

CASH SUBORDINATED LOAN AGREEMENT

September 2004

This Cash Subordinated Loan Agreement (the "Agreement") is effective as of the _____ day of _____, 20____ by and between _____ (the "Lender"), and _____ (the "Borrower"), who mutually agree as follows:

1. (a) The term "Designated Self-Regulatory Organization" or "DSRO" shall mean the Exchange(s) and/or other Self-Regulatory Organizations which is (are) a party to the Joint Audit Agreement and which has (have) been designated by the Joint Audit Committee as the Borrower's DSRO. The Borrower's DSRO is subject to change from time to time at the Joint Audit Committee's discretion.
- (b) The term "Commission" shall mean the Commodity Futures Trading Commission.
- (c) The term "Capital Requirements" shall mean the rules, regulations, and requirements of the Designated Self-Regulatory Organization which were adopted pursuant to CFTC Regulations 1.17 and 1.52.
- (d) The term "CFTC regulations" shall mean the Commodity Futures Trading Commission's Minimum Financial Regulations.
- (e) The term "Adjusted Net Capital" shall mean adjusted net capital as defined in Commodity Futures Trading Commission Regulation 1.17(c)(5).
- (f) The term "Subordination Agreement" shall mean either a subordinated loan agreement or a secured demand note agreement, as those terms are defined in Commodity Futures Trading Commission Regulation 1.17(h)(1).
2. Lender hereby agrees to lend the sum of _____ (\$_____) to Borrower, and Borrower agrees to borrow the said sum from Lender upon the terms and conditions set forth herein.
3. Subject to the terms and conditions hereinafter set forth, the Borrower will repay the principal amount due plus interest thereon from the date hereof to the Maturity Date at the rate of _____ (_____) percent per annum (the "Indebtedness") [on _____ (the "Maturity Date")]¹ OR [in the following installments:

¹ The Maturity Date must be at least one year from the date of this Agreement. It must be at least three years from the date of this Agreement if the proceeds of this Agreement are used as equity capital.

beginning on _____ and ending on _____ (the "Maturity Date").

[Choose either the lump sum or installment payments. You may NOT choose both.]

4. The Lender hereby subordinates any right to receive any payment with respect to this Agreement, together with accrued interest or compensation, to the prior payment or provision for payment in full of all claims of all present and future creditors of the Borrower arising out of any matter occurring prior to the Maturity Date, except for claims which are the subject of subordination agreements which rank on the same priority as or are junior to the claim of the Lender under this Agreement.
5. The proceeds of this Agreement shall be used and dealt with by the Borrower as part of its capital and shall be subject to the risks of its business.
6. The Borrower shall have the right to deposit any cash proceeds of this subordinated loan agreement in an account or accounts in its own name in any bank or trust company.
- ²7. Borrower, at its option, but not at the option of Lender, may make a payment of all or any portion of the Indebtedness prior to the scheduled Maturity Date (hereinafter referred to as a "Prepayment"). No Prepayment may be made before the expiration of one year from the date this Agreement becomes effective unless it is a Special Prepayment made pursuant to paragraph 8 hereof.³ No prepayment shall be made if, after giving effect thereto (and to all payments of payment obligations under any other subordination agreements then outstanding, the maturity or accelerated maturities of which are scheduled to fall due within six months after the date such Prepayment is to occur pursuant to this provision, or on or prior to the date on which the payment obligation with respect to such Prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the Borrower, the Adjusted Net Capital of the Borrower is less than the greatest of 1) 120% of the appropriate minimum dollar amount required by CFTC Regulations, or 2) 120% of the firm's risk based capital requirement calculated in accordance with CFTC Regulations, or 3) if the Borrower is a securities broker or dealer, the amount of net capital specified in Rule 15c3-1d(b)(7) of the Regulations of the Securities and Exchange Commission [17C.F.R.240.15c3-1d(b)(7)] or 4) the minimum capital requirement as defined by the DSRO. Notwithstanding the above, no prepayment shall occur without the prior written approval of the Designated Self-Regulatory Organization.
- ⁴8. Borrower, at its option, but not at the option of Lender, may make a prepayment within one year of the effective date of this Agreement (hereinafter referred to as a "Special Prepayment") if the written consent of the Designated Self-Regulatory Organization is first obtained. Provided, however, that no such Special Prepayment shall be made if:

2 These provisions are optional, i.e., not required by the CFTC Regulations or the Capital Requirements, but permitted by them.

3 If paragraph 8 is included.

4 Optional. This provision cannot be used if the proceeds of this agreement are used as equity capital.

- (a) After giving effect thereto (and to all payments of payment obligations under any other subordination agreements then outstanding, the maturities or accelerated maturities of which are scheduled to fall due within six months after the date such Special Prepayment is to occur pursuant to this provision, or on or prior to the date on which the payment obligation in respect to such Special Prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the Borrower, the Adjusted Net Capital of the Borrower is less than the greatest of 1) 200% of the appropriate minimum dollar amount required by CFTC Regulations, or 2) 125% of the firm's risk based capital requirement calculated in accordance with CFTC Regulations, or 3) if the Borrower is a securities broker or dealer, the amount of net capital specified in Rule 15c3-1d(c)(5)(ii) of the regulations of the Securities and Exchange Commission, [17C.F.R.240.15c3-1d(5)(ii)] or 4) the minimum capital requirement as defined by the DSRO; or
 - (b) Pre-tax losses during the latest three month period were greater than 15% of current excess adjusted Net Capital.
- 9.
 - (a) The payment obligation of the Borrower in respect of this Agreement shall be suspended and shall not mature if, after giving effect to payment of such payment obligation (and to all payments of payment obligations of the Borrower under any other subordination agreements then outstanding which are scheduled to mature on or before such payment obligation), the Adjusted Net Capital of the Borrower would be less than the greatest of 1) 120% of the appropriate minimum dollar amount required by CFTC Regulations, or 2) 120% of the firm's risk based capital requirement calculated in accordance with CFTC Regulations, or 3) if the Borrower is a securities broker or dealer, the amount of net capital specified in Rule 15c3-1d(b)(8)(i) of the Regulations of the Securities and Exchange Commission, [17C.F.R. 240.15c3-1d(b)(8)(i)] or 4) the minimum capital requirement as defined by DSRO. [Provided that if the payment obligation of the Borrower hereunder does not mature and is suspended as a result of the requirements of this paragraph for a period of not less than six months, the Borrower shall then commence the rapid and orderly liquidation of its entire business, but the right of the Lender to receive payment, together with accrued interest or compensation shall remain subordinate as required by the provisions of this Agreement.⁵]
 - (b) In the event the Borrower is required to commence a rapid and orderly liquidation, as permitted in paragraph 9(a), the date on which the liquidation commences shall be the maturity date for any subordination agreement of the Borrower then outstanding, but the rights of the respective lenders to receive payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of such agreements.⁶

5 This provision is optional. However, if the proviso at the end of paragraph 9(a) is used, then paragraph 9(b) must be used.

6 Optional.

[NOTE: CHOOSE ONE OF THE FOLLOWING THREE ALTERNATIVES. THE FIRST ALTERNATIVE MUST BE CHOSEN IF THE PROCEEDS OF THIS AGREEMENT ARE USED AS EQUITY CAPITAL.]

10. No default in the payment of interest or in the performance of any covenant or condition of this Agreement or any note or notes made hereunder shall have the effect of accelerating the date on which the Borrower's payment obligation is scheduled to mature.

10. Subject to the provisions of paragraph 9 of this Agreement, the Lender may, upon prior written notice to the Borrower and the Designated Self-Regulatory Organization and, if required, the Commission, given not earlier than six months after the effective date of this Agreement, accelerate the date on which the payment obligation of the Borrower, together with accrued interest or compensation, is scheduled to mature to a date not earlier than six months after giving of such notice, but the rights of the Lender to receive payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of this Agreement.

⁷10. (a) The Lender may, upon prior written notice to the Borrower and the Designated Self-Regulatory Organization and, if required, the Commission, of the occurrence of any event of acceleration (as hereinafter defined) given no sooner than six months after the effective date of this Agreement, accelerate the date on which the payment obligation of the Borrower, together with accrued interest or compensation, is scheduled to mature, to the last business day of a calendar month which is not less than six months after notice of acceleration is received by all parties required by this provision to be notified. If upon such accelerated maturity date the payment obligation of the Borrower is suspended as required by Paragraph 9 of this Agreement, and liquidation of the Borrower has not commenced on or prior to such accelerated maturity date, notwithstanding paragraph 9 of this Agreement, the payment obligation of the Borrower with respect to this Agreement shall mature on the day immediately following such accelerated maturity date and in any such event the payment obligations of the Borrower with respect to all other subordination agreements then outstanding shall also mature at the same time but the rights of the respective lenders to receive payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of such agreements. The following are the events of acceleration:

⁸(1) Failure of Borrower to pay interest or any installment of principal on a Subordination Agreement as scheduled;

(2) Failure of Borrower to pay when due other money obligations of \$_____ or greater, which Borrower and Lender agree is a

7 If this alternative is chosen, you may further choose to use either (a) or (b) or may use both (a) and (b).

8 Cross out any events of acceleration which you do not agree to include. You may NOT add additional events of acceleration.

material amount;

- (3) Discovery that any material, specified representation or warranty of the Borrower which is included in an Addendum to this Agreement and on which this Agreement was based or continued was inaccurate in a material respect at the time made;
 - (4) Any specified and clearly measurable event which Lender and Borrower agree (a) is a significant indication that the financial position of the Borrower has changed materially and adversely from agreed upon specified norms; or (b) could materially and adversely affect the ability of the Borrower to conduct its business as conducted on the date this Agreement was made; or (c) is a significant change in the senior management of the Borrower or in the general business conducted by the Borrower from that which existed on the date this Agreement became effective;
 - (5) Any continued failure to perform agreed covenants included in an Addendum to this Agreement relating to the conduct of the business of the Borrower or relating to the maintenance and reporting of its financial position.
- (b) Notwithstanding the provisions of paragraph 9, if liquidation of the business of the Borrower has not already commenced, the payment obligation of the Borrower shall mature, together with accrued interest or compensation, and the rapid and orderly liquidation of the business of the Borrower shall commence, upon the occurrence of an event of default (as hereinafter defined). The date on which such event of default occurs, if liquidation of the Borrower has not already commenced, shall be the date on which the payment obligation of the Borrower with respect to all other subordination agreements then outstanding shall mature, but the rights of the respective lenders to receive payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of such agreements. The following are the events of default:
- ⁹(1) The making of an application by the Securities Investor Protection Corporation for a decree adjudicating that customers of the Borrower are in need of protection under the Securities Investor Protection Act of 1970 and the failure of the Borrower to obtain the dismissal of such application within 30 days;
 - (2) Failure to meet the minimum capital requirements of the Designated Self-Regulatory Organization or the Commission, throughout a period of 15 consecutive business days, commencing on the date the Borrower first determines and notifies the Designated Self-Regulatory Organization and the Commission; or the Designated Self-Regulatory Organization or the

9 Cross out any events of default which you do not agree to include. You may NOT add additional events of default.

Commission first determines and notifies the Borrower of such fact;

3. The Commission's revocation of the registration of the Borrower;
 4. The Designated Self-Regulatory Organization shall suspend (and not reinstate within 10 days) or revoke the Borrower's status as a member thereof;
 5. Any receivership, insolvency, liquidation pursuant to the Securities Investor Protection Act of 1970 or otherwise, bankruptcy, assignment for the benefit of creditors, reorganization whether or not pursuant to bankruptcy laws, or any other marshalling of the assets and liabilities of the Borrower.
11. Notwithstanding the provisions of paragraph 9 of this Agreement, the payment obligation of the Borrower with respect to this Agreement, together with accrued interest and compensation, shall mature in the event of any receivership, insolvency, liquidation pursuant to the Securities Investor Protection Act of 1970 or otherwise, bankruptcy, assignment for the benefit of creditors, reorganization whether or not pursuant to the bankruptcy laws, or any other marshalling of the assets and liabilities of the Borrower, but the right of the Lender to receive payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of this Agreement.
12. The Borrower shall immediately notify the Designated Self-Regulatory Organization and the Commission if, after giving effect to all payments of payment obligations under subordination agreements then outstanding which are then due or mature within the following six months without reference to any projected profit or loss of the Borrower, its adjusted net capital would be less than the greatest of 1) 120% of the appropriate minimum dollar amount required by CFTC Regulations, or 2) 120% of the firm's risk based capital requirement calculated in accordance with CFTC Regulations, or 3) if Borrower is a securities broker or dealer, the amount of net capital specified in Rule 15c3-1d(c)(2) of the Regulations of the Securities and Exchange Commission, [17C.F.R.240.15c3-1d(b)(c)(2)] or 4) the minimum capital requirement defined by the DSRO.
13. Neither this Agreement nor any note or other instrument made hereunder is entered into in reliance upon the standing of the Borrower as a member organization of any commodity exchange or securities exchange or upon any such exchange's surveillance of the Borrower or its capital position. The Lender is not relying upon any such exchange to provide any information concerning or relating to the Borrower. No such exchange has a responsibility to disclose to the Lender any information concerning or relating to the Borrower which it may have now or at any future time. Neither any such exchange nor any officer or employee of any such exchange shall be liable to the Lender with respect to this Agreement, the Indebtedness, the repayment thereof, any interest or compensation thereon or any damages resulting from the breach of this Agreement. Neither the Designated Self-Regulatory Organization nor the Commission is a guarantor of this Agreement.

14. This Agreement shall be binding upon the Lender and the Borrower and their respective heirs, executors, administrators, successors and assigns.
15. Any note or other written instrument evidencing the Indebtedness shall bear on its face an appropriate legend stating that such note or instrument is issued subject to the provisions of this Agreement, which shall be adequately referred to and incorporated by reference herein.
16. This Agreement shall not be subject to cancellation by either party; no payment shall be made with respect thereto and this Agreement shall not be terminated, rescinded or modified by mutual consent or otherwise if the effect thereof would be inconsistent with the Capital Requirements or, if applicable, the CFTC Regulations.
17. This Agreement is governed by the laws of the State of Illinois/New York.
18. Any notice required or provided for herein shall be deemed to have been given or received when it has been delivered in person or has been deposited, postage prepaid, by United States certified or registered mail, addressed to the person for whom intended:

(a) If for Borrower:

(b) If for Lender:

(c) If for Borrower's Designated Self-Regulatory Organization:

19. This Agreement supersedes all prior agreements of the parties with respect to the Indebtedness.

IN WITNESS WHEREOF, the parties hereto have set their hands this _____ day of _____, 20____.

Borrower

Lender

SUBORDINATION AGREEMENT

INFORMATION STATEMENT

Name and address of Lender: _____

Business relationship of lender to clearing member:

_____ Officer _____ Partner
_____ Stockholder _____ Other

Did the clearing member carry funds or securities for the lender at or about the time the proposed subordinated agreement was filed?

Yes _____ No _____