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CIRCULAR
November 15, 2004

CAPITAL REQUIREMENTS FOR UNDERWRITING COMMITMENTS

The Rules and Policies Committee of Bourse de Montréal Inc. (the Bourse) approved amendments to article 7224 of the Rules of the Bourse and to Schedule 2A of Policy C-3 of the Bourse, which deal with capital requirements for underwriting commitments. **These amendments will become effective on March 1, 2005.**

This circular has been prepared to describe the background to and provide details on these amendments to the capital requirements for underwriting commitments. Copies of amended article 7224 and Schedule 2A of Policy C-3 are enclosed as Attachment 1 and 2 respectively, for information purposes only. Also enclosed as Attachment 3 is a copy of the standard new issue loan agreement that has been developed in connection with the proposed amendments. This new issue loan agreement format **shall be used effective March 1, 2005** to qualify for the capital requirement reductions provided when new issue letters are obtained, as set out in amended article 7224.

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Encl.

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OVERVIEW

In January 1998, after passing a regulatory proposal to eliminate the use of standby subordinated debt for regulatory capital purposes, the Investment Dealers Association (IDA) Board of directors asked that the Financial Administrators Section (FAS) examine the continued use of new issue loans. It had been determined that since the new issue loan facility was similar to the standby subordinated debt facility, its continued use also needed to be studied. The similarity between these two types of credit facilities is that the use of the current new issue loan facility may result in a capital benefit to the firm even without such facility being drawn. In response to this request, the FAS Capital Formula Subcommittee established the Bank Loan Working Group to study new issue loans. Rather than address uniquely the continued use of the new issue loan, the working group determined that all aspects of the existing capital rules for underwriting commitments warranted study. As a result, the working group developed recommendations on a number of issues relating to underwriting commitments. These recommendations will be implemented on March 1, 2005, through amendments to article 7224 and Schedule 2A of Policy C-3 and through the introduction of the standard form of new issue loan agreement.

KEY AMENDMENTS TO EXISTING RULES, MAJOR COMPONENTS OF STANDARD NEW ISSUE LOAN AGREEMENT AND PERMITTED USE OF CAPITAL RENTAL ARRANGEMENTS

A. The key amendments made to article 7224 are as follows:

1. Introduction of reduced “normal new issue margin” rates [*article 7224(a)(viii)*];
2. Formal codification of the required wording to be used for “disaster out” and “market out” clauses [*article 7224(a)(iii) and (v)*];
3. Amendments to the reductions in “normal new issue margin” rates due to presence of disaster out and/or market out clauses [*article 7224(b)*];
4. Formal codification of the pricing terms that must be agreed to (in addition to all other non-pricing terms) before an approved participant is considered to have an underwriting commitment [*article 7224(a)(ii)*];
5. Introduction of reductions to “normal new issue margin” rates due to the existence of expressions of interest from exempt purchasers¹ that have been verbally affirmed but not yet contracted provided there is “acceptable documentation” retained [*article 7224(a)(i) and (c)*];
6. Expansion of the list of parties eligible to issue a new issue loan for which the approved participant will receive a reduction in its underwriting capital requirement [*article 7224(a)(vi)*]; and
7. Formal codification of minimum required terms to be included in new issue loan agreement [*article 7224(a)(vi)*].

¹ Article 7224(a)(iv) defines the term “exempt purchasers” as “all persons with whom the issuer could, pursuant to applicable securities laws, proceed with the sales of securities without having the obligation to produce a prospectus if such sales were made exclusively to these persons”.

B. The key amendments made to Schedule 2A of Policy C-3 are as follows:

1. Increase in the individual underwriting concentration threshold from 25% to 40% of Net Allowable Assets [*Column 4 of detail relating to Line 1 of Schedule 2A of Policy C-3*]; and
2. For each outstanding commitment, inclusion of the portion of the commitment allocated to exempt purchasers as an exposure subject to the individual and overall underwriting concentration requirements [*Notes 2 and 4 to Schedule 2A of Policy C-3*].

C. The major components of Standard Form of New Issue Loan agreement are as follows:

1. The approved participant has the ability to draw down funds on the strength of the new issue only;
2. The loan issuer (“Lender”) agrees up front to advance funds:
 - (a) at a stated loan value [a percentage of the new issue price];
 - (b) on the draw down date [for any portion not sold prior to draw down];
 - (c) at a stated interest rate; and
 - (d) for a stated period of time [which must equal or exceed a prescribed minimum period]; and
3. The Lender agrees to waive any right of set-off against other assets of the approved participant.

D. Permitted use of capital rental arrangements

1. “Capital rental arrangements” are arrangements where one approved participant lends capital to another. These arrangements have always been available to approved participants but the SROs had never officially sanctioned their use. These arrangements will now be formally permitted.

DETAILED DISCUSSION

A. KEY AMENDMENTS MADE TO ARTICLE 7224

A1. INTRODUCTION OF REDUCED “NORMAL NEW ISSUE MARGIN” RATES

Effective March 1, 2005, “normal new issue margin rates” will be set at levels lower than the current normal margin requirement for listed securities where the market value of the issue being underwritten is \$2.00 per share or more. In other words, new issue underwriting commitments with the following current margin rates will be margined at the following reduced margin rates during the period from commitment date until the business day prior to the settlement date of the underwriting:

Current normal margin rates	Reduced “normal new issue margin” rates
25.00%	15.00%
50.00%	40.00%
60.00%	60.00%
80.00%	80.00%
100.00%	100.00%

These reductions are supported by the results of a study of price volatility performed as part of a comprehensive project to develop revised margin rates for equity securities (known as the “Equity Margin Project”). The study concluded that on average there are significant cushions in the current margin rate structure for 25% and 50% margin rate securities over and above the margin that would be required to cover the actual market risk associated with these securities. Rather than wait for the adoption of the recommendations of the Equity Margin Project for all listed securities, the amendments to article 7224 allow for the early adoption of lower margin rates for certain securities the firm is underwriting and for which it has an underwriting commitment. These reductions will be made effective through the addition of a new defined term, “normal new issue margin” [article 7224(a)(viii)].

A2. FORMAL CODIFICATION OF THE REQUIRED WORDING TO BE USED FOR “DISASTER OUT” AND “MARKET OUT” CLAUSES

The definitions of “disaster out clause” and “market out clause” have been amended to formally codify the required wording to be used for domestic underwritings [articles 7224(a)(iii) and 7224(a)(v)]. Where an approved participant participates in underwritings with a material foreign portion, other “disaster out clause” or “market out clause” wording may be acceptable, but it must conform to the required wording to be used in the concern foreign jurisdiction.

A3. AMENDMENTS TO THE REDUCTIONS IN “NORMAL NEW ISSUE MARGIN” RATES DUE TO THE PRESENCE OF DISASTER OUT OR MARKET OUT CLAUSES

The reductions in the capital required on an underwriting commitment due to the presence of a disaster out or market out clause have also been amended. The amendments made were determined by studying the amount of loss that would generally be borne by an approved participant on an underwriting before an out clause would be exercised. For example, if an approved participant is willing to assume a 5% loss on an underwriting before invoking a market out clause, then the approved participant should accrue for this 5% loss on commitment date even though the market out clause may be in effect.

The amended requirements, which will come into effect on March 1, 2005, will require the approved participant to set aside a minimum amount of capital to support its underwriting commitments, irrespective of which out clauses remain unexpired, to cover

the loss it would be willing to assume, as described above. The following is a summary of the amended requirements:

Condition(s) met	Underwriting Capital Requirement	
	Current Rules	Amended Rules (effective March 1, 2005)
No out clauses in effect	100% of "normal margin"	100% of "normal new issue margin"
Disaster out clause in effect	50% of "normal margin"	50% of "normal new issue margin"
New issue loan obtained	10% of "normal margin"	10% of "normal new issue margin"
Disaster out clause in effect and new issue loan obtained	5% of "normal margin"	10% of "normal new issue margin"
Market out clause in effect	0% of "normal margin"	10% of "normal new issue margin"
Market out clause in effect and new issue loan obtained	0% of "normal margin"	5% of "normal new issue margin"

So, for an underwriting commitment with a normal margin rate of 50%, the following table indicates what will be the capital requirements effective March 1, 2005 during the period from commitment date until the business day prior to the settlement date of the underwriting:

Condition(s) met	Underwriting Capital Requirement	
	Current Rules	Amended Rules (effective March 1, 2005)
No out clauses in effect	50.00%	- 40.00%
Disaster out clause in effect	25.00%	- 20.00%
New issue loan obtained	5.00%	- 4.00%
Disaster out clause in effect and new issue loan obtained	2.50%	- 4.00%
Market out clause in effect	0.00%	- 4.00%
Market out clause in effect and new issue loan obtained	0.00%	- 2.00%

A4. FORMAL CODIFICATION OF THE PRICING TERMS THAT MUST BE AGREED TO (IN ADDITION TO ALL OTHER NON-PRICING TERMS) BEFORE AN APPROVED PARTICIPANT IS CONSIDERED TO HAVE AN UNDERWRITING COMMITMENT

Several forms of underwriting agreements are in use throughout Canada. For certain agreements it is not readily apparent whether entering into the agreement constitutes an agency offering or a committed offering. Whether or not entering into the underwriting agreement constitutes a committed offering is a question of fact. If a sufficient number of pricing terms (in addition to all other non-pricing terms) are agreed to, the approved participant has entered into a commitment. To assist in determining whether an approved

participant has entered or not into a commitment, a definition of the term “commitment” has been added [*article 7224(a)(ii)*].

The definition provides that two of the following three pricing terms (in addition to all other non-pricing terms) must be agreed to before an approved participant is considered to have entered into an underwriting commitment:

- Issue price
- Number of shares
- Issue commitment amount [issue price x number of shares]

Since the issue commitment amount is the issue price multiplied by the number of shares, agreeing to any two of the above three terms will effectively mean the third term has been agreed to as well.

A5. INTRODUCTION OF REDUCTIONS TO “NORMAL NEW ISSUE MARGIN” RATES DUE TO THE EXISTENCE OF EXPRESSIONS OF INTEREST FROM EXEMPT PURCHASERS THAT HAVE BEEN VERBALLY AFFIRMED BUT NOT YET CONTRACTED PROVIDED THERE IS “ACCEPTABLE DOCUMENTATION” RETAINED

One of the most significant amendments relates to the presence of expressions of interest from exempt purchasers. The amendments will allow for a significant reduction in the capital requirement for that portion of the underwriting commitment where documented expressions of interest have been received from exempt purchasers. The amendments assume that even though expressions of interest received from exempt purchasers are usually recorded as revenue on the date that contracting takes place, the risk associated with the underwriting is lessened on a date prior to contracting. That date occurs when the final allocation has been made to the exempt purchasers and the entire allotment to exempt purchasers has been verbally affirmed. On this date, each exempt purchaser is informed of the number of shares it has been allotted and the expression of interest received from the exempt purchaser is verbally affirmed. It is also on this date and because of the existence of these verbally affirmed expressions of interest that a reduction in the normal new issue margin required will be permitted, effective March 1, 2005, subject to the approved participant and/or the lead manager meeting certain documentation standards and conditions. These standards and conditions are as follows:

Documentation standards

As a minimum, the following documentation standards must be met before a member of the banking group takes any capital requirement reduction:

- For that portion of the underwriting commitment that is allocated to be sold to exempt purchasers, the lead manager must keep a record of the final affirmed allocation indicating for each expression of interest:
 - the name of the exempt purchaser;
 - the name of the employee of the exempt purchaser accepting the amount allocated;
 - the name of the representative of the lead underwriter responsible for affirming the amount allocated to the exempt purchaser;
 - the date and time of the affirmation.

- Upon request, the lead manager must be required to notify in writing all the banking group participants when the entire allotment to exempt purchasers has been verbally affirmed so that all banking group participants may take advantage of the reduction in the capital requirement; under no circumstances may the lead manager reduce its own capital requirement on an underwriting due to such expressions of interest from exempt purchasers without providing the above notification to the rest of the banking group.

These documentation standards will be codified in the Rules of the Bourse through the establishment of a definition for the term “appropriate documentation” [article 7224(a)(i)].

Conditions to be met

In addition to meeting the above documentation standards, the following conditions shall be met before an approved participant will be permitted to reduce the capital requirement on that portion of the underwriting commitment where expressions of interest will have been received from exempt purchasers:

- There is unlikely to be a significant renege rate on the expressions of interest received from exempt purchasers; and
- The approved participant is not significantly leveraging its underwriting activities through the use of the capital requirement reduction provided on that portion of the underwriting commitment where expressions of interest have been received from exempt purchasers.

In order to ensure that these conditions are effectively met, the following specific criteria have been developed:

- The portion of the underwriting commitment that is allotted to exempt purchasers must be finalized [i.e., the percentage allocation between exempt and retail customers must have been determined in a final manner] and the entire allotment to exempt purchasers must have been verbally affirmed;
- To qualify for the reduction in the capital requirement to 20% of normal new issue margin, the current market value of the commitment must be at or above 90% of new issue value (90% x issue price x number of shares). Should a subsequent decline in value reduce the current market value of the commitment below 90% of the new issue value, the capital requirement will be increased up to 40% of normal new issue margin. Further, should a subsequent decline in value reduce the current market value of the commitment below 80% of the new issue value, the capital requirement will be increased up to 100% of normal new issue margin; and
- The entire exempt purchaser allotment for which a capital requirement reduction is taken must be subject to an underwriting commitment concentration charge.

Reduction in normal new issue margin to be permitted

In summary, where the documentation standards and the above criteria will be met, the approved participant will be permitted to reduce by either 80% or 60% (i.e., the capital requirement will be 20% or 40% of normal new issue margin) the capital requirement

applicable on that portion of the underwriting commitment for which expressions of interest have been verbally affirmed by exempt purchasers. The following table summarizes the lower capital requirements that are applicable when an 80% reduction is taken:

“Normal new issue margin rate”	Underwriting Capital Requirement where expressions of interest have been received from exempt purchasers*	
	No out clause in effect [†]	Disaster out clause in effect [†]
15.00%	3.00%	3.00%
40.00%	8.00%	8.00%
60.00%	12.00%	12.00%
80.00%	16.00%	16.00%
100.00%	20.00%	20.00%
* Under the new rules the approved participant will be permitted to reduce its capital provided due to the presence of expressions of interest affirmed by exempt purchasers only where either no out clauses are in effect or a disaster out clause is in effect. This is because when either a market out clause is in effect or a new issue loan has been obtained (or both) the allowable capital requirement is already lower than the 20% or 40% of normal new issue margin.		
† The new rules will allow to reduce the capital requirement by either 80% or 60%. The table above has been prepared based on a reduction of 80%. So, for the above normal new issue margin rates the permitted capital requirement is: 20% x normal new issue margin.		

Thus, for underwriting commitment with a normal margin rate of 50% and where the market price of the issue is remaining at the issue price, the following will be the capital requirements, effective March 1, 2005, during the period from commitment date until business day prior to the settlement date of the underwriting:

Condition(s) met	Underwriting Capital Requirement where expressions of interest have been received from exempt purchasers		
	Current Rules	Amended Rules (effective March 1, 2005)	
		Exempt purchasers	All other purchasers
No out clauses in effect	50.00%	- 8.00%	- 40.00%
Disaster out clause in effect	25.00%	- 8.00%	- 20.00%
New issue loan obtained	5.00%	- 4.00%	- 4.00%
Disaster out clause in effect and new issue loan obtained	2.50%	- 4.00%	- 4.00%
Market out clause in effect	0.00%	- 4.00%	- 4.00%
Market out clause in effect and new issue loan obtained	0.00%	- 2.00%	- 2.00%

A6. EXPANSION OF THE LIST OF PARTIES ELIGIBLE TO ISSUE A NEW ISSUE LOAN FOR WHICH THE APPROVED PARTICIPANT WILL RECEIVE A REDUCTION IN ITS UNDERWRITING CAPITAL REQUIREMENT

Currently, only Canadian chartered banks are permitted to provide new issue loans to approved participants. Under SRO rules, Canadian chartered banks generally qualify as “acceptable institutions”. Therefore, there is no reason why other acceptable institutions should not be permitted to provide new issue loans (e.g., trust and insurance companies) on the same basis as Canadian chartered banks. To make this change, the wording of the defined term “new issue letter” has been modified to permit all acceptable institutions to provide new issue loans [*article 7224(a)(vi)*].

A further source of capital to support underwritings are large corporations that, although they are not regulated and thus do not meet the “acceptable institution” definition, have substantial capital. Under the terms of the new standard form of new issue loan agreement, there is no lender risk associated with the credit facility after the funds have been drawn, so it is necessary to ensure that the lender is capable of advancing the funds on settlement date. This has been addressed by requiring any lender who is not an acceptable institution to place in escrow with an acceptable institution high-grade securities, bank issued letters of credit or cash in escrow. The wording of the defined term “new issue letter” has been modified to permit counterparties other than acceptable institutions to advance new issue loans provided however collateral is provided (and held in escrow at an acceptable institution to secure a future draw on the facility) [*article 7224(a)(vi)*].

A7. FORMAL CODIFICATION OF MINIMUM REQUIRED TERMS TO BE INCLUDED IN NEW ISSUE LOAN AGREEMENT

In addition to the development of a standard form of new issue loan agreement, the minimum required standard terms that any new issue letter must include will also be listed as part of the revised definition of the term “new issue letter” [*article 7224(a)(vi)*]. For further details on these minimum terms refer to Section C below.

B. KEY AMENDMENTS MADE TO SCHEDULE 2A OF POLICY C-3

The main reason the underwriting commitment concentration capital charge was put in place was to limit an approved participant’s ability to take on underwriting risks. Thus, since the use of a new issue loan under existing rules allowed for a 90% reduction in the capital otherwise required on an underwriting, those underwritings where a new issue loan had been obtained were subject to a concentration limit. Since approved participants will still have the ability to take on additional underwriting risk through the use of the new standard form of new issue loan agreement, the underwriting concentration calculation has been retained. Further, since the amended rules will also allow up to an 80% reduction in the capital otherwise required on an underwriting (subject to certain conditions) where expressions of interest from exempt purchasers have been verbally affirmed but not yet contracted, the concentration calculation has been amended to require that these exposures be reported for concentration purposes [*Schedule 2A of Policy C-3*].

The following set of examples has been prepared to illustrate how revised Schedule 2A is to be completed:

Details of underwriting commitments with unsold quantities and calculation of underwriting concentration charge						
1. Calculation of adjusted normal new issue margin rate (including all adjustments other than those for the SFNIL* and for expressions of interest)						
	Issue with unsold quantities	Unadjusted normal new issue margin rate	Disaster out clause present and effective	Market out clause present and effective	Adjusted normal new issue margin rate (including all adjustments other than those for the SFNIL and for expressions of interest)	
1	ABC	40%	Yes	No	20%	
2	DEF	40%	No	No	40%	
3	GHI	40%	No	Yes	4%	
4	JKL	40%	No	Expired	40%	
2. Calculation of fully adjusted normal new issue margin rate (including all adjustments)						
	Issue with unsold quantities	Adjusted normal new issue margin rate (including all adjustments other than those for the SFNIL and for expressions of interest)	SFNIL present	If SFNIL present, number of day underwriting is past settlement date	Expressions of interest present and for what portion of the underwriting	Adjusted normal new issue margin rate (including all adjustments)
1	ABC	20%	No	N/A	Yes, 100%	Lesser of: 40% x 50% = 20% 40% x 20% = 8%
2	DEF	40%	Yes	4	No	40% x 10% = 4%
3	GHI	4%	No	N/A	No	4%
4	JKL	40%	Yes	10	No	40% x 25% = 10%
* SFNIL: Standard Form of New Issue Letter						

3. Calculation of individual and overall underwriting concentration charge						
DATE:		PART II				SCHEDULE 2A
JOINT REGULATORY FINANCIAL QUESTIONNAIRE AND REPORT						
<u>ABC Securities Inc.</u> (Firm Name)						
MARGIN FOR CONCENTRATION IN UNDERWRITING COMMITMENTS						
INDIVIDUAL CONCENTRATION:						
<u>Description</u> <small>(see note 3)</small>	<u>Market Value</u>	<u>Normal Margin</u> ^①	<u>40% of Net allow-able assets</u>	<u>Excess</u>	<u>Margin Already Provided</u> ^② <small>(see note 2)</small>	<u>Concentration Margin</u>
ABC Co. preferred shares	\$13,750,000	\$2,750,000	\$2,000,000	\$750,000	\$1,100,000	Nil
DEF Co. common shares	\$7,500,000	\$3,000,000	\$2,000,000	\$1,000,000	\$300,000	\$700,000
JKL Co. common shares	\$3,400,000	\$1,360,000	\$2,000,000	Nil	\$340,000	Nil
1. SUBTOTAL.....						\$700,000
OVERALL CONCENTRATION:						
<u>Description</u> <small>(see note 5)</small>	<u>Total Market Value</u>	<u>Normal Margin</u>	<u>100% of Net allow-able assets</u>	<u>Excess</u>	<u>Margin Already Provided</u> <small>(see note 4)</small>	<u>Concentration Margin</u>
2. See Above	\$24,650,000	\$7,110,000	\$5,000,000	\$2,110,000	\$2,440,000	Nil
3. TOTAL CONCENTRATION MARGIN [lines 1 plus 2].....						\$700,000
						B-8
NOTES:						
1. This schedule need only be completed for underwriting commitments requiring concentration margin.						
2. INDIVIDUAL COMMITMENT CONCENTRATION:						
Where the normal margin required on any one commitment is reduced due to either:						
a) the use of a new issue letter; or						
b) qualifying expressions of interest received from exempt purchasers that have been verbally affirmed but not yet contracted (the margin reduction is only permitted once the final allocation has been made to the exempt purchasers and the entire allotment to exempt purchasers has been verbally affirmed);						
and the normal margin on the commitment exceeds 40% of the member firm's net allowable assets, such excess shall be provided as margin. The amount to be added may be reduced by the amount of margin already provided on the individual underwriting position to which such excess relates.						
3. Report details by individual commitments.						
4. OVERALL COMMITMENT CONCENTRATION:						
Where the normal margin required on some or all commitments is reduced due to either:						
a) the use of a new issue letter; or						
b) qualifying expressions of interest received from exempt purchasers that have been verbally affirmed but not yet contracted (the margin reduction is only permitted once the final allocation has been made to the exempt purchasers and the entire allotment to exempt purchasers has been verbally affirmed);						
and the aggregate normal margin on these commitments exceeds 100% of the member firm's net allowable assets, such excess shall be provided as margin. The amount to be added may be reduced by the amount of margin already provided on such commitments and by the amount, if any, already provided for individual concentration.						
5. It is not necessary to report details of individual commitments. Report the aggregate totals.						
① Normal Margin: determined by multiplying the market value of the unsold portion of the underwriting commitment by the adjusted normal new issue margin rate (including all adjustments other than those for the SFNIL and for expressions of interest) as calculated in step 1 above.						
② Margin Already Provided: determined by multiplying the market value of the unsold portion of the underwriting commitment by the fully adjusted normal new issue margin rate (including all adjustments) as calculated in step 2 above.						

C. THE MAJOR COMPONENTS OF STANDARD FORM OF NEW ISSUE LOAN AGREEMENT

The primary concern with the existing new issue letter is that it allows approved participants a significant reduction in their capital requirements without shifting a significant portion of the underwriting risk to the letter issuer. The new standard form of new issue loan (SFNIL) agreement was developed to create a risk transfer agreement that also takes into account the fact that funds made available by the facility will only be needed on the settlement date of the relevant underwriting. Under the new SFNIL agreement:

- The approved participant has the ability to draw down funds on the strength of the new issue only;
- The loan issuer (“Lender”) agrees up front to advance funds:
 - (a) at a stated loan value [a percentage of the new issue price];
 - (b) on the draw down date [for any portion not sold prior to draw down];
 - (c) at a stated interest rate; and
 - (d) for a stated period of time [which must equal or exceed a prescribed minimum period]; and
- The Lender agrees to waive right of set-off against other assets of the approved participant.

Collateral available to the Lender

As stated above, under the SFNIL agreement the loan issuer will agree to provide to the approved participant an irrevocable commitment to advance funds on the strength of the new issue only. As such is the case, the loan issuer will receive, as collateral on draw down date [*the facility must be drawn on settlement date to the extent there is a remaining unsold position*], the unsold portion of the underwriting.

Further, under no circumstances will the loan issuer have any right of set-off and therefore it will have no recourse to use other cash and securities collateral lodged by the approved participant to recover any loss incurred on the SFNIL agreement.

However, there are certain assets that are currently considered non allowable assets that are not included as part of an approved participant’s regulatory capital. Approved participants may be permitted to pledge these assets under the SFNIL agreement provided they do not represent the other side of an obligation to a client (e.g., dividends and interest receivable). Such assets could include capital assets such as furniture and fixtures, certain types of unsecured loans in existence at the date of the SFNIL agreement (to prevent the creation of unsecured loans after the fact), investments and advances in subsidiaries and affiliates (keeping in mind that such investments would be included in the client pool fund on bankruptcy – but that they could also be in a holding company and thus clients would not be able to obtain such value and it could be pledged to support SFNIL agreement borrowing in such cases), real estate, commissions receivable, etc.

Specific repayment terms

Generally, funds will only be drawn under a SFNIL agreement where a portion of the underwriting remains unsold as at the underwriting settlement date. When funds are drawn, the approved participant will provide the Lender as collateral the unsold portion of the underwriting commitment. As sales of the new issue are made, the approved participant will pay the funds to the Lender for the release of the securities required to make delivery to purchasers or to meet segregation requirements. In the event that the price of the new issue declines, the approved participant will immediately record a mark-to-market adjustment to recognize the loss on the unsold portion of the issue (a continuous process as the price fluctuates). Payments for the release of securities held by the Lender as collateral would have to be based on either:

- The original issue price or the stated loan value per share (terms to be negotiated between the loan issuer and the approved participant) where the approved participant has sufficient regulatory capital; or
- The proceeds per share realized where the approved participant has insufficient regulatory capital.

Ongoing approved participant obligation to the Lender should repayments be insufficient

In the event that the Lender ultimately realizes less than the amount of the loan, the Lender will become, under the terms of the SFNIL agreement, a general unsecured creditor for the balance owing with, as noted above, absolutely no right of set-off. The approved participant will be permitted to pay down the balance of such loan only to the extent that such payment does not result in the firm having a capital deficiency.

The only exception to the above requirement that “under no circumstances would the loan issuer have any right of set-off” will be in the event that an approved participant defaulted on one or more SFNIL agreements held by the Lender. It would be reasonable under this circumstance to allow the Lender to combine all of the outstanding SFNILs so that an excess on one SFNIL could offset the loss on another.

Rights of Lender in the event of approved participant bankruptcy

In the event of the bankruptcy of the approved participant, the loan issuer will be a general creditor and it will share in the general fund based on the amount of the loss (or unsecured portion of the loan if the entire new issue had not yet been sold). It will not have any access to the client pool fund (that would contain all cash, all securities including inventory, equity in subsidiaries, etc.). This will correct the abuses and dangers that are inherent in the current new issue loan process. Thus, loan issuer lending officers will be forced to apply prudent credit policies in granting SFNIL agreements and in addition to assessing the quality of the new/secondary issue, it will be necessary for them to evaluate the adequacy and quality of the borrower's balance sheet.

D. FORMAL PERMITTED USE OF CAPITAL RENTAL ARRANGEMENTS

Arrangements, referred to as “capital rental arrangements”, where one approved participant lends capital to another have always been available to approved participants but the SROs had never officially sanctioned their use. The use of such agreements will now be formally permitted.

Capital rental contract terms

A capital rental arrangement is in essence the same as an over the counter put option contract where the approved participant willing to lend capital (Lender) writes a put option to the approved participant wishing to borrow capital (Borrower). As with any over the counter option contract, the two parties must agree to the following minimum terms:

- **Type of option contract** – in this case it must be a put option;
- **Contract premium** – the premium will generally be determined in relation to the fees to be earned associated with the underwriting;
- **Contract exercise price** – to transfer all risk to the Lender, the exercise price should normally be set at the underwriting issue price; where an exercise price lower than the issue price is set, both the Borrower and the Lender shall be providing capital on the underwriting;
- **Contract size** – the number of share of the underwriting;
- **Contract expiry date** – negotiable.

Capital requirements where capital rental agreement has been executed

If the capital rental agreement contains the above described terms, the capital requirements that apply to the Lender and the Borrower, where the Borrower also has an underwriting commitment for the underlying security referred to by the capital rental agreement, are as follows:

Lender – the capital requirement is the same as the one applicable for a short put option position and it must be calculated pursuant to article 11227 of the Rules of the Bourse;

Borrower – the capital requirement is the same as the one applicable for a long put option paired with a long underlying security position and it must be calculated pursuant to article 11230 of the Rules of the Bourse.

OVERALL EFFECT OF AMENDMENTS

Because the amendments are numerous, their impact on a particular underwriting commitment may be difficult to determine. In order to assist in making an impact assessment, the following table, which compares the existing requirements to the new requirements that will come into effect on March 1, 2005, has been prepared:

COMPARISON OF NEW (EFFECTIVE MARCH 1, 2005) WITH EXISTING (<i>IN BRACKETS</i>) CAPITAL REQUIREMENTS FOR UNDERWRITING COMMITMENTS							
Without documented expressions of interest from exempt purchasers		With documented expressions of interest from exempt purchasers		With or without documented expressions of interest from exempt purchasers			
Margin rate with no out clauses or SFNIL in effect	Margin rate with disaster out clause	Margin rate with no out clauses or SFNIL in effect	Margin rate with disaster out clause	Margin rate with SFNIL only	Margin rate with disaster out clause and SFNIL	Margin rate with market out clause	Margin rate with market out clause and SFNIL
15.00% [25.00%]	7.50% [12.50%]	3.00% [25.00%]	3.00% [12.50%]	1.50% [2.50%]	1.50% [1.25%]	1.50% [Nil]	0.75% [Nil]
40.00% [50.00%]	20.00% [25.00%]	8.00% [50.00%]	8.00% [25.00%]	4.00% [5.00%]	4.00% [2.50%]	4.00% [Nil]	2.00% [Nil]
60.00% [60.00%]	30.00% [30.00%]	12.00% [60.00%]	12.00% [30.00%]	6.00% [6.00%]	6.00% [3.00%]	6.00% [Nil]	3.00% [Nil]
80.00% [80.00%]	40.00% [40.00%]	16.00% [80.00%]	16.00% [40.00%]	8.00% [8.00%]	8.00% [4.00%]	8.00% [Nil]	4.00% [Nil]
100.00% [100.00%]	50.00% [50.00%]	20.00% [100.00%]	20.00% [50.00%]	10.00% [10.00%]	10.00% [5.00%]	10.00% [Nil]	5.00% [Nil]

7224 Margin Requirements for Underwriting Commitments
(01.06.88, 19.08.93, **01.03.05**)

a) In the present article, the expression:

i) “appropriate documentation” with respect to the portion of the underwriting commitment where expressions of interest have been received from exempt purchasers means, at a minimum:

A) that the lead manager has a record of the final affirmed exempt purchaser allocation indicating for each expression of interest:

I) the name of the exempt purchaser;

II) the name of the employee of the exempt purchaser accepting the amount allocated;

III) the name of the representative of the lead underwriter responsible for affirming the amount allocated to the exempt purchaser; and

IV) the date and time of the affirmation,

and

B) that the lead manager has notified in writing all the banking group participants when the entire allotment to exempt purchasers has been affirmed pursuant to paragraph A) above so that all banking group participants may take advantage of the reduction in the capital requirement.

Under no circumstances may the lead manager reduce its own capital requirement on an underwriting commitment due to such expressions of interest from exempt purchasers without providing notification to the rest of the banking group.

ii) a “commitment” pursuant to an underwriting agreement or banking group agreement to purchase a new issue of securities or a secondary issue of securities means, where all other non-pricing agreement terms have been agreed to, where two of the following three pricing terms have been agreed to:

A) issue price;

B) number of shares;

C) commitment amount [issue price x number of shares].

iii) “disaster out clause” means a provision in an underwriting agreement substantially in the following form:

“The obligations of the underwriter (or any of them) to purchase the securities under this agreement may be terminated by the underwriter (or any of them) at its option by written notice to that effect to the issuer at any time prior to the closing if there should develop, occur or come into effect or existence any event, action, state, condition or major financial occurrence of national or international consequence or any law or regulation which, in the opinion of the underwriter, seriously affects adversely, or involves, or will seriously affect adversely, or involve, the financial markets or the business, operations or affairs of the issuer and its subsidiaries taken as a whole”.

- iv) “exempt purchasers” means all persons with whom the issuer could, pursuant to applicable securities laws, proceed with the sales of securities without having the obligation to produce a prospectus if such sales were made exclusively to these persons.
- v) "market out clause" means a provision in an underwriting agreement which permits an underwriter to terminate its commitment to purchase in the event of unsaleability due to market conditions, substantially in the following form:

“If, after the date hereof and prior to the time of closing, the state of financial markets in Canada or elsewhere where it is planned to market the securities is such that, in the reasonable opinion of the underwriters (or any of them), the securities cannot be marketed profitably, any underwriter must be entitled, at its option, to terminate its obligations under this agreement by notice to that effect given to the issuer at or prior to the time of closing”.

- vi) "new issue letter" means an underwriting loan facility in a form satisfactory to the Bourse. Where the provider of the new issue letter is other than an acceptable institution, the funds that can be drawn pursuant to the letter must either be fully collateralized by high-grade securities or held in escrow with an acceptable institution.

Under the terms of the new issue letter, the letter issuer must:

- A) provide an irrevocable commitment to advance funds based only on the strength of the new issue and the approved participant;
 - B) advance funds to the approved participant for any portion of the commitment not sold:
 - I) for an amount based on a stated loan value rate;
 - II) at a stated interest rate; and
 - III) for a stated period of time,
- and
- C) under no circumstances, in the event that the approved participant is unable to repay the loan at the termination date, resulting in a loss or potential loss to the letter issuer, have or seek any right of set-off against:
 - I) collateral held by the letter issuer for any other obligations of the approved participant or the approved participant's clients;

- II) cash on deposit with the letter issuer for any purpose whatsoever; or
- III) securities or other assets held in a custodial capacity by the letter issuer for the approved participant either for its own account or for the approved participant's clients,

in order to recover the loss or potential loss.

vii) "normal margin" means margin otherwise required by the Rules.

viii) "normal new issue margin" means:

- A) where the market value of the security is \$2.00 per share or more and the security qualifies for a reduced margin rate pursuant to paragraph 3 of article 7213, 60% of normal margin for the period from the date of commitment to the business day prior to settlement date and 100% of normal margin from settlement date on; or
 - B) where the market value of the security is \$2.00 per share or more and the security does not qualify for a reduced margin rate pursuant to paragraph 3 or article 7213, 80% of normal margin for the period from the date of commitment to the business day prior to settlement date and 100% of normal margin from settlement date on; or
 - C) where the market value of the security is less than \$2.00 per share, 100% of normal margin.
- b) Where an approved participant has a commitment pursuant to an underwriting agreement or banking group agreement to purchase a new issue of securities or a secondary issue of securities, the following margin rates are prescribed:

i) without new issue letter:

- A) in the case where the underwriting agreement includes neither a disaster out clause nor a market out clause:

normal new issue margin from the date of commitment;
- B) in the case where the underwriting agreement includes a disaster out clause:

50% of normal new issue margin from the date of the commitment until settlement date or the expiry of the disaster out clause, whichever is earlier. Thereafter margin as required in A) above applies;
- C) in the case where the underwriting agreement includes a market out clause:

10% of normal new issue margin from the date of commitment until settlement date or the expiry of the market out clause, whichever is earlier. Thereafter margin as required in A) above applies;

- D) in the case where the underwriting agreement includes a disaster out clause and a market out clause:

10% of normal new issue margin from the date of commitment until settlement date or the expiry of the market out clause, whichever is earlier. Thereafter margin as required in A), B) and C) above applies.

ii) with new issue letter:

- A) in the case where the underwriting agreement includes neither a disaster out clause nor a market out clause:

10% of normal new issue margin from the date of the letter to the business day prior to settlement date or when the new issue letter expires, whichever is earlier;

10% of normal new issue margin from settlement date to 5 business days after settlement date or when the new issue letter expires, whichever is earlier, where the new issue letter has been drawn;

25% of normal new issue margin for the next succeeding 5 business days or when the new issue letter expires, whichever is earlier, where the new issue letter has been drawn;

50% of normal new issue margin for the next succeeding 5 business days or when the new issue letter expires, whichever is earlier, where the new issue letter has been drawn;

75% of normal new issue margin for the next succeeding 5 business days or when the new issue letter expires, whichever is earlier, where the new issue letter has been drawn;

otherwise, the normal new issue margin is required;

- B) in the case where the underwriting agreement includes a disaster out clause:

10% of normal new issue margin from the date of the commitment until the settlement date or the expiry of the disaster out clause, whichever is earlier. Thereafter margin as required in A) above applies;

- C) in the case where the underwriting agreement includes a market out clause:

5% of normal new issue margin from the date of commitment until the settlement date or the expiry of the market out clause, whichever is earlier. Thereafter margin as required in A) above applies;

- D) in the case where the underwriting agreement includes a disaster out clause and a market out clause:

5% of normal new issue margin from the date of commitment until the settlement date or the expiry of the market out clause, whichever is earlier. Thereafter margin as required in A), B) and C) above applies.

If the margin rates prescribed above in respect of commitments for which a new issue letter is available are less than the margin rates required by the issuer of such letter, the higher rates required by the issuer must be applied.

- c) Where an approved participant has a commitment pursuant to an underwriting agreement or banking group agreement to purchase a new issue of securities or a secondary issue of securities and the approved participant has determined through obtaining appropriate documentation:

- I) that the allocation between retail and exempt purchasers has been finalized;
- II) that expressions of interest received from the entire allotment to exempt purchasers have been verbally affirmed but not yet ticketed;
- III) that there is unlikely to be a significant renege rate on the expressions of interest received from exempt purchasers; and
- IV) that the approved participant is not significantly leveraging its underwriting activities through the use of the capital requirement reduction provided on that portion of the underwriting commitment where expressions of interest have been received from exempt purchasers.

The following margin rates must be applied for the portion of the commitment allocated to exempt purchasers:

i) without new issue letter:

- A) in the case where the underwriting agreement includes neither a market out clause nor a disaster out clause:

From the date that the expressions of interest received from the entire allotment to exempt purchasers have been verbally affirmed but not yet ticketed until the date the sales are contracted:

20% of normal new issue margin is required, provided the current market value of the commitment is at or above 90% of new issue value (90% x issue price x number of shares);

40% of normal new issue margin is required, provided the current market value of the commitment is at or above 80% of new issue value (80% x issue price x number of shares) but less than 90% of new issue value;

otherwise, normal new issue margin is required;

- B) in the case where the underwriting agreement includes a disaster out clause:

from the date that the expressions of interest received from the entire allotment to exempt purchasers have been verbally affirmed but not yet ticketed until the date the sales are contracted:

20% of normal new issue margin is required, provided the current market value of the commitment is at or above 90% of new issue value (90% x issue price x number of shares);

40% of normal new issue margin is required, provided the current market value of the commitment is at or above 80% of new issue value (80% x issue price x number of shares) but less than 90% of new issue value;

otherwise normal new issue margin is required;

- C) in the case where the underwriting agreement includes a market out clause:

margin required is the one prescribed in paragraph b) i) C) above;

- D) in the case where the underwriting agreement includes a disaster out clause and a market out clause:

margin required is the one prescribed in paragraph b) i) D) above.

ii) with new issue letter:

- A) in the case where the underwriting agreement includes neither a disaster out clause nor a market out clause:

margin required is the one prescribed in paragraph b) ii) A) above;

- B) in the case where the underwriting agreement includes a disaster out clause:

margin required is the one prescribed in paragraph b) ii) B) above;

- C) in the case where the underwriting agreement includes a market out clause:

margin required is the one prescribed in paragraph b) ii) C) above;

- D) in the case where the underwriting agreement includes a disaster out clause and a market out clause:

margin required is the one prescribed in paragraph b) ii) D) above.

d) Concentration

Where the normal new issue margin required is reduced by a new issue letter or by a qualifying expressions of interest received from exempt purchasers that have been verbally affirmed but not yet contracted, the approved participant must determine if there is any concentration by doing the calculations prescribed in the Joint Regulatory Financial Questionnaire and Report.

- e) In determining the amount of an approved participant's commitment pursuant to an underwriting agreement or banking group agreement for the purposes of paragraphs b), c) and d) above, receivables from members of the banking or selling groups in respect of their obligations to take down a portion of a new issue of securities may be deducted from the liability of the approved participant to the issuer.

DATE: _____

SCHEDULE 2A

PART II JOINT REGULATORY FINANCIAL QUESTIONNAIRE AND REPORT

(Firm Name)

MARGIN FOR CONCENTRATION IN UNDERWRITING COMMITMENTS

INDIVIDUAL CONCENTRATION:

<u>Description</u> (see note 3)	<u>Market Value</u>	<u>Normal Margin</u>	<u>40% of Net allowable assets</u>	<u>Excess</u>	<u>Margin Already Provided</u> (see note 2)	<u>Concentration Margin</u>
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1. SUBTOTAL \$_____

OVERALL CONCENTRATION:

<u>Description</u> (see note 5)	<u>Total Market Value</u>	<u>Normal Margin</u>	<u>100% of Net allowable assets</u>	<u>Excess</u>	<u>Margin Already Provided</u> (see note 4)	<u>Concentration Margin</u>
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2. \$_____

3. TOTAL CONCENTRATION MARGIN [lines 1 plus 2]..... \$=====

B-8

NOTES:

- This schedule need only be completed for underwriting commitments requiring concentration margin.
- INDIVIDUAL COMMITMENT CONCENTRATION:**
Where the normal margin required on any one commitment is reduced due to either:
 - the use of a new issue letter; or
 - qualifying expressions of interest received from exempt purchasers that have been verbally affirmed but not yet contracted (the margin reduction is only permitted once the final allocation has been made to the exempt purchasers and the entire allotment to exempt purchasers has been verbally confirmed);
 and the normal margin on the commitment exceeds 40% of the member firm's net allowable assets, such excess shall be provided as margin. The amount to be added may be reduced by the amount of margin already provided on the individual underwriting position to which such excess relates.
- Report details by individual commitments.
- OVERALL COMMITMENT CONCENTRATION:**
Where the normal margin required on some or all commitments is reduced due to either:
 - the use of a new issue letter; or
 - qualifying expression of interest received from exempt purchasers that have been verbally affirmed but not yet contracted (the margin reduction is only permitted once the final allocation has been made to the exempt purchasers and the entire allotment to exempt purchasers has been verbally confirmed);
 and the aggregate normal margin on these commitments exceeds 100% of the member firm's net allowable assets, such excess shall be provided as margin. The amount to be added may be reduced by the amount of margin already provided on such commitments and by the amount, if any, already provided for individual concentration.
- It is not necessary to report details of individual commitments. Report the aggregate totals.

STANDARD FORM OF NEW ISSUE LETTER

DATE: xxxx xx, 20xx

BETWEEN:

[Name of Approved Participant]

("Approved Participant")

- and -

[Name of Issuer]

("Lender")

INTRODUCTION:

The Approved Participant is a member of a self-regulatory organization ("SRO") having prime audit jurisdiction over the Approved Participant and engages in underwriting new or secondary issues of securities subject to the by-laws, regulations and rules of the SRO. The SRO Rules contemplate the calculation of capital and margin requirements of the Approved Participant in respect of such underwritings according to whether or not a loan facility in the form of a new issue letter (as defined by the SRO Rules) has been obtained.

This Master Agreement is intended to provide for new issue letters by the Lender in favour of the Approved Participant from time to time as evidenced by confirmations ("Confirmations") relating to specific underwritings and as governed by this Master Agreement.

AGREEMENT:

The Approved Participant and Lender for good consideration hereby acknowledge and agree as follows:

1. **Interpretation.** This Agreement and each Confirmation shall form one agreement and shall be interpreted in accordance with the provisions and definitions contained herein and in each such Confirmation. In the event of any inconsistency between this Master Agreement and a Confirmation, the terms of the Master Agreement will govern. Terms used in this Agreement or any Confirmation shall have the meanings set out below, unless defined otherwise or the context requires:

"Business Day" means a day on which The Toronto Stock Exchange is open for regular trading business.

"Collateral" means the aggregate number of securities constituting the part of the New Issue in respect of which the Approved Participant grants to the Lender a security interest, pledge or hypothecation in accordance with Section 4(a).

"Confirmation" means a confirmation issued by the Lender for a Loan relating to a specific underwriting as provided in Section 2(a) and Schedule I to this Master Agreement.

"Default" means, with respect to the Approved Participant:

- (a) the failure to repay any amount advanced under the Loan, interest thereon or any other amounts owed by the Approved Participant to the Lender in respect of a Loan;
- (b) the failure to repay any amount required to be repaid by the Approved Participant to the Lender in respect of moneys borrowed or credit extended under any agreement or arrangement, in writing or not, between the Lender and the Approved Participant other than this Master Agreement or the Loan; or

- (c) the insolvency of the Approved Participant or the Approved Participant becoming subject to the provisions of the *Bankruptcy and Insolvency Act* (Canada) by voluntary or involuntary assignment or petition or proceedings in respect of a proposal.

"Depository" means a depository holding Collateral in accordance with Section 4(b).

"Lender's Proceeds" means the proceeds of the sale of Collateral referred to in Section 4(d).

"Loan" means a loan made pursuant to Section 2(a) in accordance with the terms and conditions of a Confirmation and Loan Commitment.

"Loan Commitment" means the amount of the Loan agreed to be advanced in accordance with Section 2(a) by the Lender to the Approved Participant as specified in a Confirmation.

"New Issue" means a new or secondary issue of securities as described in Section 2(a) in respect of which a new issue letter has been made available.

"New issue letter" means a new issue letter as defined in the SRO Rules.

"Risk Adjusted Capital" means the amount calculated as such in accordance with SRO Rules.

"Settlement Date" means the date(s) on which the Approved Participant is required to acquire and pay for (for its own account or for the account of any other person) the securities which are the subject of a New Issue.

"SRO" means the self-regulatory organization sponsoring the Canadian Investor Protection Fund having prime audit jurisdiction over the Approved Participant.

"SRO Rules" means the by-laws, regulations, rules, policies, forms and regulatory notices and directives of the SRO in effect from time to time, provided that no amendment, addition or deletion in respect of the SRO Rules shall affect the rights and obligations of the Lender hereunder until 90 days after the effective date of the same or such earlier time as the Lender may agree.

2. (a) **New Issue Letters.** The Lender and the Approved Participant may from time to time enter into a Loan Commitment to be evidenced by a Confirmation substantially in the form of Schedule I hereto to provide a Loan for the purpose of financing the underwriting by the Approved Participant of new or secondary issues of securities in circumstances where a new issue letter under SRO Rules may allow a reduction of capital or margin requirements for the Approved Participant. Nothing in this Master Agreement shall, or shall be deemed to, obligate or bind the Lender in any way to make available such Loan Commitments or Loans and the Lender shall only be so bound and obligated on the execution, delivery and acceptance of a Confirmation in respect of a specific New Issue. The Approved Participant shall promptly advise the Lender from time to time of agreements entered into by it with other Lenders in terms substantially the same as this Master Agreement. In the normal course of the Approved Participant's business it is expected the Approved Participant will only arrange one Confirmation under this Master Agreement and other similar agreements in respect of each New Issue, provided that if the Approved Participant executes and delivers a Confirmation to more than one Lender with respect to a specific New Issue it shall promptly advise each such Lender of the fact and terms of each Confirmation.
- (b) **Loan Advances.** Unless the Loan Commitment shall have been terminated or reduced in accordance with Section 3(a), the Lender shall advance the amount of the Loan for the account of the Approved Participant in respect of any Loan Commitment for which a Confirmation has been entered into, subject to the terms and conditions of the Confirmation and this Master Agreement including the receipt of Collateral by the Lender pursuant to Section 4(a), and provided that the aggregate amount of such advance shall not exceed the amount of the Loan Commitment. Interest and any other charges payable on such outstanding Loans from time to time shall be as set out in the Confirmation for the Loan Commitment.

The SRO shall have the right to request and require the Lender to advance the Loan under a Confirmation in accordance with this Master Agreement and to direct that payment of any such Loan be made to either the Approved Participant, the SRO or some other person or entity designated by the SRO. The Approved Participant shall be liable to the Lender for the reimbursement of any Loans received by the SRO or by any person or entity designated by the SRO as if such Loans had been made at the Approved Participant's request and received by it.

The obligations of the Lender to advance Loans pursuant to this Agreement and a Confirmation shall be unconditional in any event whatsoever including the dissolution, winding-up, liquidation, insolvency or bankruptcy of the Approved Participant. The obligation of the Lender to make advances shall not be affected by any claim or defence, legal or equitable, which the Lender may have against the Approved Participant, and the Lender shall not be entitled to set off any part of a Loan Commitment that is unadvanced from time to time against any debts owed to it including, without limitation, debts in respect of any other Credit or under this Agreement. In the event of default by the Lender to advance any Loan upon the request of the SRO, the SRO shall have a right of action for recovery of such advance against the Lender, and the Lender shall not be entitled to set up against the SRO any ground of defence, including error or fraud, which it might have against the Approved Participant.

3. (a) **Termination or Reduction by Approved Participant.** All or part of any Loan Commitment may be reduced or terminated, by the Approved Participant on [one] Business Day's notice to the Lender provided that the Risk Adjusted Capital of the Approved Participant (calculated after taking into account such reduction or termination) is greater than zero. Amounts of the Loan Commitment reduced or terminated in accordance with this Master Agreement shall no longer be available to the Approved Participant.
- (b) **Optional Repayment.** All or any part of any Loan advanced in accordance with Section 2(b) may be repaid by the Approved Participant on [one] Business Day's notice to the Lender provided that the Risk Adjusted Capital of the Approved Participant (calculated after taking into account such repayment) is greater than zero.
- (c) **Mandatory Repayment.** All proceeds arising in connection with the sale or other disposition by the Approved Participant of securities which are the subject of a New Issue shall be immediately remitted or credited to the account of the Lender as repayment of the Loan in respect of such New Issue until such Loan and all amounts owing to the Lender in respect of the Loan have been paid in full.
- (d) **Restrictions on Repayment.** Except as provided under Sections 3(b) and (c) and Section 4, the Lender shall not be entitled to repayment, satisfaction of extinguishment in any manner of the Loan or any amount outstanding from time to time including, without limitation, by set-off, netting of any kind, reduction or compromise of debts, consolidation of accounts or similar basis, arising by agreement, by law or otherwise, which would be contrary to the intent of this Master Agreement and the SRO Rules that, except as provided herein, the Lender is to assume the financial risk associated with the portion of a New Issue funded by a Loan. Any payment or benefit received by the Lender contrary to this Section or Section 4 shall be held in trust for the Approved Participant and repaid or credited to it.

- (e) **Risk Adjusted Capital.** For the purposes of this Section 3 and the termination or repayment of all or any of a Loan Commitment or Loan on the basis of the Risk Adjusted Capital of the Approved Participant, the Approved Participant shall prepare and deliver to the Lender a certificate of the chief financial officer of the Approved Participant in the form of Schedule II hereto calculating the Risk Adjusted Capital (after taking into account the reduction, termination or repayment) at the relevant time. The Lender shall be entitled to rely on such certificate in accepting reduction, termination and/or repayment of the Loan Commitment or Loan unless within [xxxx] Business Days of the delivery of such certificate to the Lender, the SRO or the Approved Participant shall have advised the Lender that the calculation is not correct in which case the Loan Commitment or Loan shall not be reduced, terminated and/or repaid until a Risk Adjusted Capital calculation is approved by the SRO. The SRO shall be under no obligation to either review a certificate or to advise the Lender that a certificate may be incorrect, and the SRO shall incur no liability to the Lender arising from the receipt of the certificate.
4. (a) **Collateral.** As security for the repayment of each Loan advanced under a Loan Commitment, interest thereon and any other amounts owing to the Lender in respect of such Loan, the Approved Participant, concurrently with the making of the Loan by the Lender under the Loan Commitment, shall pledge, hypothecate, grant a security interest in and deliver to or to the account of the Lender the number of securities constituting the New Issue as set out in the Confirmation. The Lender shall release to the Approved Participant the number of securities constituting the Collateral as follows:
- (i) in circumstances where mandatory repayment of the Loan is required pursuant to Section 3(c), securities of the New Issue which are the subject of bona fide sales or dispositions by the Approved Participant and which are required to be delivered by the Approved Participant in connection with the sale or disposition, such release of securities to be in a time and manner that will permit the Approved Participant to settle its delivery obligations in accordance with SRO Rules and the conventions of the market in which the securities are to be sold;
 - (ii) in circumstances where the Approved Participant has made optional repayment of the Loan pursuant to Section 3(b), securities of the New Issue as agreed between the Approved Participant and the Lender; and
 - (iii) [xxxx].
- (b) **Custodian.** Where the Collateral is held by the Approved Participant with The Canadian Depository for Securities Limited or such other clearing agency or depository at which the Approved Participant and the Lender maintain accounts (a "Depository") directly or through nominee participants or agents, the pledging, assignment, hypothecation and granting of a security interest in the Collateral shall be made by way of an appropriate entry in the account of the Approved Participant and a corresponding entry in the Lender's account with the Depository. The Lender shall not be responsible for any delay, interruption or cessation of communication or data processing facilities whether used by the Lender or a Depository or any delay, error or omission of a Depository. The Lender may rely upon any instruction or information received from a Depository.
- (c) **Distributions.** Provided that the Approved Participant is not in default in accordance with Section 4(d), the Approved Participant shall be entitled to receive all distributions made on or in respect of the Collateral, including but not limited to stock dividends, interest and cash payments, the record dates for which are during the term of the Credit or during the term of

possession of the Collateral by the Lender and which are not otherwise received by the Approved Participant, to the full extent it would be so entitled if the Collateral had not been delivered to the Lender.

- (d) **Default.** Upon a Default occurring in respect of the Approved Participant, the Lender shall be entitled and is hereby authorized to sell all or any of the Collateral in the respective principal markets for such Collateral and to apply the [net proceeds of such sale (after deducting from the gross proceeds all fees, commissions and all other reasonable costs, fees and expenses related to such sales)] (collectively, the "Lender's Proceeds") to satisfy all amounts due to the Lender hereunder in respect of the amount of Loan in default. If the Lender's Proceeds amount to less than the amounts due to the Lender under the Loan, the Approved Participant shall be liable to the Lender for such difference until such amount is paid in full, subject to the provisions of Section 4(e). If the Lender's proceeds exceed the amount due to the Lender hereunder, such excess shall be returned by the Lender to the Approved Participant together with any Collateral remaining.
- (e) **Limitation on Recourse.** At any time when the Risk Adjusted Capital of the Approved Participant (calculated after taking into account any amount owing by the Approved Participant to the Lender in respect of the particular Loan in respect of which recourse is sought) is less than zero, the Lender shall not be entitled to seek recourse in respect of a Loan against the assets, property or undertaking of the Approved Participant in any forum or by any means (including, without limitation, by execution, garnishment, realization, claim in bankruptcy, set-off, netting of any kind, reduction or compromise of debts, consolidation of accounts or any similar basis) other than exercising its rights in respect of the Collateral for the Loan in accordance with this Section 4 or in respect of any Collateral for any other Loan to the Approved Participant made pursuant to the terms of this Master Agreement and a Confirmation.
- (f) **Property Separate and Transferable.** All Collateral shall be held by the Lender in segregation separate from the assets of the Lender and identified as the property of the Approved Participant. Except as expressly provided for in this Master Agreement, the Lender may not sell, assign, pledge, hypothecate or otherwise deal with the Collateral. All Collateral and loaned money, securities or property shall be free and clear of any trading restrictions and duly endorsed for transfer or be otherwise transferable.
5. **Notice.** Any notice or communication hereunder which is given in writing may be effectively given by delivering the same or transmission by facsimile or other electronic means which can be recorded and retrieved, to the Approved Participant as follows:
- XXXX
- and to the Lender as follows:
- XXXX
- and to the SRO as follows:
- XXXX
- or to such address as any of the parties or the SRO shall have specified by notice given to the other of them including by Confirmation. Any such notice or communication if received prior to 2:00 p.m. (local time) on a Business Day shall be deemed to be given on such Business Day, and if received on or after 2:00 p.m. on a Business Day, shall be deemed to be given on the next following Business Day.
6. **Enurement.** This Master Agreement, each Confirmation and the Schedules hereto shall extend to and enure to the benefit of and be binding upon the successors and assigns of any of the parties hereto

including, in the case of successors, any firm or corporation which succeeds to all or part of the business of a party.

7. **Assignment.** This Master Agreement and any Confirmation shall not be assigned at any time by any party hereto without the written consent of the other party first had and received.
8. **SRO.** The parties declare that the benefit of their respective covenants under this Master Agreement or any Confirmation are held by them in trust for the SRO in its own behalf and on behalf of clients of the Approved Participant and acknowledge that the SRO may enforce such covenants directly against each of them, as the case may be, as if entered into by the SRO or such clients themselves. The SRO shall be under no obligation or responsibility of any kind or character or to any Approved Participant, client or person claiming through them in respect of this Master Agreement and, in particular, shall have no obligation, responsibility or duty to see that any covenant is carried out or fulfilled or to take any action for the enforcement of this Master Agreement or any Confirmation.
9. **Entire Agreement.** The parties hereto acknowledge and agree that this Master Agreement and the Schedules hereto contain, save as expressly herein or in a Confirmation otherwise referred to, the entire agreement between the parties and that there are no other terms and conditions to the Master Agreement and the Schedules.
10. **Governing Law.** This Master Agreement and each Confirmation shall be governed by the laws of the Province of _____ and the federal laws of Canada applicable therein.
11. **English Language.** This agreement has been drawn up in the English language at the request of the parties. Les parties ont requis que la présente convention soit rédigée en anglais.

EXECUTED AND DELIVERED BY

[Approved Participant]

By: _____

By: _____

[Lender]

By: _____

By: _____

**SCHEDULE I TO
STANDARD FORM OF NEW ISSUE LETTER**

Form of Confirmation
[Letterhead of Lender]

Date: [xxxx xx, 20xx]

[Name and Address of Approved Participant]

Dear Sirs:

Re: Loan for [identify new issue] ("New Issue")

This letter is to confirm the terms and conditions on which the undersigned Lender agrees to make available to you as Approved Participant a cash loan (the "Loan") in respect of your participation in the securities underwriting identified above. The Loan is provided pursuant to the provisions of a Standard Form New Issue Letter dated [xxxx xx, 20xx] ("Master Agreement") made between you and us and this letter is a Confirmation for the purposes of the Master Agreement and together the Master Agreement and the Confirmation constitute one agreement. The terms and conditions of the Master Agreement including, without limitation, the definitions therein shall govern the Loan. In the event of any inconsistency between this Confirmation and the Master Agreement, the terms of the Master Agreement will govern.

Accordingly, the Lender agrees to advance to the Approved Participant the Loan as follows:

Amount of Loan:	[Cdn. \$xxx]
Purpose:	to be applied to meet underwriting obligations of the Approved Participant in respect of the New Issue.
Advance Date:	[usually New Issue closing/settlement date]
Availment:	[cash advance]
Interest, Fees and Expenses:	[to be described]
Collateral:	[number and description of securities of New Issue to be pledged to Lender on Settlement Date]
Loan Value:	[xx.xx%]
Account Details:	[payment instructions etc.]
Details of Master Agreements entered into with other Lenders:	[xxxx]

Please confirm that the foregoing correctly sets out the terms of our agreement and your acceptance of such terms by executing the duplicate copy of this Confirmation and returning it to us.

Yours very truly,

[Lender]

By: _____

By: _____

CONFIRMED AND ACCEPTED this xx day of xxxx, 20xx

[Approved Participant]

By: _____

By: _____

**SCHEDULE II TO
STANDARD FORM OF NEW ISSUE LETTER**

Approved Participant Chief Financial Officer's Certificate

Date: [xxxx xx, 20xx]

[Name and Address of Lender]

Dear Sirs:

Re: Loan pursuant to Confirmation dated ("Confirmation") and Standard Form New Issue Letter ("Letter") - [Identify new issue]

In connection with the repayment of funds and/or termination or reduction of [all or specify amount] the Loan or Loan Commitment pursuant to the Letter and Confirmation referred to above, the undersigned certifies that to the best of his\her knowledge the Risk Adjusted Capital for the purposes of the Letter and Confirmation is as at the date hereof not less than the amount set out below.

Risk Adjusted Capital

Cdn. \$xxx

Yours truly,

By:

[Chief Financial Officer]