

# The Depository Trust Company

# **IMPORTANT**

**B#:** 2473

**DATE:** October 11, 2001

**TO:** All Participants

**CATEGORY:** Executive Notices

**FROM:** General Counsel's Office

**ATTENTION:** Managing Partner/Officer, Operations Partner/Officer

**SUBJECT:** Rule Change Regarding Multilateral Cross  
Guaranty Agreement

The Depository Trust Company ("DTC") has filed a rule change with the Securities and Exchange Commission for authority to enter into a Multilateral Netting Contract and Limited Cross-Guaranty (the "Multilateral Agreement") with Emerging Markets Clearing Corporation ("EMCC"), Government Securities Clearing Corporation, MBS Clearing Corporation ("MBSCC"), National Securities Clearing Corporation ("NSCC"), and The Options Clearing Corporation ("OCC"). The rule change also amends the existing Amended and Restated Netting Contract and Limited Cross-Guaranty between NSCC and DTC, so that there will be no conflict or priority issue with the limited cross-guaranty provisions of the Multilateral Agreement.

The guaranty provides that the excess resources of a defaulting common member remaining after the defaulting common member's obligations to the guaranteeing clearing agency have been satisfied will be used to satisfy the obligations of the defaulting common member that remain unsatisfied at the other participating clearing agencies. The guaranty is limited to the amount of a defaulting common member's resources remaining at the guaranteeing clearing agency.

The full text of the rule change is attached.

Questions or comments regarding this notice of proposed Rule change may be directed to Larry E. Thompson, Managing Director and Deputy General Counsel (212-855-3240) or Diane L. Brennan, Director - Risk Management (212-855-3320) at The Depository Trust Company, 55 Water Street, 49<sup>th</sup> Floor, New York, New York 10041-0099.

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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Form 19b-4

Proposed Rule Change

by

THE DEPOSITORY TRUST COMPANY

Pursuant to Rule 19b-4 under  
the Securities Exchange Act of 1934

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December 13, 2000

**1. Text of the Proposed Rule Change**

- (a) The proposed rule change consists of (i) a Netting Contract and Limited Cross-Guaranty among The Depository Trust Company (“DTC”), Emerging Markets Clearing Corporation (“EMCC”), Government Securities Clearing Corporation (“GSCC”), MBS Clearing Corporation (“MBSCC”), National Securities Clearing Corporation (“NSCC”) and The Options Clearing Corporation (“OCC”) in the form annexed hereto as Exhibit 2 (the “Multilateral Agreement”), and (ii) a Seconded Amended and Restated Netting Contract and Limited Cross-Guaranty between DTC and NSCC in the form annexed hereto as Exhibit 3 (the “New DTC-NSCC Agreement”).
- (b) The New DTC-NSCC Agreement (forming a part of the proposed rule change) will modify and supercede the current Amended and Restated Netting Contract and Limited Cross-Guaranty dated February 21, 1996 between DTC and NSCC (the “Old DTC-NSCC Agreement”) by deleting the limited net resources cross-guaranty provisions of the Old DTC-NSCC Agreement so that the limited net resources cross-guaranty provisions of the Multilateral Agreement will be the only such provisions of this type between DTC and NSCC and among DTC and NSCC and the other parties to the Multilateral Agreement.
- (c) The file number for the prior filing with respect to existing rules specified in response to item (b) above is SR-DTC-96-06.

2. **Procedures of the Self-Regulatory Organization**

(a) DTC's Board of Directors has authorized the execution of the Multilateral Agreement and the amendment and restatement of the Old DTC-NSCC Agreement in the form of the New DTC-NSCC Agreement.

(b) The following persons at DTC are prepared to respond to questions and comments on the proposed rule change:

Larry E. Thompson, Deputy General Counsel, (212) 855-3240

Diane L. Brennan, Director, Risk Management (212) 855-3320

3. **Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change**

At the present time, there are limited cross-guaranty agreements ("Bilateral Agreements") in effect between:

(1) DTC and NSCC (forming part of the Old DTC-NSCC Agreement that also provides for the netting of settlement payments and the collateralization of transactions processed through the facilities of DTC and NSCC), Release No. 34-36867 (February 21, 1996), File No. SR-DTC-96-06, and Release No. 34-36866 (February 21, 1996), File No. SR-NSCC-96-03;

- (2) MBSCC and Participants Trust Company,<sup>1</sup> Release No. 34-38604 (May 9, 1997), File No. SR-PTC-97-01;
- (3) NSCC and each of MBSCC, GSCC and International Securities Clearing Corporation (“ISCC”),<sup>2</sup> Release No. 34-37616 (August 28, 1996), File Nos. SR-MBSCC-96-02, SR-GSCC-96-03 and SR-ISCC-96-04, and Release No. 34-39020 (September 4, 1997), File No. SR-NSCC-97-11;
- (4) NSCC and OCC, Release No. 34-39022 (September 4, 1997), File Nos. SR-OCC-97-17 and SR-NSCC-97-12; and
- (5) EMCC and each of NSCC, GSCC and ISCC, Release No. 34-42180 (November 29, 1999), File No. SR-EMCC-99-7.

In general, each clearing agency that is a party to a Bilateral Agreement provides the other clearing agency with a limited guaranty of the obligations of any entity that is a member of both clearing agencies, so that if a common member fails and one clearing agency winds up

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<sup>1</sup> Participants Trust Company has been merged into DTC.

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<sup>2</sup> ISCC has ceased to be a registered clearing agency.

its business with the common member with an excess of the assets of the common member and the other clearing agency winds up its business with the common member with a deficiency of such assets, (i) the clearing agency with the excess pays the clearing agency with the deficiency an amount equal to the lesser of the excess or the deficiency and (ii) the amount paid by the clearing agency with the excess to the clearing agency with the deficiency becomes an obligation of the common member to the clearing agency with the excess which the clearing agency with the excess may satisfy if necessary (thereby reimbursing itself for the amount paid to the clearing agency with the deficiency) from the assets of the common member. In this way -- through the mechanism of a limited cross-guaranty and a compensating reimbursement obligation -- the assets of a common member at one clearing agency in excess of its liabilities to that clearing agency may be made available to satisfy the liabilities of the common member to another clearing agency.

The Commission has encouraged the use of limited cross-guaranty agreements and other similar arrangements among clearing agencies. Release No. 34-42180 (November 29, 1999), File No. SR-EMCC-99-7 (order approving limited cross-guaranty agreements between EMCC and each of NSCC, GSCC and ISCC), Release No. 34-38410 (March 17, 1997), File No. SR-OCC-96-18 (order approving changes in the rules of OCC to authorize OCC to enter into limited cross-guaranty agreements) and Release No. 34-37616 (August 28, 1996), File Nos. SR-MBSCC-96-02, SR-GSCC-96-03 and SR-ISCC-96-04 (order approving changes in the rules of MBSCC, GSCC and ISCC to authorize them to enter into limited cross-guaranty agreements). The Commission has also

noted that the Collateral Management Service (“CMS”) operated by NSCC is especially beneficial to clearing agencies which enter into limited cross-guaranty agreements (because CMS enables such clearing agencies to provide and receive the information on common members needed to implement the sharing procedures contained in such limited cross-guaranty agreements). Release No. 34-36091 (August 10, 1995), File No. SR-NSCC-95-06 (order approving establishment of CMS by NSCC), Release No. 34-36431 (October 27, 1995), File No. SR-MBSCC-95-05 (order approving release of clearing data relating to members by MBSCC), Release No. 34-36597 (December 15, 1995), File No. SR-GSCC-95-03 (order approving release of clearing data relating to members by GSCC) and Release No. 34-37608 (August 26, 1996), File No. SR-DTC-96-11 (order approving release of clearing data relating to members by DTC).

- (a) The proposed Multilateral Agreement is similar in purpose to the existing Bilateral Agreements but different in form, scope and operation because (i) all of the parties to the several Bilateral Agreements will be parties to the Multilateral Agreement, (ii) all of the transactions of common members with any of the parties to the several Bilateral Agreements will be subject to the limited cross-guaranties of the Multilateral Agreement, (iii) all of the assets of common members with any of the parties to the several Bilateral Agreements will be subject to application pursuant to the provisions of the Multilateral Agreement, (iv) all of the parties to the Multilateral Agreement will rank pari passu in terms of the payment of their respective guaranty obligations and entitlements and (v) all

such guaranty obligations and entitlements will be (A) calculated by DTC (based on information provided by the clearing agencies) pursuant to a formula set forth in the Multilateral Agreement and (B) settled through the facilities of DTC upon instructions from the clearing agencies required to make guaranty payments.

Set forth below is a description of the material terms and conditions of the Multilateral Agreement:

If a party to the Multilateral Agreement (a “Clearing Agency”) ceases to act for or suspends a person (“Ceases to Act” for such person) and if such person is a member or participant of two or more Clearing Agencies (a “Common Member”), such Clearing Agency must give each other Clearing Agency a notice (a “Default Notice”) that it has Ceased to Act for such Common Member (thereafter, a “Defaulting Member”). Each such other Clearing Agency that also Ceases to Act for the Defaulting Member within a period of 10 business days after the Default Notice is given (a “Participating Clearing Agency”) then has a further period of 15 business days to deliver to each other Participating Clearing Agency a statement (an “Information Statement”) which sets forth the sum (positive or negative) derived (after application of any applicable liquidation procedures) from adding the amounts (specified in the Multilateral Agreement) owed by the Participating Clearing Agency to the Defaulting Member as of the close of business on the day on which such Participating Clearing Agency Ceased to Act for such

Defaulting Member and subtracting the amounts (specified in the Multilateral Agreement) owed by the Defaulting Member to the Participating Clearing Agency as of the close of business on such date (the “Available Net Resources” of such Participating Clearing Agency with respect to such Defaulting Member).

Each Participating Clearing Agency with positive Available Net Resources (a “Payor Clearing Agency”) has an obligation to make a payment (a “Guaranty Obligation”) to each Participating Clearing Agency with negative Available Net Resources, and each Participating Clearing Agency with negative Available Net Resources (a “Payee Clearing Agency”) has an entitlement to receive a payment (a “Guaranty Entitlement”) from each Participating Clearing Agency with positive Available Net Resources, in an amount determined by a formula which (i) limits the aggregate Guaranty Obligation of any Payor Clearing Agency to the amount of its positive available Net Resources and prorates the aggregate Guaranty Obligations of all Payor Clearing Agencies (based on their Available Net Resources) if all positive Available Net Resources of all Payor Clearing Agencies exceeds all negative Available Net Resources of all Payee Clearing Agencies and (ii) limits the aggregate Guaranty Entitlement of any Payee Clearing Agency to the amount of its negative Available Net Resources and prorates the aggregate Guaranty Entitlements of all Payee Clearing Agencies (based on their

Available Net Resources) if the negative Available Net Resources of all Payee Clearing Agencies exceeds the positive Available Net Resources of all Payor Clearing Agencies.

Within two business days after the end of the period for submitting Information Statements (with the information on the Available Net Resources of the Participating Clearing Agencies), DTC, acting for the Participating Clearing Agencies (whether or not DTC is a Participating Clearing Agency with respect to any particular claim under the Multilateral Agreement), and using only the information on Available Net Resources contained in the Information Statements, calculates the Guaranty Obligations and the Guaranty Entitlements of the Participating Clearing Agencies in accordance with the formula set forth in the Multilateral Agreement and delivers a report thereon to the Participating Clearing Agencies. Two business days after that, DTC, acting on appropriate payment instructions from the Payor Clearing Agencies, debits their settlement accounts at DTC the amounts of their Guaranty Obligations and credits the settlement accounts of the Payee Clearing Agencies at DTC the amounts of their Guaranty Entitlements. Such debits and credits are then netted and settled with all other debits and credits to the settlement accounts of the Participating Clearing Agencies on the day of settlement. All of the Clearing Agencies are (or prior to the execution of the Multilateral Agreement will be) participants of DTC.

It is important to note that a Clearing Agency cannot assert a claim and cannot be obligated to make or be entitled to receive a payment unless it Ceases to Act for a Defaulting Member. Each Clearing Agency determines, on the basis of its own rules, whether or not to Cease to Act for a Defaulting Member. A Clearing Agency may Cease to Act for a Defaulting Member -- to protect the interests of the Clearing Agency, its other members or participants and the national system for the clearance and settlement of securities transactions -- because, among other things, the Defaulting Member has failed to pay a settlement debit or has failed to pay or perform any other obligation to the Clearing Agency or because the Defaulting Member has become the subject of an insolvency proceeding or has become a “failed member” within the meaning of the Federal Deposit Insurance Corporation Improvement Act of 1991, e.g., it ceases to meet its obligations when due even if it has not become the subject of a formal insolvency proceeding. Ceasing to Act for a member or participant is a serious measure which a Clearing Agency does not take lightly or for minor defaults.

Accordingly, by requiring that a Clearing Agency must Cease to Act for a Defaulting Member before the procedures of the Multilateral Agreement can be implemented, the Multilateral Agreement ensures that the payment obligations of Payor Clearing Agencies and the reimbursement obligations of Defaulting Participants to Payor Clearing Agencies will not be triggered by minor defaults which do not pose a threat to the interests of the

Clearing Agencies, their members or participants or the national system for the clearance and settlement of securities transactions.

As the foregoing description of the process for determining and satisfying a claim under the Multilateral Agreement indicates, no Clearing Agency would ever be required under the Multilateral Agreement to deliver assets or the proceeds of assets of a Defaulting Member to another Clearing Agency except for assets or the proceeds thereof in excess of the obligations and liabilities of the Defaulting Member to the first Clearing Agency, and then only up to the amount needed to discharge the liabilities and obligations of the Defaulting Member to the second Clearing Agency. In substance and effect, the Multilateral Agreement provides a mechanism for using the assets of a member or participant of any Clearing Agency to secure the obligations and liabilities of such member or participant, first, to such Clearing Agency and, second, to other Clearing Agencies to the extent of any excess assets. The Multilateral Agreement therefore should reduce risk to the Clearing Agencies (and to the national system for the clearance and settlement of securities transactions) because a Defaulting Common Member may have positions spread across the Clearing Agencies in such manner as to cause its Available Net Resources at one or more Clearing Agencies to be positive even though its Available Net Resources at one or more other Clearing Agencies are negative.

The Multilateral Agreement also provides for subsequent adjustments in Guaranty Obligations and Guaranty Entitlements among Participating Clearing Agencies if information is discovered which, if known at the time of the initial calculation, would have changed the amounts of such Guaranty Obligations and Guaranty Entitlements, subject to certain conditions and limitations as described below.

If, at any time within four years after any payment is made in respect of a Guaranty Obligation, any Participating Clearing Agency has any information that could result in a change in the calculation of such payment, such Participating Clearing Agency must give each other Participating Clearing Agency a notice thereof (an “Adjustment Notice”).

Within a period of 10 business days after the Adjustment Notice is given, each Participating Clearing Agency must deliver to each other Participating Clearing Agency (and to DTC if DTC is not a Participating Clearing Agency with respect to such default) a statement (a “Supplemental Information Statement”) which sets forth (i) the amount of the Available Net Resources of such Participating Clearing Agency with respect to the Defaulting Member as of the close of business on the day on which such Participating Clearing Agency Ceased to Act for such Defaulting Member but taking into account the effect (if any) of the information in the Adjustment Notice and (ii) the amount of its

Available Net Resources (if any) as of the close of business on the day it received the Adjustment Notice.

Within two business days after the end of the period for submitting Supplemental Information Statements (with the information on the Available Net Resources of the Participating Clearing Agencies), DTC, acting for the Participating Clearing Agencies (whether or not DTC is a Participating Clearing Agency with respect to such default), and using only the information on Available Net Resources contained in the Supplemental Information Statements, recalculates the Guaranty Obligations and Guaranty Entitlements of the Participating Clearing Agencies in accordance with the same formula originally used to calculate the Guaranty Obligations and Guaranty Entitlements of the Participating Clearing Agencies and delivers a report thereon to the Participating Clearing Agencies; provided, however, that no Participating Clearing Agency that is required to make a payment as a result of any recalculation of Guaranty Obligations and Guaranty Entitlements with respect to a prior default is required to make any payment in excess of the positive amount of its Available Net Resources on the date it received the Adjustment Notice plus or minus any cash payments it previously received or paid, respectively, pursuant to the terms of the Multilateral Agreement in respect of the same default. Two business days after that, DTC, acting on appropriate instructions from the Participating Clearing Agencies required to make

adjustment payments as a result of the recalculation of Guaranty Obligations and Guaranty Entitlements described above, debits their settlement accounts the amounts they are obligated to pay and credits the settlement accounts of the Participating Clearing Agencies entitled to receive adjustment payments the amounts they are entitled to receive. Such debits and credits are then netted and settled with all other debits and credits to the settlement accounts of the Participating Clearing Agencies on the day of settlement.

As the foregoing description of the process for adjusting Guaranty Obligations and Guaranty Entitlements under the Multilateral Agreement indicates, a Clearing Agency is never required to use its own assets to pay the claim of any other Clearing Agency against a Defaulting Member. Only the available net assets of the Defaulting Member are ever used for this purpose, so, if as a result of a recalculation of Guaranty Obligations and Guaranty Entitlements, the obligation of a Participating Clearing Agency which was a Payor Clearing Agency to make a payment is increased or a Participating Clearing Agency which was a Payee Clearing Agency is now required to make a payment, the amount of that payment is nevertheless limited to the net assets of the Defaulting Member then in the possession of the Participating Clearing Agency required to make the payment plus the net amount of any payments it previously received from other Participating Clearing Agencies on account of the same claim.

Any Clearing Agency other than DTC may withdraw from the Multilateral Agreement on ten days' advance written notice, any Clearing Agency which resigns as a participant of DTC ceases to be a party to the Multilateral Agreement effective upon such resignation and DTC may terminate the Multilateral Agreement entirely on one year's advance written notice; provided, however, that any such withdrawal or resignation does not effect the obligations of a withdrawing or resigning Clearing Agency with respect to a claim for which a Default Notice was delivered prior to such withdrawal or resignation and any such termination does not effect the obligations of any Clearing Agency with respect to a claim for which a Default Notice was delivered prior to such termination.

In conjunction with the Multilateral Agreement DTC and NSCC will be amending and restating the Old DTC-NSCC Agreement in the form of the New DTC-NSCC Agreement to delete the limited net resources guaranty provisions of the Old DTC-NSCC Agreement so that there will be no conflict or priority issue with the limited cross-guaranty provisions of the Multilateral Agreement.

- (b) Section 17A(a)(2)(A) of the Securities Exchange Act of 1934 (the “Act”) directs the Securities and Exchange Commission (the “Commission”) to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions and to facilitate the establishment of linked or coordinated facilities for the clearance and settlement of transactions. 15 U.S.C. §78q-1(a)(2)(A). Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible. 15 U.S.C. §78q-1(b)(3)(F).

The proposed rule change -- comprising the Multilateral Agreement and the New DTC-NSCC Agreement -- is consistent with the requirements of the Act and the rules and regulations promulgated thereunder because it will (i) reduce the risk of loss to Clearing Agencies resulting from the failure or default of a Common Member, (ii) mitigate the risk to the national clearance and settlement system resulting from such failure or default and the impact of such failure or default on Clearing Agencies and their other members or participants, (iii) foster cooperation and coordination among Clearing Agencies and other persons involved in the clearance and settlement of securities transactions and (iv) assist Clearing Agencies in safeguarding the securities and funds in their custody or control or for which they are responsible.

4. **Self-Regulatory Organization's Statement on Burden on Competition**

DTC perceives no impact on competition by reason of the proposed rule change.

5. **Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others**

DTC has not solicited nor received written comments on the proposed rule change.

6. **Extension of Time Period for Commission Action**

DTC does not consent to an extension of the time period specified in Section 19(b)(2) of the Act.

7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

Not applicable.

**8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

The proposed rule change is not based on a rule either of another self-regulatory organization or of the Commission.

**9. Exhibits**

1. Completed Notice of the Proposed Rule Change for publication in the Federal Register.
2. Form of Proposed Netting Contract and Limited Cross-Guaranty among the Clearing Agencies.
3. Form of Proposed Second Amended and Restated Netting Contract and Limited Cross-Guaranty between DTC and NSCC.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the self-regulatory organization has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

**The Depository Trust Company**

**By: /s/ Dennis Dirks**  
**Dennis Dirks**  
**President**

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-DTC-00-21)

SELF REGULATORY ORGANIZATIONS

Proposed Rule Change by

The Depository Trust Company

Relating to a Multilateral Agreement among DTC, EMCC, GSCC, MBSCC, NSCC and OCC.

Comments requested within \_\_\_\_ days after the date of this publication.

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Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. §78s(b)(1), notice is hereby given that on, \_\_\_\_\_, The Depository Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change consists of (i) a Netting Contract and Limited Cross-Guaranty among The Depository Trust Company (“DTC”), Emerging Markets Clearing Corporation (“EMCC”), Government Securities Clearing Corporation (“GSCC”), MBS Clearing Corporation (“MBSCC”), National Securities Clearing Corporation (“NSCC”) and The Options Clearing Corporation (“OCC”) in the form annexed hereto as Exhibit 2 (the “Multilateral Agreement”), and (ii) a Seconded Amended and Restated Netting Contract and Limited Cross-Guaranty between DTC and NSCC in the form annexed hereto as Exhibit 3 (the “New DTC-NSCC Agreement”).

The New DTC-NSCC Agreement (forming a part of the proposed rule change) will modify and supercede the current Amended and Restated Netting Contract and Limited Cross-Guaranty dated February 21, 1996 between DTC and NSCC (the “Old DTC-NSCC Agreement”) by deleting the limited net resources cross-guaranty provisions of the Old DTC-NSCC Agreement so that the limited net resources cross-guaranty provisions of the Multilateral Agreement will be the only such provisions of this type between DTC and NSCC and among DTC and NSCC and the other parties to the Multilateral Agreement.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

**A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change**

At the present time, there are limited cross-guaranty agreements (“Bilateral Agreements”) in effect between:

- (1) DTC and NSCC (forming part of the Old DTC-NSCC Agreement that also provides for the netting of settlement payments and the collateralization of transactions processed through the facilities of DTC and NSCC), Release No. 34-36867 (February 21, 1996), File No. SR-DTC-96-06, and Release No. 34-36866 (February 21, 1996), File No. SR-NSCC-96-03;

- (2) MBSCC and Participants Trust Company,<sup>1</sup> Release No. 34-38604 (May 9, 1997), File No. SR-PTC-97-01;
- (3) NSCC and each of MBSCC, GSCC and International Securities Clearing Corporation (“ISCC”),<sup>2</sup> Release No. 34-37616 (August 28, 1996), File Nos. SR-MBSCC-96-02, SR-GSCC-96-03 and SR-ISCC-96-04, and Release No. 34-39020 (September 4, 1997), File No. SR-NSCC-97-11;
- (4) NSCC and OCC, Release No. 34-39022 (September 4, 1997), File Nos. SR-OCC-97-17 and SR-NSCC-97-12; and
- (5) EMCC and each of NSCC, GSCC and ISCC, Release No. 34-42180 (November 29, 1999), File No. SR-EMCC-99-7.

In general, each clearing agency that is a party to a Bilateral Agreement provides the other clearing agency with a limited guaranty of the obligations of any entity that is a member of both clearing agencies, so that if a common member fails and one clearing agency winds up its business with the common member with an excess of the assets of the common member and

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the other clearing agency winds up its business with the common member with a deficiency of such assets, (i) the clearing agency with the excess pays the clearing agency with the deficiency an amount equal to the lesser of the excess or the deficiency and (ii) the amount paid by the clearing agency with the excess to the clearing agency with the deficiency becomes an obligation of the common member to the clearing agency with the excess which the clearing agency with the excess may satisfy if necessary (thereby reimbursing itself for the amount paid to the clearing agency with the deficiency) from the assets of the common member. In this way -- through the mechanism of a limited cross-guaranty and a compensating reimbursement obligation -- the assets of a common member at one clearing agency in excess of its liabilities to that clearing agency may be made available to satisfy the liabilities of the common member to another clearing agency.

The Commission has encouraged the use of limited cross-guaranty agreements and other similar arrangements among clearing agencies. Release No. 34-42180 (November 29, 1999), File No. SR-EMCC-99-7 (order approving limited cross-guaranty agreements between EMCC and each of NSCC, GSCC and ISCC), Release No. 34-38410 (March 17, 1997), File No. SR-OCC-96-18 (order approving changes in the rules of OCC to authorize OCC to enter into limited cross-guaranty agreements) and Release No. 34-37616 (August 28, 1996), File Nos. SR-MBSCC-96-02, SR-GSCC-96-03 and SR-ISCC-96-04 (order approving changes in the rules of MBSCC, GSCC and ISCC to authorize them to enter into limited cross-guaranty agreements). The Commission has also noted that the Collateral Management Service ("CMS") operated by NSCC is especially beneficial to

clearing agencies which enter into limited cross-guaranty agreements (because CMS enables such clearing agencies to provide and receive the information on common members needed to implement the sharing procedures contained in such limited cross-guaranty agreements). Release No. 34-36091 (August 10, 1995), File No. SR-NSCC-95-06 (order approving establishment of CMS by NSCC), Release No. 34-36431 (October 27, 1995), File No. SR-MBSCC-95-05 (order approving release of clearing data relating to members by MBSCC), Release No. 34-36597 (December 15, 1995), File No. SR-GSCC-95-03 (order approving release of clearing data relating to members by GSCC) and Release No. 34-37608 (August 26, 1996), File No. SR-DTC-96-11 (order approving release of clearing data relating to members by DTC).

- (a) The proposed Multilateral Agreement is similar in purpose to the existing Bilateral Agreements but different in form, scope and operation because (i) all of the parties to the several Bilateral Agreements will be parties to the Multilateral Agreement, (ii) all of the transactions of common members with any of the parties to the several Bilateral Agreements will be subject to the limited cross-guaranties of the Multilateral Agreement, (iii) all of the assets of common members with any of the parties to the several Bilateral Agreements will be subject to application pursuant to the provisions of the Multilateral Agreement, (iv) all of the parties to the Multilateral Agreement will rank pari passu in terms of the payment of their respective guaranty obligations and entitlements and (v) all such guaranty obligations and entitlements will be (A) calculated by DTC (based on

information provided by the clearing agencies) pursuant to a formula set forth in the Multilateral Agreement and (B) settled through the facilities of DTC upon instructions from the clearing agencies required to make guaranty payments.

Set forth below is a description of the material terms and conditions of the Multilateral Agreement:

If a party to the Multilateral Agreement (a “Clearing Agency”) ceases to act for or suspends a person (“Ceases to Act” for such person) and if such person is a member or participant of two or more Clearing Agencies (a “Common Member”), such Clearing Agency must give each other Clearing Agency a notice (a “Default Notice”) that it has Ceased to Act for such Common Member (thereafter, a “Defaulting Member”). Each such other Clearing Agency that also Ceases to Act for the Defaulting Member within a period of 10 business days after the Default Notice is given (a “Participating Clearing Agency”) then has a further period of 15 business days to deliver to each other Participating Clearing Agency a statement (an “Information Statement”) which sets forth the sum (positive or negative) derived (after application of any applicable liquidation procedures) from adding the amounts (specified in the Multilateral Agreement) owed by the Participating Clearing Agency to the Defaulting Member as of the close of business on the day on which such Participating Clearing Agency Ceased to Act for such Defaulting Member and subtracting the amounts (specified in the Multilateral

Agreement) owed by the Defaulting Member to the Participating Clearing Agency as of the close of business on such date (the “Available Net Resources” of such Participating Clearing Agency with respect to such Defaulting Member).

Each Participating Clearing Agency with positive Available Net Resources (a “Payor Clearing Agency”) has an obligation to make a payment (a “Guaranty Obligation”) to each Participating Clearing Agency with negative Available Net Resources, and each Participating Clearing Agency with negative Available Net Resources (a “Payee Clearing Agency”) has an entitlement to receive a payment (a “Guaranty Entitlement”) from each Participating Clearing Agency with positive Available Net Resources, in an amount determined by a formula which (i) limits the aggregate Guaranty Obligation of any Payor Clearing Agency to the amount of its positive available Net Resources and prorates the aggregate Guaranty Obligations of all Payor Clearing Agencies (based on their Available Net Resources) if all positive Available Net Resources of all Payor Clearing Agencies exceeds all negative Available Net Resources of all Payee Clearing Agencies and (ii) limits the aggregate Guaranty Entitlement of any Payee Clearing Agency to the amount of its negative Available Net Resources and prorates the aggregate Guaranty Entitlements of all Payee Clearing Agencies (based on their Available Net Resources) if the negative Available Net Resources of all Payee Clearing Agencies exceeds the positive Available Net Resources of all Payor Clearing Agencies.

Within two business days after the end of the period for submitting Information Statements (with the information on the Available Net Resources of the Participating Clearing Agencies), DTC, acting for the Participating Clearing Agencies (whether or not DTC is a Participating Clearing Agency with respect to any particular claim under the Multilateral Agreement), and using only the information on Available Net Resources contained in the Information Statements, calculates the Guaranty Obligations and the Guaranty Entitlements of the Participating Clearing Agencies in accordance with the formula set forth in the Multilateral Agreement and delivers a report thereon to the Participating Clearing Agencies. Two business days after that, DTC, acting on appropriate payment instructions from the Payor Clearing Agencies, debits their settlement accounts at DTC the amounts of their Guaranty Obligations and credits the settlement accounts of the Payee Clearing Agencies at DTC the amounts of their Guaranty Entitlements. Such debits and credits are then netted and settled with all other debits and credits to the settlement accounts of the Participating Clearing Agencies on the day of settlement. All of the Clearing Agencies are (or prior to the execution of the Multilateral Agreement will be) participants of DTC.

It is important to note that a Clearing Agency cannot assert a claim and cannot be obligated to make or be entitled to receive a payment unless it Ceases to Act for a

Defaulting Member. Each Clearing Agency determines, on the basis of its own rules, whether or not to Cease to Act for a Defaulting Member. A Clearing Agency may Cease to Act for a Defaulting Member -- to protect the interests of the Clearing Agency, its other members or participants and the national system for the clearance and settlement of securities transactions -- because, among other things, the Defaulting Member has failed to pay a settlement debit or has failed to pay or perform any other obligation to the Clearing Agency or because the Defaulting Member has become the subject of an insolvency proceeding or has become a “failed member” within the meaning of the Federal Deposit Insurance Corporation Improvement Act of 1991, e.g., it ceases to meet its obligations when due even if it has not become the subject of a formal insolvency proceeding. Ceasing to Act for a member or participant is a serious measure which a Clearing Agency does not take lightly or for minor defaults. Accordingly, by requiring that a Clearing Agency must Cease to Act for a Defaulting Member before the procedures of the Multilateral Agreement can be implemented, the Multilateral Agreement ensures that the payment obligations of Payor Clearing Agencies and the reimbursement obligations of Defaulting Participants to Payor Clearing Agencies will not be triggered by minor defaults which do not pose a threat to the interests of the Clearing Agencies, their members or participants or the national system for the clearance and settlement of securities transactions.

As the foregoing description of the process for determining and satisfying a claim under the Multilateral Agreement indicates, no Clearing Agency would ever be required under the Multilateral Agreement to deliver assets or the proceeds of assets of a Defaulting Member to another Clearing Agency except for assets or the proceeds thereof in excess of the obligations and liabilities of the Defaulting Member to the first Clearing Agency, and then only up to the amount needed to discharge the liabilities and obligations of the Defaulting Member to the second Clearing Agency. In substance and effect, the Multilateral Agreement provides a mechanism for using the assets of a member or participant of any Clearing Agency to secure the obligations and liabilities of such member or participant, first, to such Clearing Agency and, second, to other Clearing Agencies to the extent of any excess assets. The Multilateral Agreement therefore should reduce risk to the Clearing Agencies (and to the national system for the clearance and settlement of securities transactions) because a Defaulting Common Member may have positions spread across the Clearing Agencies in such manner as to cause its Available Net Resources at one or more Clearing Agencies to be positive even though its Available Net Resources at one or more other Clearing Agencies are negative.

The Multilateral Agreement also provides for subsequent adjustments in Guaranty Obligations and Guaranty Entitlements among Participating Clearing Agencies if

information is discovered which, if known at the time of the initial calculation, would have changed the amounts of such Guaranty Obligations and Guaranty Entitlements, subject to certain conditions and limitations as described below.

If, at any time within four years after any payment is made in respect of a Guaranty Obligation, any Participating Clearing Agency has any information that could result in a change in the calculation of such payment, such Participating Clearing Agency must give each other Participating Clearing Agency a notice thereof (an “Adjustment Notice”).

Within a period of 10 business days after the Adjustment Notice is given, each Participating Clearing Agency must deliver to each other Participating Clearing Agency (and to DTC if DTC is not a Participating Clearing Agency with respect to such default) a statement (a “Supplemental Information Statement”) which sets forth (i) the amount of the Available Net Resources of such Participating Clearing Agency with respect to the Defaulting Member as of the close of business on the day on which such Participating Clearing Agency Ceased to Act for such Defaulting Member but taking into account the effect (if any) of the information in the Adjustment Notice and (ii) the amount of its Available Net Resources (if any) as of the close of business on the day it received the Adjustment Notice.

Within two business days after the end of the period for submitting Supplemental Information Statements (with the information on the Available Net Resources of the Participating Clearing Agencies), DTC, acting for the Participating Clearing Agencies (whether or not DTC is a Participating Clearing Agency with respect to such default), and using only the information on Available Net Resources contained in the Supplemental Information Statements, recalculates the Guaranty Obligations and Guaranty Entitlements of the Participating Clearing Agencies in accordance with the same formula originally used to calculate the Guaranty Obligations and Guaranty Entitlements of the Participating Clearing Agencies and delivers a report thereon to the Participating Clearing Agencies; provided, however, that no Participating Clearing Agency that is required to make a payment as a result of any recalculation of Guaranty Obligations and Guaranty Entitlements with respect to a prior default is required to make any payment in excess of the positive amount of its Available Net Resources on the date it received the Adjustment Notice plus or minus any cash payments it previously received or paid, respectively, pursuant to the terms of the Multilateral Agreement in respect of the same default. Two business days after that, DTC, acting on appropriate instructions from the Participating Clearing Agencies required to make adjustment payments as a result of the recalculation of Guaranty Obligations and Guaranty Entitlements described above, debits their settlement accounts the amounts they are obligated to pay and credits the settlement accounts of the Participating

Clearing Agencies entitled to receive adjustment payments the amounts they are entitled to receive. Such debits and credits are then netted and settled with all other debits and credits to the settlement accounts of the Participating Clearing Agencies on the day of settlement.

As the foregoing description of the process for adjusting Guaranty Obligations and Guaranty Entitlements under the Multilateral Agreement indicates, a Clearing Agency is never required to use its own assets to pay the claim of any other Clearing Agency against a Defaulting Member. Only the available net assets of the Defaulting Member are ever used for this purpose, so, if as a result of a recalculation of Guaranty Obligations and Guaranty Entitlements, the obligation of a Participating Clearing Agency which was a Payor Clearing Agency to make a payment is increased or a Participating Clearing Agency which was a Payee Clearing Agency is now required to make a payment, the amount of that payment is nevertheless limited to the net assets of the Defaulting Member then in the possession of the Participating Clearing Agency required to make the payment plus the net amount of any payments it previously received from other Participating Clearing Agencies on account of the same claim.

Any Clearing Agency other than DTC may withdraw from the Multilateral Agreement on ten days' advance written notice, any Clearing Agency which resigns as a participant

of DTC ceases to be a party to the Multilateral Agreement effective upon such resignation and DTC may terminate the Multilateral Agreement entirely on one year's advance written notice; provided, however, that any such withdrawal or resignation does not effect the obligations of a withdrawing or resigning Clearing Agency with respect to a claim for which a Default Notice was delivered prior to such withdrawal or resignation and any such termination does not effect the obligations of any Clearing Agency with respect to a claim for which a Default Notice was delivered prior to such termination.

In conjunction with the Multilateral Agreement DTC and NSCC will be amending and restating the Old DTC-NSCC Agreement in the form of the New DTC-NSCC Agreement to delete the limited net resources guaranty provisions of the Old DTC-NSCC Agreement so that there will be no conflict or priority issue with the limited cross-guaranty provisions of the Multilateral Agreement.

- (b)** Section 17A(a)(2)(A) of the Securities Exchange Act of 1934 (the “Act”) directs the Securities and Exchange Commission (the “Commission”) to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions and to facilitate the establishment of linked or coordinated facilities for the clearance and settlement of transactions. 15 U.S.C. §78q-1(a)(2)(A). Section

17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible. 15 U.S.C. §78q-1(b)(3)(F).

The proposed rule change -- comprising the Multilateral Agreement and the New DTC-NSCC Agreement -- is consistent with the requirements of the Act and the rules and regulations promulgated thereunder because it will (i) reduce the risk of loss to Clearing Agencies resulting from the failure or default of a Common Member, (ii) mitigate the risk to the national clearance and settlement system resulting from such failure or default and the impact of such failure or default on Clearing Agencies and their other members or participants, (iii) foster cooperation and coordination among Clearing Agencies and other persons involved in the clearance and settlement of securities transactions and (iv) assist Clearing Agencies in safeguarding the securities and funds in their custody or control or for which they are responsible.

**B. Self-Regulatory Organization's Statement on Burden on Competition**

DTC perceives no impact on competition by reason of the proposed rule change.

**C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others**

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DTC has not solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or such longer period (i) as the Commission may delegate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within \_\_\_\_ days after the date of this publication.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>3</sup>

Secretary.

Dated:

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<sup>3</sup> 17 C.F.R. 200.30-3(a)(12).

SECOND AMENDED AND RESTATED  
NETTING CONTRACT AND LIMITED CROSS-GUARANTY

BETWEEN

NATIONAL SECURITIES CLEARING CORPORATION

AND

THE DEPOSITORY TRUST COMPANY

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SECOND AMENDED AND RESTATED  
NETTING CONTRACT AND LIMITED CROSS-GUARANTY

AGREEMENT, dated as of \_\_\_\_\_, 2000, between National Securities Clearing Corporation, a New York corporation ("NSCC"), and The Depository Trust Company, a New York limited purpose trust company ("DTC"). Capitalized terms used in this Agreement that refer to NSCC or the clearing activities of NSCC and that are not otherwise defined herein shall have the meanings given to such terms in the rules of NSCC (the "NSCC Rules"). Capitalized terms used in this Agreement that refer to DTC or the depository activities of DTC and that are not otherwise defined herein shall have the meanings given to such terms in the rules of DTC (the "DTC Rules").

W I T N E S S E T H:

WHEREAS, NSCC is (i) a "clearing agency", registered under Section 17A(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), in accordance with the provisions of Section 19(a) thereof, (ii) a "clearing organization", as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991, as amended (the "FDIC Act"), and (iii) a Participant of DTC;

WHEREAS, DTC is (i) a "clearing agency", registered under Section 17A(b) of the Exchange Act, in accordance with the provisions of Section 19(a) thereof, (ii) a "clearing organization", as defined in the FDIC Act, and (iii) a "clearing corporation", as defined in the New York Uniform Commercial Code which operates a central depository for the book-entry transfer and pledge of Securities;

WHEREAS, from time to time a partnership, corporation or other organization or entity may concurrently be a Member of NSCC and a Participant of DTC (each, a "Common Member", as more particularly described in Section 2.01(a));

WHEREAS, (i) on each day that NSCC is open for business, a Member of NSCC may be entitled to receive a payment from, or may be obligated to make a payment to, NSCC, (ii) on each day that DTC is open for business, a Participant of DTC may be entitled to receive a payment from, or may be obligated to make a payment to, DTC, and (iii) on each business day that both NSCC and DTC are open for business (a "Common Business Day"), a Common Member may be (A) entitled to receive a payment from both NSCC and DTC (each, a "Clearing Agency"), (B) obligated to make

a payment to each Clearing Agency or (C) entitled to receive a payment from one Clearing Agency and obligated to make a payment to the other Clearing Agency;

WHEREAS, each Common Member is (i) required by the NSCC Rules to make a deposit to the Clearing Fund of NSCC and (ii) required by the DTC Rules to make a deposit to the Participants Fund of DTC;

WHEREAS, the NSCC Rules are a "netting contract" as defined in the FDIC Act;

WHEREAS, the DTC Rules are a "netting contract" as defined in the FDIC Act;

WHEREAS, NSCC and DTC previously entered into a Netting Contract and Limited Cross-Guaranty, dated as of April 4, 1994, which was amended and restated in an Amended and Restated Netting Contract and Limited Cross-Guaranty, dated as of February 21, 1996 (such Netting Contract and Limited Cross-Guaranty as amended and restated in such Amended and Restated Netting Contract and Limited Cross-Guaranty, the "Current Agreement"), pursuant to which:

(1) the Clearing Agencies net the right of a Common Member to receive a payment from one Clearing Agency against the obligation of the Common Member to make a payment to the other Clearing Agency, so that the right to receive a payment is applied to the obligation to make a payment and the Common Member either receives a single net payment from one Clearing Agency or makes a single net payment to the other Clearing Agency;

(2) in certain circumstances, (A) DTC provides liquidity to NSCC in the form of a specified amount of securities and (B) NSCC provides liquidity to DTC in the form of a specified amount of cash or the right to pledge a specified amount of securities or a combination of both;

(3) DTC provides NSCC with a guaranty of the obligations of Common Members to NSCC to the extent of the value of certain securities delivered by NSCC through the facilities of DTC (on which DTC has a lien), subject to certain adjustments, and NSCC provides DTC with a guaranty of the settlement obligations of Common Members to DTC to the extent of the value of certain securities delivered to

NSCC through the facilities of DTC (on which DTC has no lien), subject to certain adjustments; and

(4) each Clearing Agency provides the other Clearing Agency with a guaranty of the obligations of Common Members to the extent of the available net resources of a Common Member that defaults in its obligations to either Clearing Agency, so that, if a Common Member defaults in its obligations to one or both Clearing Agencies, any resources available to one Clearing Agency in excess of the obligations of the Common Member to such Clearing Agency are applied to any deficiency in the resources available to the other Clearing Agency to satisfy the obligations of the Common Member to such Clearing Agency (the "Net Resources Cross-Guaranty");

WHEREAS, on the date hereof, NSCC and DTC are entering into a Netting Contract and Limited Cross-Guaranty with the Emerging Markets Clearing Corporation, Government Securities Clearing Corporation, MBS Clearing Corporation and The Options Clearing Corporation (the "Multilateral Agreement"); and

WHEREAS, the provisions of the Multilateral Agreement are intended to supercede the Net Resources Cross-Guaranty provisions of the Current Agreement and, accordingly, NSCC and DTC wish to amend and restate the Current Agreement to delete the Net Resources Cross-Guaranty provisions of the Current Agreement and make certain other necessary and conforming changes;

NOW, THEREFORE, in consideration of the mutual premises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree that, effective as of the date hereof, the Current Agreement is hereby amended and restated to read in its entirety as follows:

## I. ARTICLE I

### TERMS AND CONVENTIONS

**A.**                    **Section 1.01. Defined Terms.** Set forth below is a list of the defined terms used in this Agreement and the place in this Agreement where such terms are defined:

<u>Defined Term</u>	<u>Defined In</u>
Clearing Agency	Forepart
Collateral Value	Section 3.01(a)
Common Business Day	Forepart
Common Member	Section 2.01(a)
Court	Section 5.04
Credit Amount	Section 2.01(b)
Credit Amount Clearing Agency	Section 2.04(a)(i)
Current Agreement	Forepart
Debit Amount	Section 2.01(c)
Debit Amount Clearing Agency	Section 2.04(b)(i)
Defaulting Member	Section 2.01(d)
DTC	Forepart
DTC Collateral Substitute Guaranty	Section 4.02
DTC Collateral Substitute Guaranty Maximum Amount	Section 4.01(a)
DTC Liquidity Obligation	Section 3.03(a)
DTC Liquidity Obligation Maximum Amount	Section 3.03(a)
DTC Net Loss	Section 4.01(b)
DTC Rules	Forepart
Exchange Act	Forepart

Failed Member	Section 2.01(e)
FDIC Act	Forepart
Guarantee Party	Section 5.01(b)
Guarantor Party	Section 5.01(c)
Limited Guaranty	Section 5.01(a)
LOC Facility	Section 3.01(b)
Long Allocation	Section 3.01(c)
Multilateral Agreement	Forepart
Net Credit Amount	Section 2.04(a)(i)
Net Debit Amount	Section 2.04(b)(i)
Net Resources Cross-Guaranty	Forepart
Netting Facilitator	Section 2.01(f)
NSCC	Forepart
NSCC Liquidity Obligation	Section 3.04(a)
NSCC Liquidity Obligation Maximum Amount	Section 3.04(a)
NSCC Net Loss	Section 4.01(d)
NSCC Rules	Forepart
NSCC Collateral Substitute Guaranty	Section 4.03
NSCC Collateral Substitute Guaranty Maximum Amount	Section 4.01(d)
Obligation	Section 2.01(g)
Paying Clearing Agency	Section 5.04
Receiving Clearing Agency	Section 5.04
Replacement Securities	Section 3.01(d)
Reversible Long Allocation	Section 3.01(e)

Rules	Section 2.01(h)
SEC	Forepart
Short Cover	Section 3.01(f)
Termination Date	Section 6.01
Third-Party Agreement	Section 5.07

**B. Section 1.02. Certain Conventions.**

Unless the context of this Agreement otherwise requires, (a) words using the singular number include the plural number and words using the plural number include the singular number, (b) the term "hereof," "herein," "hereby" and similar words refer to this Agreement and (c) the terms "Article" or "Section" refer to the specified Article or Section of this Agreement. Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Common Business Days are specified.

**II. ARTICLE II**

**NETTING CONTRACT BETWEEN NSCC AND DTC**

**A. Section 2.01. Defined Terms.** The following terms shall have the meanings specified below:

- (a) The term "Common Member" shall mean each partnership, corporation or other organization or entity that now or hereafter may concurrently be a Member of NSCC and a Participant of DTC, notwithstanding that, subsequent to an event or circumstance affecting the Common Member under this Agreement, (i) the Common Member withdraws from either Clearing Agency, (ii) either Clearing Agency ceases to act for the Common Member or (iii) there is any other termination of the relationship between the Common Member and either Clearing Agency.
- (b) "Credit Amount" shall mean any settlement payment due from a Clearing Agency to a Common Member after netting all settlement credits and debits with respect

to all accounts maintained by the Common Member with such Clearing Agency.

- (c) "Debit Amount" shall mean any settlement payment due from a Common Member to a Clearing Agency after netting all settlement credits and debits with respect to all accounts maintained by the Common Member with such Clearing Agency.
- (d) "Defaulting Member" shall mean (i) a Common Member which fails to pay a Debit Amount or Net Debit Amount or fails to satisfy any other Obligation to either Clearing Agency, (ii) a Common Member for which either Clearing Agency has ceased to act or (iii) a Common Member which for any other reason becomes a Failed Member if the parties hereto agree that such reason shall constitute a default for purposes of this Agreement.
- (e) "Failed Member" shall have the meaning provided in Section 402(8) of the FDIC Act.
- (f) "Netting Facilitator" shall mean the person or persons (collectively as a group) designated by the Clearing Agencies to act as provided in this Article II.
- (g) "Obligation" shall mean any obligation or liability of a Common Member to a Clearing Agency under the Rules of the Clearing Agency.
- (h) "Rules" shall mean (i) the NSCC Rules or (ii) the DTC Rules.

**B. Section 2.02. Determination of Credit Amounts and Debit Amounts.** On each Common

Business Day, each Clearing Agency shall determine, in accordance with its Rules, the Credit Amount or Debit Amount for each Common Member, and shall report such Credit Amount or Debit Amount to the Common Member and the Netting Facilitator in such manner as the parties hereto shall agree from time to time.

**C. Section 2.03. Comparison of Credit Amounts and Debit Amounts.**

On each Common Business Day, the Netting Facilitator shall compare the Credit Amount or Debit Amount determined by each Clearing Agency for each Common Member and shall establish which Common Members have a Credit Amount at one Clearing Agency and a Debit Amount at the other Clearing Agency.

**D. Section 2.04. Payment of Net Credit Amounts and Net Debit Amounts.**

For each Common Member with a Credit Amount at one Clearing Agency and a Debit Amount at the other Clearing Agency, the Netting Facilitator shall net the Credit Amount and the Debit Amount, and:

- (a) if the Credit Amount is greater than the Debit Amount,
  - (i) the excess shall constitute a "Net Credit Amount" owed by the Clearing Agency at which there was a Credit Amount (the "Credit Amount Clearing Agency") to the Common Member, (ii) the Credit Amount Clearing Agency shall pay the Common Member an amount equal to the Net Credit Amount in full satisfaction of the settlement obligation of the Credit Amount Clearing Agency to the Common Member and (iii) the Credit Amount Clearing Agency shall pay the other Clearing Agency an amount equal to the Debit Amount in full satisfaction of the settlement obligation of the Common Member to the other Clearing Agency;
- (b) if the Debit Amount is greater than the Credit Amount,
  - (i) the excess shall constitute a "Net Debit Amount" owed by the Common Member to the Clearing Agency at which there was a Debit Amount (the "Debit Amount Clearing Agency"), (ii) the Common Member shall pay the Debit Amount Clearing Agency an amount equal to the Net Debit Amount in full satisfaction of the settlement obligation of the Common Member to the Debit Amount Clearing Agency and (iii) the Credit Amount Clearing Agency shall pay the Debit Amount Clearing Agency an amount equal to the Credit Amount in full satisfaction of the settlement obligation of the Credit Amount Clearing Agency to the Common Member; and
- (c) if the Credit Amount equals the Debit Amount, (i) the Credit Amount Clearing Agency shall pay the Debit

Amount Clearing Agency an amount equal to the Credit Amount in full satisfaction of (A) the settlement obligation of the Common Member to the Debit Amount Clearing Agency and (B) the settlement obligation of the Credit Amount Clearing Agency to the Common Member and (ii) no payment shall be due to or from the Common Member.

**E. Section 2.05. Method of Making**

**Payments.** All payments to be made pursuant to Section 2.04 shall be made in the manner prescribed by the Rules of the Clearing Agencies for settlement payments. In order to reduce the number of payments to be made, the Netting Facilitator may (a) aggregate or net the payments to be made by the Clearing Agencies to each other and (b) instruct the Clearing Agencies to make such aggregated or netted payments accordingly.

**F. Section 2.06. Sharing of Settlement**

**Information.** The Clearing Agencies shall share with each other and the Netting Facilitator information regarding the Credit Amounts and Debit Amounts of Common Members in the manner in which they currently share such information or as they shall agree from time to time.

**G. Section 2.07. Effectiveness of Netting**

**Contract.** The provisions of this Article II shall be given effect notwithstanding that a Common Member becomes a Defaulting Member, except as the parties hereto may otherwise agree.

**III. ARTICLE III**

**CERTAIN ARRANGEMENTS BETWEEN NSCC AND DTC**

**A. Section 3.01. Defined Terms.** The

following terms shall have the meanings specified below:

- (a) "Collateral Value" for purposes of Section 4.02 shall mean (i) with respect to equity Securities that have a Market Value of \$5.00 or more, 90% of the Market Value of such Securities, (ii) with respect to investment

grade debt Securities, 95% of the Market Value of such Securities, and (iii) with respect to any other Securities, zero or such percentage of the Market Value of such other Securities as DTC may determine, in its sole discretion, from time to time, or (iv) such other percentage of the Market Value of any Securities as the Clearing Agencies shall mutually agree upon from time to time. "Collateral Value" for all other purposes shall have the meaning provided in Section 1 of Rule 1 of the DTC Rules.

- (b) "LOC Facility" shall mean the committed revolving line of credit facility maintained by DTC with one or more banks or other lenders, as the same may exist from time to time.
- (c) "Long Allocation" shall mean a free delivery of Securities (resulting from the CNS Accounting Operation) by NSCC to a Common Member through the facilities of DTC.
- (d) "Replacement Securities" shall mean Securities with Collateral Value (thereby excluding Long Allocations) that DTC may (i) segregate if a Common Member becomes a Defaulting Member and (ii) either (A) pledge to secure an advance to DTC under the LOC Facility or, if not needed for that purpose, (B) use to satisfy certain obligations of DTC to NSCC pursuant to this Agreement.
- (e) "Reversible Long Allocation" shall mean a Long Allocation which has not been transferred, withdrawn or pledged by the Common Member.
- (f) "Short Cover" shall mean a free delivery of Securities (resulting from the CNS Accounting Operation) by a Common Member to NSCC through the facilities of DTC.

**B. Section 3.02. Certain Arrangements.**

Notwithstanding anything else contained in the Rules, with respect to Securities transferred through the facilities of DTC on any Common Business Day:

- (a) Securities delivered free as Short Covers by a Common Member to NSCC, including Securities delivered versus

payment to a Common Member which are redelivered free as Short Covers to NSCC, shall not be pledged by DTC to secure any advance to DTC under the LOC Facility.

- (b) Securities delivered free as Long Allocations by NSCC to a Common Member (i) shall not be given any Collateral Value for purposes of calculating the Collateral Monitor for any Account Family of the Common Member and, except as provided in Section 3.04(b) and (ii) shall not be pledged by DTC to secure any advance to DTC under the LOC Facility.
- (c) If a Common Member fails to satisfy any Obligation and becomes a Defaulting Member, DTC shall redeliver free to NSCC, on demand, all Reversible Long Allocations credited by DTC to the Common Member on the day on which NSCC makes a demand hereunder, provided that the Common Member is still a Defaulting Member on that day. NSCC shall promptly notify DTC of any such event.

**C. Section 3.03. Liquidity Obligation of DTC.** If a Common Member becomes a Defaulting

Member:

- (a) DTC shall make available to NSCC, on demand, liquidity (the "DTC Liquidity Obligation") in an amount up to (i) the aggregate Collateral Value of all Long Allocations credited by DTC to the Defaulting Member on the day on which NSCC makes a demand hereunder (provided that the Defaulting Member is still a Defaulting Member on that day) minus (ii) the sum of (A) the Collateral Value of the Reversible Long Allocations redelivered that day by DTC to NSCC pursuant to Section 3.02(c) and (B) any Credit Amount of the Defaulting Member at DTC applied that day against any Debit Amount of the Defaulting Member at NSCC (the "DTC Liquidity Obligation Maximum Amount").
- (b) In satisfaction of the DTC Liquidity Obligation, DTC shall, until such time as NSCC no longer needs such liquidity or as otherwise provided in this Section 3.03, without interest or other charge, (i) advance immediately available funds to NSCC in an amount up to the DTC Liquidity Obligation Maximum Amount or (ii)

deliver free to NSCC Replacement Securities selected by DTC having an aggregate Collateral Value up to the DTC Liquidity Obligation Maximum Amount or (iii) provide NSCC with a combination of immediately available funds and Replacement Securities (selected and valued as set forth in clause (ii) above) in a total amount up to the DTC Liquidity Obligation Maximum Amount. In satisfaction of the DTC Liquidity Obligation, DTC shall have the option of determining whether the DTC Liquidity Obligation shall be satisfied in accordance with the provisions of clause (i), (ii) or (iii) of this paragraph (b). DTC may, at any time, substitute cash for Replacement Securities provided by DTC to NSCC in accordance with clause (ii) or (iii) of this paragraph (b).

- (c) NSCC shall use Replacement Securities provided by DTC to NSCC in accordance with paragraph (b) above only for the purpose of securing an advance from its lenders in accordance with the NSCC Rules, and DTC acknowledges that NSCC may use such Replacement Securities for such purpose.
- (d) NSCC shall promptly redeliver to DTC any Replacement Securities provided by DTC to NSCC in accordance with paragraph (b) above (i) if NSCC does not need such Replacement Securities for the purpose specified in paragraph (c) above, (ii) upon the satisfaction of the obligations of DTC to NSCC pursuant to Section 4.02 or (iii) to enable DTC to deliver the Replacement Securities in connection with a liquidation thereof for the purpose of applying the proceeds to the satisfaction of the obligations of DTC to NSCC pursuant to Section 4.02. NSCC shall promptly repay to DTC any cash provided by DTC to NSCC pursuant to paragraph (b) above upon the satisfaction of the obligations of DTC to NSCC pursuant to Section 4.02.

**D. Section 3.04. Liquidity Obligation of NSCC.** If, on any Common Business Day, a Common Member becomes a Defaulting Member and if, because of the application of Section 3.02(a), the funds available to DTC from the LOC Facility are insufficient to meet its needs:

- (a) NSCC shall make available to DTC, on demand, liquidity (the "NSCC Liquidity Obligation") in an amount up to (i) the aggregate Collateral Value of all Securities delivered free as Short Covers from the Defaulting Member to NSCC on the day of the default minus (ii) any Credit Amount of the Defaulting Member at NSCC applied that day against any Debit Amount of the Defaulting Member at DTC (the "NSCC Liquidity Obligation Maximum Amount").
- (b) In satisfaction of the NSCC Liquidity Obligation, NSCC shall, until such time as DTC no longer needs such additional liquidity, without interest or other charge, (i) advance immediately available funds to DTC in an amount up to the NSCC Liquidity Obligation Maximum Amount or (ii) permit DTC to retain and pledge to its lenders Reversible Long Allocations selected by DTC (otherwise required to be redelivered to NSCC pursuant to Section 3.02(c)) having an aggregate Collateral Value up to the NSCC Liquidity Obligation Maximum Amount or (iii) provide DTC with a combination of immediately available funds and Reversible Long Allocations (selected, valued and applied as set forth in clause (ii) above) in a total amount up to the NSCC Liquidity Obligation Maximum Amount. In satisfaction of the NSCC Liquidity Obligation, NSCC shall have the option of determining whether the NSCC Liquidity Obligation shall be satisfied in accordance with the provisions of clause (i), (ii) or (iii) of this paragraph (b).
- (c) DTC shall promptly deliver to NSCC any Reversible Long Allocations retained by DTC in accordance with paragraph (b) above (i) upon the satisfaction of the obligations of NSCC to DTC pursuant to Section 4.03 or (ii) to enable NSCC to deliver the Reversible Long Allocations in connection with a liquidation thereof for the purpose of applying the proceeds to the satisfaction of the obligations of NSCC to DTC pursuant to Section 4.03. DTC shall promptly repay to NSCC any cash provided by NSCC to DTC pursuant to paragraph (b) above upon the satisfaction of the obligations of NSCC to DTC pursuant to Section 4.03.

**E. Section 3.05. Certain Indemnities.**

With respect to the obligations of the Clearing Agencies pursuant to this Article III:

- (a) DTC shall indemnify and hold harmless NSCC from and against any claim, loss, cost or expense suffered or incurred by NSCC as a result of any law, rule, regulation, order or judgment that requires or obligates NSCC to deliver to the Defaulting Member, its legal representative or any other person the Reversible Long Allocations provided by NSCC to DTC pursuant to Section 3.04(b)(ii) and (iii), or make a payment on account thereof.
- (b) NSCC shall indemnify and hold harmless DTC from and against any claim, loss, cost or expense suffered or incurred by DTC as a result of any law, rule, regulation, order or judgment that requires or obligates DTC to deliver to the Defaulting Member, its legal representative or any other person the Reversible Long Allocations and Replacement Securities provided by DTC to NSCC pursuant to Section 3.02(c) and Section 3.03(a), or make a payment on account thereof.

**IV. ARTICLE IV**

**LIMITED COLLATERAL SUBSTITUTE CROSS-GUARANTIES**

**A. Section 4.01. Defined Terms.** The following terms shall have the meanings specified below:

- (a) "DTC Collateral Substitute Guaranty Maximum Amount" shall mean, with respect to Securities transferred through the facilities of DTC on any Common Business Day, an amount equal to (i) the aggregate Collateral Value of all Securities delivered free as Long Allocations by NSCC to a Common Member, whether or not such Long Allocations have been transferred, withdrawn or pledged by the Common Member, minus (ii) the sum of (A) the Collateral Value of the Reversible Long Allocations redelivered by DTC to NSCC pursuant to Section 3.02(c) and (B) any Credit Amount of the Common Member at DTC applied that day against any Debit Amount of the Common Member at NSCC.

- (b) "DTC Net Loss" shall mean any loss incurred by DTC with respect to a Common Member which has failed to satisfy any Obligation to DTC after application of (i) the netting payments made pursuant to Article II and (ii) the failure to settle procedures incorporated into the DTC Rules.
- (c) "NSCC Collateral Substitute Guaranty Maximum Amount" shall mean, with respect to Securities transferred through the facilities of DTC on any Common Business Day, an amount equal to (i) the sum of (A) the aggregate Market Value of all Securities delivered versus payment to a Common Member which are redelivered free as Short Covers by the Common Member to NSCC plus (B) the aggregate Collateral Value of all other Securities delivered free as Short Covers by the Common Member to NSCC minus (ii) the sum of (A) the excess (if any) of 90% of the aggregate Market Value of the Securities constituting the portion of the scheduled aggregate Short Covers of the Common Member attributable to non-fail ACATS items over 80% (or such other percentage as NSCC shall from time to time specify to DTC in writing) of the aggregate Market Value of the Securities constituting the portion of the scheduled aggregate Long Allocations of the Common Member attributable to non-fail ACATS items and (B) any Credit Amount of the Common Member at NSCC applied that day against any Debit Amount of the Common Member at DTC.
- (d) "NSCC Net Loss" shall mean any loss incurred by NSCC with respect to a Common Member which has failed to satisfy any Obligation to NSCC after application of (i) the netting payments made pursuant to Article II and (ii) the close out of transactions in accordance with the NSCC Rules.

**B. Section 4.02. DTC Collateral Substitute Guaranty.**

- (a) DTC hereby guarantees (the "DTC Collateral Substitute Guaranty"), in the manner and to the extent set forth in paragraph (b) below, the Obligations of Defaulting Members to NSCC; provided, however, that, as a



Collateral Substitute Guaranty but (i) DTC shall not be required to give such notice to NSCC as a condition to the effectiveness of the NSCC Collateral Substitute Guaranty if DTC has received a notice from NSCC pursuant to Section 4.02(a) and (ii) any failure of DTC to give a timely notice pursuant to this paragraph (a) shall be deemed waived if NSCC nevertheless makes a guaranty payment to DTC pursuant to paragraph (b) below.

- (b) In satisfaction of the NSCC Collateral Substitute Guaranty, NSCC shall pay DTC, on demand (which demand shall be made no later than one year after the day of the failure) in immediately available funds, an amount equal to the lesser of (i) the NSCC Collateral Substitute Guaranty Maximum Amount or (ii) the DTC Net Loss.

**D. Section 4.04. Collateral Value.**

Notwithstanding anything else contained in the DTC Rules, the amount of the NSCC Collateral Substitute Guaranty with respect to the Obligations of a Common Member shall be given Collateral Value for purposes of calculating the Collateral Monitor for the applicable Account Family of the Common Member.

**V. ARTICLE V**

**CERTAIN UNDERTAKINGS OF NSCC AND DTC**

**A. Section 5.01. Defined Terms.** The following terms shall have the meanings specified below:

- (a) "Limited Guaranty" shall mean (i) a DTC Collateral Substitute Guaranty or (ii) an NSCC Collateral Substitute Guaranty.
- (b) "Guarantee Party" shall mean the Clearing Agency entitled to receive a Limited Guaranty.
- (c) "Guarantor Party" shall mean the Clearing Agency required to give a Limited Guaranty.

**B. Section 5.02. Obligations of Defaulting Members.** For purposes of Article IV:

- (a) If an Obligation of a Defaulting Member to a Clearing Agency is a performance Obligation rather than a payment Obligation, such performance Obligation shall be liquidated by the Clearing Agency and reduced to a payment Obligation.
- (b) If a Defaulting Member has a Debit Amount at each Clearing Agency on any Common Business Day, so that the provisions of Article II do not apply to reduce either Debit Amount to a Net Debit Amount, (i) each such Debit Amount shall constitute an Obligation of the Defaulting Member and (ii) each Clearing Agency shall be entitled to treat the amount thereof as an unpaid Obligation of the Defaulting Member.
- (c) If a Clearing Agency makes a guaranty payment to the other Clearing Agency in accordance with the provisions of Article IV, such guaranty payment shall constitute an Obligation of the Defaulting Member to the Clearing Agency that makes the guaranty payment.

**C. Section 5.03. Subsequent Adjustment by the Parties.** If any information is received by a Clearing Agency after a payment is made with respect to a Limited Guaranty which would result in a change in the calculation of the Limited Guaranty, (a) such Clearing Agency shall promptly report that information to the other Clearing Agency, (b) there shall be a new calculation of the Limited Guaranty and (c) appropriate adjustments shall be made by the parties, even and notwithstanding that such adjustments may reduce or eliminate or increase or create a Limited Guaranty or change a Clearing Agency from a Guarantor Party to a Guarantee Party or vice versa.

**D. Section 5.04. Subsequent Determination by the Parties or a Court.**

Upon a determination by a Clearing Agency or the judgment of a court of competent jurisdiction (the "Court") that any amount paid pursuant to this Agreement was not paid on account of an amount owed by a Defaulting Member to the Clearing Agency that received the payment (the "Receiving Clearing Agency"), the Receiving Clearing Agency shall promptly repay to the Clearing Agency that paid the amount (the "Paying Clearing Agency") the amount paid by the Paying Clearing Agency to the Receiving Clearing Agency; provided, however, that (i) if the Receiving Clearing Agency is ordered by the Court to pay to or on behalf of the Defaulting Member the amount paid by the Paying Clearing Agency to the Receiving Clearing Agency, then such amount shall be paid as ordered to or on behalf of the Defaulting Member and such payment shall discharge any obligation of the Paying Clearing Agency to the Defaulting Member for such amount, and (ii) if the Receiving Clearing Agency is ordered by the Court to pay to or on behalf of the Defaulting Member only a portion of the amount paid by the Paying Clearing Agency to the Receiving Clearing Agency, then such amount shall be paid as ordered to or on behalf of the Defaulting Member and the excess which is not so paid to or on behalf of the Defaulting Member shall be retained by the Receiving Clearing Agency or repaid to the Paying Clearing Agency in accordance with their rights and obligations under this Agreement as their interests may appear. The parties hereto shall cooperate with each other, including in any action or proceeding, to endeavor to prevent redundant payments to a Defaulting Member.

**E. Section 5.05. Nature of Limited Guaranties.**

The Limited Guaranties provided in Article IV and Article V shall be continuing guaranties and shall apply to all obligations of the Clearing Agencies thereunder on a daily basis whenever arising. All obligations outstanding when claims with respect thereto are made shall, cumulatively and in the aggregate, constitute the obligations to be satisfied, subject to the adjustments to be made in accordance with Section 5.03 and Section 5.04. The Limited Guaranties provided in Article IV shall be separate and independent guaranties. Claims with respect thereto shall not be offset or netted.

**F. Section 5.06. Sharing of Certain Information** . Each Clearing Agency shall promptly notify the other Clearing Agency if such Clearing Agency (a) ceases to act for a Common Member or (b) learns of any other reason why a Common Member would be a Defaulting Member.

**G. Section 5.07. Notice of Other Agreements**. If either Clearing Agency proposes to enter into a "netting contract", as defined in the FDIC Act, or any other agreement with any other clearing agency registered under Section 17A(b) of the Exchange Act, other than any wholly-owned subsidiary of such Clearing Agency, which provides for netting or guaranty arrangements similar or comparable to the arrangements in this Agreement (a "Third-Party Agreement"), such Clearing Agency shall give notice of such intent and a copy of such Third-Party Agreement to the other Clearing Agency at least ten days prior to the time that such Third-Party Agreement is executed and/or submitted for approval to the SEC.

**H. Section 5.08. Incorporation of this Agreement into Rules**. Each Clearing Agency shall cause this Agreement to be incorporated into the Rules of such Clearing Agency. In the event of a conflict between the provisions of this Agreement and the other Rules of a Clearing Agency, the provisions of this Agreement shall prevail.

## **VI. ARTICLE VI**

### **MISCELLANEOUS**

**A. Section 6.01. Termination.** Either party hereto may terminate this Agreement as of a day on which neither Clearing Agency is open for business ("Termination Date") by giving the other party hereto written notice thereof at least 120 days prior to the Termination Date, except that (a) the provisions of Article II shall survive the termination of this Agreement with respect to the netting of Credit Amounts and Debit Amounts for any Common Business Day prior to the Termination Date, (b) the provisions of Article III shall survive the termination of this Agreement with respect to a liquidity obligation arising prior to the Termination Date, (c) the provisions of Article IV shall survive the termination of this Agreement with respect to the guaranty rights and obligations arising thereunder prior to the Termination Date and (d) the provisions of Article V shall survive the termination of this Agreement insofar as such provisions relate to provisions of Articles II, III and IV that survive the termination of this Agreement.

**B. Section 6.02. Notices.** All notices, requests and other communications hereunder shall be in writing and shall be deemed to have been duly given only if delivered personally or by telecopier to the other party hereto at the following addresses or telecopier numbers:

National Securities Clearing Corporation  
55 Water Street  
New York, New York 10041

Attention:  
Telecopier:

The Depository Trust Company  
55 Water Street  
New York, New York 10041

Attention:  
Telecopier:

provided, however, that a notice pursuant to Section 4.02 or Section 4.03 may be given verbally (in person or by phone or other means) and the party receiving a notice given verbally shall be entitled to rely and act upon it if such party reasonably believes that such notice was given by the other party.

**C.**                   **Section 6.03. Entire Agreement.** This Agreement supersedes all prior discussions, expressions of intent and agreements between the parties hereto with respect to the subject matter hereof.

**D.**                   **Section 6.04. Binding Effect.** This Agreement is binding upon, inures to the benefit of and is enforceable by the parties hereto and their respective successors and permitted assigns.

**E.**                   **Section 6.05. No Assignment.** Neither this Agreement nor any right, interest or obligation hereunder may be assigned by any party hereto without the prior written consent of the other party hereto and any attempt to do so shall be void.

**F.**                   **Section 6.06. Amendment.** This Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each party hereto.

**G.**                   **Section 6.07. No Third Party Beneficiaries.** The terms and provisions of this Agreement are intended solely for the benefit of each party hereto and their respective successors or permitted assigns, and it is not the intention of the parties to confer third-party beneficiary rights upon any other person, including without limitation any Member of NSCC or Participant of DTC.

**H. Section 6.08. Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of any party hereto under this Agreement will not be materially and adversely affected thereby, (a) such provision shall be fully severable, (b) this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and (d) in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

**I. Section 6.09. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York without giving effect to principles of conflicts of law.

**J. Section 6.10. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

NATIONAL SECURITIES CLEARING CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

THE DEPOSITORY TRUST COMPANY

By: \_\_\_\_\_  
Name:  
Title: