

NOTICE TO INSTITUTIONS REGARDING OPERATING CIRCULAR NO. 10

Please be advised that the Federal Reserve Banks will be revising Operating Circular No. 10, effective October 15, 2006 ("Revised OC-10").

From time to time, Reserve Banks revise their Operating Circulars to incorporate changes in law and practice. Since current Operating Circular No 10, effective January 2, 1998 ("Current OC-10"), was adopted 8 years ago, a number of such changes have occurred, among them: (1) a new secured lending law, Article 9 of the Uniform Commercial Code has been adopted in some form by each of the 50 states, (2) Regulation A of the Board of Governors of the Federal Reserve System, "Lending," was amended, and (3) the importance of contingency planning and flexibility in contingencies continued to increase. Revised OC-10 reflects these and other considerations.

At the end of this notice is a brief summary of some of the more significant differences between Revised OC-10 and Current OC-10.

How will the implementation of Revised OC-10 effect your operations? If you are a signatory of Current OC-10, your local Reserve Bank may ask you to agree to Revised OC-10 by signing a new Letter of Agreement and to submit other documentation in connection with the implementation of Revised OC-10. In particular, your local Reserve Bank may ask to submit a Certificate containing information that will facilitate its filing of a UCC-1 financing statement against your institution (the form of Certificate is included in Revised OC-10).

SUMMARY OF THE MORE SIGNIFICANT DIFFERENCES BETWEEN REVISED OC-10 AND CURRENT OC-10

- A number of new **Appendices** have been added to Revised OC-10 and existing Appendices and other attachments have been amended and/or reorganized. **Appendix 1** provides a new broad collateral description that Borrowers now authorize the Reserve Banks to include in UCC-1 financing statements filed against the Borrower. **Appendix 2** recites the terms of a new agreement--a control agreement among the Reserve Banks. The agreement, to be signed once by each Reserve Bank, ensures that each Reserve Bank will have a perfected security interest in any account maintained by any Borrower who has signed the Reserve Bank's OC-10 *at any other Reserve Bank* (e.g., a transition account). Each Borrower that agrees to OC-10 agrees to this control agreement. **Appendix 3 and 4** are the Application Packages for US banks and non-US banks. Included in each is the Form of Letter of Agreement, substantially identical to that in Current OC-10, a Form of Certificate, providing the Reserve Bank with all relevant information necessary to make an effective UCC-1 financing statement filing against the Borrower (note that in the covenants section of Revised OC-10, the Borrower agrees to advise the Reserve Bank of

any changes to this information, which is useful to ensure that the Reserve Bank maintains a meaningful UCC-1 filing--perfected security interest), the Form of Resolutions, the form of signature card (including designation for pledging and borrowing authority), and, in the case of non-US banks, the forms of required legal opinions. **Appendix 5** includes the "Ancillary Documents:" a revised form of third party custodian agreement and the correspondent agreement. Note that the "BIC Agreement," in Current OC-10 has been deleted and replaced by the addition of relevant provisions from that agreement to the text of Revised OC-10 (e.g., new Section 7.3, 7.6).

- Some definitions have been revised. Most notably, the definition of "**Collateral**" has been revised to get rid of some of the circularity of the definition in Current OC-10. In particular, the definition now includes most of the general asset category types listed in revised Article 9 of the UCC, as well as a catch-all provision. The definition also clarifies that items under the control of or in the possession of the Reserve Bank are part of "Collateral" (e.g., securities pledged through our DTC/ Euroclear/ Clearstream account). In Current OC-10, such items are not part of the defined term "Collateral," although they are separately pledged to the Reserve Bank pursuant to Section 6.2 of Current OC-10.
- Consistent with the definition of "obligation" as including any liability of the Borrower to any Reserve Bank, the **granting clause** (Section 6.0) has been revised to provide that the Borrower is pledging collateral to the Reserve Bank for itself and *as agent of each other Reserve Bank to whom the Borrower owes any obligation*. This clarifies that the collateral pledged to the local Reserve Bank under OC-10 is actually securing every obligation that the Borrower has to any and every Reserve Bank.
- **UCC-1 Filing Authorization.** Section 7.5 contains all of the necessary authorizations for a Reserve Bank to file a UCC-1 against the Borrower (the Borrower no longer needs to sign the UCC-1, but it must still authorize the filing).
- **Events of Default (Definition), Representations and Warranties (Section 9) and Covenants (Section 10)** have been revised to be more comprehensive.
- **Standard of care (Section 13).** Under Current OC-10, a Borrower indemnified the Bank for losses, other than losses due to the Reserve Bank's failure to exercise reasonable care. Revised OC-10 changes that standard to the Reserve Bank's gross negligence or willful misconduct. This is consistent with standard commercial lending documentation.