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Master Securities Loan Agreement

Guidance Notes

2000 Version

The Bond Market Association and the Securities Industry Association (the "Associations") are jointly publishing a revised version of The Bond Market Association's Master Securities Loan Agreement. The Agreement was first published in May 1993 to provide a basic contractual framework, grounded in market practice, for the rights and obligations of parties to securities loan transactions. The Agreement was designed to address many legal and regulatory concerns present in securities loan transactions, while allowing the parties considerable flexibility, through the use of annexes and schedules, to address specific regulatory or other considerations and to structure the business aspects of their transactions.

The revisions to the Agreement, which have been prepared through extensive consultations with participants in the securities lending market, are intended to reflect a number of important legal and marketplace developments, while at the same time preserving the key features of the May 1993 version of the Agreement. As in the past, the Agreement will continue to provide, on a reciprocal basis, the basic protections that are essential for participants in the securities lending market. The Agreement has been refined, however, to reflect user experience and has been updated in the following significant respects:

Legal Developments. The Agreement has been revised to reflect amendments to the Securities Exchange Act of 1934 (the "Exchange Act") and Regulation T of the Board of Governors of the Federal Reserve System (the "Board"), which have significantly liberalized the regulatory restrictions applicable to the securities borrowing and lending activities of broker-dealers. Among the significant implications of the amendments to the Exchange Act and Regulation T for securities lending activities are:

- Elimination of restrictions regarding the amount and type of Collateral required under Regulation T for securities borrowing and lending transactions (although the collateral requirements of Exchange Act Rule 15c3-3 and comparable Treasury regulations under Section 15C of the Exchange Act continue to apply);

- Elimination of the permitted purpose requirement under Regulation T for Loans of securities by "exempted borrowers" – *i.e.*, registered broker-dealers with a substantial non-broker-dealer business – as well as registered broker-dealers entering into Loans to finance their market making or underwriting activities (although broker-dealers qualifying for such treatment may not borrow securities from a Lender other than another qualifying broker-dealer without a permitted purpose);

- Elimination of the permitted purpose requirement with respect to all Loans involving securities other than Equity Securities; and

- Expansion of the foreign securities exception in Regulation T to permit all broker-dealers to lend (or to borrow for the purpose of relending) any foreign securities to a foreign person for any purpose lawful in the country in which they are to be used.

The Agreement has also been revised to reflect amendments to Article 8 of the Uniform Commercial Code (the "UCC") updating the commercial law rules applicable to transfers of interest in investment securities and in particular, with respect to securities held indirectly by one or more "securities intermediaries" (*e.g.*, the Depository Trust Company).

These legal developments were addressed in an Amendment to the Agreement published in April 1998.

Experience in the Securities Lending Markets. The Agreement has been revised to incorporate a number of changes that reflect market participants' experience in exercising liquidation and similar closeout rights in the context of counterparty insolvency. In particular, the Agreement has been revised to implement many of the suggestions of the Counterparty Risk Management Policy Group (the "Policy Group") with respect to the documentation of over-the-counter transactions among financial institutions. Many of these revisions parallel revisions made to The Bond Market Association's Master Repurchase Agreement in September 1996.

Schedule of Optional Provisions. Schedule B has been expanded to provide parties with standard language for frequently negotiated supplemental terms. These optional provisions include, among others: (i) additional events of Default and remedies for Loans with a scheduled commencement date, (ii) alternative "standard settlement dates" for Foreign Securities for purposes of the termination provisions of the Agreement, and (iii) incorporation of uniform practices with respect to buy-in procedures and the allocation of economic benefits in respect of securities.

Additional Annexes. Two new Annexes have been added to the Agreement.

- ***Market Value.*** Annex II, based on Section 15 of the May 1993 version of the Agreement, allows the parties greater flexibility to determine the method by which the Market Value of Loaned Securities and Collateral are determined for purposes of the mark-to-market provisions of the Agreement.

- ***Term Loans.*** Annex III provides supplemental provisions governing "Term Loans," where the parties agree that Lender will lend to Borrower a specific amount of securities until a scheduled termination date. Under Annex III, all Loans of Securities other than Equity Securities would be Term Loans, unless the parties otherwise agree. As noted below, parties should consult with appropriate professional advisors to determine whether any modifications should be made to Annex III to address potential tax, accounting or ERISA issues.

The Associations wish to emphasize that the publication of the revised Agreement should not be construed as a suggestion that counterparties no longer conduct business pursuant to the May 1993 version of the Agreement and the 1998 Amendment thereto. Nevertheless, the Associations view the revised Agreement as better suited to current market conditions than the May 1993 version and strongly encourage its use in establishing new counterparty relationships. The Associations do not, however, consider it necessary for counterparties to abandon existing contractual arrangements based on the May 1993 version and the 1998 Amendment absent a mutual determination that the revised Agreement would be preferable.

The Agreement has been prepared as a standard form and any person proposing to use it should ascertain that it is suitable for the circumstances in which it is proposed to be used. Neither Association assumes responsibility for use of the Agreement or any Annex or Schedule in any particular circumstance. Parties using this documentation may wish to incorporate amendments. The Associations, however, will only permit this documentation to be used in an amended form if the amendments are made in such a way that they are clearly identifiable (for example by a side letter or mark-up).

To assist users of the Agreement, the Associations have prepared the following guidance notes to explain and summarize the provisions of the Agreement, as revised, on a section-by-section basis, as well as to identify certain additional issues which parties to the Agreement may wish to address. The purpose of these guidance notes is to assist users of the Agreement in understanding the basic structure as well as certain of the more essential operational aspects of securities lending relationships governed by the Agreement. ***These guidance notes should not be relied upon by any party to determine, without appropriate legal, accounting or other relevant professional advice, whether the Agreement is suitable to its particular circumstances and needs.*** Capitalized terms not otherwise defined have the meanings given to them in the Agreement.

Section 1: Applicability.

The Agreement, as revised, covers loans of all securities ("Securities"), including instruments that are deemed "securities" under commercial, regulatory or bankruptcy law or for other purposes. In addition, the parties may (but are not required to) agree in writing to extend the scope of the Agreement to cover loans of other financial instruments or assets.

Parties are expected not to enter into loans of assets other than securities under the Agreement without expressly agreeing to do so in writing and carefully reviewing the Agreement to determine whether supplemental provisions are necessary to accommodate loans of such assets on a case-by-case basis. Such supplemental provisions should include, for example, provisions governing the transfer of such assets and the valuation of such assets for purposes of the mark-to-market provisions of the Agreement. Parties should also consider the treatment of a Loan of assets other than securities in the event of a counterparty insolvency under the Bankruptcy Code or other applicable insolvency regimes, as well as any additional tax, accounting or other regulatory consequences.

The Agreement contains a number of provisions specifically designed to accommodate Loans of non-U.S. securities. In particular, the Agreement contains provisions addressing certain currency-exchange and international tax issues, as well as a definitional provision addressing variations in the definition of "Business Day" in different markets. Although the Agreement also contains a general provision relating to its use for Loans involving non-U.S. securities, it is important to recognize that the Agreement does not address comprehensively the individual legal and other considerations that must be taken into account in cross-border securities lending transactions. Most notably, it does not specify the means of transfer that are to be used for non-U.S. securities (which may have important operational and creditors' rights implications), nor does it address any special considerations arising under non-U.S. insolvency or other laws that may be applicable to a counterparty. These issues generally can be addressed fully only with knowledge of the specific non-U.S. securities and specific non-U.S. counterparties involved in a transaction and thus would be difficult to resolve in a master agreement that is intended to serve as a basic framework for a wide range of securities lending transactions.

In addition, parties should note that, as in the case of the May 1993 version of the Agreement, "Business Day" is generally defined by reference to regular trading days in the principal market for the Loaned Securities. Such days may not always correspond to days on which each party is normally open for business, particularly in cross-border transactions. As discussed below, parties should consider establishing appropriate deadlines for notices or deliveries under the Agreement (*e.g.*, the "Margin Notice Deadline," the "Close of Business" and the "Cutoff Time") to address any ambiguities that may otherwise arise as to the days or times at which parties must satisfy such deadlines.

Section 2: Loans of Securities.

Pursuant to Section 2.1 of the Agreement, either party may seek to initiate a Loan, subject to the agreement of the other party to the terms of the Loan. The Agreement has been revised to remove the assumption that Loans will always be initiated "orally." This permits the parties to initiate and agree to the terms of a Loan electronically, as well as orally or in writing, although the parties may wish to specify whether, and on what terms, Loans may be initiated and agreed to through electronic means. At a minimum, in connection with each Loan the parties must agree to certain basic terms, such as 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. In many transactions, parties will also wish to agree at the outset on other material terms of a Loan (such as in Term Loans under Annex III, discussed below).

As revised, the Agreement requires the parties to confirm their agreement to the basic terms of a Loan. Although confirmations for securities lending transactions are not generally required under current law, the Policy Group has recommended that financial institutions issue confirmations for all privately negotiated over-the-counter transactions as a matter of sound business practice. The Associations support the Policy Group's recommendations, and have accordingly sought to broaden the existing confirmation requirement in the Agreement to include Loans between market professionals. In light of the limitations of current industry systems, however, the Agreement has been designed to preserve sufficient flexibility to permit parties to continue their current course of conduct with respect to the documentation of securities lending transactions until appropriate industry-wide solutions have been implemented.

Loans where Lender is a Customer of Borrower for purposes of Exchange Act Rule 15c3-3 may (as in the May 1993 version of the Agreement) be confirmed by:

- A schedule provided by Lender to Borrower listing the Loaned Securities, to be executed and returned by Borrower when the Loaned Securities are received;
- Notice provided to each party by a Clearing Organization evidencing the transfer of securities through the Clearing Organization; or
- A confirmation or other document provided by Borrower to Lender.

Loans between broker-dealers may additionally be confirmed through:

- An electronic comparison system (such as Loanet) that compares Loans if both Borrower and Lender are participants in such system; or

- Any other manner agreed by the parties in writing.

The Agreement does not require a Confirmation provided under Section 2.1 to contain all terms agreed upon by the parties. For example, a schedule and receipt listing the Loaned Securities may not reflect terms such as the basis of compensation or the type or amount of Collateral to be transferred by Borrower. Likewise, electronic comparison systems may not be able to confirm certain material terms of a Loan – in particular, the terms of a Term Loan under Annex III. The Associations encourage parties to ensure that all material terms of a Loan are confirmed through one or more of the alternatives listed above – particularly when entering into non-permitted purpose Loans or Term Loans.

In the event of any inconsistency between a Confirmation provided pursuant to Section 2.1 and the Agreement itself, the Agreement shall prevail ***unless*** each party has executed the Confirmation. This provision is designed to prevent the party issuing the Confirmation from unilaterally amending the terms and conditions of the Agreement by adding supplemental provisions in a Confirmation without obtaining the other party's express consent. It is intended, however, that additional terms in a Confirmation which merely supplement, rather than contradict, the Agreement shall be enforceable absent prompt objection by the receiving party.

Section 2.2 provides that a Loan shall not be deemed to have commenced until both the Loaned Securities and the Collateral have been transferred, unless otherwise agreed by the parties. Because securities lending market participants have traditionally sought to maintain the flexibility to cancel a Loan prior to commencement, the failure to deliver Loaned Securities or Collateral on the commencement date of a Loan does not trigger a Default under the Agreement. Section 2.2, in conjunction with Section 4.4, is intended to confirm the absolute right of each party to the return of its property if the other party elects not to perform its obligations at the initiation of a Loan.

> ***Possible Use of Schedule B:*** For certain Loans or classes of Loans, the parties may wish to agree that delivery of Loaned Securities and Collateral is required on the agreed commencement date. Schedule B includes optional language that provides that failure to deliver the Loaned Securities and Collateral on the commencement date shall constitute a Default under the Agreement with respect to an individual Loan (if so agreed in a Confirmation for such Loan that is executed by each party) or with respect to a class of Loans (if so agreed by the parties in writing in Schedule B or otherwise).

Section 3: Transfer of Loaned Securities.

Section 3.1 provides that, unless otherwise agreed, Lender shall transfer the Loaned Securities to Borrower by the Cutoff Time on the agreed date for the commencement of the Loan.

> ***Possible Use of Schedule B:*** The "Cutoff Time" is defined in Section 25.16 as a time agreed by the parties in Schedule B or otherwise orally or in writing. Parties may wish to specify a single Cutoff Time for all transfers or different Cutoff Times for different types of Loaned Securities, Collateral or currencies. In the absence of an agreement by the parties, the Agreement provides that the Cutoff Time shall be determined in accordance with market practice.

Section 3.2 requires Borrower to provide each Lender that is a Customer with a form of schedule and receipt listing the Loaned Securities, as required by Exchange Act Rule 15c3-3(b)(3)(ii). As noted above, the Agreement has traditionally afforded the parties flexibility in choosing among the different formats for schedules and receipts typically used by Borrowers and Lenders in securities lending relationships.

Section 3.3 is intended to provide Borrower with a security interest in the Loaned Securities in the event that a Loan under the Agreement secured by cash Collateral is recharacterized as a loan of money.

Section 4: Collateral.

Delivery of Collateral.

Section 4.1 provides that, unless otherwise agreed, Borrower must deliver Collateral with a Market Value at least equal to the "Margin Percentage" (typically 100% or more) of the Market Value of the Loaned Securities that is agreed to by the parties at the time a Loan is initiated. Such Collateral must be delivered to Lender prior to or concurrently with the transfer of Loaned Securities to Borrower, but in no case later than the Close of Business on the day Lender transfers the Loaned Securities to Borrower.

As a result of the elimination of the collateral requirements on the borrowing and lending of securities in Regulation T, the Agreement, as revised, permits the parties, in circumstances where Lender is not a Customer, to agree that the Market Value of the Collateral securing a Loan may be less than 100% of the Market Value of the Loaned Securities. Such an agreement may cover a single Loan or an entire class of Loans between the parties and, in accordance with Section 24.2, may be made (i) in writing, (ii) orally (if confirmed promptly thereafter in writing or through a system such as Loanet that compares such transactions if Borrower and Lender are participants therein), or (iii) in any other manner agreed upon by the parties in writing. In the absence of any such agreement, however, the Agreement provides that the Margin Percentage with respect to any Loan shall not be less than 100%.

In the event that the parties agree that the Margin Percentage may be less than 100% with respect to one or more Loans, but fail to set out in a Confirmation or other writing the Margin Percentage with respect to any specific Loan, the definition of the term Margin Percentage in Section 25.37 provides that the applicable Margin Percentage with respect to such Loan shall not be less than the ratio of the Market Value of Collateral required to be transferred by Borrower at the commencement of the Loan to the Market Value of Loaned Securities required to be transferred by Lender at the commencement of the Loan. This provision is similar to the provisions used the September 1996 version of the Master Repurchase Agreement to determine the "Buyer's Margin Percentage" and "Seller's Margin Percentage" in the absence of any express agreement by the parties.

Although Regulation T no longer imposes any collateral requirements on the borrowing and lending of securities, minimum collateralization requirements may still apply in a number of contexts, depending upon the status of Borrower and Lender and the nature of their relationship. For example, Exchange Act Rule 15c3-3 generally requires a broker-dealer that borrows securities from a customer to enter into a written agreement that at a minimum provides, among other terms, that the broker-dealer will deliver and subsequently maintain collateral with a market value equal to at least 100% of the market value of all outstanding securities loaned. Similarly, Loans by ERISA Plans in reliance on Prohibited Transaction Exemption 81-6 ("PTE 81-6") are subject, among other conditions, to a 100% collateralization requirement. The Agreement accordingly does not eliminate the 100% collateralization requirement for Loans where Lender is a Customer of a Borrower that is a broker-dealer or where the Loans are effected in reliance upon PTE 81-6.

For parties that are required to prepare financial reports in accordance with U.S. generally accepted accounting principles ("U.S. GAAP"), Loans that are collateralized at less than 100% of the market value of the Loaned Securities may be subject to a different accounting treatment than traditional securities loans (especially if such Loans are effected without a permitted purpose). Furthermore, depending upon the status of the parties (*e.g.*, tax-exempt organizations), such Loans may have certain tax consequences under the Internal Revenue Code.

Parties should determine whether any Loans are subject to a minimum collateralization requirement or any other restrictions on the type or quantity of Collateral acceptable under any applicable laws, rules or regulations. Parties should also consult with their accounting advisors to determine the accounting treatment of Loans involving less than 100% Collateral, as well as with their legal advisors to determine the tax consequences of such Loans (especially if they involve tax-exempt organizations).

Before agreeing to accept Collateral in an amount less than the Market Value of the Loaned Securities, Lender should consider carefully the credit, insolvency, liquidity, regulatory capital and other implications of such a determination.

Security Interest in Collateral.

Section 4.2 provides that Borrower grants Lender a security interest in the Collateral transferred by Borrower. The Collateral serves as security for Borrower's obligations in respect of the Loan to which it relates and any other obligations of Borrower to Lender under the Agreement. Unless Lender is a Broker-Dealer, it must segregate Collateral from other securities and assets in its possession. Lender may, however, invest any cash Collateral at its own risk. Section 4.2 additionally provides that Lender may Retransfer the Collateral only (i) if Lender is a Broker-Dealer or (ii) in the event of a Default by Borrower.

Return of Collateral.

Section 4.3 obligates Lender to return the Collateral (as adjusted under the mark-to-market provisions of Section 9) upon Borrower's return of the Loaned Securities at the termination of a Loan pursuant to Section 6.2, except as otherwise provided in the Agreement. At the initiation of a transaction, if one party transfers Collateral or Loaned Securities but the other party fails to make a reciprocal transfer, Section 4.4 provides that the first party will have the absolute right to the return of its Collateral or Loaned Securities, as the case may be.

Substitution of Collateral.

Section 4.5 provides that Borrower may, upon reasonable notice to Lender (taking into account all relevant factors, including industry practice, the type of Collateral substituted and the applicable method of transfer), substitute Collateral for Collateral securing any Loan or Loans. Substitution is only permitted, however, if (i) upon substitution the Market Value of all the Collateral for Loans in which the party substituting such Collateral is acting as Borrower is at least equal to the Margin Percentage of the Market Value of the Loaned Securities and (ii) the substituted Collateral falls within the categories of acceptable Collateral agreed upon by the parties prior to the Loan. Parties that wish to accept other types of Collateral not agreed upon prior to the Loan may, of course, subsequently agree in writing that such other types of Collateral are acceptable in substitution.

The Agreement does not specifically address the impact of the expansion of the types of Collateral permitted in securities lending transactions on Borrower's right to substitute Collateral. As discussed in greater detail below, if Lender has the right to Retransfer Collateral under the Agreement, Lender may require more than one Business Day to purchase or otherwise obtain Collateral for delivery to Borrower in the event Borrower requests substitution.

Parties using the Agreement should consult their legal and accounting advisors to determine the tax and accounting consequences of eliminating or restricting Borrower's right of substitution in connection with any Loan, and particularly in connection with Term Loans for which Borrower does not have a permitted purpose. Parties using the Agreement in connection with any other securities lending documentation should also ensure that Lender is given sufficient notice and opportunity to purchase or otherwise obtain Collateral for delivery to Borrower in the event Borrower requests substitution.

Letters of Credit.

Section 4.6 requires Borrower, prior to the Extension Deadline for any letters of credit supporting its obligations under the Agreement, to obtain extensions of such letters of credit or to provide substitute letters of credit in the appropriate amounts. The Agreement defines "Extension Deadline" to mean the Cutoff Time on the Business Day preceding the day on which the letter of credit expires, although the parties may provide an alternative definition in Schedule B.

Section 5: Fees for Loans.

Section 5.1 sets forth a framework in which the parties can agree upon fees consistent with common practice in the securities lending market. The parties must specify the actual fees themselves and may choose to do so in Schedule B. Consistent with market practice, the Agreement has been revised to provide that the Loan Fees for all Loans secured by Collateral other than cash (including Loans of Government Securities) will be calculated based on the aggregate Market Value of the Loaned Securities.

Section 5.2 specifies the date upon which such fees are due. Section 5.2, as revised, requires the payment of fees incurred with respect to a Loan of Government Securities upon termination of such Loan and at such other times, if any, as may be customary in accordance with market practice.

> ***Possible Use of Schedule B:*** Parties to a Loan may wish to use Schedule B to incorporate any number of modifications to the fee provisions of the Agreement commonly used by market participants. For example:
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> - To encourage Lender not to recall Loaned Securities prematurely, a number of market participants reportedly use variable fee schedules under which the Loan Fee or Cash Collateral Fee is adjusted according to an established schedule while the Loan remains outstanding.
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> - To compensate Lender for making Loaned Securities available on the commencement date of a Loan, some securities lending agreements provide that Lender is entitled to receive a commitment fee if Borrower elects not to borrow the Loaned Securities on the commencement date.

The parties may wish to consider what supplemental provisions, if any, should be included in Schedule B or otherwise to address potential withholding tax issues. In general, however, it is anticipated that parties will seek to avoid entering into transactions where a withholding tax might arise.

Section 6: Termination of the Loan.

Section 6.1 provides that either party may terminate a Loan upon sufficient notice to the other party so that the other party may return the Loaned Securities or Collateral, as the case may be. 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 that is no earlier than the standard settlement date that would apply to a purchase or sale of the Loaned Securities. For example, if the standard settlement cycle that would apply to the purchase or sale of a Loaned Security is three business days, Lender must provide three business days' notice to Borrower before termination of a Loan with respect to that security. Likewise, Borrower may terminate a Loan on a termination date established by notice to Lender that is no earlier than the standard settlement date that would apply to a purchase or sale of non-cash Collateral. If the Collateral in respect of a Loan consists of cash or Government Securities or Lender is not permitted to Retransfer Collateral, however, Borrower may terminate such Loan on any Business Day by giving notice to Lender before the Cutoff Time on the same day. The Agreement has been revised to refer to the "purchase or sale" of the Loaned Securities or non-cash Collateral, rather than "trades" of the Loaned Securities or non-cash Collateral, solely for purposes of clarity and without any intended substantive effect.

The parties should note that, unless otherwise agreed, the standard settlement date that would apply to purchases and sales of Loaned Securities and Collateral (other than Government Securities) is the third Business Day following the termination notice. The parties should carefully consider the implications of any delays necessitated by the use of different types of Collateral in connection with Loans where Borrower is borrowing the Loaned Securities for a permitted purpose, especially in circumstances where Lender is engaged in conduit lending of customer securities.

> ***Possible Use of Schedule B:*** Parties may wish to consider whether to use the optional language in Schedule B that provides that the standard settlement date that would apply to a purchase or sale of Foreign Securities shall be the standard settlement date that would apply to a purchase or sale of such Securities entered into in the principal market for such Securities. Although parties may wish to extend the notification period with respect to Foreign Securities or other Securities with a longer settlement cycle, they generally should not do so without consulting with their tax and other advisors. In particular, parties should consider whether, in light of certain tax considerations under the Internal Revenue Code and accounting considerations under U.S. GAAP (as well as ERISA considerations, where applicable), they may wish to retain the right to terminate any Loan within five Business Days.

Section 6.2 provides that Borrower shall transfer the Loaned Securities to Lender on or before the Cutoff Time on the date a Loan is terminated, provided that Lender transfers the Collateral securing the Loan to Borrower in accordance with Section 4.3.

Section 7: Rights in Respect of the Loaned Securities and Collateral.

Section 7.1 provides that, during the term of the Loan, Borrower has all incidents of ownership with respect to the Loaned Securities, including the right to transfer the Loaned Securities to others. Lender waives the right to vote or provide consent or take any similar action with respect to the Loaned Securities if the record date or deadline for such action falls during the term of the

Loan. Borrower's rights under this Section are limited by Section 8, however, under which Lender retains the right to Distributions on or in respect of the Loaned Securities – including, as noted below, the right to receive any cash or other consideration paid or provided by the issuer of such Security in exchange for any vote, consent or the taking of any similar action during the term of the Loan.

Similarly, Section 7.2 provides that, if Lender has the right to Retransfer the Collateral under the Agreement, Borrower waives all rights to vote or provide consent or take any similar action with respect to the Collateral until Lender is required to return the Collateral (*e.g.*, upon termination of a Loan or pursuant to any substitution, mark-to-market or similar provisions in the Agreement). Parties may wish to amend this Section to address particular transactions in which the transfer of voting or similar rights is not possible or desirable. Parties should also consider the effect that any covenants of Lender the parties may wish to adopt regarding the exercise of voting or similar rights with respect to the Collateral may have from a corporate law and governance perspective and on whether Lender has a perfected security interest in the Collateral under applicable law.

Section 8: Distributions.

Sections 8.1 and 8.3 provide that Lender and Borrower are each entitled to receive all Distributions on or in respect of the Loaned Securities and Collateral, respectively, to the full extent that they would be so entitled if the Loan had not been made. Sections 8.2 and 8.4 provide that each party is obligated to transfer to the other party (so long as the other party is not in Default) cash in the amount of any cash Distribution on the Loaned Securities or Collateral, as the case may be, which the other party is entitled to receive. Section 8.2 provides that non-cash Distributions that Lender is entitled to receive on the Loaned Securities are added to the Loaned Securities unless the Loan has terminated, in which case they are to be transferred to Lender, while Section 8.4 provides that non-cash Distributions that Borrower is entitled to receive on the Collateral are added to the Collateral until each Loan secured by such Collateral has terminated, in which case they are to be transferred to Borrower.

All Distributions are deemed to be made on the date of actual distribution – *i.e.*, the date cash Distributions are paid or non-cash Distributions are transferred to holders of the Loaned Securities or Collateral, as the case may be. In certain situations, an issuer may declare a Distribution as of a specified record date even though the cash or securities that are the subject of the Distribution may not be paid or transferred for a significant period of time thereafter. The parties may wish to address in Schedule B the impact of such practices on the Market Value of Loaned Securities or Collateral.

The new defined term "Distribution" encompasses all economic benefits derived from Loaned Securities or Collateral, as the case may be, to which Lender or Borrower is entitled during the term of a Loan. In particular, the term Distribution includes any cash or other consideration paid or provided by the issuer of a Security in exchange for any vote, consent or the taking of any similar action in respect of such Security (regardless of whether the record date for such vote, consent or other action falls during the term of the Loan). The Associations believe that the ultimate Borrower of a Loaned Security has the obligation to make any and all such payments to Lender – even if Borrower did not possess the security on the record date and consequently did not have the right to exercise such voting, consent or other rights. Likewise, in the event that the holder of a Loaned Security is entitled to elect the type of distribution to be received from two or more alternatives, the definition of the term "Distribution" provides that such election shall be made by Lender.

> ***Possible Use of Schedule B:*** Parties may wish to use the optional language in Schedule B providing that they agree to comply with any procedures for allocating economic benefits in respect of Loaned Securities and Collateral established by the Associations.

Section 8.5 provides for "gross-up" payments whenever a party obligated to make a Distribution payment is required to withhold Tax on the payment. In general, the party entitled to receive a Distribution payment is to be made whole to the extent that any Tax withheld on the payment exceeds the amount that would have been withheld if the party had received the Distribution directly.

The Agreement does not include any other provisions specifically addressing cross-border tax issues. Parties should consult with their tax advisors regarding the appropriate tax treatment of Loans involving Collateral other than traditional securities loan collateral and the potential application of withholding tax to payments made thereunder or to Distributions received on Collateral, particularly where the related Loans involve non-U.S. securities or where such parties include non-U.S. persons.

> ***Possible Uses of Schedule B:*** Under Section 8.5(d), each party is deemed to represent that, as of the commencement of any Loan, no Tax would be imposed on it for 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. Parties, particularly foreign parties, should be aware of this deemed representation and should specify, in Schedule B or elsewhere, any Tax obligations known to be applicable to cash Distributions on any Loaned Securities or Collateral.
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> In addition, the provisions of the Agreement governing cash Distributions do not currently deal with the allocation of potential economic losses resulting from Lender's ineligibility for the *avoir fiscal* (or any other tax credit that would have been available to Lender had it not lent the Loaned Securities). The parties may wish to consider drafting appropriate provisions in Schedule B or otherwise.

Section 8.6 provides that if a transfer of a Distribution on the Loaned Securities would give rise to a Margin Excess (*i.e.*, the Market Value of all Collateral for Loans to Borrower would be greater than the Margin Percentage of the Market Value of the outstanding Loaned Securities subject to such Loans) or if a transfer of a Distribution on Collateral would give rise to a Margin Deficit (*i.e.*, the Market Value of all Collateral for Loans by Lender would be less than the Margin Percentage of the Market Value of the outstanding Loaned Securities subject to such Loans), the party that otherwise would have been required to make such transfer shall, instead, credit the other party's account by the amount of the Distribution.

Section 9: Mark to Market.

Pursuant to Exchange Act Rule 15c3-3(b)(3)(iii), a Broker-Dealer acting as Borrower must, if borrowing Securities from a Customer, daily mark each Loan to market and maintain Collateral with a Market Value equal to at least 100% of the value of the Loaned Securities (PTE 81-6 similarly requires Borrower to mark to market daily each Loan involving Plan assets). Section 9.1, which implements these requirements, does not require notice from or any other action by Lender and applies regardless of any other agreements between the parties regarding the adequacy of Collateral.

Sections 9.2 and 9.3 establish more general mark-to-market rights for both Lender and Borrower. In contrast to Section 9.1, these two Sections provide for marking to market based on the applicable Margin Percentage agreed upon by the parties. Further, neither Borrower nor Lender is required to "self-mark" under Sections 9.2 and 9.3; instead, each party's obligation to eliminate a Margin Deficit or Margin Excess arises only after the other party has given appropriate notice as specified in the Agreement. Margin Excess and Margin Deficit are to be calculated on an aggregate basis, unless the parties agree otherwise.

Section 9.4 expressly states that the parties may agree, with respect to one or more Loans, to mark to market the Loaned Securities and Collateral or exercise margin rights on a Loan-by-Loan basis. Section 9.5 recognizes that some parties may prefer to agree beforehand upon a minimum dollar or percentage threshold below which margin calls will not be permitted.

> ***Possible Use of Schedule B:*** Additional margin provisions deemed necessary by the parties, such as specific Margin Notice Deadlines, may be included in Schedule B. The parties may also wish to modify the mark-to-market provisions of the Agreement, through supplemental provisions to Schedule B or otherwise, to minimize counterparty exposure during volatile market conditions. For example, the parties may wish to consider whether to adjust the Margin Percentage during extraordinary market conditions where either (i) the last reported price of a security deviates by more than an agreed percentage from the previous day's closing price, or (ii) the current Market Value of a security (as determined by the last reported price) deviates by more than a specified dollar threshold from the previous day's Market Value.

New Section 9.6 clarifies timing issues arising under the mark-to-market provisions by establishing a specific "Margin Notice Deadline" for same day satisfaction of margin calls. If notice of the margin call is given at or before the Margin Notice Deadline, the party receiving such notice must satisfy its mark-to-market obligation no later than the Close of Business on the day on which notice is given (if Collateral may be transferred on such day). If the Margin Notice Deadline is not met, the party receiving such notice has until the Close of Business on the next day following such notice on which Collateral may be transferred.

Section 10: Representations.

Section 10 contains a number of general representations and warranties that are made by both parties, as well as certain specific representations and warranties made only by Borrower or Lender (special representations applicable to Loans involving assets of ERISA Plans are provided in Section 17). Parties may wish to consider adding other representations as appropriate, particularly in cases where Lender is a regulated institution.

General Representations.

Each party represents and warrants that it is authorized to engage in the Loans contemplated by the Agreement (Section 10.1), that it has not relied on the other party for any tax or accounting advice concerning the Agreement (Section 10.2), and that it acts for its own account unless it has given notice to the contrary in writing and agrees, pursuant to Section 11.1(b), to complete and comply with the provisions of Annex I (which sets forth the terms and conditions under which an Agent Borrower or Lender may act on behalf of one or more Principals) (Section 10.3).

In addition, Borrower represents and warrants that it is empowered to grant a first priority security interest in the Collateral (Section 10.4), and Lender represents and warrants that it has or will have the right to transfer the Loaned Securities (Section 10.6), on the commencement date.

To conform more closely to the representations made by the parties in the Associations' other master agreements, the Agreement, as revised, no longer requires each party to represent that the execution, delivery and performance of the Agreement and each Loan by it will comply with applicable laws and regulations (including those of applicable regulatory and self-regulatory organizations).

> ***Possible Use of Schedule B:*** The parties may wish to use the more expansive "no-reliance" representations set forth in the Optional Provisions for Schedule B. The absence of these representations in Schedule B, however, should not be construed to imply the existence of any particular relationship between the parties.
>
> Likewise, the parties may wish to incorporate the optional representation set forth in Schedule B regarding securities subject to restrictions on transfers under the Securities Act or otherwise (*e.g.*, "control" or "restricted" securities). The optional representation provides that Loaned Securities are not subject to restrictions on transfer unless any such restrictions are disclosed by the transferor (who, at the time of the transfer, is in a better position to make the relevant determinations regarding the Securities transferred) and agreed to by the parties. Parties may engage in Loans involving "control" or "restricted" Securities by agreeing that the representations shall not apply and by making such other representations or covenants as may be appropriate.

Permitted Purpose.

In Section 10.5(a), as revised, Borrower represents and warrants that it or the person to whom it relends the Loaned Securities is borrowing or will borrow any Loaned Securities that are Equity Securities for purposes permitted by Regulation T – *i.e.*, for the purpose of making delivery in the case of short sales, fails to receive securities, or similar circumstances, as described in Section 220.10 of Regulation T. As a result of the Board's amendments to Regulation T, the Regulation T permitted purpose requirement no longer applies to securities other than Equity Securities.

Section 10.5(b) additionally provides that the parties may agree that Borrower shall not be deemed to represent that it is borrowing the Loaned Securities for a "permitted purpose," provided that Lender represents that it qualifies for an exemption from the margin requirements under the Exchange Act and the Board's margin regulations. The standard permitted purpose representation will continue to apply in those cases where the parties do not expressly agree to the contrary, although it is expected that the parties will identify whether individual Loans are or are not for a permitted purpose as a matter of practice.

To assist the parties in maintaining records to identify whether Loans are or are not for a permitted purpose, the Agreement provides that any agreement by the parties to eliminate the permitted purpose representation with respect to a Loan may, in accordance with Section 24.2, only be made (i) in writing, (ii) orally (if confirmed promptly in writing or through an electronic comparison system in which both Borrower and Lender are participants), or (iii) in such other manner as may be agreed by the parties in writing. ***Although the Agreement provides the parties with considerable flexibility to determine how to document non-permitted purpose Loans, parties are encouraged to keep adequate records of such Loans to ensure compliance with all applicable SEC and self-regulatory organization recordkeeping requirements.***

> ***Possible Use of Schedule B:*** To preserve the reciprocal nature of the Agreement without requiring each party to represent that it qualifies for an exemption from the margin rules,

> Section 10.5(b) provides that the party acting as Lender shall make such a representation only with respect to Loans in which the parties have agreed that Borrower need not have a permitted purpose. In lieu of this approach, the parties may prefer to include an explicit representation by each party that will be acting as Lender (in Schedule B or otherwise) that it qualifies for the statutory exemption. The following is a sample form of such representation:
>
>> Additional Representation. [Broker-dealer] represents and warrants that it is a member of a national securities exchange in the United States or registered as a broker or dealer with the U.S. Securities and Exchange Commission and either (A) a substantial portion of its business consists of transactions with persons other than brokers or dealers or (B) it is entering into each Loan involving an Equity Security in which it is acting as Lender to finance its activities as a market maker or an underwriter.
>
> In addition to or in lieu of the foregoing representation, Borrower may wish to obtain a representation from a broker-dealer acting as Lender that it is an "exempted borrower" within the meaning of Regulation T.

Lenders should note that, notwithstanding the exemptions afforded under the Exchange Act, in certain circumstances it may still be prudent to obtain a permitted purpose representation from a Borrower to whom it on-lends Equity Securities. For example, a Lender that borrows Securities from a party other than a broker-dealer (such as a bank or insurance company) may wish to obtain a permitted purpose representation from the party to whom it relends such Securities (including another broker-dealer) as a means of assuring the existence, where necessary, of a permitted purpose for the original borrowing. Lenders who engage in Loans without a permitted purpose, as well as Lenders who engage in conduit lending of customer securities, may wish to consider developing procedures that would identify those Loans for which they require a permitted purpose and that would ensure that any necessary representations are received from the Borrower in connection with such Loans.

The Agreement does not specifically address the applicability of the permitted purpose requirement in the context of a Loan involving two parties neither of which is subject to Regulation T (*e.g.*, a bank or foreign broker-dealer borrowing securities from a non-broker-dealer U.S. customer). The parties may wish to consider adopting additional provisions to accommodate such situations, especially in circumstances where a foreign broker-dealer is involved.

The Agreement does not expressly reflect the exception in Section 220.10(b) of Regulation T permitting a broker-dealer to relend any Loaned Security that is a foreign security to a foreign person for any purpose lawful in the country in which it is to be used, although it is contemplated that such transactions are included among the transactions "otherwise permitted pursuant to Regulation T" within the meaning of Section 10.5(a). Parties that intend to enter into such transactions may wish to ensure that such transactions are permissible under the terms of their securities lending documentation.

Section 11: Covenants.

Section 11.1 operates in conjunction with the representations in Section 10 and the provisions of Annex I to address issues of principal/agent liability. Section 11.1 provides explicitly that each party is liable as principal unless it executes and complies fully with the provisions of Annex I. Pursuant to Section 11.2, Borrower must, upon request, furnish Lender with its most recent publicly available financial statements.

To conform more closely to the format of the Associations' other master agreements, several provisions relating to the parties' understanding of the legal and regulatory treatment of Loans have been moved to a new Section 26.

Section 12: Events of Default.

The events of default specified in Section 12 (each, individually, a "Default") are designed to be broad, consistent with market practice in this respect, and have been revised to conform more closely to the Events of Default in the Associations' other master agreements. The events of Default in Section 12 also conform in substance to Rule 296 of the New York Stock Exchange, which sets forth certain required events of default in a securities lending agreement involving a member or member organization of the Exchange.

Under the Agreement, as revised, a non-defaulting party has the option of terminating a Loan immediately upon the occurrence of any Default, provided that it notifies the defaulting party of the exercise of its rights under the Agreement as promptly as practicable thereafter. This revision, which is based on a similar revision to the 1996 version of the Master Repurchase Agreement, makes clear that, while a non-defaulting party is required to give notice as promptly as practicable, its inability to do so (*e.g.*, as a result of a failure by the defaulting party to answer its telephones or maintain other lines of communication) will not preclude the immediate exercise of the non-defaulting party's rights.

> ***Possible Use of Schedule B.*** Section 12 has not generally been evoked under the May 1993 version of the Agreement to deal with "fails" that occur in the ordinary course of business. The parties may, however, wish to use the optional language in Schedule B that provides that the parties shall observe any buy-in procedures established by the Associations in the event of a "fail" to the extent that the non-defaulting party does not exercise its option to terminate all Loans under the Agreement.
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> In addition, the parties should consider the implications under Section 12 of any definition of "Close of Business" that they may adopt in Schedule B or otherwise (or which may apply in the absence of any agreement regarding such definition).

To conform more closely to the Events of Default in the Associations' other master agreements (*e.g.*, the Master Repurchase Agreement), the Agreement no longer provides that it shall be a Default if a party has been suspended or expelled from membership or participation in a self-regulatory organization, if a party has been suspended from dealing in securities by any applicable federal or state governmental authority, or if a party's license to conduct a material portion of its business has been withdrawn, suspended or revoked.

> ***Possible Use of Schedule B.*** Parties may wish to use the optional language in Schedule B to provide that such events will constitute a Default under the Agreement.

Section 13: Remedies.

Upon the occurrence of a Default, Sections 13.1 and 13.2 grant a non-defaulting party the right, in addition to any other rights arising under the Agreement and applicable law, (i) to purchase a like amount of Replacement Securities or Replacement Collateral to replace the Loaned Securities or Collateral it has transferred to a defaulting party, (ii) to take appropriate steps to sell any Collateral or a like amount of Loaned Securities it may hold, and (iii) to apply and set off

Collateral or Loaned Securities, and any proceeds thereof (including amounts drawn under a letter of credit supporting any Loan), against the cost of such Replacement Securities or Replacement Collateral and any other obligation of the defaulting party under the Agreement.

The defaulting party remains liable to the non-defaulting party for the difference, with interest thereon, between the cost of the Replacement Securities or Replacement Collateral (plus any other amounts due to the non-defaulting party) and the sales price received (or deemed received) by the non-defaulting party for the Collateral or Loaned Securities. As security for the defaulting party's obligation to pay such difference, the Agreement provides the non-defaulting party with a security interest in any property of the defaulting party then held by or for the non-defaulting party and a right of setoff with respect to such property and any other amounts payable by the non-defaulting party. At its discretion, the non-defaulting party may elect, in lieu of purchasing all or a portion of the Replacement Securities or Replacement Collateral or selling all or a portion of the Collateral or Loaned Securities, to be deemed to have made such purchase or sale on the terms specified in the Agreement.

Section 13.3, as revised, contains an express acknowledgment that, unless otherwise agreed by the parties, the assets subject to any Loan under the Agreement are instruments traded in a "recognized market." This express acknowledgment is consistent with market participants' understanding, as noted above, that they would have the right, upon the occurrence of an event of Default, to effect "deemed" purchases and sales of Loaned Securities and Collateral. Moreover, because the existence of an active securities lending market for a class of securities also tends to demonstrate the existence of a "recognized market," the presumption established by the Agreement (which applies absent an agreement to the contrary between the parties) is expected to conform to underlying market reality.

> ***Possible Use of Schedule B:*** The parties may wish to include the optional language in Schedule B setting forth the non-defaulting party's right to recover damages equal to the cost (including fees, expenses and commissions) of entering into replacement transactions and entering into or terminating hedge transactions. The optional language would make clear the non-defaulting party's right to recover any other loss, damage, cost or expense directly arising or resulting from the occurrence of an event of Default in respect of a Loan, regardless of whether the non-defaulting party enters into or terminates, as the case may be, any such replacement or hedge transaction.
>
> Section 13 provides that the rate of interest on certain amounts remaining due by the defaulting party shall be LIBOR with respect to Foreign Securities and the Federal Funds Rate with respect to any other Securities. Parties may wish to specify other rates of interest in Schedule B.

Section 14: Transfer Taxes.

Consistent with market practice, Section 14 obligates Borrower to pay any transfer taxes with respect to the transfer of Loaned Securities or Collateral.

Section 15: Transfers.

Section 15 sets forth the requirements for transfers of cash, securities, and other property under the Agreement and has been revised to reflect the new terminology of Revised Article 8 of the UCC without effecting any substantive changes to the method for transferring securities and other assets thereunder. Section 15.1 provides that all transfers of Loaned Securities or Collateral consisting of "financial assets" may be transferred by (i) physical delivery coupled with appropriate transfer powers, (ii) registration of an uncertificated security in the transferee's name by the issuer of such uncertificated security, (iii) the crediting of such financial assets to the "securities account" of the transferee at a Clearing Organization (the definition of which has been revised to refer to any "securities intermediary" agreed upon by the parties) or (iv) any other means agreed to by the parties.

Because a transferee on whose behalf a Security is credited in a securities account by a securities intermediary does not receive the underlying security, but instead acquires a "security entitlement" with respect to the security, Section 15.5 clarifies, for the avoidance of doubt, that references to "securities" throughout the Agreement include any "security entitlements" with respect thereto.

The parties should note that there are a variety of mechanisms pursuant to which transfers of Collateral consisting of Equity Securities may occur. The parties should consider how any particular transfer mechanism, through DTC or otherwise, will affect their rights, including with respect to the voting of the Collateral, the retransfer of Collateral and the receipt of any distributions on the Collateral. The parties should also consider the effect of any transfer option on the characterization of the Loan for purposes of applicable tax, bankruptcy, securities or other laws and on the priority of Lender's interest in the Collateral as against third parties under applicable law.

> ***Possible Use of Schedule B:*** The parties may wish to specify in Schedule B which methods of transfer are acceptable. The parties may also wish to develop country-specific provisions governing transfers in order to accomplish the objectives of this Section in accordance with applicable foreign law or regulation.

Section 16: Contractual Currency.

Section 16 defines the Contractual Currency in which payments are to be made. The party entitled to receive a payment may, at its option, accept payment in a currency other than the Contractual Currency, in which case Section 16 seeks to minimize the exchange risks to which the party receiving payment is subject. Payments made in any currency other than the Contractual Currency discharge the payor's payment obligation only to the extent of the amount of the Contractual Currency the recipient is able to purchase with the amount tendered in the other currency. Except in the event of a Default by the payee, the party making payment remains liable for any shortfalls in amounts due in the Contractual Currency, including shortfalls after any judgments or orders against that party in another currency have been converted to the Contractual Currency. If the amount in the Contractual Currency received upon conversion of the tendered currency exceeds the amount due, the recipient, except in the event of a Default by the payor, must refund the difference. The enforceability of these provisions will be subject to applicable law and judicial practice.

Section 17: ERISA.

The objectives of Section 17 are (i) to identify transactions raising potential ERISA concerns, (ii) in the case of any Loan involving ERISA Plan assets, to comply with PTE 81-6, unless the parties have determined that they wish to rely on another exemption or proceed without an exemption, and (iii) to provide other requirements appropriate to securities lending transactions involving ERISA plan assets.

Under Section 17.2, Borrower represents and warrants that neither it nor any affiliate has discretionary investment authority or control over, or renders investment advice regarding, the assets of the Plan involved in the Loan. As a practical matter, Lender has exclusive access to the information necessary to permit Borrower reasonably to determine its status with respect to investment control over the Plan (and compliance with PTE 81-6). Consequently, Lender agrees to identify to Borrower at the outset of the transaction any persons with such discretionary authority or control or rendering such investment advice with respect to the assets of the Plan involved in the Loan. In the event Lender fails to communicate and keep current such information, the representation and warranty in Section 17.2 is deemed to be made by Lender rather than Borrower.

Section 17.3 clarifies that Borrower must mark to market daily each Loan under the Agreement in the case of any Loan involving Plan assets. Section 17.4 sets forth the additional conditions established by PTE 81-6 for securities loans involving Plan assets.

Section 18: Single Agreement.

Section 18 establishes that all Loans made under the Agreement are part of the same contractual arrangement and that payments and transfers under all Loans may be netted. In addition, default in the performance of any obligation under any Loan constitutes default under all Loans under the Agreement, and the non-defaulting party may set off claims and apply property held by it in respect of any Loan against obligations owed to it in respect of any other Loan with the defaulting party. It is contemplated that each party will still retain all other applicable legal remedies (*e.g.*, damages as well as any common law or other setoff rights) against a defaulting party. Specific legal advice should always be sought in regard to the availability of a right of setoff, particularly in regard to an insolvent foreign entity.

Section 19: Applicable Law.

The choice of New York law in Section 19 is based upon a determination that, among the jurisdictions in the United States, the greatest number of securities lending agreements occur within New York. New York also has an extensive body of commercial and securities law and by statute has indicated that it will respect the parties' contractual choice of law in transactions involving an amount of at least $250,000 (see New York General Obligations Law, § 5-1401), thus providing market participants with certainty regarding applicable law.

Sections 20 to 22: Waiver, Survival of Remedies, Notices and Other Communications.

Sections 20 to 22 contain standard provisions regarding forbearance by a party, survival of remedies, and notice procedures typically included in securities lending agreements.

The revisions to Section 22 are intended to conform the notice provisions of the Agreement to the provisions of the Associations' other standard agreements and to the recommendations of the Policy Group. In particular, Section 22 provides for notices to be given by telephone, mail, facsimile, e-mail, electronic message, telegraph, messenger or otherwise, and for such notices to be deemed effective on the day on which received or, if not received, when delivery was attempted in good faith. Telephonic notice must be confirmed in writing and will be effective only if at least one other specifically listed means of notice has been attempted. Parties should, in providing notice, give due consideration to evidentiary issues that may apply to such notice in any judicial proceedings.

As revised, the Agreement no longer provides that a notice received on a date on which the recipient is closed for business shall be deemed received on the next day on which such party is open for business. As noted in the discussion of Section 25 (Definitions) below, the parties should consider adopting appropriate definitions of "Cutoff Time," "Margin Notice Deadline" and "Close of Business," in Schedule B or otherwise, where these terms may not be clearly defined by market practice or where ambiguities may otherwise arise – *e.g.*, because parties are located in different time zones or jurisdictions – as to the days and times at which parties must satisfy notice or delivery deadlines in the Agreement.

In addition, the parties should specify proper addresses for notice in Schedule A, and may wish to provide for additional instructions for wire transactions or other deliveries.

Section 23: Submission to Jurisdiction.

Submission to the jurisdiction of state and federal courts located in New York City, as provided in Section 23, is designed to address in particular the possibility that foreign parties using the Agreement might not otherwise be subject to such jurisdiction. The submission to jurisdiction is non-exclusive, so that a party may initiate proceeding in any other court of competent jurisdiction.

Section 24: Miscellaneous.

Section 24.1 contains a variety of provisions customarily contained in agreements of this type. Assignment is not permitted without the prior written consent of the non-assigning party, and any attempted assignment without the consent of the other party is null and void. Although the Agreement may be terminated by written notice, outstanding obligations under the Agreement survive under this Section and under Section 21.

As noted above, Section 24.2 requires that certain agreements between the parties – such as an agreement to set a Margin Percentage less than 100% or to have Lender represent that it is entitled to an exemption from the permitted purpose requirements of Regulation T – must be made (i) in writing, (ii) orally (if confirmed promptly in writing or through a system such as Loanet), or (iii) in such other manner as may be agreed by the parties in writing.

Section 25: Definitions.

Section 25 defines the principal terms used but not elsewhere defined in the Agreement.

Business Day.

The term "Business Day" is generally defined on a Loan-by-Loan basis, with a Business Day being a day on which regular trading occurs in the principal market for the Loaned Securities subject to such Loan. This general rule is subject to two specific qualifications relating to market valuations (Section 25.38 and Annex II) and mark-to-market obligations (Section 9). Because market valuations can most reliably be determined on days on which there is trading activity, a Business Day is defined for purposes of determining the Market Value of Securities under the Agreement as any day on which regular trading occurs in the principal market for the Securities whose value is being determined. For purposes of mark-to-market valuations under Section 9, it is important to measure any Margin Deficit or Margin Excess that results from fluctuations in the value of either the Loaned Securities or Collateral. Thus, with respect to Section 9, Business Day means any day on which regular trading occurs in the principal market for any Loaned Securities or for any securities Collateral under any outstanding Loan. In the context of Loaned Securities or securities Collateral that do not trade regularly, the parties may wish to consider adopting a different definition of "Business Day."

In addition, to clarify the timing of Borrower's and Lender's respective obligations to eliminate a Margin Deficit or Margin Excess, "next Business Day" is defined for purposes of Section 9 as the next day on which Collateral could be transferred to the other party in accordance with the Agreement. Saturdays and Sundays are never considered Business Days.

Clearing Organization.

The definition of "Clearing Organization," as revised, refers to the newly defined term "securities intermediary" in the UCC.

Close of Business.

The term "Close of Business," which was used but not defined in the May 1993 version of the Agreement, has been defined as the time agreed by the parties or, in the absence of any such agreement, the time determined in accordance with market practice. In considering the appropriate definition for this term, parties should note in particular the use of the term in Section 6 (termination of a Loan), Section 9 (mark-to-market obligations) and Section 12 (notice of certain potential Defaults) of the Agreement as well as Section 2 of Annex I (identification of Principals). Parties should consider defining the term "Close of Business" by reference to a particular time zone or location where appropriate to avoid any ambiguity regarding the time intended.

Close of Trading.

The new term "Close of Trading" has been defined to reflect recent initiatives by U.S. equity markets to extend trading hours. The price or bid quotation of a security at the Close of Trading is intended to refer to the last sale price or last bid quotation published by the principal market for the security at the end of the primary trading session for the security.

Collateral.

The definition of "Collateral" includes (i) any property which the parties agree will be acceptable Collateral before engaging in a Loan and which is transferred to Lender pursuant to Section 4 or 9, (ii) any property properly substituted for such Collateral, (iii) all accounts in which such property is deposited and all securities in which any cash collateral is invested, and (iv) any proceeds of the above. The definition has been revised to accommodate Collateral consisting of securities other than traditional securities loan collateral (*i.e.*, in general, U.S. Treasuries and certain other U.S. government obligations, certain foreign securities money market instruments and letters of credit from qualifying banks). As noted above, a Loan that is not subject to Exchange Act Rule 15c3-3 and that is not conducted in accordance with PTE 81-6 may generally be secured with Collateral that does not fall within the specific categories enumerated in each of those rules (*e.g.*, Equity Securities). The definition of "Collateral" under the Agreement has therefore been expanded to include any new or different securities exchanged for any securities that are Collateral (*e.g.*, through a recapitalization or other corporate action). This approach is consistent with the treatment of such exchanges with respect to Loaned Securities.

No provisions have been drafted to address the acceptability of such additional types of Collateral, since most parties identify the categories of eligible Collateral in a non-standard schedule or otherwise outside the provisions in the main body of the Agreement. Nevertheless, parties seeking, in appropriate circumstances, to use Collateral of a type other than those previously required by Regulation T should consider whether any modifications to their documentation are needed to address this possibility.

Before agreeing to accept Collateral that does not fall within the categories previously enumerated in Regulation T, Lenders should consider carefully the credit, insolvency, liquidity, regulatory capital and other implications of such a determination.

For purposes of return of Collateral by Lender or purchase or sale of securities pursuant to the remedies provisions of the Agreement, Collateral includes securities of the same issuer, class, and quantity as the Collateral initially transferred by Borrower to Lender (as adjusted in the event of any corporate action, as described above). For definitional purposes only, letters of credit mutually acceptable to Borrower and Lender are treated as Collateral, although they are a form of credit support that is not "collateral" under commercial or bankruptcy law. The definition has also been modified to expressly recognize, as required by Exchange Act Rule 15c3-3, that if Lender is a Customer, "Collateral" shall be limited to cash, U.S. Treasury bills and notes, irrevocable letters of credit issued by a bank, and any other property permitted to serve as collateral securing a loan of securities pursuant to exemptive, interpretive or no-action relief or otherwise.

Cutoff Time.

As revised, the Agreement uses the term "Cutoff Time" to establish the time by which certain notices or deliveries must occur, including in Section 3.1 (initiation of Loan), Section 4.3 (transfers of Collateral), Section 6 (termination of a Loan), Section 12 (cure of certain potential Defaults), and Section 25.22 (Extension Deadline). The term is also used in the Additional Events of Default optional provision in Schedule B. Parties should consider defining this term by reference to a particular time zone or location where appropriate.

Distribution.

The definition of "Distribution" is intended to refer to all economic benefits derived from a Loaned Security or Collateral not otherwise received by Lender or Borrower, respectively. As noted above, the Distributions which a party is entitled to receive include consent payments to the record holder of a security during the term of a Loan (although each party waives the right to provide any consent with respect to the Loaned Securities or Collateral during the term of the Loan).

Foreign Securities.

The definition of "Foreign Securities" turns on the location where Securities are principally cleared and settled. This approach is designed to facilitate the practical application of the definition by permitting the parties readily to determine whether particular Securities are "Foreign Securities."

LIBOR.

The definition of "LIBOR" is a standard definition, based on the Reuters Screen LIBO page.

> ***Possible Use of Schedule B:*** If the parties wish to use the reference bank method of calculating LIBOR, they may amend the LIBOR definition by using Schedule B. In addition, when using a Contractual Currency other than U.S. Dollars, the parties may wish to add provisions to Schedule B based on a LIBOR rate in respect of that currency.

Margin Notice Deadline.

The "Margin Notice Deadline" is defined as the time agreed to by the parties as the deadline for giving notice requiring same-day satisfaction of their mark-to-market obligations under Sections

9.2 and 9.3 of the Agreement. In the absence of an agreement by the parties, the deadline is established in accordance with market practice. In reviewing the "Margin Notice Deadline," parties should consider establishing that time by reference to a particular time zone or location where appropriate.

Margin Percentage.

The definition of "Margin Percentage" reflects the recent amendments to the Exchange Act and Regulation T, described above, permitting the parties to agree that the Market Value of the Collateral securing a Loan may be less than 100% of the Market Value of the Loaned Securities under certain circumstances.

Market Value.

The definition of "Market Value," for purposes of the mark-to-market provisions of the Agreement, generally refers to the market valuation provisions of a new Annex II (discussed below). Annex II is modeled on the market valuation provisions of Section 15 of the May 1993 version of the Agreement and is intended to give the parties greater flexibility in determining how Securities should be valued.

Securities.

The new term "Securities" has been defined to permit parties to agree to broaden the scope of assets that may be the subject of a Loan under the Agreement, as discussed above.

Section 26: Intent

Sections 26.1 to 26.5 seek to assist the parties in obtaining the benefits of certain Bankruptcy Code and Federal Deposit Insurance Act ("FDIA") protections applicable to participants in securities lending transactions.

Parties entering into the Agreement with an insured depository institution should be aware of the written agreement and related requirements under sections 11(d)(9), 11(n)(4)(1), and 13(e) of the FDIA that may apply in the event that the Federal Deposit Insurance Corporation (the "FDIC") or the Resolution Trust Corporation (the "RTC") is appointed conservator or receiver. In this regard, the FDIC and the RTC have issued policy statements under which a "qualified financial contract" (such as a loan of securities) will be deemed to satisfy the FDIA's written agreement and related requirements if (i) it is evidenced by a writing that is sent reasonably contemporaneously with the parties' agreement to enter into the transaction, (ii) the counterparty relies in good faith on evidence of the insured institutions' corporate authority to enter into the transactions, which evidence may consist of a written representation in a master agreement by a vice president or more senior officer of the institution, and (iii) the counterparty maintains copies of records establishing the existence of the writing and the evidence of authority. *See* FDIC and RTC, "Statements of Policy on Qualified Financial Contracts" (Dec. 12, 1989). In view of these policy statements, it would be appropriate at a minimum for a party to require, when using the Agreement with a federally insured depository institution, that the Agreement be executed by an officer who is at least a full vice president of that institution.

In light of the expanded scope of the assets that may be covered by the Agreement, technical changes been made in revised Section 26 to provide that a Loan is not intended to fall within the Bankruptcy Code definition of a "securities contract," or the FDIA definition of a "securities contract" or "qualified financial contract," if the assets subject to such Loan would render such definitions inapplicable.

Under Section 26.6, the parties agree that Loans are not "exchange contracts" and are not governed by buy-in or similar rules of any self-regulatory organization.

> ***Possible Use of Schedule B:*** As noted above, the parties may wish to use the optional language in Schedule B that provides that the parties shall comply with any uniform buy-in procedures established by the Associations.

Section 27: Disclosure Relating to Certain Federal Protections

Section 27.1 provides the notice required by Exchange Act Rule 15c3-3(b)(3)(iv), governing Borrowers who are broker-dealers, stating that the provisions of the Securities Investor Protection Act of 1974 may not protect Lender with respect to Loaned Securities.

Section 27.2 provides express notice, as required by a 1989 SEC no-action letter, that the Collateral for a Loan may include, as permitted by applicable law, some Government Securities that are not backed by the full faith and credit of the U.S. Government (for example, securities issued or guaranteed by the Federal Home Loan Mortgage Corporation (Freddie Mac) or the Federal National Mortgage Association (Fannie Mae)). *See* Public Securities Association (available March 2, 1989). *See also* Exchange Act Release No. 26,608 (Mar. 8, 1989) (proposed amendment to Exchange Act Rule 15c3-3(b)(3)(iii) specifically permitting the use of certain agency securities as collateral).

Additional Issues.

Stock-for-Stock Loans. Parties contemplating Loans involving the borrowing of Equity Securities collateralized by Equity Securities should consider carefully (and seek appropriate advice from their legal advisors regarding) the implications of such Loans under the SEC's Net Capital Rule and Customer Protection Rule, Rules 15c3-1 and 15c3-3 under the Exchange Act, respectively.

Impossibility and "Act of God" Provisions. The Agreement does not include any impossibility or "Act of God" provisions or otherwise address parties' rights, obligations and allocation of risk in circumstances where government-imposed controls or other events make it impossible to transfer Loaned Securities or Collateral or any other amounts due thereunder. Consequently, a party that is unable to return Loaned Securities or Collateral upon demand due to the imposition of government controls would be in Default under Section 12.

In light of the recent market experience, the Policy Group has recommended that documentation for privately negotiated over-the-counter transactions should specify the consequences of events such as changes in law, changes in tax rules, regulatory changes, or governmental actions that render performance substantially more difficult or expensive or introduce substantial uncertainty. The Associations support the Policy Group's recommendations and intend to develop model language incorporating, to the extent appropriate, any specific approaches developed by the various industry working groups currently considering the issue.

Other Issues. The parties should consider carefully (and seek appropriate advice from their legal advisors regarding) any additional regulatory issues that may arise in connection with Loans in which Borrower does not have a permitted purpose and transfers to Lender of Collateral consisting of Equity Securities, especially where Lender does not retransfer the Collateral.

Guidance Notes for Annexes

Designation of Annexes to Form a Part of the Agreement

Parties should consider whether to require separate signatures on each Annex to help prove, as an evidentiary matter, that a particular party has entered into a particular Annex.

Annex I: Party Acting as Agent

Annex I addresses a number of practical and legal issues in the context of a securities loan relationship with a party acting as Agent for one or more Principals. For example, a bank may be a party to the Agreement as agent lender, or a broker-dealer may be a party to the Agreement as agent borrower for one or more customers (*e.g.*, in a prime brokerage arrangement). In light of the potential ambiguity regarding when an Agent is liable for its Principals' obligations, the central objective of Annex I is to assist parties entering into securities loan transactions in determining who, as between the Agent and its Principals, is liable for performance under the Agreement. Annex I, as originally published in May 1993, was prepared in consultation with a number of Agent banks and representatives of Robert Morris Associates, but no endorsement of Annex I by any of these entities is implied.

Section 1: Additional Representations and Warranties

Under Section 1, the party acting as Agent represents and warrants, in addition to making the representations and warranties in the Agreement, that its Principal has authorized it to execute and deliver the Agreement, to enter into Loans and to perform its obligations thereunder. This is a standard representation in agency transactions in the securities markets generally.

Section 2: Identification of Principals

Pursuant to this Section, Agent agrees to provide the other party, prior to any Loan under the Agreement, with a written list of Principals for whom it intends to act as Agent and to inform the other party, no later than the Close of Business on the next Business Day after a Loan is agreed upon, of the specific Principal or Principals for whom it is acting. Such disclosure protects both the party acting as Agent and the other party to the Agreement. The other party comes to "know its counterparty" (a particularly important fact in the event the counterparty is an ERISA Plan). Agent's identification of its Principal or Principals also plays an important role in achieving a release of Agent from liability under Section 11.1 of the Agreement and traditional common law rules governing transactions by an Agent on behalf of undisclosed or partially disclosed Principals. If Agent fails to identify the Principal or Principals prior to the time provided, or if the other party determines that the Principal or Principals so identified are not acceptable, the other party may reject and rescind the Loan. In this event, the parties must retransfer any Collateral or Loaned Securities that have changed hands. To the extent that either party has performed under the Loan prior to such rejection, that party is entitled to any applicable fees or other amounts that would otherwise have been payable in respect of such performance.

The Associations understand that some securities lending Agents do not currently identify their Principals on a Loan-by-Loan basis and may not wish to do so in the future. In such cases, the parties may wish to modify Annex I, through Schedule B, to reflect their agreement not to identify Principals on a Loan-by-Loan basis. This determination, however, will have important potential credit (and ERISA) implications. In particular, if Agent does not identify its Principals on a Loan-by-Loan basis, the other party effectively must assume that Agent is acting for the least creditworthy Principal on the list of permissible Principals agreed upon in advance. In addition, the parties must agree upon how the mark-to-market obligations and the rights of the parties in the event of a Default will be implemented. (If a Default has occurred with respect to one Principal, can all Loans entered into with Agent be terminated? If not, should it not be made clear that all transactions will be marked to market on a Loan-by-Loan basis, since setoff rights might otherwise be adversely affected?) Parties that elect not to adopt the approach set forth in Section 2 of Annex I likely will find it highly desirable to address each of the foregoing issues, as well as related regulatory and legal concerns that may arise where Agent's Principals are not identified on a Loan-by-Loan basis.

Section 4(c) of Annex I, as discussed below, addresses these issues in cases where Agent agrees to identify its Principals on a Loan-by-Loan basis, but is not able or does not wish to inform the other party of the specific dollar amount of each Loan applicable to each Principal.

Section 3: Limitation of Agent's Liability

This Section sets forth the general rules limiting Agent's liability under the Agreement. Where Agent has, through compliance with the provisions of the Agreement, taken the steps necessary to permit the other party to assess the creditworthiness of its Principal or Principals, Agent's obligations do not include a guarantee of performance by its Principal or Principals, and the other party's remedies do not include a right of setoff with respect to any obligations between itself and Agent, acting for its own account.

Section 4: Multiple Principals

When an Agent acts on behalf of multiple Principals, the Agreement presumes that the Loans will be treated as multiple transactions on behalf of separate Principals, unless the parties agree in writing to treat the Loans as if they were transactions by a single Principal.

If the parties agree to treat the Loans as separate transactions, Agent must specify the portion of each Loan allocable to each Principal, the portion of any individual Loan allocable to each Principal shall be deemed a separate Loan under the Agreement, the mark-to-market obligations under the Agreement will be determined on a Loan-by-Loan basis (unless the parties agree to determine them on a Principal-by-Principal basis), and the remedies upon a Default will be determined as if Agent had entered into a separate Agreement with the other party on behalf of each of its Principals. Any transactions by Agent on behalf of separate Principals are marked to market on a Loan-by-Loan basis.

If the parties agree to treat Loans as if they were transactions by a single Principal, Agent must specify the names of the Principals (but not the portion of the Loan allocable to each Principal), the mark-to-market obligations under the Agreement will be determined on an aggregate basis for all Loans entered into by Agent on behalf of any Principal, and the remedies upon a Default will be determined as if all Principals were a single Lender or Borrower, as the case may be.

Section 5: Interpretation of Terms

This Section sets forth a general rule of construction for the terms "Borrower" and "Lender" in the Agreement in the context of agency transactions, subject to the limitation of an Agent's liability in

Section 3 of Annex I. This Section explicitly acknowledges that each Principal has the rights, responsibilities, privileges, and obligations of a "Borrower" or "Lender," as the case may be, that enters directly into Loans with the other party, and that Agent has been designated as the sole agent of each Principal for performance of such Principal's obligations to the other party and for receipt of performance by the other party of its obligations to such Principal. The terms "party" or "either party" are deemed to refer to both Agent and Principal, including, *inter alia,* in the context of Defaults.

Annex II: Market Value

Annex II establishes the procedures for determining the Market Value (as defined in the Agreement) of exchange-traded, over-the-counter, and Foreign Securities for all purposes under the Agreement (except the provisions governing Default). Unless otherwise agreed, the Market Value of a letter of credit is the undrawn amount thereof.

Annex II provides that the Market Value of fixed-income Securities (including Government Securities) traded in the over-the-counter market shall be determined in accordance with market practice, based on a price or quotation obtained from a generally recognized source agreed to by the parties. The parties are encouraged to agree upon appropriate procedures for determining the Market Value of such Securities prior to the commencement of the Loan.

All determinations of Market Value for purposes of Annex II include accrued interest (other than interest previously transferred to the other party) except in those limited cases where there is a contrary market practice. Determinations of Market Value under Annex II are generally made on the basis of the last sale, quotation, or bid (or other specified criteria) on the preceding Business Day.

> ***Possible Use of Schedule B:*** Some parties may wish to consider specifying other sources for Market Value, depending on, *e.g.*, the type of Securities they contemplate lending or other relevant regulatory or business concerns. In addition, the parties may wish to draft supplemental provisions for determining, for purposes of the parties' mark-to-market obligations, the Market Value of illiquid Securities (*e.g.*, emerging market debt, certain corporate debt) for which a bid quotation may not exist for an extended period of time. For example, supplemental provisions could be drafted that would:
>
> - Establish dispute resolution procedures similar to those in Paragraph 5 of the ISDA Credit Support Annex;
> - Require the parties to appoint a third-party calculation agent in the event of a dispute regarding the Market Value of a security; or
> - Require that disputes regarding market valuation be submitted to arbitration.

Annex III: Term Loans

Annex III establishes special terms and conditions for certain Term Loans, in which the parties agree that Lender will lend to Borrower a specific amount of Loaned Securities against a pledge of cash Collateral by Borrower until a scheduled Termination Date. The provisions of Annex III are designed to permit the parties to obtain the economic benefits of entering into Loans for a scheduled term. While the Annex preserves each party's right to terminate a Loan within the standard timeframes established by the Agreement, ***each party should consult with its own tax, legal and other advisors to ascertain whether use of the Annex may result in adverse tax and***

accounting consequences under the Internal Revenue Code and U.S. GAAP (as well as under ERISA, where applicable).

Section 1 provides that the provisions of the Annex shall apply to Loans of Equity Securities only if they are designated as Term Loans by the parties, either in a Confirmation executed by each party (in the case of an individual Loan), or by the written agreement of the parties in the Annex or in a Schedule to the Agreement (in the case of a class of Loans). In light of the widespread usage of Term Loans in the fixed-income securities lending markets, the Annex provides that, unless otherwise agreed by the parties, all Loans of Securities other than Equity Securities shall be Term Loans subject to the Annex. Parties may wish to modify the default rule in Schedule B, or designate additional classes of Loans that shall be Term Loans for purposes of the Annex.

Section 2 requires the parties to a Term Loan to confirm certain additional terms in the Confirmation required to be provided pursuant to the Agreement, and provides that each Term Loan shall be subject to all terms and conditions of the Agreement, including the right to terminate any Loan upon appropriate notice to the other party. Parties who rely on an electronic comparison system (such as Loanet) to confirm Term Loans should take care to ensure that all material terms of each Term Loan are confirmed and, where required, executed by each party. For example, some systems may not have fields for the entry of a Term Loan Amount separate from the field for Loaned Securities, or may not be programmed to compare other material terms of a Term Loan, such as the Termination Date. In such circumstances, parties may wish to consider whether an additional written confirmation should be provided.

Section 3 provides that, in the event either party exercises its right to terminate a Term Loan pursuant to the Agreement, the parties shall, unless otherwise agreed, use their best efforts to negotiate in good faith a "Replacement Loan." The terms of the Replacement Loan shall be identical to those of the terminated Loan (including the Cash Collateral Fee and scheduled Termination Date), except that the parties must agree upon the identity of the Loaned Securities that will be the subject of the Replacement Loan. The Replacement Loan will commence as soon as the parties have selected the Loaned Securities for the Replacement Loan.

Section 4 provides that, if the parties agree to enter into a Replacement Loan, Lender may treat the Collateral as Collateral for the Replacement Loan.

Section 5 provides that, if the parties fail to enter into a Replacement Loan for some or all of the Term Loan Amount, the party exercising its right to terminate a Term Loan shall pay a Breakage Fee to the non-terminating party with respect to that portion of the Term Loan Amount for which a Loan was not entered into and Lender shall transfer to Borrower Collateral for the Terminated Loan in accordance with and to the extent required under the Agreement. The parties may wish to specify a formula for computing the Breakage Fee in the Confirmation or otherwise.

In the absence of any agreement, Section 6 provides that the Breakage Fee with respect to Loans of Government Securities shall equal the sum of (i) the cost of entering into replacement transactions and entering into or terminating hedge transactions, ***plus*** (ii) any other losses directly arising or resulting from the termination of the Terminated Loan (as determined by the non-terminating party in a commercially reasonable manner), ***plus*** (iii) any other amounts due and owing to the non-terminating party under the Agreement at the time the Term Loan is terminated. The Breakage Fee shall not, however, include compensation for any consequential losses or costs for lost profits or lost opportunities as a result of the termination of the Terminated Loan.

Schedule of Optional Provisions for Schedule B

Additional Events of Default.

In addition to the events enumerated in Section 12 of the Agreement:

(a) The occurrence of any one or more of the following events shall constitute a Default under the Agreement and entitle the non-defaulting party to exercise the termination rights under Section 12 of the Agreement:

(i) if either party shall have been suspended or expelled from membership or participation in any national securities exchange, registered national securities association or registered clearing agency of which it is a member or any 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; or

(ii) 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.

(b) The occurrence of any one or more of the following events with respect to an individual Loan (if so agreed in a Confirmation for such Loan that is executed by each party) or with respect to a class of Loans (if so agreed by the parties in writing in this Schedule B or otherwise) shall constitute a Default under the Agreement and entitle the non-defaulting party to exercise the termination rights under Section 12 of the Agreement:

(i) if Loaned Securities shall not, in accordance with Section 3.1 of the Agreement, be transferred to Borrower against the transfer of Collateral on or before the Cutoff Time on the date agreed to by Borrower and Lender for the commencement of such Loan or Loans; or

(ii) if Collateral shall not, in accordance with Section 4.1 of the Agreement, be transferred to Lender against the transfer of Loaned Securities on or before the Cutoff Time on the date agreed to by Borrower and Lender for the commencement of such Loan or Loans.

Unless otherwise agreed, all Loans of Loaned Securities consisting of Securities other than Equity Securities shall be subject to this paragraph (b).

Additional Remedies.

In addition to any other remedies to which a non-defaulting party may be entitled under the Agreement, the defaulting party shall, with respect to an individual Loan (if so agreed in a Confirmation for such Loan that is executed by each party) or with respect to a class of Loans (if so agreed by the parties in writing in this Schedule B or otherwise), be liable to the non-defaulting party for (a) the amount of all reasonable legal or other expenses incurred by the non-defaulting party in connection with or as a result of a Default, (b) damages in an amount equal to the cost (including all fees, expenses and commissions) of entering into replacement transactions and entering into or terminating hedge transactions in connection with or as a result of a Default, and (c) any other loss, damage, cost or expense directly arising or resulting from the occurrence of a Default in respect of a Loan.

Unless otherwise agreed, all Loans of Loaned Securities consisting of Securities other than Equity Securities shall be subject to this Section.

Standard Settlement Date for Foreign Securities.

Notwithstanding Section 6.1(a)(ii) of the Agreement, Borrower and Lender agree that the standard settlement date that would apply to a purchase or sale of Foreign Securities for purposes of the termination provisions of Section 6 of the Agreement shall be the standard settlement date that would apply to a purchase or sale of such Foreign Securities entered into at the time of a termination notice in the principal market for such Foreign Securities.

Trading Practices.

Each party shall observe, and the Agreement and each Loan thereunder is subject to, including with regard to (a) the allocation of economic benefits in respect of Loaned Securities and Collateral and (b) buy-in procedures in the case of failures to receive Loaned Securities or Collateral, any uniform practices applicable to securities loans among members of The Bond Market Association and the Securities Industry Association (the "Associations"), as currently in effect, or successor provisions thereto (the "Uniform Practices"), regardless of whether each party is a member of one of the Associations, to the extent that such market practice (including the Uniform Practices) does not conflict with the terms of the Agreement. Notwithstanding the preceding sentence, a party shall not waive its right to exercise its option to terminate all Loans under Section 12 of the Agreement by observing the buy-in procedures described in clause (b) of the preceding sentence.

No Reliance.

In addition to the representations and warranties set forth in Section 10 of the Agreement, each party hereby makes the following representations and warranties in connection with the Agreement and each Loan thereunder, which shall continue during the term of any such Loan:

(a) unless there is a written agreement with the other party to the contrary, it is not relying on any advice (whether written or oral) of the other party, other than the representations expressly set out in the Agreement;

(b) it has made and will make its own decisions regarding the entering into of any Loan based upon its own judgment and upon advice from such professional advisers as it has deemed it necessary to consult; and

(c) it understands the terms, conditions and risks of each Loan and is willing to assume (financially and otherwise) those risks.

Restricted or Control Securities.

In addition to the representations and warranties set forth in Section 10 of the Agreement, the following representations and warranties shall apply, unless otherwise agreed by the parties:

(a) On the commencement date for any Loan, Lender represents and warrants that:

(i) Lender is familiar with the provisions of Rule 144 under the Securities Act of 1933 (the "Securities Act");

(ii) Lender is not, and within the preceding three months has not been, an "affiliate" of the issuer of any Loaned Securities as that term is used in Rule 144; and

(iii) Any Loaned Securities transferred to Borrower by Lender are not "restricted securities" within the meaning of Rule 144 or otherwise subject to any legal, regulatory or contractual restrictions on transfer; and

(b) On the date that any Loan is terminated, Borrower represents and warrants that:

(i) Borrower is familiar with the provisions of Rule 144 under the Securities Act;

(ii) Borrower is not, and within the preceding three months has not been, an "affiliate" of the issuer of any Loaned Securities as that term is used in Rule 144; and

(iii) assuming the accuracy and completeness of Lender's representations under subparagraph (a) of this paragraph, any Loaned Securities transferred to Lender by Borrower are not "restricted securities" within the meaning of Rule 144 or otherwise subject to any legal, regulatory or contractual restrictions on transfer.

Additional Definitions.

Close of Business

Cutoff Times

Margin Notice Deadline