีหน้าที่ต้องส่งมอบหลักทรัพย์หรือหลักประกันคืนในจำนวนที่เท่ากับที่ได้รับมา

**B: Legal Basis**

4. หลักทรัพย์ที่จะให้ยืมนั้นจะต้องทำข้อตกลงเป็นหนังสือระหว่างคู่สัญญาที่เกี่ยวข้อง โดยอย่างน้อยจะต้องมีรายละเอียดตามที่กำหนดไว้ใน Code (อย่างไรก็ตามอาจมีรายละเอียดบางประการที่กฎหมายอื่นกำหนดว่าต้องมีในข้อตกลง ซึ่งอาจเป็นเรื่องที่อยู่นอกขอบเขตของ Code นี้)
5. ในกรณีที่มีเหตุผิดนัดและคู่สัญญาแต่ละฝ่ายต่างมีสิทธิเรียกร้องต่อกัน คู่สัญญาของการยืมหลักทรัพย์จะต้องยินยอมให้มีการหักลบหนี้กับคู่สัญญาอีกฝ่ายได้ ทั้งนี้เว้นแต่กฎหมายของอังกฤษจะได้อำนาจในเรื่องนี้ไว้เป็นอย่างอื่น ทั้งนี้ให้เป็นไปตามบทบัญญัติของ Leading Counsel 1990 ข้อตกลงดังกล่าวนี้ให้รวมถึงกรณีที่เป็นการยืมโดยผ่านตัวแทนด้วย
6. ข้อตกลงที่เป็นมาตรฐานของ Stock Exchange จะนำมาใช้สำหรับกรณีการยืมหลักทรัพย์ของ UK
7. กรณีที่ custodian ได้นำหลักทรัพย์ของลูกค้มาเพื่อให้ยืมนั้น จะต้องมีการทำข้อตกลงที่ชัดเจน ซึ่งอาจใช้ข้อตกลงมาตรฐานสำหรับการรับฝากหลักทรัพย์ได้ การให้อำนาจแก่ custodian ในการนำหลักทรัพย์ออกให้ยืมนั้นจะต้องกำหนดให้ชัดเจนถึงเงื่อนไขในการให้ยืม หลักทรัพย์ที่จะให้ยืม รวมถึงตลอดถึงการกำหนดหลักประกันที่จะเรียกสำหรับการให้ยืมหลักทรัพย์นั้น

**C: Authorities**

8. ในการนำหลักทรัพย์ออกให้ยืม participant จะต้องได้รับอำนาจจากผู้เป็นเจ้าของหลักทรัพย์หรือจากผู้ที่ได้รับมอบอำนาจจากเจ้าของหลักทรัพย์ก่อน

**D: Counterparties**

9. ในการให้ยืมหลักทรัพย์คู่สัญญาจะต้องรู้สถานะของคู่สัญญาอีกฝ่ายว่ากระทำการในฐานะใด เป็นตัวการ ตัวแทน หรือเป็นตัวแทนซึ่งต้องรับผิดชอบตัวการ (agent taking principal risk)
10. ในกรณีที่เป็นกรกระทำในฐานะตัวแทน จะต้องมีการระบุให้ชัดเจนถึงรายละเอียดของผู้เป็นตัวการด้วย
11. คู่สัญญาของการให้ยืมหลักทรัพย์จะต้องระมัดระวัง (monitor) ในเรื่องการเปิดเผยของตนต่อคู่สัญญาอีกฝ่ายของตน on daily basis

**E: Collateral**

12. จะต้องมีกรเรียกหลักประกันสำหรับหลักทรัพย์ที่นำออกให้ยืม โดยหลักประกันนั้นต้องเป็นหลักประกันที่ผู้ให้ยืมหลักทรัพย์ยอมรับได้ ซึ่งต้องมีการระบุเรื่องนี้ไว้ในข้อตกลงหรือโดยได้รับความยินยอมก่อนการให้ยืมหลักทรัพย์
13. หลักประกันสำหรับการยืมหลักทรัพย์จะต้องนำเข้าบัญชีของผู้ให้ยืมหลักทรัพย์ หรือตัวแทน หรือบุคคลอื่นตามที่ได้ระบุกันไว้

14. หลักประกันที่เรียกสำหรับการยืมหลักทรัพย์จะต้องคำนวณผลต่างระหว่างราคาขายและราคาต้นทุน/กำไรเบื้องต้น(Margin) โดย Margin นี้จะต้องระบุไว้ในข้อตกลง หรือในเวลาที่มีการนำออกให้ยืมโดยได้รับความยินยอมจากคู่สัญญาทั้งสองฝ่าย
15. หลักทรัพย์ที่ให้อืมและหลักประกันของหลักทรัพย์ดังกล่าวจะต้องมีการปรับราคา (Marked market) ในแต่ละวัน และในกรณีที่เป็นการคำนวณมูลค่าดังกล่าวจะต้องคำนวณดอกเบี้ยรวมเข้าไปด้วย
16. ในข้อตกลงจะต้องกำหนดเกี่ยวกับการปรับหลักประกันสำหรับกรณีที่มีการเปลี่ยนแปลงอันเป็นนัยสำคัญในมูลค่าของอัตราแลกเปลี่ยนหรือราคาของหลักทรัพย์ที่เกี่ยวข้องกับ transactions ดังกล่าว ทั้งนี้รวมถึงการปรับปรุงเกี่ยวกับกำไรเบื้องต้น (original margin) ด้วย
17. กรณีที่ผู้ให้ยืมหลักทรัพย์กระทำการในฐานะเป็นตัวแทน จะต้องมีการทำข้อตกลงระหว่างตัวแทนกับตัวการสำหรับการเก็บรักษาหลักประกัน และรวมถึงการเก็บรวบรวมผลประโยชน์ที่ได้จากหลักประกันดังกล่าวด้วย
18. กรณีที่ participant กระทำการในฐานะเป็นตัวแทนให้แก่ตัวการมากกว่าหนึ่งรายแล้ว participant จะต้องมีการกำหนดให้ชัดเจนเกี่ยวกับการแบ่งแยกทรัพย์สินของตัวการแต่ละรายที่นำออกให้ยืมที่ตนทำการแทน และต้องมีการกำหนดให้ชัดเจนเกี่ยวกับวิธีการจัดสรรหลักประกันในระหว่างผู้ให้ยืมแต่ละรายและข้อจำกัดสิทธิของตัวการเหล่านั้น

#### F: Daylight Exposure

19. participant ทั้งหมดจะต้องกำหนดขั้นตอนเพื่อให้แน่ใจว่า daylight exposure นั้นได้รับการรับรองและอยู่ในขอบเขตที่ควบคุมได้ ซึ่งการควบคุมนี้รวมถึงการควบคุมเกี่ยวกับการเปลี่ยนหรือนำหลักประกันมาทดแทนด้วย
20. กรณีที่หลักทรัพย์และหลักประกันไม่ได้มีการส่งมอบ(move)กัน ภายในระบบหรือในประเทศเดียวกัน จะต้องมีการดูแลเป็นพิเศษเกี่ยวกับมูลค่าของหลักประกันซึ่งจะต้องกำหนดมูลค่าตาม timely fashion เพื่อลด daylight exposure และลดความเสี่ยงในเรื่องของการชำระราคา/อัตราแลกเปลี่ยน

#### G: Distributions

21. ต้องมีการจัดการเกี่ยวกับค่าชดเชยหรือค่าตอบแทนของผู้ให้ยืมหลักทรัพย์(หรือผู้ให้หลักประกัน) สำหรับเงินปันผล หรือผลประโยชน์ที่เกิดขึ้นในระหว่างที่นำหลักทรัพย์ออกให้ยืม(หรือในระหว่างที่หลักประกันนั้นถูกผู้ให้ยืมยึดถือไว้) โดยในการจัดการนี้รวมถึงการกำหนดหน้าที่ของคู่สัญญาแต่ละฝ่ายให้ชัดเจน เช่นกำหนดเวลาในการชำระเงิน
22. ในการคำนวณภาษีสำหรับเงินทดแทนเงินปันผล(manufactured dividends)นั้น Participants จะต้องคำนวณให้ถูกต้องตามหลักเกณฑ์ที่เกี่ยวข้อง

23. ผู้ยืมหลักทรัพย์ย่อมมีสิทธิในการออกเสียงไม่ว่าจะยืมในฐานะเป็นผู้ยืมเองหรือยืมในฐานะเป็นตัวกลางก็ตาม โดยจะต้องมีการระบุให้ชัดเจนว่าสิทธิในการออกเสียงของผู้ยืมหลักทรัพย์จะถูกโอนไปพร้อมกับกรรมสิทธิ์ในหลักทรัพย์
24. ก่อนการให้ยืมหลักทรัพย์ คู่สัญญาทุกฝ่ายต้องมีการกำหนดให้ชัดเจนเกี่ยวกับวิธีการจัดการในกรณีที่มีการให้สิทธิซื้อหุ้นเพิ่มทุน(rights issue)หรือในกรณีอื่นใด ทั้งนี้โดยคำนึงถึงหลักปฏิบัติทั่วไปใน market ด้วย

#### H: Calling Stock

25. คู่สัญญาจะต้องกำหนดวิธีการในการเรียกหลักทรัพย์คืน โดยจะต้องกำหนดสิทธิและหน้าที่ของคู่สัญญาแต่ละฝ่ายให้ชัดเจน
26. กรณีที่คู่สัญญาฝ่ายใดฝ่ายหนึ่งประสงค์คืนหลักทรัพย์ที่ยืม หรือเรียกคืนหลักทรัพย์ที่ยืม จะต้องแจ้งให้คู่สัญญาอีกฝ่ายทราบโดยทันที
27. ในระหว่างคู่สัญญาจะต้องมีการกำหนดให้ชัดเจนเกี่ยวกับการจัดการในกรณีที่ไม่สามารถคืนหลักทรัพย์ได้ตามที่มีการเรียกคืน

#### I: Failed Deals

28. คู่สัญญาจะต้องกำหนดวิธีการดำเนินการกรณีที่มีการผิดนัดในหลักทรัพย์ที่ยืม โดยจะต้องกำหนดถึงสิทธิและหน้าที่ของคู่สัญญาแต่ละฝ่ายไว้ให้ชัดเจน

#### J: confirmation

29. ผู้ยืมจะต้องมีการยืนยันการยืมหลักทรัพย์ไปยังผู้ให้ยืมหลักทรัพย์ทุกครั้ง ทั้งนี้ไม่ว่าจะโดยการยืนยันเป็นลายลักษณ์อักษร หรือใช้ระบบอิเล็กทรอนิกส์ในการยืนยันก็ตาม และการยืนยันดังกล่าวจะต้องทำก่อนการส่งมอบ(move)หลักทรัพย์
30. จะต้องมีการแสดงให้เห็นเกี่ยวกับรายละเอียดของค่าธรรมเนียม และหน้าที่ค้างชำระของผู้ยืมหลักทรัพย์ที่ยืมและหลักประกันที่รับมาและจะต้องแจ้งให้คู่สัญญาอีกฝ่ายทราบ


#### K: Management Controls

31. ในการจำกัดการเปิดเผย(exposure)นั้นจะต้องทำอย่างเหมาะสมเพื่อ maintained คู่สัญญาอีกฝ่ายไม่ว่าจะเป็นการซื้อจำกัดของกลุ่ม หรือซื้อจำกัดส่วนตัวของคู่สัญญาที่เกี่ยวข้อง และจะต้องอยู่บนพื้นฐานของกฎเกณฑ์ที่เกี่ยวข้อง
32. ต้องมีการทำรายงานเพื่อแสดงรายละเอียดเกี่ยวกับหลักทรัพย์ที่ยืม มูลค่าของหลักทรัพย์ที่ยืม/ให้ยืม หลักประกันที่ให้/เรียกสำหรับการยืม/ให้ยืมหลักทรัพย์ และค่าธรรมเนียมที่ได้รับ ซึ่งข้อมูลเหล่านี้จะต้องสรุปและมีไว้เพื่อให้คู่สัญญาอีกฝ่ายสามารถตรวจดูได้

33. ต้องมีระบบการควบคุมภายในที่เหมาะสมเพื่อตรวจสอบว่าหลักทรัพย์ที่ใหยืมนั้นเป็นหลักทรัพย์ที่ตนมีอำนาจในการนำออกใหยืมได้ ซึ่งการตรวจสอบนี้จะต้องกระทำก่อนที่จะมีการนำหลักทรัพย์ออกใหยืม
34. ในการจัดการจะต้องมีการจัดทำ list ของหลักทรัพย์ที่ได้รับมอบหมายใหยืม หรือนำออกใหยืม และต้องจัดเตรียม list นี้ไว้สำหรับกรณีที่คุณผู้สัญญาอีกฝ่ายร้องขอ

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Code นี้ได้รับความเห็นชอบจาก The Stock Borrowing and Lending Committee ในเดือนเมษายน 1993 และมีผลใช้บังคับตั้งแต่วันที่ 1 พฤษภาคม 1994 เป็นต้นไป



ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

## ประวัติผู้เขียน

นายอรรถวิทย์ ยาวะประภาส เกิดเมื่อวันที่ 2 พฤศจิกายน 2512 ณ กรุงเทพมหานคร สำเร็จการศึกษาชั้นมัธยมศึกษาตอนปลายจากโรงเรียนหอวัง กรุงเทพฯ สำเร็จการศึกษาปริญญานิติศาสตร์บัณฑิต จากจุฬาลงกรณ์มหาวิทยาลัย ปีการศึกษา 2533 ปัจจุบันทำงานเป็นเจ้าหน้าที่กฎหมาย ในฝ่ายกฎหมาย ตลาดหลักทรัพย์แห่งประเทศไทย



ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย