NORTH CAROLINA

MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
08 CVS 2779

THE CHARLOTTE-MECKLENBURG HOSPITAL AUTHORITY d/b/a CAROLINAS HEALTHCARE SYSTEM,

Plaintiff,

vs.

WACHOVIA BANK, NATIONAL ASSOCIATION d/b/a WACHOVIA GLOBAL SECURITIES LENDING and METROPOLITAN WEST SECURITIES, LLC, d/b/a WACHOVIA GLOBAL SECURITIES LENDING,

Defendants.

DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

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I. INTRODUCTION

Plaintiff has filed this action seeking to recover a potential investment loss. While investments in securities typically involve risk of loss, in this instance, Plaintiff was acutely aware of and agreed to accept that risk. The contract between the parties governing the investment at issue expressly provides not only that Plaintiff bore any risk of loss, but also that Defendants did not. Now that Plaintiff's investment in Sigma Finance, a traditionally strong investment, may have resulted in a loss, Plaintiff seeks to bypass the language of the contract to try to recoup its potential loss by claiming that Defendants breached other terms of the contract.

This action is and should be nothing more than a breach of contract action, and accordingly, Defendants do not seek to dismiss Count I. Plaintiff, however, has filed a multi-count Amended Complaint asserting a host of other claims that fail to state a claim as matter of law. Specifically, because the parties' contract governs their relationship with respect to the Sigma Finance investment at issue, Plaintiff's tort claims for breach of fiduciary duty and negligence fail as a matter of law.

Plaintiff's statutory claims for alleged violations of North Carolina's Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1 ("UDTPA") and the North Carolina Securities Act, N.C. Gen. Stat. § 78A-8, and Investment Advisers Act, N.C. Gen. Stat. § 78C-8, fare no better. Specifically, Plaintiff's UDTPA claim should be dismissed because the statute is inapplicable where the alleged wrongful conduct arises from a securities transaction, as it does here. Plaintiff's claims for alleged violations of the North Carolina securities laws also fail because Plaintiff has not alleged the fraud underlying those claims with the required factual specificity.

For these reasons, which are set forth in more detail below, Plaintiff has failed to state a claim in Counts II-VI of the Amended Complaint, and those claims should be dismissed.

II. PLAINTIFF'S ALLEGATIONS

A. The Parties' Securities Lending Agency Agreement.

Plaintiff's claims arise from a securities lending transaction with Wachovia Bank, N.A. ("Wachovia") and Metropolitan West Securities, LLC ("Metropolitan West" or, collectively with Wachovia Bank, "Defendants"). Securities lending is a type of investing in which an investor-lender (such as Plaintiff) lends securities it owns to a third-party borrower. *See* Amended Complaint at ¶ 13. The third-party borrower, typically a broker, provides collateral, typically cash, for the borrowed securities and then uses those securities for other trades. *Id.* The investor-lender in turn invests the cash collateral until the borrower returns the securities. *Id.* Thus, the lender, in this case Plaintiff, typically reaps potential investment gains (or losses) not only from owning the securities that it lends, but also from investing the cash collateral.

The lending of the securities between the investor-lender and the third-party borrower is typically facilitated by an agent (such as Wachovia). *Id.* In some cases, as was the case here, the agent also invests the collateral on behalf of the investor-lender. *Id.* When the term of the loan ends, the security is returned (through the agent) to the investor-lender, and the collateral must be returned (again through the agent) to the third-party borrower. *Id.*

The above-described scenario is precisely what occurred here. In February, 2005, Plaintiff and Wachovia entered into a Securities Lending Agency Agreement pursuant to which Plaintiff appointed Wachovia to be its agent for purposes of lending securities owned by Plaintiff to third-party borrowers. *See* Amended Complaint at ¶ 17; Exhibit A (Securities Lending Agency Agreement) at Introduction and ¶ 1. Plaintiff had already been investing profitably with Wachovia and sought to use securities held in its pension plan to engage in securities lending as a means of generating additional investment income. *See* Amended Complaint at ¶¶ 9, 18.

The Securities Lending Agency Agreement sets forth very detailed terms pursuant to which Wachovia, acting as Plaintiff's agent, may lend Plaintiff's securities to third-party borrowers, and pursuant to which Wachovia may invest the collateral exchanged for the securities. *See generally* Exhibit A (Securities Lending Agency Agreement). The Securities

Lending Agency Agreement incorporates Securities Lending Investment Guidelines, which provide the contractual terms for Wachovia's investment of the collateral provided in connection with lending Plaintiff's securities. *Id.* at ¶ 6.1 (incorporating Attachment B to Securities Lending Agency Agreement).

The Securities Lending Agency Agreement specifically addressed the fact that the investment of the cash collateral posed a risk and that Plaintiff agreed to bear that risk: "Any losses (including any loss of principal) from investing and reinvesting any cash Collateral in accordance with the provisions hereof shall be at the Lender's [Plaintiff's] risk and for the Lender's [Plaintiff's] account." *Id.* The parties also bargained for an exculpatory clause pursuant to which Wachovia is not liable to Plaintiff for any losses incurred as a result of securities lending unless those losses are caused by Wachovia's negligence or willful misconduct:

> The Agent [Wachovia Bank] shall not be liable to the Lender [Plaintiff] or any third party for any loss occasioned by reason of action taken or omitted to be taken by the Agent hereunder or in connection herewith, except insofar as such loss is occasioned by the Agent's negligence or willful misconduct.

Id. at ¶ 12.2. With respect to securities lending investments, the parties' relationship is governed solely by the Securities Lending Agency Agreement.

B. Plaintiff's Claims Here Arise Out Of The Securities Lending Agency Agreement.

Plaintiff's first Complaint asserted claims arising out of Wachovia's investment of cash collateral obtained in exchange for lending Plaintiff's securities to a third-party borrower. Specifically, Wachovia invested cash collateral for Plaintiff in two investments – floating rate notes of Sigma Finance and Pricoa Global Funding. Complaint ¶33. Plaintiff claimed originally that it had lost nearly $14 million as a result of the investment of cash collateral in the Sigma Finance investment and $5 million as a result of the investment with Pricoa Global Funding. Complaint ¶¶ 33-41. Although not acknowledged in the Amended Complaint, after filing its Complaint, Plaintiff recouped its entire investment in the Pricoa Global Funding notes, and

therefore suffered no loss arising out of that investment. Accordingly, Plaintiff has since withdrawn any claim arising out of the Pricoa investment as reflected in its Amended Complaint. Thus, in the Amended Complaint, Plaintiff's allegations address only the potential loss arising out of the Sigma Finance investment. As Plaintiff acknowledges in paragraph 36 of Plaintiff's Amended Complaint, it is "not yet know[n] how much money [Plaintiff] will receive for the Sigma Finance Investment".

In sum, Plaintiff seeks to bypass the express provisions of the contract imposing any risk of loss on Plaintiff by alleging that Wachovia, in making and maintaining the Sigma Finance investment, failed to comply with the terms of the Securities Lending Agency Agreement. Plaintiff also generally alleges that Defendants made general misrepresentations about securities lending and the Sigma Finance investment in particular. Plaintiff's allegations can be summarized as follows:

- Defendants' investments in Sigma Finance were risky and did not adequately provide for safety of principal or liquidity under the Securities Lending Agency Agreement, Amended Complaint at ¶¶ 46(a), 51(c);
- Defendants failed to timely notice and report to Plaintiff material market changes in the value of the collateral investments in Sigma Finance as required by the Securities Lending Agency Agreement, *id.* at ¶¶ 46(b), 51(e), 55(d), 58(d);
- Defendants failed to timely liquidate the collateral investments pursuant to the terms of the Securities Lending Agency Agreement, *id.* at ¶¶ 46 (c), 51(f), 55(e), 58(e), 64(c), 72(c);
- Defendants failed to exercise due care when selecting and retaining Plaintiff's investments, and made risky investment decisions, in violation of the Securities Lending Agency Agreement, *id.* at ¶¶ 46 (c), 51(b), 55(b), 58(c);
- Defendants failed to disclose all of the risks associated with the Sigma Finance investment as required by the Securities Lending Agency Agreement, *id.* at ¶¶ 51(d), 55(c), 58(b); and
- Defendants made various misrepresentations to Plaintiff about the Securities Lending Agency Agreement and the Sigma Finance investment, including that securities investing was "low-risk," that Plaintiff's collateral would only be invested in safe and liquid investments, and about the value of the Sigma Finance investment, *id.* at ¶¶ 51(a), 55(a), 58(a), 64(a)-(c), 72(a)-(c).

Importantly, Plaintiff does not allege in the Amended Complaint that it was unaware of the Sigma Finance investment, that it objected to the Sigma Finance investment or even that it expressed any concern about the Sigma Finance investment when made. Rather, it appears from the factual allegations in the Amended Complaint (or the absence thereof), that Plaintiff, like the rating agencies and the financial community at large, agreed that Sigma Finance, one of the oldest, safest, and most recognized structured investment vehicles, was an appropriate investment, and that Plaintiff is only objecting to that investment now because it *may* suffer a loss.

Plaintiff asserts five causes of action against Defendants for breach of contract (Count I), breach of fiduciary duty (Count II) and negligence (Count III), and for allegedly violating the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1 (Count IV), the North Carolina Securities Act, N.C. Gen. Stat. §78A-8 (Count V), and the North Carolina Investment Advisers Act, N.C. Gen. Stat. §78C-8 (Count VI).

III. LEGAL STANDARD

"A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the complaint." *Harrold v. Dowd*, 561 S.E.2d 914, 917 (N.C. App. Ct. 2002) (citation omitted). "A complaint may be dismissed on motion filed under Rule 12(b)(6) if it is clearly without merit; such lack of merit may consist of an absence of law to support a claim . . ., absence of fact sufficient to make a good claim, or the disclosure of some fact which will necessarily defeat the claim." *Clontz v. St. Mark's Evangelical Lutheran Church*, 578 S.E.2d 654, 657 (N.C. App. Ct. 2003) (citation omitted). In deciding a motion to dismiss, the Court may consider any exhibits that are attached to the complaint, or documents referenced in the complaint. *See Eastway Wrecker Serv. v. City of Charlotte*, 599 S.E.2d 410, 412 (N.C. App. Ct. 2004), *aff'd,* 622 S.E.2d 495 (N.C. 2005). When the Court's consideration reveals that there is no set of facts on which the plaintiff could

prevail, the claims must be dismissed. *See Newton v. Standard Fire Ins. Co.*, 229 S.E.2d 297, 300 (N.C. 1976).

IV. ARGUMENT

A. Plaintiff's Tort Claims For Breach Of Fiduciary Duty (Count II) And Negligence (Count III) Should Be Dismissed Because The Parties' Contract Governs Their Conduct.

Under North Carolina law, a plaintiff may not bring a tort claim, be it for breach of fiduciary duty or negligence, arising from the alleged failure to perform a contractual obligation. Except for limited exceptions not applicable here, "a tort action does not lie against a party to a contract who simply fails to properly perform the terms of the contract, even if that failure to properly perform was due to the negligent or intentional conduct of that party, when the injury resulting from the breach is damage to the subject matter of the contract."[1] *Spillman v. American Homes of Mocksville, Inc.*, 422 S.E.2d 740, 741-42 (N.C. App. Ct. 1992) (citing *North Carolina State Ports Authority v. Fry Roofing Co.*, 240 S.E.2d 345, 350-51 (N.C. 1978)); *see also U.S. LEC Comms., Inc. v. Quest Comms. Corp.*, No. 05-CV-00011, 2006 WL 1367383, at *2 (W.D.N.C. May 15, 2006) ("In order to state a viable claim in tort for conduct that is alleged to breach a contract, a plaintiff must allege a duty owed him by the defendant separate and distinct from any duty owed under a contract.") (internal citation and punctuation omitted). "It is the law of contract and not the law of negligence which defines the obligations and remedies of the parties in such a situation." *Spillman*, 422 S.E.2d at 742.

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1 The limited exception is when a party's negligent or willful act or omission in the course of performing the contract results in personal injury or physical damage to property. *See City of Wilson v. Carolina Builders of Wilson, Inc.*, 379 S.E.2d 712, 714 (N.C. App. Ct. 1989) (citing *North Carolina Ports Authority*, 240 S.E.2d at 350-51, *rejected on other grounds by, Trustees of Rowan Tech. College v. J. Hyatt Hammond Assocs.*, 328 S.E.2d 274 (N.C. 1985)). Here there are no allegations of either personal injury or physical injury to property and, accordingly, this exception does not apply.

Because of this prohibition against a plaintiff attempting to bring a tort claim for the defendant's alleged breach of contract, "trial courts should keep open-ended tort damages from distorting contractual relations and must be vigilant against a party's attempt to manufacture a tort dispute out of what is, at bottom, a simple breach of contract claim, a practice that is inconsistent both with North Carolina law and sound commercial practice." *Media Network, Inc. v. Mullen Advertising, Inc.*, Civ. Nos. 05-CVS-7255, 05-CVS-15428, 2007 NCBC LEXIS 1, at *47 (N.C. Super. Ct. Jan. 19, 2007) (internal quotations omitted) (citing *Broussard v. Meineke Discount Muffler Shops, Inc.*, 155 F.3d 331, 346 (4th Cir. 1998)).

Plaintiff's breach of fiduciary duty and negligence claims should be dismissed based on this fundamental principle of North Carolina law. Plaintiff plainly acknowledges in the Amended Complaint that the parties' relationship is embodied in the Securities Lending Agency Agreement. *See* Amended Complaint at ¶ 17. Absent that bargained for contractual relationship, there are no other relationships or duties between the parties. Nevertheless, Plaintiff is improperly attempting to manufacture a tort dispute between the parties arising from Wachovia's alleged breach of the Securities Lending Agency Agreement.[2]

In Count II, Plaintiff alleges that in "the Securities Lending Agency Agreement, [Plaintiff] appointed Wachovia as its agent for the purpose of lending securities and investing the cash collateral received in exchange for such securities" and that Defendants breached an alleged fiduciary duty owed to Plaintiff "in connection with the investment of cash collateral received in

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2 It is without question that negligence is a tort. Likewise, North Carolina courts recognize that a breach of fiduciary duty claim is nothing more than a negligence claim. *See Babb v. Bynum & Murphrey, PLLC*, 643 S.E.2d 55, 57 (N.C. App. Ct. 2007) ("A claim for breach of fiduciary duty is 'essentially a negligence or professional malpractice claim.'"), *cert. denied*, 659 S.E.2d 434 (N.C. 2008); *Farndale Co., LLC v. Gibellini*, 628 S.E.2d 15, 20 (N.C. App. Ct. 2006) (noting that breach of fiduciary duty claim is "a species of negligence or professional malpractice").

exchange for loaned securities." Amended Complaint at ¶¶ 49-50. Plaintiff goes on to identify six specific alleged breaches of fiduciary duty, each of which is nothing more than an allegation that Defendants failed to comply with the terms of the Securities Lending Agency Agreement. *Id.* at ¶ 51. Indeed, the conduct alleged to have been a breach of fiduciary duty all relates to the manner in which Wachovia invested the securities pursuant to the Securities Lending Agency Agreement, the information it communicated to Plaintiff about the investments as required by the Securities Lending Agency Agreement, and Wachovia's alleged failure to suspend the securities lending program as instructed by Plaintiff pursuant to the Securities Lending Agency Agreement. *See* Amended Complaint at ¶ 51 (a)-(f). Many of Plaintiff's allegations of alleged breaches of fiduciary duty are identical to Plaintiff's breach of contract allegations in Count I.[3] *Compare* Amended Complaint at ¶ 46(a)-(c) *with* ¶ 51(c), (e), (f).

The same is true of Plaintiff's negligence claim (Count III). Like its breach of fiduciary duty claim, Plaintiff's negligence claim is predicated on Wachovia's alleged failure "to exercise reasonable care in investing cash collateral received in exchange for loaned securities on [Plaintiff's] behalf" pursuant to the terms of the Securities Lending Agency Agreement. *See* Amended Complaint at ¶ 54. Plaintiff's five specific allegations of negligence are identical to Plaintiff's breach of fiduciary duty allegations and all concern Wachovia's alleged failure to comply with its contractual duties. *Compare* Amended Complaint at ¶ 55(a)-(e) *with* ¶ 51(a)-(f).

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3 For example, Plaintiff contends that Defendants breached an alleged fiduciary duty by "investing and holding cash collateral received in exchange for loaned securities in risky investments that did not adequately provide for safety of principal or liquidity"; "failing to timely notify and report to [Plaintiff] material changes in the market value of investments made with cash collateral received in exchange for loaned securities"; and failing to suspend the securities lending program and return the collateral to Plaintiff – all allegations identical to Plaintiff's breach of contract allegations in Count I. *Compare* Amended Complaint at ¶ 46(a)-(c) *with* ¶ 51(c), (e), (f).

Many of these allegations are also the same as Plaintiff's breach of contract claim.[4] *Compare* Amended Complaint at ¶ 46(b), (c) *with* ¶ 58(d), (e). Plaintiff may not manufacture tort liability out of a straightforward contract dispute. Dismissal of the breach of fiduciary duty and negligence claims is justified on this basis. *See U.S. LEC Comms., Inc.*, 2006 WL 1367383, at *2 (dismissing tort claims premised on same facts as breach of contract claim).

B. Plaintiff's Claim For An Alleged Violation Of North Carolina's Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1 (Count IV) Should Be Dismissed Because That Statute Does Not Apply To Securities Transactions.

In Count IV, Plaintiff alleges that Defendants violated North Carolina's Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1 ("UDTPA"). The UDTPA prohibits "unfair methods of competition in or affecting commerce, and unfair and deceptive acts or practices in or affecting commerce[.]" *Id.* Although the UDTPA is broad and applies to "business activity," it "is not intended to apply to all wrongs in a business setting." *Dalton v. Camp*, 548 S.E.2d 704, 711 (N.C. 2001).

One area specifically excluded from the UDTPA's purview is claims involving securities transactions. The North Carolina Supreme Court specifically held "that securities transactions are beyond the scope of [the UDTPA]." *Skinner v. E.F. Hutton & Co., Inc.*, 333 S.E.2d 236, 241 (1985). A UDTPA claim brought based on alleged improper conduct arising from a securities transaction should be dismissed for failure to state a claim. *Id.* (affirming dismissal of UDTPA

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4 Plaintiff alleges that Defendants both breached the Securities Lending Agency Agreement and acted negligently by "failing to timely notify and report to CHS material changes in the market value of investments made with cash collateral received in exchange for loaned securities." Amended Complaint at ¶ 46(b), ¶ 55(d); *Compare* Amended Complaint at ¶ 46(a) (investing and holding cash collateral in "risky" investments that do not adequately provide for "safety of principal or liquidity" was a breach of contract) *with* ¶ 55(a) (misrepresenting to Plaintiff that securities investing is "low-risk" and that cash collateral will be invested in "safe, liquid" investments was negligent) and ¶ 46(c) (failing to timely liquidate collateral investments was a breach of contract) *with* ¶ 55(e) (same conduct constitutes negligence).

claim based on securities transactions); *Hajmm Co. v. House of Raeford Farms, Inc.*, 403 S.E.2d 483, 493 (N.C. 1991) (affirming trial court dismissal of UDTPA claim based on securities transactions); *Sterner v. Penn*, 583 S.E.2d 670, 675-76 (N.C. App. Ct. 2003) (affirming dismissal of UDTPA claim arising for allegations of securities fraud); *Oberlin Capital, L.P. v. Slavin*, Civ. No. 99-CVS-03447, 2000 NCBC LEXIS 8, at *31 (N.C. Super. Ct. Apr. 28, 2000) ("North Carolina courts have repeatedly held that the provisions of [the UDTPA] do not apply to securities transactions.") (citing *Skinner*, 314 N.C. 267); *see also Lindner v. Durham Hosiery Mills, Inc.*, 761 F.2d 162, 168 (4th Cir. 1985) (holding that securities transactions are beyond the reach of the UDTPA and dismissing UDTPA claim); *Harrah v. J.C. Bradford & Co.*, 37 F.3d 1493 (4th Cir. 1994) (granting summary judgment on UDTPA claim arising from allegations of securities fraud).

In this case, there is no question that Plaintiff's UDTPA claim is based on securities transactions. Plaintiff specifically alleges in the Amended Complaint that Defendants violated the UDTPA "in connection with the investment of cash collateral received in exchange for loaned securities" in Sigma Finance by (a) making misrepresentations about the securities lending program and the Sigma Finance investment; (b) failing to disclose certain risks associated with the Sigma Finance investment; (c) investing in and holding Sigma Finance in order to generate improper investment fees; (d) failing to report material changes in the Sigma Finance investment; and (e) failing to timely liquidate the Sigma Finance investment at Plaintiff's request. *See* Amended Complaint at ¶ 58(a)-(e). That Plaintiff's UDTPA claim is based on securities transactions is evidenced by the fact that much of the alleged improper conduct that forms the basis for Plaintiff's UDTPA claims also forms the basis for its state

securities law claims.[5] *Compare* Complaint ¶ 58(a) *with* ¶¶ 64(a), 72(a); and ¶ 58(d) with ¶¶ 64 (c), 72 (c).

North Carolina law is clear on this point: A plaintiff may not assert a UDTPA claim based on securities transactions. Because Plaintiff has attempted to base its UDTPA claim on alleged misconduct relating to Defendants' investment of Plaintiff's securities lending collateral in Sigma Finance investments, a securities transaction, Count IV, should be dismissed with prejudice.

C. Plaintiff's Claim Pursuant To The North Carolina Securities Act (Count V) Should Be Dismissed Because Plaintiff Has Failed To Sufficiently Plead Fraud.

In Count V, Plaintiff alleges that Defendants violated the North Carolina Securities Act, N.C. Gen. Stat. § 78A-8. Section 78A-8 prohibits fraudulent conduct in the sale and purchase of securities. Specifically, the statute makes it "unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly:

> (1) To employ any device, scheme, or artifice to defraud,
>
> (2) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading or,
>
> (3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person."

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5 Indeed, in paragraph 58(a) of the Amended Complaint, Plaintiff alleges that Defendants violated the UDTPA by "misrepresenting to CHS that Wachovia's securities lending program was a 'low-risk' investment strategy and that cash collateral received in exchange for loaned securities would only be invested in safe, liquid investments." Plaintiff likewise alleges in paragraphs 64(a) and 72(a) of the Amended Complaint that Defendants violated the North Carolina Securities Act and Exchange Act by "misrepresenting to CHS that Wachovia's securities lending program was a 'low-risk' investment strategy and that cash collateral received in exchange for loaned securities would only be invested in safe, liquid investment". *See also* Amended Complaint at ¶ 58(d) (Defendants failed to timely notify Plaintiff of investment changes) with ¶¶ 64 (c), 72 (c) (same).

N.C. Gen. Stat. § 78A-8. Because there is limited case law addressing N.C. Gen. Stat. § 78A-8, North Carolina courts find authority interpreting SEC Rule 10(b)-5 – which is the federal parallel to this state statute – instructive. *See State v. Davidson*, 506 S.E.2d 743, 748 (N.C. App. Ct. 1998) ("N.C. Gen. Stat. § 78A-8 closely parallels the Rule 10b-5 antifraud provision of the Securities Exchange Act. Cases construing the federal rule are instructive when examining our statute.") (citations omitted); *State v. Williams*, 390 S.E.2d 746, 749 (N.C. App. Ct. 1990) ("Sec. 78A-8 closely parallels the S.E.C. Rule 10(b)-5 antifraud provision, which is designed to ensure that investors are aware of market risks.")

Under the federal Securities Act, allegations of securities fraud are subject to the heightened pleading standards set forth in Federal Civil Rule 9(b). *See Krim v. Coastal Physician Group, Inc.*, 81 F.Supp. 2d 621 (M.D.N.C. 1998) (stating that allegations of securities fraud under the federal statutes must meet F.R.C.P. 9(b) pleading requirements), *aff'd*, 201 F.3d 436 (4th Cir. 1999); *In re First Union Corp. Securities Litigation*, 128 F.Supp. 2d 871, 884 (W.D.N.C. 2001) (same). The particularity requirement of Rule 9(b) has been rigorously applied in securities fraud cases. *See id.; Rockefeller Ctr. Prop., Inc. Securities Litigation*, 311 F.3d 198, 216 (3d Cir. 2002). "Particularity of pleading is required with regard to the time, place, speaker, and contents, as well as the manner in which statements are false and the specific acts raising an inference of fraud – the 'who, what, where, why and when.'" *In re First Union Corp. Securities Litigation*, 128 F.Supp.2d at 884 (citing cases). Allegations in pleadings that are based "upon information and belief" violate Rule 9(b). *Gross v. Diversified Mortgage Investors*, 431 F.Supp. 1080 1087 (S.D.N.Y. 1977), *aff'd sub nom. Duban v. Diversified Mortgage Investors*, 636 F.2d 1201 (2d Cir. 1980). The claimant must aver specific facts upon which the belief is based. *Id.* The Court should apply this heightened pleading standard to Plaintiff's claims under the North Carolina Securities Act.

North Carolina Rule of Civil Procedure 9(b) requires that "in all averments of fraud the circumstances constituting fraud shall be stated with particularity." *Bob Timberlake Collection, Inc. v. Edwards*, 626 S.E.2d 315, 321 (N.C. App. Ct. 2006). To comply with this requirement,

the pleader must specifically allege the time, place and content of the false representation, the identity of the person making the representation, and what was obtained as a result of the fraudulent acts or representations. *See Terry v. Terry*, 273 S.E.2d 674, 678 (N.C. 1981); *Gant v. NCNB Nat'l Bank of North Carolina*, 379 S.E.2d 865, 867-68 (N.C. App. Ct. 1989). To allege a misrepresentation or omission of a material fact with sufficient specificity to comply with Rule 9(b), a plaintiff "must point to a factual statement or omission – that is, one that is demonstrable as being true or false." *Ottmann v. Hanger Orthopedic Group, Inc.*, 353 F.3d 338, 342-43 (4th Cir. 2003).

Plaintiff's claim against Defendants for an alleged violation of the North Carolina Securities Act should be dismissed for failure to state a claim because Plaintiff has failed to allege Defendants' purported fraud with the particularity required by Rule 9(b). Plaintiff contends that Defendants violated Section 78A-8 by making "untrue statements of material facts or omissions of material facts related to the sale or purchase of securities" (*see* Amended Complaint ¶ 64), but has failed to identify the specific factual misstatements and omissions allegedly made. Plaintiff claims that Defendants misrepresented that securities lending was "low-risk" and that the securities lending collateral would be invested in "safe, liquid" investments, but never alleges the specific statement allegedly made by Defendants or how that statement was allegedly false. *Id.* at ¶ 64(a). The same is true of Plaintiff's allegation that Defendants misrepresented in the Investment Guidelines that the primary objective of the investment of cash collateral is to provide for "safety of principal." *Id.* at ¶ 64(b). Plaintiff's allegation that Defendants misrepresented the true value of the Sigma investment and/or omitted to timely notify Plaintiff of material changes in the Sigma investment also falls short of Rule 9(b)'s pleading requirement. *Id.* at ¶ 64(c). Among other things, Plaintiff has failed to allege how Defendants misrepresented the value of the Sigma investment (*i.e.*, what the investment was worth and what did Defendants represent it was worth) or identify the "material changes" in the Sigma investment that Defendants failed to report and what Defendants should have reported.

Moreover, for each of its three discrete allegations of securities fraud, Plaintiff has failed to allege the "who, what, when, where and how of the events at issue." Nowhere does Plaintiff identify the person(s) making these alleged fraudulent misstatements and omissions, the dates and locations of the alleged fraudulent misstatements and omissions, or specific facts showing how the alleged fraudulent misstatements and omissions came to be made.

Plaintiff has not complied with Rule 9(b)'s heightened pleading requirement for a securities fraud claim. Accordingly, Plaintiff's North Carolina Securities Act claim (Count V) should be dismissed. *See Bob Timberlake Collection,* 626 S.E.2d at 321 (affirming trial court's dismissal of securities fraud claim for failure to plead sufficient facts).

D. Plaintiff's Claim For An Alleged Violation Of The North Carolina Investment Advisers Act (Count VI) Should Likewise Be Dismissed For Failure To Sufficiently Plead Fraud.

Finally, Plaintiff alleges in Count VI that Defendants violated the North Carolina Investment Advisers Act, N.C. Gen. Stat. § 78C-8. The Investment Advisers Act prohibits a party who provides investment advice about the value of securities to engage in fraud or deceit. The Investment Advisers Act states:

> (a) It is unlawful for any person who receives, directly or indirectly, any consideration from another person for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise,
>
> > (1) To employ any device, scheme, or artifice to defraud the other person,
> >
> > (2) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person . . .

N.C. Gen. Stat. § 78C-8(a).[6] North Carolina's statute tracks the federal Investment Advisers Act statute, found at 15 U.S.C. § 80b-6.

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6 Plaintiff fails to identify the subsection of N.C. Gen. Stat. § 78C-8 pursuant to which it is bringing claims. Based on the allegations in the Complaint, it appears that Plaintiff is asserting claims under N.C. Gen. Stat. § 78C-8(a).

A claim under the Investment Advisers Act, like the Securities Act, must also be pleaded with the specificity required by Rule 9(b), and failure to comply with this standard warrants dismissal. *See Polera v. Altorfer, Podesta, Woolard & Co.*, 503 F.Supp. 116, 119 (N.D. Ill. 1980) (dismissing Investment Advisers Act claims for failure to satisfy the requirements of 9(b)); *see also Carroll v. Bear, Stearns & Co.*, 416 F.Supp. 998, 1001 (S.D.N.Y. 1976) (stating that Investment Advisers Act claim is subject to same pleading requirements with respect to particularity and scienter as applies to Rule 10b-5 claim).

Plaintiff's allegations in support of its Investment Advisers Act claim are identical to Plaintiff's allegations in support of its Securities Act claim. *See* Amended Complaint at ¶¶ 72-76. Accordingly, for the reasons set forth above, Plaintiff has failed to allege fraud with sufficient particularity as required by Rule 9(b), and Plaintiff's Investment Advisers Act claim, (Count VI) should be dismissed.

V. CONCLUSION

This action should be nothing more than a breach of contract action. Plaintiff's tort and statutory claims fail as a matter of law. Accordingly, the Court should dismiss Counts II-VI of the Amended Complaint with prejudice.

DATED this the 7th day of May, 2009.

Respectfully submitted,

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Pittsburgh, PA 15219
Telephone: (412) 288- 3131

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Defendants' Memorandum In Support of Motion to Dismiss Plaintiff's Amended Complaint was served on counsel for Plaintiff through the Court's electronic filing system, pursuant to BCR 6.5, and by depositing a copy thereof, postage prepaid, pursuant to Rule 5 of the North Carolina Rules of Civil Procedure, addressed as follows:

Robert R. Marcus
Jonathan P. Heyl
C. Bailey King, Jr.
SMITH MOORE LEATHERWOOD LLP
525 N. Tryon Street, Suite 1400
P.O. Box 31728-28231
Charlotte, NC 28202

Attorneys for Plaintiff The Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas HealthCare System

Dated this 7th day of May, 2009.

s/ Cory Hohnbaum
Cory Hohnbaum

EXHIBIT A

SECURITIES LENDING
AGENCY AGREEMENT

Securities Lending Agency Agreement

This Securities Lending Agency Agreement (the "Agreement") dated as of February 9, 2005 sets forth the terms and conditions between The Charlotte-Mecklenburg Hospital Authority (with respect to the Charlotte-Mecklenburg Hospital Authority Funded Depreciation Account), and The Charlotte-Mecklenburg Hospital Authority (with respect to the Charlotte–Mecklenburg Hospital Authority Pension Plan), (the "Lender") and Wachovia Bank, National Association (the "Agent"), concerning the lending by the Agent, solely as agent for the Lender and not in its individual capacity, of securities held by the Agent for the Lender in the custody account established pursuant to the Custody Agreement, as amended by this Agreement (the securities held in such custody account from time to time are hereafter referred to collectively as the "Available Securities"), to certain banks, securities brokers and dealers as provided herein. This Agreement shall apply to each such loan of securities, hereinafter referred to individually as a "Loan". Other capitalized terms used herein have the respective meanings specified in section 14. The Agent shall administer any Loans subject to the following terms and conditions:

1. Appointment / Selection of Borrowers. The Lender hereby authorizes and appoints the Agent, as agent for the Lender to lend Available Securities of the Lender in accordance with the provisions hereof. The Agent is hereby authorized and agrees to make Loans pursuant to this Agreement only to such banks, securities brokers and dealers (collectively, the "Borrowers") as have been approved by the Lender. Attached hereto, as Attachment A is a list of the Borrowers, each of which has been approved by the Lender as of the date hereof. In addition, the Lender may authorize or direct the Agent to make Loans to additional organizations and entities selected from time to time by Lender as to which Agent has entered into or will enter into a Master SLA (as defined below), which, upon the Lender's approval, shall be added to Attachment A and become Borrowers until further notice from the Lender. Subject to the Lender's approval, Attachment A may also be amended by Agent from time to time to add or delete Borrowers and Agent will notify Lender of each such proposed change provided that the Agent shall not make any Loan of the Lender's securities to any proposed Borrower not previously disclosed to the Lender except after not less than 10 days prior written notice thereof to the Lender. With respect to a deleted Borrower, such change shall be effective immediately upon notification to Lender to such effect. With respect to a proposed additional borrower, unless Lender notifies Agent, within ten days of the giving by Agent of notice of the proposed additional borrower(s), of Lender's disapproval of any such additional borrower(s), Lender agrees that Attachment A shall be deemed amended to add the name(s) of such borrower(s).

At any time the Lender may direct the Agent to cease lending Available Securities to any Borrower in which event such Borrower shall be deleted from Attachment A and shall cease to be a Borrower until further notice from the Lender.

2. Master Securities Loan Agreement. Loans to any Borrowers shall be made only pursuant to a Master Securities Loan Agreement ("Master SLA") in substantially the form attached hereto as Attachment E. The Lender specifically approves such form of agreement and agrees to promptly furnish to Agent its financial statements to enable Agent to comply with any request therefore by Borrower in connection with any Master SLA. The Lender understands and agrees that the Agent may revise in a manner not inconsistent with the provisions of this Agreement, without notice to the Lender, the terms of any Master SLA with any Borrower as the Agent deems necessary or appropriate, in its discretion, for the effectuation of any transaction contemplated hereby or thereby.

The Lender hereby represents that (a) Available Securities are free and clear of any lien, charge or encumbrance except as otherwise created hereunder, and (b) the Lender and any third party having power to dispose of such Available Securities has no present intention to sell such Available Securities. The Lender shall (a) promptly notify the Agent of any change in the availability of such Available Securities for lending, (b) in the event of the sale of any such Available Securities, give notice thereof to the Agent no later than the trade date of such sale, and (c) upon Lender's, or a person's or persons' authorized to act on behalf of Lender, receipt of a notice of buy-in such notice will be immediately electronically transmitted to Agent for retransmission to Borrower and, if such buy-in is executed, Lender or person or persons authorized to act on behalf of Lender will communicate to Agent no later than 3:45 PM Philadelphia time on day of execution the pertinent information regarding such buy-in. The Lender acknowledges that, under the applicable Master SLA, Borrowers will not be required to return loaned securities immediately upon receipt of notice from Agent terminating the applicable loan, but instead will be required to return such loaned securities within the standard settlement period for such securities. Upon receiving a notice from the Lender or person or persons authorized to act on behalf of Lender that Available Securities which have been lent to a Borrower should no longer be considered Available Securities (whether because of the sale of such securities or otherwise), the Agent shall use its best efforts to notify promptly thereafter the Borrower which has borrowed such securities that the loan of securities is terminated and that such securities are to be returned within the standard settlement period for such securities or five (5) business days, whichever is less.

3. Initial Collateral for Loans. As security for each Loan, the Agent shall, on or prior to delivery of the Available Securities to be loaned, receive Collateral (as defined and permitted by the applicable Master SLA) from the Borrower consisting of (a) cash, (b) US government securities, (c) irrevocable letters of credit (individually, a "Letter of Credit"), or (d) such other forms as the Agent and the Lender may from time to time agree in writing in each case of a character and in an amount equal to no less 102% of the market value of the securities loaned in the case of securities of U.S. issuers and 105% of the market value of the securities Loaned in the case of securities of Non-US issuers. The Lender may, by prior notice to the Agent, direct the Agent to accept only certain of the foregoing types of Collateral in respect of Loans made on behalf of the Lender.

4. Marking to Market.

4.1. The Agent shall compute, pursuant to the applicable Master SLA, daily the Contract Value (as defined in the applicable Master SLA) of all Loaned Securities with respect to

each Borrower. If at the close of business on any day, the market value of the Collateral held in aggregate for any Borrower, is less than 101% of the aggregate Contract Value as defined under the Master SLA, then the Agent shall demand that such Borrower deliver to the Lender's collateral account, additional Collateral (by delivery of additional cash or securities) in an amount that will bring the aggregate Borrower's collateral to 102% of the aggregate Market Value of securities on loan to the Borrower.

4.2. If, under the Master SLA between the Agent and a Borrower, the market value of the Collateral received with respect to any Loan to such Borrower exceeds the Contract Value of the Loaned Securities with respect to such Loan by an amount sufficient under the Master SLA to permit the Borrower to request an adjustment to the amount of Collateral for such Loan, the Agent is authorized to make such an adjustment (by the return of a portion of the cash or securities or acceptance of an amendment to or substitution for the Letter of Credit previously delivered by such Borrower in respect of Loans), as provided in such Master SLA.

5. Distributions, Loan Premiums, etc.

5.1. The Agent shall collect and hold (pursuant to the Lender's instructions) as and when payable by each Borrower amounts equivalent to all Distributions made in respect of Loaned Securities during the term of Loans made to such Borrower.

5.2. Loaned Securities may be transferred into the names of others and the Lender hereby waives on behalf of itself and each person with an interest, beneficial or otherwise, in the Loaned Securities any right to vote the Loaned Securities prior to the termination of the Loan with respect to such Loaned Securities and the right to participate in any dividend reinvestment program attendant to such Loaned Securities during the term of any Loan. The Lender understands and agrees that the identity of Lender shall be disclosed by Agent to a Borrower.

5.3. The Agent is authorized to return to Borrowers all interest and other Distributions on Collateral consisting of securities, if any, as provided in the relevant Master SLAs.

6. Investment of Cash; Maintenance of Collateral Securities.

6.1. The Agent shall invest cash Collateral received in respect of any Loan, subject to an obligation, upon the termination of the Loan, to return to the Borrower the amount of cash initially pledged (as adjusted for any interim marks-to-market). Unless otherwise agreed, the Lender hereby authorizes and directs the Agent to maintain cash collateral in a separate account maintained by the Agent for the Lender and to invest such cash collateral on behalf of the Lender in accordance with the investment guidelines outlined in Attachment B. Any losses (including any loss of principal) from investing and reinvesting any cash Collateral in accordance with the provisions hereof shall be at the Lender's risk and for the Lender's account. To the extent that earnings on invested cash collateral are insufficient to pay the amount of any rebate payable to a Borrower in respect of any Loan or any investment losses reduce the principal amount of cash below the amount required to be returned to the Borrower upon the termination of any Loan made on the Lender's behalf (after giving effect to any rebate due Borrower), the Lender will, on demand of the Agent, immediately pay to the Agent (for transmission to such Borrower) an equivalent amount in cash.

The Lender acknowledges and agrees that, in respect of any Loan entered into on the Lender's behalf, the Agent may at its option advance its own funds to pay any such rebate or other fees or amounts due Borrower to the extent permitted by applicable law. If the Agent makes any such advance, or if the Lender does not pay to the Agent when due the applicable revenue sharing or fees pursuant to section 10 of this Agreement, the Lender will be liable to the Agent until payment in full of such liability, at a rate per annum (computed daily on the amount of the outstanding liability) equal to 2% above the prime rate of interest of Wachovia Bank, National Association as announced at its principal office in Charlotte, North Carolina from time to time.

6.2. Unless otherwise agreed, the Agent will hold for the Lender, for safekeeping, all Collateral consisting of cash and securities received from Borrowers in respect of Loaned Securities either (a) at its own facilities, (b) with a Federal Reserve Bank, the Depository Trust Company or any other depository or clearing corporation of which the Agent is a participant or (c) with a bank sub-custodian approved by the Agent.

6.3. The Agent is authorized to accept substitute Collateral of any type as is permitted hereunder during the term of any Loan so long as the Contract Value in respect of such Loan continues to be satisfied after such substitution.

7. Termination of Securities Loan. The Lender shall have the right to direct the Agent (a) to terminate any Loan with any Borrower at any time and (b) to cease, either temporarily or indefinitely, entering into any new Loans with such Borrowers as from time to time the Lender may designate. The Agent is also authorized in its discretion to terminate, on the Lender's behalf, any Loan entered into with a Borrower without prior notice to the Lender, subject to the conditions of the relevant Master SLA. In the event of the termination of a Loan under any provision of the Master SLA between a Borrower and the Agent (whether or not as a result of the direction of the Lender), the Agent shall (subject to section 12 of this Agreement) receive the Loaned Securities in respect of such Loan and all Distributions thereon delivered by such Borrower as a result of such termination within the standard settlement period for such Loaned Securities, and, in connection with such termination, is authorized to return to such Borrower any Collateral in respect of such Loan, and in the case of Collateral consisting of securities, all Distributions thereon not previously returned to Borrower, to the extent provided in such Master SLA.

8. Reports. The Agent shall provide the Lender with (a) monthly statements (i) describing all Loans entered into pursuant to this Agreement during such month, including the names of the Borrowers, the Loaned Securities, the Collateral held by the Agent therefore, and the amount of the loan premiums received and the loan rebates paid by the Agent, (ii) stating with respect to such month the amount of any return on cash Collateral invested by the Agent pursuant to section 6 of this Agreement, and (iii) setting forth with respect to such month the amount of the Agent's share of revenues hereunder, and (b) such other information or documentation with respect to Loans entered into hereunder as may be reasonably requested by the Lender from time to time.

9. Loan Premiums; Loan Rebates. The Agent shall have sole responsibility for negotiating the amount and terms to the extent not otherwise specified in the Master SLA of (a) all

loan premiums to be paid by Borrowers in respect of Loans secured by securities Collateral or a Letter of Credit and (b) all loan rebates to be paid by the Agent on behalf of the Lender to Borrowers in respect of Loans secured by cash Collateral. The Agent is authorized to pay any such rebates when and as due to such Borrowers, to the extent of available funds therefore.

10. Revenue Sharing. The Lender and Agent shall share in the net securities lending revenues generated under this Agreement in the amounts agreed upon from time to time in writing signed by the Lender and the Agent. For purposes hereof "net securities lending revenues" shall mean (a)(i) all loan premium fees derived from Agent's acceptance of non-cash Collateral; plus (ii) all gains and losses, income and earnings from the investment and reinvestment of the Fund's cash Collateral; minus (b) broker rebate fees paid by the Agent to the Borrower. See Attachment C.

11. Representation and Warranties.

11.1. The Agent represents and warrants that:

(a) The Agent has full legal right, power and authority to execute, deliver and perform this Agreement,

(b) No contractual or legal obligation exists which would prohibit the Agent from carrying out the transactions contemplated hereby;

(c) This Agreement has been duly authorized by all necessary corporate action on the part of the Agent and has been duly executed and delivered by one of the duly authorized officers of the Agent; and

(d) The execution and delivery of this Agreement will not result in any violation of or be in conflict with or constitute a default under any term of the charter or by-laws of the Agent or of any agreement or other instrument, law or judgment applicable to the Agent.

11.2. The Lender represents and warrants that:

(a) The Lender has full legal right, power and authority to execute, deliver and perform this Agreement; as certified in Attachment D;

(b) No contractual or legal obligation exists which would prohibit the Lender from carrying out the transactions contemplated hereby or the lending of securities hereunder or investment of cash Collateral pursuant hereto;

(c) This Agreement has been duly authorized by all necessary executive, legislative, governmental and administrative action on the part of the Lender and has been duly executed and delivered by a duly authorized representative of the Lender; and

(d) The execution and delivery of this Agreement and the performance of the transactions contemplated hereby will not result in any violation or be in conflict with or constitute a default or violation under or violate any law, ordinance, decree or judgment applicable to the Lender or any person having an interest in Available Securities hereunder or any agreement or instrument to which either is a party or by which it is bound.

(e) The Available Securities are owned by the Lender free and clear of any lien, charge or encumbrance.

12. Agent's Obligations.

12.1. If the Borrower in respect of any loan made pursuant hereto and pursuant to the relevant securities borrowing agreement ("Master SLA") fails to return loaned securities because it is the subject of a bankruptcy, insolvency, reorganization, liquidation, receivership, conservatorship or similar event (collectively, "Bankruptcy Event"), then Agent shall, at its expense (subject to the succeeding paragraph hereof and to the Lender's Liability for principal losses pursuant to Section 6 of the Agreement) and within 1 business day of the Bankruptcy Event as determined by Agent (the "Indemnity Triggering Date"), credit Lender's account in United States dollars with the difference (where a positive number) ("Indemnifiable Amount") between (A) the market value of such loaned securities on the Indemnity Triggering Date (including, in the case of debt securities, accrued, but unpaid interest and, in the case of equity securities, dividends or distributions declared but not paid or remitted to Lender) and (B) the market value of the related collateral which shall be (i) in the case of loans collateralized solely by cash collateral, the greater of the market value of the cash collateral on the date of initial pledge as adjusted for any subsequent marks-to-market to the Indemnity Triggering Date and the market value of the proceeds of cash collateral investments on the Indemnity Triggering Date, (ii) in the case of loans collateralized solely by securities collateral, the greater of the market value of such collateral on the business day immediately preceding the Indemnity Triggering Date and on the Indemnity Triggering Date, and (iii) in the case of loans collateralized solely by letters of credit, the respective available undrawn amounts on the Indemnity Triggering Date. Where a loan is collateralized by more than one type of collateral, the aggregate market value of collateral securing such loan (for the purpose of computing the Indemnifiable Amount) shall be the sum of the market values for each relevant type of collateral. Market value shall be determined by Agent, where applicable, by utilizing recognized pricing services or dealer price quotations.

In lieu of paying Lender the Indemnifiable Amount as provided above, Agent may, at its sole option and expense, purchase for Lender's account ("Buy-In") on the Indemnity Triggering Date for settlement in the normal course replacement securities of the same issue, type, class, and series as that of the loaned securities, provided, however, that if Agent effects a Buy-In, Lender agrees that, to the extent of such Buy-In, Agent shall be subrogated to, and Lender shall assign and be deemed to have assigned to Agent, all of Lender's rights in, to and against the Borrower (and any guarantor thereof) in respect of such loan, any collateral pledged by the borrower in respect of such loan (including any letters of credit and the issuers thereof), and all proceeds of such collateral. In the event that Lender receives or is credited with any payment, benefit or value from or on behalf of the Borrower in respect of rights to which Agent is subrogated as provided herein, Lender shall promptly remit or pay to Agent the same (or, where applicable, its United States dollar equivalent).

12.2. The Agent shall not be liable to the Lender or any third party for any loss occasioned by reason of action taken or omitted to be taken by the Agent hereunder or in connection herewith, except insofar as such loss is occasioned by the Agent's negligence or willful misconduct. The Lender agrees to reimburse the Agent for all losses, damages, taxes (other than income taxes on any fee paid to the Agent pursuant to section 10) and costs and expenses (including, without limitation, costs incurred as a result of proceeding against any Collateral upon a default by a Borrower and all amounts paid in the settlement of claims or satisfaction of judgments and legal fees) which may arise out of (i) any action taken by the Agent pursuant to this Agreement or otherwise upon the instructions of the Lender (except insofar as such losses, damages, taxes and expenses are incurred as a result of the Agent's negligence or willful misconduct) or (ii) the failure by the Lender to fulfill the terms of any Loan or any agreement relating thereto, including this Agreement and any Master SLA, including without limitation, a failure by the Lender to give timely notification to Agent of any sale or change in availability of Available Securities as required by Section 2 of this Agreement.

12.3. In order to be able to carry out Loans hereunder, the Agent is authorized to deposit Available Securities with a Federal Reserve Bank, the Depository Trust Company or any other depository or clearing corporation of which the Agent is a participant or with a bank sub-custodian approved by the Agent. The Agent shall not be liable to the Lender or any third party as a result of any act or failure to act by any Federal Reserve Bank, the Depository Trust Company or any depository or clearing corporation or sub-custodian, or the employees or agents of any of the foregoing, so long as the Agent exercised reasonable care in the selection thereof.

12.4. The Agent may, in its discretion and without notice to the Lender, from time to time appoint one or more persons to act as its sub-agent hereunder or with respect to the loan of securities held in the custody account established pursuant to the Custody Agreement, and the Lender hereby approves any such appointment. Any reference to the Agent shall deem to mean and include, any sub-agent appointed by Wachovia Bank, National Association Agent shall have the right, in its discretion, to terminate any appointment of a sub-agent or to modify the terms of any such appointment without notice to the Lender.

13. Agent's Outside Activities. The Lender understands that (a) through the Agent's commercial lending, trust or other departments, the Agent may be a creditor of Borrowers for its own account and (b) all requests for Loans from Borrowers will be allotted by the Agent among all of its customers in a manner which in the judgment of the Agent shall be fair and equitable. The Agent shall furnish to the Lender upon request a description of its method for allocating Loans in accordance with the foregoing clause (b), as then in effect.

14. Definitions.

Custody Agreement: the Custody Agreement between the Lender and the Agent, dated September 26, 2003_____, (year).

Distribution: with respect to any Loaned Securities, or Collateral consisting of securities, any interest, dividend or other payment or distribution of cash, securities or other property including any option, warrant, right, privilege or other security of any kind distributed with respect thereto or in exchange therefore.

Loaned Securities: with respect to any Borrower, the aggregate of the following (unless otherwise provided in the Master SLA):

(a) all securities which the Agent shall deliver to such Borrower pursuant to a Loan;

(b) all securities distributed with respect to or in exchange for any Loaned Securities, including securities distributed as a result of any stock split or stock dividend;

(c) all securities received in exchange for Loaned Securities in connection with (I) a merger in which the issuer of such Loaned Securities is not the surviving corporation or (ii) a sale of substantially all the assets of such issuer; and

(d) all securities for which Loaned Securities are exchanged in connection with any recapitalization of the issuer of such Loaned Securities.

15. ERISA. Where the Lender is a plan subject to the requirements of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Lender agrees to promptly notify the Agent if at any time:

(a) any potential borrower which is a broker-dealer registered under the Securities Exchange Act of 1934, as amended (the "1934 Act"), a broker-dealer exempted from registration under Section 15(a)(1) of the 1934 Act as a dealer of exempted U.S. Government securities, or a bank (or any of such potential borrower's affiliates, as defined in Department of Labor Prohibited Transaction Exemption 81-6) has discretionary authority or control with respect to the investment of any Available Securities, or renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to any Available Securities, or

(b) any potential borrower not described in clause (a) above is a party-in-interest with respect to the Lender (within the meaning of 3(14) of ERISA) or a disqualified person with respect to the Lender (within the meaning of 4975(e) (2) of the Internal Revenue Code of 1986, as amended).

If the Lender provides such notice, the Agent shall take appropriate action to prevent the Lender from engaging in a loan of securities that would constitute a prohibited transaction (as described in Section 406 of ERISA) with any potential borrower so identified by the Lender. The Agent shall be entitled to rely conclusively upon such notice from the Lender.

16. Tax Considerations. The Lender acknowledges that any payment of distributions from a Borrower to the Lender are in substitution for the interest or dividend accrued or paid in respect of Loaned Securities and that the tax treatment of such payment may differ from the tax treatment of such interest or dividend. The Lender acknowledges that it has made its own assessment and evaluation of the tax consequences to it of any Loan permitted to be effected hereunder.

17. The parties acknowledge that:

THE PROVISIONS OF THE SECURITIES INVESTOR PROTECTION ACT OF 1970 MAY NOT PROTECT THE LENDER WITH RESPECT TO THE SECURITIES LOAN TRANSACTION AND THAT, THEREFORE, THE COLLATERAL DELIVERED BY THE BROKER OR DEALER, AS BORROWER, TO THE LENDER MAY CONSTITUTE THE ONLY SOURCE OF SATISFACTION OF THE BROKER'S OR DEALER'S OBLIGATION IN THE EVENT THE BROKER OR DEALER FAILS TO RETURN THE SECURITIES.

18. Execution of Documents. The Lender hereby authorizes and empowers the Agent to execute in the Lender's name and on its behalf and at its risk all agreements and documents as may be necessary or appropriate in the judgment of the Agent to carry out the purposes of this

Agreement. The Agent is authorized to supply any information regarding the Lender and any Loan effected pursuant hereto which is required by applicable law.

19. Termination. This Agreement may be terminated at the option of either party upon no less than 30 days' prior written notice of termination to the other party. Concurrent with the termination date of this Agreement, no further Loans will be made and unless otherwise directed in writing by the Lender, the Agent shall terminate any Loans which remain outstanding in accordance with the Master SLA's applicable to such Loans. The provisions hereof shall continue in full force and effect in all other respects until all Loans have been terminated and all obligations satisfied as herein provided.

20. Notices. All notices, demands and other communications hereunder shall be in writing and delivered or transmitted (as the case may be) by registered mail, facsimile, telex or courier, or be effected by telephone promptly confirmed in writing and delivered or transmitted as aforesaid, to the intended recipient as set forth below. Notices shall be effective upon receipt.

(a) if to the Lender, at	(b) if to the Agent, at
Julie France Carolinas HealthCare System P.O. Box 32861 Charlotte, NC 28232-2861 Tel: 704-697-7011 email- julie.france@carolinashealthcare.org	Alba M. Suarez Wachovia Bank, National Association PA 4944 123 South Broad Street Philadelphia, PA 19109 Tel: 215-670-4521 Fax: 215-670-4798 alba.suarez@wachovia.com

or to such other addresses as either of the parties shall have furnished to the other in writing.

21. Custody Agreement. Insofar as the terms of the Custody Agreement are inconsistent with, or require written instructions or a separate written agreement to permit performance of, this Agreement, such terms shall be deemed amended, such instructions given and such agreement entered into by the parties hereunder, to the extent necessary to permit the performance of this Agreement in accordance with its terms in connection with the transactions contemplated hereby. As so amended by the preceding sentence, the Custody Agreement is ratified and confirmed to be in full force and effect. All terms and conditions of the Custody Agreement consistent with this Agreement are hereby ratified and confirmed to be in full force and effect in this Agreement.

22. Miscellaneous. This Agreement embodies the entire agreement and understanding between the parties and supersedes any other agreement between the parties concerning securities lending. This Agreement may not be changed, amended or modified except by an instrument in writing signed by each of the parties hereto. The headings in this Agreement are for convenience of reference only and shall not expand, limit or otherwise affect the meaning hereof. This Agreement shall not be assignable by either party hereto without the written consent of the other and shall be governed by and construed in accordance with Pennsylvania law. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of each party hereto and its successors and permitted assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the day and year first above written.

The Charlotte-Mecklenburg Hospital Authority

By Robert H. Wiggins Jr. 2-27-05
Robert H. Wiggins Jr. Date
~~Vice President~~
Senior Vice President

Metropolitan West Securities, LLC.

By 2-28-05
Daniel T. Murphy Date
Managing Director
President

ATTACHMENT A

The Charlotte Mecklenburg Hospital Authority

APPROVED BORROWERS FOR SECURITIES LENDING

Borrower
Abbey National Securities, Inc.
ABN Amro Bank, NV
ABN Amro, Inc.
Banc of America Securities LLC
Barclays Bank Plc
Barclays Capital, Inc.
Bear Stearns Companies, Inc.
Bear Stearns & Co. Inc.
Bear Stearns International Limited
Bear Stearns Securities Corp.
BNP Paribas
BNP Paribas Securities Corp.
Cantor Fitzgerald & Co.
Cantor Fitzgerald Securities
Cater Allen International Ltd.
Citigroup Global Markets Inc.
Citigroup Global Markets Ltd.
Countrywide Securities Corp.
Credit Suisse First Boston LLC
Credit Suisse First Boston (Europe) Ltd.
Deutsche Bank AG
Deutsche Bank Securities Inc.
Dresdner Bank AG
Dresdner Kleinwort Wasserstein Securities, LLC
Dresdner Kleinwort Wasserstein Securities, Ltd.
Fortis Bank
Fortis Securities, LLC
Goldman Sachs & Co.
Goldman Sachs International
Greenwich Capital Markets, Inc.
Harris Nesbitt Corp.
HSBC Securities (USA), Inc.
ING Financial Markets, LLC
Janney Montgomery Scott LLC
Jefferies & Company, Inc.
J.P. Morgan Securities, Inc.
J.P. Morgan Securities, Ltd.
Lehman Brothers, Inc.
Lehman Brothers International (Europe)
Merrill Lynch Government Securities, Inc.
Merrill Lynch International
Merrill Lynch Pierce Fenner & Smith, Inc.
Morgan Stanley & Co., Inc.
Morgan Stanley & Co. International Ltd.

ATTACHMENT A

MS Securities Services Inc.
Nomura Securities International, Inc.
RBC Capital Markets Corp.
Societe Generale
UBS AG
UBS Securities LLC
WestLB AG

ATTACHMENT B

SECURITIES LENDING INVESTMENT GUIDELINES

The following investment guidelines govern the investment activity of collateral in The Charlotte-Mecklenburg Hospital Authority Lending program ("Lender") with Wachovia Bank N.A.("Agent").

1. INVESTMENT SUMMARY AND PORTFOLIO STRUCTURE

There are three objectives to managing the collateral portfolio. The primary objective is to provide safety of principal while earning a positive spread to the rebate rate on securities lent. The second objective is to provide adequate daily liquidity for the collateral portfolio, and the third objective is to obtain the highest yield possible within the parameters of these guidelines.

A. Safety of Principal

1. All credit restrictions and rating requirements pertain to the time of purchase.

2. A downgrade in credit rating does not by itself require immediate liquidation of the security, but does require prompt review by the Lender regarding the appropriateness of holding the security if the time to maturity exceeds seven days. The Lender will be notified promptly by Agent of such downgrade and asked for specific written instructions as to the possible disposition of that security, provided the maturity of the downgraded security exceeds 7 days.

3. All investments made in the Lender's collateral portfolio shall be segregated from the investments made on behalf of other participants in the Wachovia Securities Lending program, unless otherwise instructed and agreed by the Lender, Agent and designated sub-agent.

B. Liquidity

1. Assets should be held until maturity under usual circumstances, and after effecting admissions and withdrawals, not less than 10% of the total collateral investments value of the remaining assets must be composed of cash and cash equivalent investments which will mature on the next business day.

2. Weighted average duration mismatch between loans and collateral investments shall not exceed one (1) day. For the purpose of calculating interest rate mismatch and the calculation of weighted average maturity or duration, the maturity date on floating rate securities shall be deemed to be the next interest rate reset date. In the case of Fixed Rate Asset Backed Securities, expected maturity shall be used in calculating weighted average maturity. Money market investments shall be viewed as the next business day.

II. INVESTMENT DIVERSIFICATION REQUIREMENTS

When the collateral portfolio is under $150 million, total exposure to any individual issuer shall not exceed $15 Million. When the collateral portfolio is equal to or greater than $150 million, total exposure to any individual issuer shall not exceed the lesser of $50 million or 10% of the collateral portfolio at the time of purchase. The following types of securities are exempt from the individual issuer limit: 1) Repurchase Agreements, other than those collateralized by Whole Loan mortgages*, and 2) Money Market Funds and 3) U.S. Government issues fully guaranteed as to both principal and interest by the U.S. Government or agencies and instrumentalities thereof.

* Repurchase Agreements secured by Whole Loan mortgages shall be limited to 50% of the collateral portfolio at the time of purchase per issuer.

III. PROHIBITED INVESTMENTS

The collateral portfolio is not allowed to hold the following.

Derivative Securities - Defined as Inverse Floaters, Yield Curve Notes, Range Floaters, Futures Contracts, Interest Only Strips, Principal Only Strips, Leveraged (or De-leveraged) Floating Rate Securities, CMT Based Floating Rate Securities, Dual Index Floating Rate Securities and COFI-Based Floating Rate Securities.

In addition, liabilities of Wachovia Bank, N. A. or any of its affiliates shall not be permissible investments unless specifically authorized in writing by the owner of the loaned securities.

IV. PERMISSIBLE INVESTMENTS

Acceptable investments will consist of **fixed income securities** (defined by the parameters of these guidelines), from issuers as follows:

A. **Securities of the U.S. Government or agencies thereof.**

B. **Corporate Bonds and Debentures** – rated at least A2 /or A, or its equivalent by a nationally recognized securities rating organization.

C. **Commercial Paper** (both with and without credit enhancement), **Bankers' Acceptances, Certificates of Deposit, Time Deposits,** and **Bank Notes** – rated at least A1 or P1 or its equivalent by at least two nationally recognized securities rating organizations.

D. **Eurodollar Time Deposits and Eurodollar Certificates of Deposit** - rated at least A1 or P1 or its equivalent by at least two nationally recognized securities rating organizations.

E. **Repurchase Agreements –** Must be collateralized at a minimum of 102%. These investments shall be effected on a DVP basis and or held by a tri-party Custodian. Repurchase Agreements shall be limited to those counter-parties listed on the approved borrowers list. Repurchase Agreements secured by Whole Loan collateral shall be limited to counter-parties having a parental guarantee by a parent of an approved borrower. Repurchase Agreements secured by Whole Loan mortgages shall be transacted on an overnight or open basis. See attached Appendix A for a list of "Acceptable Collateral for Repurchase Agreements." Any additions or deletions to Appendix A must be approved by the Lender, agent and its designated sub-agent.

F. **Floating Rate Securities** - The coupons of which adjust to market interest rates at least quarterly, meet the quality criteria outlined above, and have maturities or average lives of three years or less. In the case of asset-backed securities and mortgage-backed securities, the average life shall be 36 months or less, using the most current prepayment assumptions. Capped floating rate securities will have a capped loan matched to its maturity.

G. **Fixed Rate Securities** - Maturities of fixed rate securities shall not exceed 18 months. Fixed rate asset-backed securities shall have a final payment of principal occurring in 30 months or less, with an average life of 18 months or less, using the most current prepayment assumptions.

H. **Money Market Mutual Funds** - As defined by SEC Regulation 270.2a-7. Investment in any one fund not to exceed 10% of the total net assets of the Fund at the time of purchase.

I. **Sweep Accounts and Short Term Investment Funds** - Only those offered by the Custodial Bank.

J. **Master Notes, Promissory Notes and Funding Agreements** - Must be issued by companies or their subsidiaries whereby the issuer or its guarantor, is rated A1 by Standard and Poor's or an equivalent rating from another nationally recognized securities rating organization. The instrument must have a put date or final maturity of 91 days or less.

V. COMPLIANCE

Compliance shall be determined on a trade date basis. It is recognized that changes in collateral portfolio balances may result, temporarily, in situations where percentage limitations are exceeded. There will be a one-business day grace period on these

situations that result from changes in these balances for open, or overnight, investments. Term investments may be carried to maturity, with no additions.

ACCEPTED AND APPROVED BY, as of _____, 2005:

The Charlotte-Mecklenburg Hospital Authority

By Robert H. Wiggins 2-27-05

Robert H. Wiggins Jr. Date
Senior Vice President

Metropolitan West Securities, LLC.

By 2-28-05

Daniel T. Murphy Date
Managing Director

ATTACHMENT C

REVENUE SHARING

All revenue shall accrue daily and shall be apportioned as follows:

(1) **65% to The Charlotte-Mecklenburg Hospital Authority Funded Depreciation Account**
35% to Wachovia Bank, N.A. (Agent)

(2) **65% to The Charlotte-Mecklenburg Hospital Authority Pension Plan**
35% to Wachovia Bank, N.A. (Agent)

Revenue shall include the difference between (i) the sum of income received from the investment of Collateral received in securities loans, loan fees received from securities loans, and fees paid by a Borrower on loans collateralized with Collateral other than Cash Collateral; and (ii) any rebate paid to a Borrower if one was named as agent for such Borrower, and any other allocable fees and expenses in connection with securities loans. Agent shall forward to Lender monthly, its allocation of revenue.

ATTACHMENT D

CLIENT INCUMBENCY CERTIFICATE

I, _____, the Secretary of _____, a _____ type of entity) ("Client"), HEREBY CERTIFY AND DECLARE, on behalf of Client, that (i) the following named person is authorized to deliver the Securities Lending Agency and Collateral Management Agreement, dated as of _____, 2004, by and between Client and Metropolitan West Securities LLC (the "SLACMA"); (ii) the office set forth opposite the identified person's name is held by such person; and (iii) the genuine signature of such person is set forth opposite his/her name.

Name: _____ Office: _____

Signature:_____

I, _____, the _____, on behalf of Client HEREBY CERTIFY AND DECLARE, on behalf of the Client that (i) each of the following named persons is singly authorized to act singly on behalf of Client under the SLACMA or in connection therewith including without limitation the execution and delivery of written and Oral Instructions; and (ii) the genuine signature of such person is set forth opposite his/her name.

Name:

XXXXXXX Signature:_____

XXXXXXX Signature:_____

IN WITNESS WHEREOF, I have caused this certificate to be executed in the name of Client as of this ___ day, _____, 2004.

Comment: Page: 2
Date

_____

I, _____, Secretary of Client, do hereby certify that _____ is the duly elected and qualified Secretary of Client and that the signature above is his genuine signature.

IN WITNESS WHEREOF, I have caused this certificate to be executed in the name of Client as of this _____, day of _____, 2004.

_____

Master Securities Loan Agreement

2000 Version

Dated as of: _____

Between: _____

and _____

1. Applicability.

From time to time the parties hereto may enter into transactions in which one party ("Lender") will lend to the other party ("Borrower") certain Securities (as defined herein) against a transfer of Collateral (as defined herein). Each such transaction shall be referred to herein as a "Loan" and, unless otherwise agreed in writing, shall be governed by this Agreement, including any supplemental terms or conditions contained in an Annex or Schedule hereto and in any other annexes identified herein or therein as applicable hereunder. Capitalized terms not otherwise defined herein shall have the meanings provided in Section 25.

2. Loans of Securities.

2.1 Subject to the terms and conditions of this Agreement, Borrower or Lender may, from time to time, seek to initiate a transaction in which Lender will lend Securities to Borrower. Borrower and Lender shall agree on the terms of each Loan (which terms may be amended during the Loan), including the issuer of the Securities, the amount of Securities to be lent, the basis of compensation, the amount of Collateral to be transferred by Borrower, and any additional terms. Such agreement shall be confirmed (a) by a schedule and receipt listing the Loaned Securities provided by Borrower to Lender in accordance with Section 3.2, (b) through any system that compares Loans and in which Borrower and Lender are participants, or (c) in such other manner as may be agreed by Borrower and Lender in writing. Such confirmation (the "Confirmation"), together with the Agreement, shall constitute conclusive evidence of the terms agreed between Borrower and Lender with respect to the Loan to which the Confirmation relates, unless with respect to the Confirmation specific objection is made promptly after receipt thereof. In the event of any inconsistency between the terms of such Confirmation and this Agreement, this Agreement shall prevail unless each party has executed such Confirmation.

2.2 Notwithstanding any other provision in this Agreement regarding when a Loan commences, unless otherwise agreed, a Loan hereunder shall not occur until the Loaned Securities and the Collateral therefor have been transferred in accordance with Section 15.

3. Transfer of Loaned Securities.

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

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

3.3 Notwithstanding any other provision in this Agreement, the parties hereto agree that they intend the Loans hereunder to be loans of Securities. If, however, any Loan is deemed to be a loan of money by Borrower to Lender, then Borrower shall have, and Lender shall be deemed to have granted, a security interest in the Loaned Securities and the proceeds thereof.

4. Collateral.

4.1 Unless otherwise agreed, Borrower shall, prior to or concurrently with the transfer of the Loaned Securities to Borrower, but in no case later than the Close of Business on the day of such transfer, transfer to Lender Collateral with a Market Value at least equal to the Margin Percentage of the Market Value of the Loaned Securities.

4.2 The Collateral transferred by Borrower to Lender, as adjusted pursuant to Section 9, shall be security for Borrower's obligations in respect of such Loan and for any other obligations of Borrower to Lender hereunder. Borrower hereby pledges with, assigns to, and grants Lender a continuing first priority security interest in, and a lien upon, the Collateral, which shall attach upon the transfer of the Loaned Securities by Lender to Borrower and which shall cease upon the transfer of the Loaned Securities by Borrower to Lender. In addition to the rights and remedies given to Lender hereunder, Lender shall have all the rights and remedies of a secured party under the UCC. It is understood that Lender may use or invest the Collateral, if such consists of cash, at its own risk, but that (unless Lender is a Broker-Dealer) Lender shall, during the term of any Loan hereunder, segregate Collateral from all securities or other assets in its possession. Lender may Retransfer Collateral only (a) if Lender is a Broker-Dealer or (b) in the event of a Default by Borrower. Segregation of Collateral may be accomplished by appropriate identification on the books and records of Lender if it is a "securities intermediary" within the meaning of the UCC.

4.3 Except as otherwise provided herein, upon transfer to Lender of the Loaned Securities on the day a Loan is terminated pursuant to Section 6, Lender shall be obligated to transfer the Collateral (as adjusted pursuant to Section 9) to Borrower no later than the Cutoff Time on such day or, if such day is not a day on which a transfer of such Collateral may be effected under Section 15, the next day on which such a transfer may be effected.

4.4 If Borrower transfers Collateral to Lender, as provided in Section 4.1, and Lender does not transfer the Loaned Securities to Borrower, Borrower shall have the absolute right to the return of the Collateral; and if Lender transfers Loaned Securities to Borrower and

Borrower does not transfer Collateral to Lender as provided in Section 4.1, Lender shall have the absolute right to the return of the Loaned Securities.

4.5 Borrower may, upon reasonable notice to Lender (taking into account all relevant factors, including industry practice, the type of Collateral to be substituted, and the applicable method of transfer), substitute Collateral for Collateral securing any Loan or Loans; provided, however, that such substituted Collateral shall (a) consist only of cash, securities or other property that Borrower and Lender agreed would be acceptable Collateral prior to the Loan or Loans and (b) have a Market Value such that the aggregate Market Value of such substituted Collateral, together with all other Collateral for Loans in which the party substituting such Collateral is acting as Borrower, shall equal or exceed the agreed upon Margin Percentage of the Market Value of the Loaned Securities.

4.6 Prior to the expiration of any letter of credit supporting Borrower's obligations hereunder, Borrower shall, no later than the Extension Deadline, (a) obtain an extension of the expiration of such letter of credit, (b) replace such letter of credit by providing Lender with a substitute letter of credit in an amount at least equal to the amount of the letter of credit for which it is substituted, or (c) transfer such other Collateral to Lender as may be acceptable to Lender.

5. Fees for Loan.

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

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

(a) in the case of any Loan of Securities other than Government Securities, upon the earlier of (i) the fifteenth day of the month following the calendar month in which such fee was incurred and (ii) the termination of all Loans hereunder (or, if a transfer of cash in accordance with Section 15 may not be effected on such fifteenth day or the day of such termination, as the case may be, the next day on which such a transfer may be effected); and

(b) in the case of any Loan of Government Securities, upon the termination of such Loan and at such other times, if any, as may be customary in accordance with market practice.

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

6. Termination of the Loan.

6.1 (a) Unless otherwise agreed, either party may terminate a Loan on a termination date established by notice given to the other party prior to the Close of Business on a Business Day. The termination date established by a termination notice shall be a date no earlier than the standard settlement date that would apply to a purchase or sale of the Loaned Securities (in the case of a notice given by Lender) or the non-cash Collateral securing the Loan (in the case of a notice given by Borrower) entered into at the time of such notice, which date shall, unless Borrower and Lender agree to the contrary, be (i) in the case of Government Securities, the next Business Day following such notice and (ii) in the case of all other Securities, the third Business Day following such notice.

(b) Notwithstanding paragraph (a) and unless otherwise agreed, Borrower may terminate a Loan on any Business Day by giving notice to Lender and transferring the Loaned Securities to Lender before the Cutoff Time on such Business Day if (i) the Collateral for such Loan consists of cash or Government Securities or (ii) Lender is not permitted, pursuant to Section 4.2, to Retransfer Collateral.

6.2 Unless otherwise agreed, Borrower shall, on or before the Cutoff Time on the termination date of a Loan, transfer the Loaned Securities to Lender; provided, however, that upon such transfer by Borrower, Lender shall transfer the Collateral (as adjusted pursuant to Section 9) to Borrower in accordance with Section 4.3.

7. Rights in Respect of Loaned Securities and Collateral.

7.1 Except as set forth in Sections 8.1 and 8.2 and as otherwise agreed by Borrower and Lender, until Loaned Securities are required to be redelivered to Lender upon termination of a Loan hereunder, Borrower shall have all of the incidents of ownership of the Loaned Securities, including the right to transfer the Loaned Securities to others. Lender hereby waives the right to vote, or to provide any consent or to take any similar action with respect to, the Loaned Securities in the event that the record date or deadline for such vote, consent or other action falls during the term of the Loan.

7.2 Except as set forth in Sections 8.3 and 8.4 and as otherwise agreed by Borrower and Lender, if Lender may, pursuant to Section 4.2, Retransfer Collateral, Borrower hereby waives the right to vote, or to provide any consent or take any similar action with respect to, any such Collateral in the event that the record date or deadline for such vote, consent or other action falls during the term of a Loan and such Collateral is not required to be returned to Borrower pursuant to Section 4.5 or Section 9.

8. Distributions.

8.1 Lender shall be entitled to receive all Distributions made on or in respect of the Loaned Securities which are not otherwise received by Lender, to the full extent it would be so entitled if the Loaned Securities had not been lent to Borrower.

8.2 Any cash Distributions made on or in respect of the Loaned Securities, which Lender is entitled to receive pursuant to Section 8.1, shall be paid by the transfer of cash to Lender by Borrower, on the date any such Distribution is paid, in an amount equal to such cash Distribution, so long as Lender is not in Default at the time of such payment. Non-cash Distributions that Lender is entitled to receive pursuant to Section 8.1 shall be added to the Loaned Securities on the date of distribution and shall be considered such for all purposes, except that if the Loan has terminated, Borrower shall forthwith transfer the same to Lender.

8.3 Borrower shall be entitled to receive all Distributions made on or in respect of non-cash Collateral which are not otherwise received by Borrower, to the full extent it would be so entitled if the Collateral had not been transferred to Lender.

8.4 Any cash Distributions made on or in respect of such Collateral, which Borrower is entitled to receive pursuant to Section 8.3, shall be paid by the transfer of cash to Borrower by Lender, on the date any such Distribution is paid, in an amount equal to such cash Distribution, so long as Borrower is not in Default at the time of such payment. Non-cash Distributions that Borrower is entitled to receive pursuant to Section 8.3 shall be added to the Collateral on the date of distribution and shall be considered such for all purposes, except that if each Loan secured by such Collateral has terminated, Lender shall forthwith transfer the same to Borrower.

8.5 Unless otherwise agreed by the parties:

(a) If (i) Borrower is required to make a payment (a "Borrower Payment") with respect to cash Distributions on Loaned Securities under Sections 8.1 and 8.2 ("Securities Distributions"), or (ii) Lender is required to make a payment (a "Lender Payment") with respect to cash Distributions on Collateral under Sections 8.3 and 8.4 ("Collateral Distributions"), and (iii) Borrower or Lender, as the case may be ("Payor"), shall be required by law to collect any withholding or other tax, duty, fee, levy or charge required to be deducted or withheld from such Borrower Payment or Lender Payment ("Tax"), then Payor shall (subject to subsections (b) and (c) below), pay such additional amounts as may be necessary in order that the net amount of the Borrower Payment or Lender Payment received by the Lender or Borrower, as the case may be ("Payee"), after payment of such Tax equals the net amount of the Securities Distribution or Collateral Distribution that would have been received if such Securities Distribution or Collateral Distribution had been paid directly to the Payee.

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

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

(d) Each party hereto shall be deemed to represent that, as of the commencement of any Loan hereunder, no Tax would be imposed on any cash Distribution paid to it with respect to (i) Loaned Securities subject to a Loan in which it is acting as

Lender or (ii) Collateral for any Loan in which it is acting as Borrower, unless such party has given notice to the contrary to the other party hereto (which notice shall specify the rate at which such Tax would be imposed). Each party agrees to notify the other of any change that occurs during the term of a Loan in the rate of any Tax that would be imposed on any such cash Distributions payable to it.

8.6 To the extent that, under the provisions of Sections 8.1 through 8.5, (a) a transfer of cash or other property by Borrower would give rise to a Margin Excess or (b) a transfer of cash or other property by Lender would give rise to a Margin Deficit, Borrower or Lender (as the case may be) shall not be obligated to make such transfer of cash or other property in accordance with such Sections, but shall in lieu of such transfer immediately credit the amounts that would have been transferable under such Sections to the account of Lender or Borrower (as the case may be).

9. Mark to Market.

9.1 If Lender is a Customer, Borrower shall daily mark to market any Loan hereunder and in the event that at the Close of Trading on any Business Day the Market Value of the Collateral for any Loan to Borrower shall be less than 100% of the Market Value of all the outstanding Loaned Securities subject to such Loan, Borrower shall transfer additional Collateral no later than the Close of Business on the next Business Day so that the Market Value of such additional Collateral, when added to the Market Value of the other Collateral for such Loan, shall equal 100% of the Market Value of the Loaned Securities.

9.2 In addition to any rights of Lender under Section 9.1, if at any time the aggregate Market Value of all Collateral for Loans by Lender shall be less than the Margin Percentage of the Market Value of all the outstanding Loaned Securities subject to such Loans (a "Margin Deficit"), Lender may, by notice to Borrower, demand that Borrower transfer to Lender additional Collateral so that the Market Value of such additional Collateral, when added to the Market Value of all other Collateral for such Loans, shall equal or exceed the Margin Percentage of the Market Value of the Loaned Securities.

9.3 Subject to Borrower's obligations under Section 9.1, if at any time the Market Value of all Collateral for Loans to Borrower shall be greater than the Margin Percentage of the Market Value of all the outstanding Loaned Securities subject to such Loans (a "Margin Excess"), Borrower may, by notice to Lender, demand that Lender transfer to Borrower such amount of the Collateral selected by Borrower so that the Market Value of the Collateral for such Loans, after deduction of such amounts, shall thereupon not exceed the Margin Percentage of the Market Value of the Loaned Securities.

9.4 Borrower and Lender may agree, with respect to one or more Loans hereunder, to mark the values to market pursuant to Sections 9.2 and 9.3 by separately valuing the Loaned Securities lent and the Collateral given in respect thereof on a Loan-by-Loan basis.

9.5 Borrower and Lender may agree, with respect to any or all Loans hereunder, that the respective rights of Lender and Borrower under Sections 9.2 and 9.3 may be exercised only where a Margin Excess or Margin Deficit exceeds a specified dollar amount or a specified percentage of the Market Value of the Loaned Securities under such Loans (which amount or percentage shall be agreed to by Borrower and Lender prior to entering into any such Loans).

9.6 If any notice is given by Borrower or Lender under Sections 9.2 or 9.3 at or before the Margin Notice Deadline on any day on which a transfer of Collateral may be effected in accordance with Section 15, the party receiving such notice shall transfer Collateral as provided in such Section no later than the Close of Business on such day. If any such notice is given after the Margin Notice Deadline, the party receiving such notice shall transfer such Collateral no later than the Close of Business on the next Business Day following the day of such notice.

10. Representations.

The parties to this Agreement hereby make the following representations and warranties, which shall continue during the term of any Loan hereunder:

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

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

10.3 Each party hereto represents and warrants that it is acting for its own account unless it expressly specifies otherwise in writing and complies with Section 11.1(b).

10.4 Borrower represents and warrants that it has, or will have at the time of transfer of any Collateral, the right to grant a first priority security interest therein subject to the terms and conditions hereof.

10.5 (a) Borrower represents and warrants that it (or the person to whom it relends the Loaned Securities) is borrowing or will borrow Loaned Securities that are Equity Securities for the purpose of making delivery of such Loaned Securities in the case of short sales, failure to receive securities required to be delivered, or as otherwise permitted pursuant to Regulation T as in effect from time to time.

(b) Borrower and Lender may agree, as provided in Section 24.2, that Borrower shall not be deemed to have made the representation or warranty in subsection (a) with respect to any Loan. By entering into any such agreement, Lender shall be deemed to have represented and warranted to Borrower (which representation and warranty shall be deemed to be repeated on each day during the term of the Loan) that Lender is either (i) an "exempted borrower" within the meaning of Regulation T or (ii) a member of a national securities exchange or a broker or dealer registered with the U.S. Securities and Exchange Commission that is entering into such Loan to finance its activities as a market maker or an underwriter.

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

11. Covenants.

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

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

12. Events of Default.

All Loans hereunder may, at the option of the non-defaulting party (which option shall be deemed to have been exercised immediately upon the occurrence of an Act of Insolvency), be terminated immediately upon the occurrence of any one or more of the following events (individually, a "Default"):

12.1 if any Loaned Securities shall not be transferred to Lender upon termination of the Loan as required by Section 6;

12.2 if any Collateral shall not be transferred to Borrower upon termination of the Loan as required by Sections 4.3 and 6;

12.3 if either party shall fail to transfer Collateral as required by Section 9;

12.4 if either party (a) shall fail to transfer to the other party amounts in respect of Distributions required to be transferred by Section 8, (b) shall have been notified of such failure by the other party prior to the Close of Business on any day, and (c) shall not have cured such failure by the Cutoff Time on the next day after such Close of Business on which a transfer of cash may be effected in accordance with Section 15;

12.5 if an Act of Insolvency occurs with respect to either party;

12.6 if any representation made by either party in respect of this Agreement or any Loan or Loans hereunder shall be incorrect or untrue in any material respect during the term of any Loan hereunder;

12.7 if either party notifies the other of its inability to or its intention not to perform its obligations hereunder or otherwise disaffirms, rejects or repudiates any of its obligations hereunder; or

12.8 if either party (a) shall fail to perform any material obligation under this Agreement not specifically set forth in clauses 12.1 through 12.7, above, including but not limited to the payment of fees as required by Section 5, and the payment of transfer taxes as required by Section 14, (b) shall have been notified of such failure by the other party prior to the Close of Business on any day, and (c) shall not have cured such failure by the Cutoff Time on the next day after such Close of Business on which a transfer of cash may be effected in accordance with Section 15.

The non-defaulting party shall (except upon the occurrence of an Act of Insolvency) give notice as promptly as practicable to the defaulting party of the exercise of its option to terminate all Loans hereunder pursuant to this Section 12.

13. Remedies.

13.1 Upon the occurrence of a Default under Section 12 entitling Lender to terminate all Loans hereunder, Lender shall have the right, in addition to any other remedies provided herein, (a) to purchase a like amount of Loaned Securities ("Replacement Securities") in the principal market for such Loaned Securities in a commercially reasonable manner, (b) to sell any Collateral in the principal market for such Collateral in a commercially reasonable manner and (c) to apply and set off the Collateral and any proceeds thereof (including any amounts drawn under a letter of credit supporting any Loan) against the payment of the purchase price for such Replacement Securities and any amounts due to Lender under Sections 5, 8, 14 and 16. In the event that Lender shall exercise such rights, Borrower's obligation to return a like amount of the Loaned Securities shall terminate. Lender may similarly apply the Collateral and any proceeds thereof to any other obligation of Borrower under this Agreement, including Borrower's obligations with respect to Distributions paid to Borrower (and not forwarded to Lender) in respect of Loaned Securities. In the event that (i) the purchase price of Replacement Securities (plus all other amounts, if any, due to Lender hereunder) exceeds (ii) the amount of the Collateral, Borrower shall be liable to Lender for the amount of such excess together with interest thereon at a rate equal to (A) in the case of purchases of Foreign Securities, LIBOR, (B) in the case of purchases of any other Securities (or other amounts, if any, due to Lender hereunder), the Federal Funds Rate or (C) such other rate as may be specified in Schedule B, in each case as such rate fluctuates from day to day, from the date of such purchase until the date of payment of such excess. As security for Borrower's obligation to pay such excess, Lender shall have, and Borrower hereby grants, a security interest in any property of Borrower then held by or for Lender and a right of setoff with respect to such property and any other amount payable by Lender to Borrower. The purchase price of Replacement Securities purchased under this Section 13.1 shall include, and the proceeds of any sale of Collateral shall be determined after deduction of, broker's fees and commissions and all other reasonable costs, fees and expenses related to such purchase or sale (as the case may be). In the event Lender exercises its rights under this Section 13.1, Lender may elect in its sole discretion, in lieu of purchasing all or a portion of the Replacement Securities or selling all or a portion of the Collateral, to be deemed to have made, respectively, such purchase of Replacement Securities or sale of Collateral for an amount equal to the price therefor on the date of such exercise obtained from a generally recognized source or the last bid quotation from such a source at the most recent Close of Trading. Subject to Section 18, upon the satisfaction of all obligations hereunder, any remaining Collateral shall be returned to Borrower.

13.2 Upon the occurrence of a Default under Section 12 entitling Borrower to terminate all Loans hereunder, Borrower shall have the right, in addition to any other remedies provided herein, (a) to purchase a like amount of Collateral ("Replacement Collateral") in the principal market for such Collateral in a commercially reasonable manner, (b) to sell a like amount of the Loaned Securities in the principal market for such Loaned Securities in a commercially reasonable manner and (c) to apply and set off the Loaned Securities and any proceeds thereof against (i) the payment of the purchase price for such Replacement Collateral, (ii) Lender's obligation to return any cash or other Collateral, and (iii) any amounts due to Borrower under Sections 5, 8 and 16. In such event, Borrower may treat the Loaned Securities as its own and Lender's obligation to return a

like amount of the Collateral shall terminate; provided, however, that Lender shall immediately return any letters of credit supporting any Loan upon the exercise or deemed exercise by Borrower of its termination rights under Section 12. Borrower may similarly apply the Loaned Securities and any proceeds thereof to any other obligation of Lender under this Agreement, including Lender's obligations with respect to Distributions paid to Lender (and not forwarded to Borrower) in respect of Collateral. In the event that (i) the sales price received from such Loaned Securities is less than (ii) the purchase price of Replacement Collateral (plus the amount of any cash or other Collateral not replaced by Borrower and all other amounts, if any, due to Borrower hereunder), Lender shall be liable to Borrower for the amount of any such deficiency, together with interest on such amounts at a rate equal to (A) in the case of Collateral consisting of Foreign Securities, LIBOR, (B) in the case of Collateral consisting of any other Securities (or other amounts due, if any, to Borrower hereunder), the Federal Funds Rate or (C) such other rate as may be specified in Schedule B, in each case as such rate fluctuates from day to day, from the date of such sale until the date of payment of such deficiency. As security for Lender's obligation to pay such deficiency, Borrower shall have, and Lender hereby grants, a security interest in any property of Lender then held by or for Borrower and a right of setoff with respect to such property and any other amount payable by Borrower to Lender. The purchase price of any Replacement Collateral purchased under this Section 13.2 shall include, and the proceeds of any sale of Loaned Securities shall be determined after deduction of, broker's fees and commissions and all other reasonable costs, fees and expenses related to such purchase or sale (as the case may be). In the event Borrower exercises its rights under this Section 13.2, Borrower may elect in its sole discretion, in lieu of purchasing all or a portion of the Replacement Collateral or selling all or a portion of the Loaned Securities, to be deemed to have made, respectively, such purchase of Replacement Collateral or sale of Loaned Securities for an amount equal to the price therefor on the date of such exercise obtained from a generally recognized source or the last bid quotation from such a source at the most recent Close of Trading. Subject to Section 18, upon the satisfaction of all Lender's obligations hereunder, any remaining Loaned Securities (or remaining cash proceeds thereof) shall be returned to Lender.

13.3 Unless otherwise agreed, the parties acknowledge and agree that (a) the Loaned Securities and any Collateral consisting of Securities are of a type traded in a recognized market, (b) in the absence of a generally recognized source for prices or bid or offer quotations for any security, the non-defaulting party may establish the source therefor in its sole discretion, and (c) all prices and bid and offer quotations shall be increased to include accrued interest to the extent not already included therein (except to the extent contrary to market practice with respect to the relevant Securities).

13.4 In addition to its rights hereunder, the non-defaulting party shall have any rights otherwise available to it under any other agreement or applicable law.

14. Transfer Taxes.

All transfer taxes with respect to the transfer of the Loaned Securities by Lender to Borrower and by Borrower to Lender upon termination of the Loan and with respect to the transfer of Collateral by Borrower to Lender and by Lender to Borrower upon termination of the Loan or pursuant to Section 4.5 or Section 9 shall be paid by Borrower.

15. Transfers.

15.1 All transfers by either Borrower or Lender of Loaned Securities or Collateral consisting of "financial assets" (within the meaning of the UCC) hereunder shall be by (a) in the case of certificated securities, physical delivery of certificates representing such securities together with duly executed stock and bond transfer powers, as the case may be, with signatures guaranteed by a bank or a member firm of the New York Stock Exchange, Inc., (b) registration of an uncertificated security in the transferee's name by the issuer of such uncertificated security, (c) the crediting by a Clearing Organization of such financial assets to the transferee's "securities account" (within the meaning of the UCC) maintained with such Clearing Organization, or (d) such other means as Borrower and Lender may agree.

15.2 All transfers of cash hereunder shall be by (a) wire transfer in immediately available, freely transferable funds or (b) such other means as Borrower and Lender may agree.

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

15.4 A transfer of Securities, cash or letters of credit may be effected under this Section 15 on any day except (a) a day on which the transferee is closed for business at its address set forth in Schedule A hereto or (b) a day on which a Clearing Organization or wire transfer system is closed, if the facilities of such Clearing Organization or wire transfer system are required to effect such transfer.

15.5 For the avoidance of doubt, the parties agree and acknowledge that the term "securities," as used herein (except in this Section 15), shall include any "security entitlements" with respect to such securities (within the meaning of the UCC). In every transfer of "financial assets" (within the meaning of the UCC) hereunder, the transferor shall take all steps necessary (a) to effect a delivery to the transferee under Section 8-301 of the UCC, or to cause the creation of a security entitlement in favor of the transferee under Section 8-501 of the UCC, (b) to enable the transferee to obtain "control" (within the meaning of Section 8-106 of the UCC), and (c) to provide the transferee with comparable rights under any applicable foreign law or regulation.

16. Contractual Currency.

16.1 Borrower and Lender agree that (a) any payment in respect of a Distribution under Section 8 shall be made in the currency in which the underlying Distribution of cash was made, (b) any return of cash shall be made in the currency in which the underlying transfer of cash was made, and (c) any other payment of cash in connection with a Loan under this Agreement shall be in the currency agreed upon by Borrower and Lender in connection with such Loan (the currency established under clause (a), (b) or (c) hereinafter referred to as the "Contractual Currency"). Notwithstanding the foregoing, the payee of any such payment may, at its option, accept tender thereof in any other currency; provided, however, that, to the extent permitted by applicable law, the obligation of the payor to make such payment will be discharged only to the extent of the amount of Contractual Currency that such payee may, consistent with normal banking

procedures, purchase with such other currency (after deduction of any premium and costs of exchange) on the banking day next succeeding its receipt of such currency.

16.2 If for any reason the amount in the Contractual Currency received under Section 16.1, including amounts received after conversion of any recovery under any judgment or order expressed in a currency other than the Contractual Currency, falls short of the amount in the Contractual Currency due in respect of this Agreement, the party required to make the payment will (unless a Default has occurred and such party is the non-defaulting party) as a separate and independent obligation and to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall.

16.3 If for any reason the amount in the Contractual Currency received under Section 16.1 exceeds the amount in the Contractual Currency due in respect of this Agreement, then the party receiving the payment will (unless a Default has occurred and such party is the non-defaulting party) refund promptly the amount of such excess.

17. ERISA.

Lender shall, if any of the Securities transferred to the Borrower hereunder for any Loan have been or shall be obtained, directly or indirectly, from or using the assets of any Plan, so notify Borrower in writing upon the execution of this Agreement or upon initiation of such Loan under Section 2.1. If Lender so notifies Borrower, then Borrower and Lender shall conduct the Loan in accordance with the terms and conditions of Department of Labor Prohibited Transaction Exemption 81-6 (46 Fed. Reg. 7527, Jan. 23, 1981; as amended, 52 Fed. Reg. 18754, May 19, 1987), or any successor thereto (unless Borrower and Lender have agreed prior to entering into a Loan that such Loan will be conducted in reliance on another exemption, or without relying on any exemption, from the prohibited transaction provisions of Section 406 of the Employee Retirement Income Security Act of 1974, as amended, and Section 4975 of the Internal Revenue Code of 1986, as amended). Without limiting the foregoing and notwithstanding any other provision of this Agreement, if the Loan will be conducted in accordance with Prohibited Transaction Exemption 81-6, then:

17.1 Borrower represents and warrants to Lender that it is either (a) a bank subject to federal or state supervision, (b) a broker-dealer registered under the Exchange Act or (c) exempt from registration under Section 15(a)(1) of the Exchange Act as a dealer in Government Securities.

17.2 Borrower represents and warrants that, during the term of any Loan hereunder, neither Borrower nor any affiliate of Borrower has any discretionary authority or control with respect to the investment of the assets of the Plan involved in the Loan or renders investment advice (within the meaning of 29 C.F.R. Section 2510.3-21(c)) with respect to the assets of the Plan involved in the Loan. Lender agrees that, prior to or at the commencement of any Loan hereunder, it will communicate to Borrower information regarding the Plan sufficient to identify to Borrower any person or persons that have discretionary authority or control with respect to the investment of the assets of the Plan involved in the Loan or that render investment advice (as defined in the preceding sentence) with respect to the assets of the Plan involved in the Loan. In the event Lender fails to communicate and keep current during the term of any Loan such information, Lender rather than Borrower shall be deemed to have made the representation and warranty in the first sentence of this Section 17.2.

17.3 Borrower shall mark to market daily each Loan hereunder pursuant to Section 9.1 as is required if Lender is a Customer.

17.4 Borrower and Lender agree that:

(a) the term "Collateral" shall mean cash, securities issued or guaranteed by the United States government or its agencies or instrumentalities, or irrevocable bank letters of credit issued by a person other than Borrower or an affiliate thereof;

(b) prior to the making of any Loans hereunder, Borrower shall provide Lender with (i) the most recent available audited statement of Borrower's financial condition and (ii) the most recent available unaudited statement of Borrower's financial condition (if more recent than the most recent audited statement), and each Loan made hereunder shall be deemed a representation by Borrower that there has been no material adverse change in Borrower's financial condition subsequent to the date of the latest financial statements or information furnished in accordance herewith;

(c) the Loan may be terminated by Lender at any time, whereupon Borrower shall deliver the Loaned Securities to Lender within the lesser of (i) the customary delivery period for such Loaned Securities, (ii) five Business Days, and (iii) the time negotiated for such delivery between Borrower and Lender; provided, however, that Borrower and Lender may agree to a longer period only if permitted by Prohibited Transaction Exemption 81-6; and

(d) the Collateral transferred shall be security only for obligations of Borrower to the Plan with respect to Loans, and shall not be security for any obligation of Borrower to any agent or affiliate of the Plan.

18. Single Agreement.

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

19. APPLICABLE LAW.

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

20. Waiver.

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

21. Survival of Remedies.

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

22. Notices and Other Communications.

Any and all notices, statements, demands or other communications hereunder may be given by a party to the other by telephone, mail, facsimile, e-mail, electronic message, telegraph, messenger or otherwise to the individuals and at the facsimile numbers and addresses specified with respect to it in Schedule A hereto, or sent to such party at any other place specified in a notice of change of number or address hereafter received by the other party. Any notice, statement, demand or other communication hereunder will be deemed effective on the day and at the time on which it is received or, if not received, on the day and at the time on which its delivery was in good faith attempted; provided, however, that any notice by a party to the other party by telephone shall be deemed effective only if (a) such notice is followed by written confirmation thereof and (b) at least one of the other means of providing notice that are specifically listed above has previously been attempted in good faith by the notifying party.

23. SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL.

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

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

24. Miscellaneous.

24.1 Except as otherwise agreed by the parties, this Agreement supersedes any other agreement between the parties hereto concerning loans of Securities between Borrower and Lender. This Agreement shall not be assigned by either party without the prior written consent of the other party and any attempted assignment without such consent shall be null and void. Subject to the foregoing, this Agreement shall be binding upon

and shall inure to the benefit of Borrower and Lender and their respective heirs, representatives, successors and assigns. This Agreement may be terminated by either party upon notice to the other, subject only to fulfillment of any obligations then outstanding. This Agreement shall not be modified, except by an instrument in writing signed by the party against whom enforcement is sought. The parties hereto acknowledge and agree that, in connection with this Agreement and each Loan hereunder, time is of the essence. Each provision and agreement herein shall be treated as separate and independent from any other provision herein and shall be enforceable notwithstanding the unenforceability of any such other provision or agreement.

24.2 Any agreement between Borrower and Lender pursuant to Section 10.5(b) or Section 25.37 shall be made (a) in writing, (b) orally, if confirmed promptly in writing or through any system that compares Loans and in which Borrower and Lender are participants, or (c) in such other manner as may be agreed by Borrower and Lender in writing.

25. Definitions.

For the purposes hereof:

25.1 "Act of Insolvency" shall mean, with respect to any party, (a) the commencement by such party as debtor of any case or proceeding under any bankruptcy, insolvency, reorganization, liquidation, moratorium, dissolution, delinquency or similar law, or such party's seeking the appointment or election of a receiver, conservator, trustee, custodian or similar official for such party or any substantial part of its property, or the convening of any meeting of creditors for purposes of commencing any such case or proceeding or seeking such an appointment or election, (b) the commencement of any such case or proceeding against such party, or another seeking such an appointment or election, or the filing against a party of an application for a protective decree under the provisions of the Securities Investor Protection Act of 1970, which (i) is consented to or not timely contested by such party, (ii) results in the entry of an order for relief, such an appointment or election, the issuance of such a protective decree or the entry of an order having a similar effect, or (iii) is not dismissed within 15 days, (c) the making by such party of a general assignment for the benefit of creditors, or (d) the admission in writing by such party of such party's inability to pay such party's debts as they become due.

25.2 "Bankruptcy Code" shall have the meaning assigned in Section 26.1

25.3 "Borrower" shall have the meaning assigned in Section 1.

25.4 "Borrower Payment" shall have the meaning assigned in Section 8.5(a).

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

25.6 "Business Day" shall mean, with respect to any Loan hereunder, a day on which regular trading occurs in the principal market for the Loaned Securities subject to such Loan, provided, however, that for purposes of determining the Market Value of any Securities hereunder, such term shall mean a day on which regular trading occurs in the principal market for the Securities whose value is being determined. Notwithstanding the

foregoing, (a) for purposes of Section 9, "Business Day" shall mean any day on which regular trading occurs in the principal market for any Loaned Securities or for any Collateral consisting of Securities under any outstanding Loan hereunder and "next Business Day" shall mean the next day on which a transfer of Collateral may be effected in accordance with Section 15, and (b) in no event shall a Saturday or Sunday be considered a Business Day.

25.7 "Cash Collateral Fee" shall have the meaning assigned in Section 5.1.

25.8 "Clearing Organization" shall mean (a) The Depository Trust Company, or, if agreed to by Borrower and Lender, such other "securities intermediary" (within the meaning of the UCC) at which Borrower (or Borrower's agent) and Lender (or Lender's agent) maintain accounts, or (b) a Federal Reserve Bank, to the extent that it maintains a book-entry system.

25.9 "Close of Business" shall mean the time established by the parties in Schedule B or otherwise orally or in writing or, in the absence of any such agreement, as shall be determined in accordance with market practice.

25.10 "Close of Trading" shall mean, with respect to any Security, the end of the primary trading session established by the principal market for such Security on a Business Day, unless otherwise agreed by the parties.

25.11 "Collateral" shall mean, whether now owned or hereafter acquired and to the extent permitted by applicable law, (a) any property which Borrower and Lender agree prior to the Loan shall be acceptable collateral and which is transferred to Lender pursuant to Sections 4 or 9 (including as collateral, for definitional purposes, any letters of credit mutually acceptable to Lender and Borrower), (b) any property substituted therefor pursuant to Section 4.5, (c) all accounts in which such property is deposited and all securities and the like in which any cash collateral is invested or reinvested, and (d) any proceeds of any of the foregoing; *provided, however*, that if Lender is a Customer, "Collateral" shall (subject to Section 17.4(a), if applicable) be limited to cash, U.S. Treasury bills and notes, an irrevocable letter of credit issued by a "bank" (as defined in Section 3(a)(6)(A)-(C) of the Exchange Act), and any other property permitted to serve as collateral securing a loan of securities under Rule 15c3-3 under the Exchange Act or any comparable regulation of the Secretary of the Treasury under Section 15C of the Exchange Act (to the extent that Borrower is subject to such Rule or comparable regulation) pursuant to exemptive, interpretive or no-action relief or otherwise. If any new or different Security shall be exchanged for any Collateral by recapitalization, merger, consolidation or other corporate action, such new or different Security shall, effective upon such exchange, be deemed to become Collateral in substitution for the former Collateral for which such exchange is made. For purposes of return of Collateral by Lender or purchase or sale of Securities pursuant to Section 13, such term shall include Securities of the same issuer, class and quantity as the Collateral initially transferred by Borrower to Lender, as adjusted pursuant to the preceding sentence.

25.12 "Collateral Distributions" shall have the meaning assigned in Section 8.5(a).

25.13 "Confirmation" shall have the meaning assigned in Section 2.1.

25.14 "Contractual Currency" shall have the meaning assigned in Section 16.1.

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

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

25.17 "Default" shall have the meaning assigned in Section 12.

25.18 "Defaulting Party" shall have the meaning assigned in Section 18.

25.19 "Distribution" shall mean, with respect to any Security at any time, any distribution made on or in respect of such Security, including, but not limited to: (a) cash and all other property, (b) stock dividends, (c) Securities received as a result of split ups of such Security and distributions in respect thereof, (d) interest payments, (e) all rights to purchase additional Securities, and (f) 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 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). In the event that the holder of a Security is entitled to elect the type of distribution to be received from two or more alternatives, such election shall be made by Lender, in the case of a Distribution in respect of the Loaned Securities, and by Borrower, in the case of a Distribution in respect of Collateral.

25.20 "Equity Security" shall mean any security (as defined in the Exchange Act) other than a "nonequity security," as defined in Regulation T.

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

25.22 "Extension Deadline" shall mean, with respect to a letter of credit, the Cutoff Time on the Business Day preceding the day on which the letter of credit expires.

25.23 "FDIA" shall have the meaning assigned in Section 26.4.

25.24 "FDICIA" shall have the meaning assigned in Section 26.5.

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

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

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

25.28 "Lender" shall have the meaning assigned in Section 1.

25.29 "Lender Payment" shall have the meaning assigned in Section 8.5(a).

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

25.31 "Loan" shall have the meaning assigned in Section 1.

25.32 "Loan Fee" shall have the meaning assigned in Section 5.1.

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

25.34 "Margin Deficit" shall have the meaning assigned in Section 9.2.

25.35 "Margin Excess" shall have the meaning assigned in Section 9.3.

25.36 "Margin Notice Deadline" shall mean the time agreed to by the parties in the relevant Confirmation, Schedule B hereto or otherwise as the deadline for giving notice requiring same-day satisfaction of mark-to-market obligations as provided in Section 9 hereof (or, in the absence of any such agreement, the deadline for such purposes established in accordance with market practice).

25.37 "Margin Percentage" shall mean, with respect to any Loan as of any date, a percentage agreed by Borrower and Lender, which shall be not less than 100%, unless (a) Borrower and Lender agree otherwise, as provided in Section 24.2, and (b) Lender is not a Customer. Notwithstanding the previous sentence, in the event that the writing or other confirmation evidencing the agreement described in clause (a) does not set out such percentage with respect to any such Loan, the Margin Percentage shall not be a percentage less than the percentage obtained by dividing (i) the Market Value of the Collateral required to be transferred by Borrower to Lender with respect to such Loan at the commencement of the Loan by (ii) the Market Value of the Loaned Securities required to be transferred by Lender to Borrower at the commencement of the Loan.

25.38 "Market Value" shall have the meaning set forth in Annex II or otherwise agreed to by Borrower and Lender in writing. Notwithstanding the previous sentence, in the event that the meaning of Market Value has not been set forth in Annex II or in any other writing, as described in the previous sentence, Market Value shall be determined in accordance with market practice for the Securities, based on the price for such Securities as of the most recent Close of Trading obtained from a generally recognized source agreed to by the parties or the closing bid quotation at the most recent Close of Trading obtained from such source, plus accrued interest to the extent not included therein (other than any interest credited or transferred to, or applied to the obligations of, the other party pursuant to Section 8, unless market practice with respect to the valuation of such Securities in

connection with securities loans is to the contrary). If the relevant quotation did not exist at such Close of Trading, then the Market Value shall be the relevant quotation on the next preceding Close of Trading at which there was such a quotation. The determinations of Market Value provided for in Annex II or in any other writing described in the first sentences of this Section 25.38 or, if applicable, in the preceding sentence shall apply for all purposes under this Agreement, except for purposes of Section 13.

25.39 "Payee" shall have the meaning assigned in Section 8.5(a).

25.40 "Payor" shall have the meaning assigned in Section 8.5(a).

25.41 "Plan" shall mean: (a) any "employee benefit plan" as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974 which is subject to Part 4 of Subtitle B of Title I of such Act; (b) any "plan" as defined in Section 4975(e)(1) of the Internal Revenue Code of 1986; or (c) any entity the assets of which are deemed to be assets of any such "employee benefit plan" or "plan" by reason of the Department of Labor's plan asset regulation, 29 C.F.R. Section 2510.3-101.

25.42 "Regulation T" shall mean Regulation T of the Board of Governors of the Federal Reserve System, as in effect from time to time.

25.43 "Retransfer" shall mean, with respect to any Collateral, to pledge, repledge, hypothecate, rehypothecate, lend, relend, sell or otherwise transfer such Collateral, or to re-register any such Collateral evidenced by physical certificates in any name other than Borrower's.

25.44 "Securities" shall mean securities or, if agreed by the parties in writing, other assets.

25.45 "Securities Distributions" shall have the meaning assigned in Section 8.5(a).

25.46 "Tax" shall have the meaning assigned in Section 8.5(a).

25.47 "UCC" shall mean the New York Uniform Commercial Code.

26. Intent.

26.1 The parties recognize that each Loan hereunder is a "securities contract," as such term is defined in Section 741 of Title 11 of the United States Code (the "Bankruptcy Code"), as amended (except insofar as the type of assets subject to the Loan would render such definition inapplicable).

26.2 It is understood that each and every transfer of funds, securities and other property under this Agreement and each Loan hereunder is a "settlement payment" or a "margin payment," as such terms are used in Sections 362(b)(6) and 546(e) of the Bankruptcy Code.

26.3 It is understood that the rights given to Borrower and Lender hereunder upon a Default by the other constitute the right to cause the liquidation of a securities contract and the right to set off mutual debts and claims in connection with a securities contract, as such terms are used in Sections 555 and 362(b)(6) of the Bankruptcy Code.

26.4 The parties agree and acknowledge that if a party hereto is an "insured depository institution," as such term is defined in the Federal Deposit Insurance Act, as amended ("FDIA"), then each Loan hereunder is a "securities contract" and "qualified financial

contract," as such terms are defined in the FDIA and any rules, orders or policy statements thereunder (except insofar as the type of assets subject to the Loan would render such definitions inapplicable).

26.5 It is understood that this Agreement constitutes a "netting contract" as defined in and subject to Title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA") and each payment obligation under any Loan hereunder shall constitute a "covered contractual payment entitlement" or "covered contractual payment obligation," respectively, as defined in and subject to FDICIA (except insofar as one or both of the parties is not a "financial institution" as that term is defined in FDICIA).

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

27. DISCLOSURE RELATING TO CERTAIN FEDERAL PROTECTIONS.

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

27.2 **LENDER ACKNOWLEDGES THAT, IN CONNECTION WITH LOANS OF GOVERNMENT SECURITIES AND AS OTHERWISE PERMITTED BY APPLICABLE LAW, SOME SECURITIES PROVIDED BY BORROWER AS COLLATERAL UNDER THIS AGREEMENT MAY NOT BE GUARANTEED BY THE UNITED STATES.**

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

Annex I

Party Acting as Agent

This Annex sets forth the terms and conditions governing all transactions in which a party lending or borrowing Securities, as the case may be ("Agent"), in a Loan is acting as agent for one or more third parties (each, a "Principal"). Unless otherwise defined, capitalized terms used but not defined in this Annex shall have the meanings assigned in the Securities Loan Agreement of which it forms a part (such agreement, together with this Annex and any other annexes, schedules or exhibits, referred to as the "Agreement") and, unless otherwise specified, all section references herein are intended to refer to sections of such Securities Loan Agreement.

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

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

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

4. **Multiple Principals.**

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

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

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

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

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

Default by Agent under the Agreement shall be deemed a Default by Lender or Borrower, as the case may be).

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

Annex II

Market Value

Unless otherwise agreed by Borrower and Lender:

1. If the principal market for the Securities to be valued is a national securities exchange in the United States, their Market Value shall be determined by their last sale price on such exchange at the most recent Close of Trading or, if there was no sale on the Business Day of the most recent Close of Trading, by the last sale price at the Close of Trading on the next preceding Business Day on which there was a sale on such exchange, all as quoted on the Consolidated Tape or, if not quoted on the Consolidated Tape, then as quoted by such exchange.

2. If the principal market for the Securities to be valued is the over-the-counter market, and the Securities are quoted on The Nasdaq Stock Market ("Nasdaq"), their Market Value shall be the last sale price on Nasdaq at the most recent Close of Trading or, if the Securities are issues for which last sale prices are not quoted on Nasdaq, the last bid price at such Close of Trading. If the relevant quotation did not exist at such Close of Trading, then the Market Value shall be the relevant quotation on the next preceding Close of Trading at which there was such a quotation.

3. Except as provided in Section 4 of this Annex, if the principal market for the Securities to be valued is the over-the-counter market, and the Securities are not quoted on Nasdaq, their Market Value shall be determined in accordance with market practice for such Securities, based on the price for such Securities as of the most recent Close of Trading obtained from a generally recognized source agreed to by the parties or the closing bid quotation at the most recent Close of Trading obtained from such a source. If the relevant quotation did not exist at such Close of Trading, then the Market Value shall be the relevant quotation on the next preceding Close of Trading at which there was such a quotation.

4. If the Securities to be valued are Foreign Securities, their Market Value shall be determined as of the most recent Close of Trading in accordance with market practice in the principal market for such Securities.

5. The Market Value of a letter of credit shall be the undrawn amount thereof.

6. All determinations of Market Value under Sections 1 through 4 of this Annex shall include, where applicable, accrued interest to the extent not already included therein (other than any interest credited or transferred to, or applied to the obligations of, the other party pursuant to Section 8 of the Agreement), unless market practice with respect to the valuation of such Securities in connection with securities loans is to the contrary.

7. The determinations of Market Value provided for in this Annex shall apply for all purposes under the Agreement, except for purposes of Section 13 of the Agreement.

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

Annex III

Term Loans

This Annex sets forth additional terms and conditions governing Loans designated as "Term Loans" in which Lender lends to Borrower a specific amount of Loaned Securities ("Term Loan Amount") against a pledge of cash Collateral by Borrower for an agreed upon Cash Collateral Fee until a scheduled termination date ("Termination Date"). Unless otherwise defined, capitalized terms used but not defined in this Annex shall have the meanings assigned in the Securities Loan Agreement of which it forms a part (such agreement, together with this Annex and any other annexes, schedules or exhibits, referred to as the "Agreement").

1. The terms of this Annex shall apply to Loans of Equity Securities only if they are designated as Term Loans in a Confirmation therefor provided pursuant to the Agreement and executed by each party, in a schedule to the Agreement or in this Annex. All Loans of Securities other than Equity Securities shall be "Term Loans" subject to this Annex, unless otherwise agreed in a Confirmation or other writing.

2. The Confirmation for a Term Loan shall set forth, in addition to any terms required to be set forth therein under the Agreement, the Term Loan Amount, the Cash Collateral Fee and the Termination Date. Lender and Borrower agree that, except as specifically provided in this Annex, each Term Loan shall be subject to all terms and conditions of the Agreement, including, without limitation, any provisions regarding the parties' respective rights to terminate a Loan.

3. In the event that either party exercises its right under the Agreement to terminate a Term Loan on a date (the "Early Termination Date") prior to the Termination Date, Lender and Borrower shall, unless otherwise agreed, use their best efforts to negotiate in good faith a new Term Loan (the "Replacement Loan") of comparable or other Securities, which shall be mutually agreed upon by the parties, with a Market Value equal to the Market Value of the Term Loan Amount under the terminated Term Loan (the "Terminated Loan") as of the Early Termination Date. Such agreement shall, in accordance with Section 2 of this Annex, be confirmed in a new Confirmation at the commencement of the Replacement Loan and be executed by each party. Each Replacement Loan shall be subject to the same terms as the corresponding Terminated Loan, other than with respect to the commencement date and the identity of the Loaned Securities. The Replacement Loan shall commence on the date on which the parties agree which Securities shall be the subject of the Replacement Loan and shall be scheduled to terminate on the scheduled Termination Date of the Terminated Loan.

4. Borrower and Lender agree that, except as provided in Section 5 of this Annex, if the parties enter into a Replacement Loan, the Collateral for the related Terminated Loan need not be returned to Borrower and shall instead serve as Collateral for such Replacement Loan.

5. If the parties are unable to negotiate and enter into a Replacement Loan for some or all of the Term Loan Amount on or before the Early Termination Date, (a) the party requesting termination of the Terminated Loan shall pay to the other party a Breakage Fee computed in accordance with Section 6 of this Annex with respect to that portion of the Term Loan Amount for which a Replacement Loan is not entered into and (b) upon the transfer by Borrower to Lender of the Loaned Securities subject to the Terminated Loan, Lender shall transfer to Borrower Collateral for the Terminated Loan in accordance with and to the extent required under the Agreement, provided that no Default has occurred with respect to Borrower.

6. For purposes of this Annex, the term "Breakage Fee" shall mean a fee agreed by Borrower and Lender in the Confirmation or otherwise orally or in writing. In the absence of any such agreement, the term "Breakage Fee" shall mean, with respect to Loans of Government Securities, a fee equal to the sum of (a) the cost to the non-terminating party (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 the termination of the Terminated Loan, and (b) any other loss, damage, cost or expense directly arising or resulting from the termination of the Terminated Loan that is incurred by the non-terminating party (other than consequential losses or costs for lost profits or lost opportunities), as determined by the non-terminating party in a commercially reasonable manner, and (c) any other amounts due and payable by the terminating party to the non-terminating party under the Agreement on the Early Termination Date.

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

Schedule A

Names and Addresses for Communications

Schedule B

Defined Terms and Supplemental Provisions