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).

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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 advice 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.