

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )  
 )  
THE STATE TREASURER OF THE STATE )  
OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

Plaintiff(s) )

vs.

2011 CP 400 0533

THE BANK OF NEW YORK MELLON )  
CORPORATION and THE BANK OF NEW )  
YORK MELLON, f/k/a THE BANK OF NEW )  
YORK )

Defendant(s) )

(Please Print)  
Submitted By: Mitchell Willoughby, Esquire -  
Willoughby & Hoefler, P.A.  
Address: P.O. Box 8416  
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Columbia, SC 29202

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Other:  
E-mail: mwilloughby@willoughbyhoefler.com  
mhm@montgomerywillard.com

[and]

Michael H. Montgomery, Esquire  
Montgomery Willard, LLC  
P.O. Box 11886  
Columbia, SC 29211-1886

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.  NON-JURY TRIAL demanded in complaint.  
 This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.  
 This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.  
 This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

- |                                                              |                                                      |                                                           |                                                         |
|--------------------------------------------------------------|------------------------------------------------------|-----------------------------------------------------------|---------------------------------------------------------|
| <b>Contracts</b>                                             | <b>Torts - Professional Malpractice</b>              | <b>Torts - Personal Injury</b>                            | <b>Real Property</b>                                    |
| <input type="checkbox"/> Constructions (100)                 | <input type="checkbox"/> Dental Malpractice (200)    | <input type="checkbox"/> Assault/Slander/Libel (300)      | <input type="checkbox"/> Claim & Delivery (400)         |
| <input type="checkbox"/> Debt Collection (110)               | <input type="checkbox"/> Legal Malpractice (210)     | <input type="checkbox"/> Conversion (310)                 | <input type="checkbox"/> Condemnation (410)             |
| <input type="checkbox"/> Employment (120)                    | <input type="checkbox"/> Medical Malpractice (220)   | <input type="checkbox"/> Motor Vehicle Accident (320)     | <input type="checkbox"/> Foreclosure (420)              |
| <input type="checkbox"/> General (130)                       | <input type="checkbox"/> Other (299)                 | <input type="checkbox"/> Premises Liability (330)         | <input type="checkbox"/> Mechanic's Lien (430)          |
| <input checked="" type="checkbox"/> Breach of Contract (140) | _____                                                | <input type="checkbox"/> Products Liability (340)         | <input type="checkbox"/> Partition (440)                |
| <input type="checkbox"/> Other (199)                         | _____                                                | <input type="checkbox"/> Personal Injury (350)            | <input type="checkbox"/> Possession (450)               |
| _____                                                        | _____                                                | <input type="checkbox"/> Other (399)                      | <input type="checkbox"/> Building Code Violation (460)  |
| _____                                                        | _____                                                | _____                                                     | <input type="checkbox"/> Other (499)                    |
| _____                                                        | _____                                                | _____                                                     | _____                                                   |
| <b>Inmate Petitions</b>                                      | <b>Judgments/Settlements</b>                         | <b>Administrative Law/Relief</b>                          | <b>Appeals</b>                                          |
| <input type="checkbox"/> PCR (500)                           | <input type="checkbox"/> Death Settlement (700)      | <input type="checkbox"/> Reinstate Driver's License (800) | <input type="checkbox"/> Arbitration (900)              |
| <input type="checkbox"/> Sexual Predator (510)               | <input type="checkbox"/> Foreign Judgment (710)      | <input type="checkbox"/> Judicial Review (810)            | <input type="checkbox"/> Magistrate-Civil (910)         |
| <input type="checkbox"/> Mandamus (520)                      | <input type="checkbox"/> Magistrate's Judgment (720) | <input type="checkbox"/> Relief (820)                     | <input type="checkbox"/> Magistrate-Criminal (920)      |
| <input type="checkbox"/> Habeas Corpus (530)                 | <input type="checkbox"/> Minor Settlement (730)      | <input type="checkbox"/> Permanent Injunction (830)       | <input type="checkbox"/> Municipal (930)                |
| <input type="checkbox"/> Other (599)                         | <input type="checkbox"/> Transcript Judgment (740)   | <input type="checkbox"/> Forfeiture (840)                 | <input type="checkbox"/> Probate Court (940)            |
| _____                                                        | <input type="checkbox"/> Lis Pendens (750)           | <input type="checkbox"/> Other (899)                      | <input type="checkbox"/> SCDOT (950)                    |
| _____                                                        | <input type="checkbox"/> Other (799)                 | _____                                                     | <input type="checkbox"/> Worker's Comp (960)            |
| _____                                                        | _____                                                | _____                                                     | <input type="checkbox"/> Zoning Board (970)             |
| _____                                                        | _____                                                | _____                                                     | <input type="checkbox"/> Administrative Law Judge (980) |

Special/Complex /Other

- |                                                |                                                       |
|------------------------------------------------|-------------------------------------------------------|
| <input type="checkbox"/> Environmental (600)   | <input type="checkbox"/> Pharmaceuticals (630)        |
| <input type="checkbox"/> Automobile Arb. (610) | <input type="checkbox"/> Unfair Trade Practices (640) |
| <input type="checkbox"/> Medical (620)         | <input checked="" type="checkbox"/> Other (699)       |
- Breach of Fiduciary Duty,  
Breach of Contract  
Accompanied by Fraudulent  
Act

- |                                                          |
|----------------------------------------------------------|
| <input type="checkbox"/> Public Service Commission (990) |
| <input type="checkbox"/> Employment Security Comm (991)  |
| <input type="checkbox"/> Other (999)                     |

Submitting Party Signature: Mitchell Willoughby Date: January 26, 2011

**Note:** Frivolous civil proceedings may be subject to sanctions pursuant to SCROP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

**FOR MANDATED ADR COUNTIES ONLY**

Florence, Horry, Lexington, Richland, Greenville\*\*, and Anderson\*\*

\*\* Contact Respective County Clerk of Court for modified ADR Program Rules

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

**You are required to take the following action(s):**

1. The parties shall select a neutral within 210 days of filing of this action, and the Plaintiff shall file a “Stipulation of Neutral Selection” on or before the 224<sup>th</sup> day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written “Request for the Appointment of a Neutral” on or before the 224<sup>th</sup> day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Case are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Cases which are appellate in nature such as appeals or writs of certiorari;
  - c. Post Conviction relief matters;
  - d. Contempt of Court proceedings;
  - e. Forfeiture proceedings brought by the State;
  - f. Cases involving mortgage foreclosures; and
  - g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.
4. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )  
 )  
**THE STATE TREASURER OF** )  
**THE STATE OF SOUTH CAROLINA,** )  
 )  
Plaintiff, )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. \_\_\_\_\_

**SUMMONS**

vs.


**THE BANK OF NEW YORK MELLON** )  
**CORPORATION and THE BANK OF** )  
**NEW YORK MELLON, f/k/a THE** )  
**BANK OF NEW YORK,** )  
 )  
Defendant. )

2011 JAN 26 PM 4:43  
JEANETTE W. McBRIDE  
C.C.P. & C.S.  
RICHLAND COUNTY  
FILED

TO THE DEFENDANTS ABOVE NAMED:

**YOU ARE HEREBY SUMMONED** and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this Complaint upon the subscribers, at their offices, 930 Richland Street, P.O. Box 8416, Columbia, South Carolina 29202-8416, and 1002 Calhoun Street, P.O. Box 11886, Columbia, South Carolina 29211-1886, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, or otherwise appear and defend, judgment by default will be rendered against you for the relief demanded in the Complaint.

*Mitchell Willoughby*  
Mitchell Willoughby, Esquire (SC Bar No. 6161)  
Elizabeth Zeck, Esquire (SC Bar No. 9006)  
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Attorneys for the State Treasurer  
of the State of South Carolina

January 26, 2011

Columbia, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 )  
**THE STATE TREASURER OF** )  
**THE STATE OF SOUTH CAROLINA,** )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
**THE BANK OF NEW YORK MELLON** )  
**CORPORATION and THE BANK OF** )  
**NEW YORK MELLON, f/k/a THE** )  
**BANK OF NEW YORK,** )  
 )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. \_\_\_\_\_

**COMPLAINT**

**(Jury Trial Demanded)**

2011 JAN 26 PM 4:45  
 FILED  
 RICHLAND COUNTY  
 CLERK OF COURT  
 JEANETTE W. MADRID  
 C.C.P. & G.S.

Plaintiff The State Treasurer of the State of South Carolina (“State Treasurer”) complains of The Bank of New York Mellon Corporation and The Bank of New York Mellon, f/k/a The Bank of New York (collectively “BNY Mellon” or “the Bank” or “Defendant”)<sup>1</sup> and respectfully alleges as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiff State Treasurer is an officer of the State of South Carolina pursuant to Article VI, Section 7 of the Constitution of South Carolina.
2. Upon information and belief, The Bank of New York Mellon Corporation is a foreign corporation chartered in the State of Delaware with its principal place of business in the State of New York and The Bank of New York Mellon, f/k/a The Bank of New York is a foreign

<sup>1</sup> Upon information and belief, on or about July 1, 2007, The Bank of New York Company, Inc. and Mellon Financial Corporation merged, forming The Bank of New York Mellon Corporation. Upon information and belief, on or about July 1, 2008, The Bank of New York Mellon Corporation completed the process of consolidating and renaming its principal U.S. bank and trust company subsidiaries into two principal banks: The Bank of New York Mellon, a New York state chartered bank (formerly named “The Bank of New York”); and BNY Mellon, N.A., a nationally chartered bank (formerly named “Mellon Bank, N.A.”).

bank chartered in the State of New York with its principal place of business in that state. BNY Mellon managed the securities lending program for the State Treasurer, which program and BNY Mellon's failures and omissions related thereto give rise to this Complaint.

3. Upon information and belief, neither The Bank of New York Mellon Corporation nor The Bank of New York Mellon, f/k/a The Bank of New York has registered with the South Carolina Secretary of State. However, the Bank engages in continuous and systematic activities within the State of South Carolina, including the use of the courts of this State to enforce contractual and other rights against citizens of South Carolina.

4. BNY Mellon presently conducts business and, at all relevant times, conducted business and performed acts in Richland County, South Carolina and has sufficient contacts and business within Richland County, South Carolina so as to be subject to the *in personam* jurisdiction of this Court pursuant to the laws of South Carolina.

5. On or about March 24, 2000, the State Treasurer and BNY Mellon executed the Securities Lending Agreement and Guaranty ("SLA") which was in effect at all times relevant to the acts and/or omissions complained of herein. A copy of the SLA is attached as Exhibit A to this Complaint and incorporated herein by this reference.

6. BNY Mellon consented to jurisdiction in the state courts of South Carolina in connection with any dispute arising under the SLA. *See* Exh. A, p. 7, Art. VII, ¶ 7.

7. All claims arising under the SLA, including the claims contained in this Complaint, are governed by the laws of the State of South Carolina. Venue is proper in Richland County, South Carolina because BNY Mellon is a foreign business entity, because the principal office of the State Treasurer is located in Richland County and/or because the most substantial part of the acts and omissions giving rise to the causes of action in this Complaint occurred here.

8. The parties and subject matter involved in this Complaint are within the jurisdiction of this Court.

### STATEMENT OF FACTS

9. Section 11-13-30 of the South Carolina Code (1986) grants to the State Treasurer the sole authority to invest and deposit funds of the State of South Carolina, while section 11-9-660 of the South Carolina Code (Supp. 2009) provides the State Treasurer with the “full power to invest and reinvest all funds of the State.” This authority includes the power to conduct a securities lending program. § 11-9-660(B).

10. The securities lending program offered by BNY Mellon allowed investors like the State Treasurer to generate additional income from their large securities holdings by lending those securities to others for a fee. Income is generated primarily through the fees paid by the borrowers for the use of the State Treasurer’s securities. The cash collateral pledged by borrowers against the return of the State Treasurer’s securities is also invested to provide a secondary income stream from the securities lending program. Because the securities borrowers can usually demand the return of their cash collateral upon short notice, the State Treasurer intended that the cash collateral should only be invested in instruments which were conservative and of high quality in order to preserve principal and relatively short-term to maintain liquidity.

11. In seeking to be selected as manager of the securities lending program for the State Treasurer, BNY Mellon accepted appointment as the agent of the State Treasurer under the SLA. *See* Exh. A, p. 2, Art. II, ¶ 1. BNY Mellon agreed to lend securities entrusted to it by the State Treasurer to third party borrowers pursuant to the terms of the SLA and as the agent of the State Treasurer. *See* Exh. A, p. 3, Art. IV, ¶ 2(a).



12. The authority that BNY Mellon accepted under the terms of the SLA authorized it to invest the cash collateral only in certain types of “Approved Investments.” *See id.* The criteria for Approved Investments are set forth in Schedule I of the SLA. *See Exh. A*, pp. 9-11. All investment decisions under the SLA and the decision to invest in any particular Approved Investment were to be made solely by BNY Mellon without any further approval of the State Treasurer so long as and only if the investments conformed to the conservative requirements set forth in Schedule I of the SLA. *See id.*

13. BNY Mellon was compensated for the operation of the securities lending program with a share<sup>2</sup> in the “Earnings”<sup>3</sup> generated by the program. Under the compensation structure requested by BNY Mellon, the Bank had an incentive to place the cash collateral in riskier investments which might provide the potential for higher returns, since it would be rewarded with higher income from those higher returns while attempting to shift all risk of loss from these riskier investments to the State Treasurer. *See Exh. A*, p. 4, Art. IV, ¶ 2(c).

14. BNY Mellon further “reserve[d] the right, in its sole discretion, to liquidate any Approved Investment and credit the net proceeds to the Collateral Account.” *See Exh. A*, p. 3, Art. IV, ¶ 2(a). As BNY Mellon was the agent of the State Treasurer, it was obligated to exercise this discretion with prudence and due care, in absolute good faith and fair dealing, and in the best interests of its principal, the State Treasurer.

15. BNY Mellon represented to the State Treasurer that it would follow the conservative investment guidelines set forth in the SLA and ensure that the cash collateral would be invested in compliance with those investment guidelines at all times.

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<sup>2</sup> The original 2000 SLA set the Agent’s Fee paid to BNY Mellon at 25% of “Earnings.” This fee was later modified to 15% of Earnings.

<sup>3</sup> Article V, ¶ 8(a) of the SLA defined “Earnings” to include both Securities Loan Fees paid by borrowers of the State Treasurer’s securities (*see Exh. A*, p. 2, Art. I, ¶ 25) and Proceeds generated by the investment of the cash collateral (*see Exh. A*, p. 2, Art. I, ¶ 21).

**ASSET-BACKED SECURITIES**

16. Under the SLA, the State Treasurer imposed the following Interest Rate Risk/Investment and Loan Maximum Maturity Limitations on Asset-Backed Securities purchased on behalf of the State Treasurer:

|                         | <u>Maximum Final<br/>Maturity</u> | <u>Maximum Weighted<br/>Average Life</u> |
|-------------------------|-----------------------------------|------------------------------------------|
| Asset-Backed Securities | 3 years                           | 1.5 years                                |

See Exh. A, p. 10, Schedule I, § IV.

17. In 2005, 2006, and 2007, BNY Mellon purchased asset-backed securities for accounts entrusted to it by the State Treasurer under the SLA. Unbeknownst to the State Treasurer, the “assets” backing these securities were long-term subprime mortgages. These Mortgage Backed Securities had maximum final maturity dates of up to 30 years and thus did not comply with the Loan Maximum Maturity Limitations imposed by the SLA, which required “maximum final maturities” of 3 years or less. *Id.* Similarly, the maximum weighted average lives of these Mortgage Backed Securities failed to meet the 1.5 year requirement imposed by the SLA. A list<sup>4</sup> of the Mortgage Backed Securities which failed to comply with the parameters agreed to in the SLA and which are at issue in this case is attached as Exhibit B to this Complaint and incorporated herein by this reference.

18. Under the SLA, BNY Mellon exercised discretion over investments in the securities lending program: “all . . . Approved Investments . . . shall be controlled by, and subject only to the instructions of, Bank, and Bank shall not be required to comply with any instructions of Lender with respect to the same.” See Exh. A, p. 4, Art. IV, ¶ 2(d). BNY Mellon exercised

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<sup>4</sup> While this list is believed to be complete, the State Treasurer reserves the right to supplement and update this list based upon discovery in this case.

this discretion in purchasing the Mortgage Backed Securities and did not consult with the State Treasurer concerning these transactions.

19. BNY Mellon did not provide the State Treasurer with accurate and truthful information about the maximum final maturity dates of the Mortgage Backed Securities (which were well in excess of the 3 year maximum) nor with accurate and truthful information about the maximum weighted average lives of the Mortgage Backed Securities (which were well in excess of the 1.5 year maximum) nor otherwise disclose to the State Treasurer that these securities did not qualify as Approved Investments under the SLA.

20. For many months after the purchases of these unauthorized investments and continuing until mid-2009, BNY Mellon made multiple misrepresentations and/or omitted to make accurate and truthful disclosures to the State Treasurer through monthly account statements and otherwise concerning the maximum final maturity dates and maximum weighted average lives of the Mortgage Backed Securities.

21. Upon information and belief, both at the time of purchase and thereafter, BNY Mellon failed in and/or disregarded its duty, which was continuous, to ascertain and report accurately and truthfully the maximum final maturity dates and maximum weighted average lives of the Mortgage Backed Securities

22. Upon information and belief and in the alternative, BNY Mellon acted in bad faith and/or recklessly and/or willfully in failing to ascertain and report the true and accurate maximum final maturity dates and maximum weighted average lives of the Mortgage Backed Securities.

23. As a result of BNY Mellon's failure to and/or disregard of its duty to ascertain and report accurately and truthfully the maximum final maturity dates and maximum weighted

average lives of the Mortgage Backed Securities, BNY Mellon failed to liquidate the Mortgage Backed Securities after the Bank knew or should have known that the actual performance of Mortgage Backed Securities would not comply with the SLA-imposed limitations on maximum final maturity and maximum weighted average life.

24. Upon information and belief, BNY Mellon acted in more than one capacity with respect to some of the Mortgage Backed Securities purchased by BNY Mellon for the State Treasurer under the SLA. In addition to acting as the agent of the State Treasurer, BNY Mellon and/or one or more of its corporate affiliates also acted as the custodian, trustee, or swap contract administrator with respect to some Mortgage Backed Securities and as a counterparty in interest rate cap agreements and/or interest rate swap agreements relating to others. A list<sup>5</sup> of the Mortgage Backed Securities in which BNY Mellon acted in more than one capacity is attached hereto as Exhibit C and incorporated herein by this reference.

25. Upon information and belief, BNY Mellon and/or its corporate affiliates was and continues to be compensated by third parties other than the State Treasurer for its services as custodian, trustee, swap contractor administrator and/or counterparty in interest rate cap and/or swap agreements in connection with certain Mortgage Backed Securities.

26. BNY Mellon did not disclose to the State Treasurer that it had conflicts of interest as a result of serving in more than one capacity with respect to those Mortgage Backed Securities identified in Exhibit C.

27. The SLA required that Approved Investments would be liquid, conservative, and relatively short-term, in order to preserve capital, which was the State Treasurer's paramount investment objective in the securities lending accounts. The Mortgage Backed Securities failed

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<sup>5</sup> While this list is believed to be complete, the State Treasurer reserves the right to supplement and update this list based upon discovery in this case.

to meet the requirements of the SLA, have been and are now significantly impaired, and have resulted in material loss and damage to certain of the accounts entrusted to BNY Mellon by the State Treasurer.

### **THE LEHMAN NOTES**

28. Using some of the cash collateral generated by the securities lending program, BNY Mellon purchased approximately \$165 million of Medium Term Notes Series I issued by Lehman Brothers Holdings, Inc. (“Lehman”) for the State Treasurer’s accounts:

A. On or about August 23, 2006, BNY Mellon purchased \$35 million in Lehman Notes, CUSIP number 52517PL33.

B. On or about August 23, 2006, BNY Mellon purchased an additional \$94.75 million of Lehman Notes, CUSIP number 52517PL33.

C. On or about March 20, 2007, BNY Mellon purchased \$35 million of Lehman Notes, CUSIP number 52517PW31.<sup>6</sup>

29. In late 2006 and 2007, as BNY Mellon was purchasing the Lehman Notes in the State Treasurer’s accounts, the Bank knew or should have known that housing prices and sales were declining and that it was therefore imprudent to invest in a company like Lehman which was heavily exposed to the subprime mortgage market. Plaintiff will not attempt to list herein each and every report or other market information that was available to BNY Mellon, but alleges the following are among those that BNY Mellon knew or should have known during this period:

A. In or about August 2006, the National Association of Realtors reported existing home sales posted an unexpectedly sharp drop to their lowest level since January 2004.

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<sup>6</sup> The three purchases of Medium Term Notes will be collectively referred to as the “Lehman Notes.”

B. In or about October 2006, Moody's Investors Service ("Moody's") issued a report forecasting a crash in housing prices in many metropolitan areas, which it projected might continue into 2008 and 2009.

C. On or about October 4, 2006, Federal Reserve Chairman Ben Bernanke stated that "[t]here is currently a substantial correction going on in the housing market."

D. On or about January 18, 2007, Moody's issued a Special Report detailing abnormally high rates of early default in mortgage securitizations issued in late 2005 and early 2006.

E. On or about April 20, 2007, Moody's released a report projecting cumulative losses of 6-8% for loans underlying subprime residential mortgage backed securities.

F. In mid-2007, the Bear Stearns Companies, Inc. ("Bear") was forced to sell \$3.6 billion in high-grade securities in order to save its hedge funds which had suffered substantial losses on subprime mortgage securities. In August 2007, shareholders brought the first lawsuit against Bear related to the collapse of its subprime mortgage hedge funds.

G. In or around July 2007, Moody's and Standard & Poors Ratings Service ("S&P") downgraded hundreds of residential mortgage backed securities then valued at approximately \$5.3 billion and placed collateralized debt obligations backed by residential Mortgage Backed Securities on watch for possible downgrades.

30. In addition, in the months before Lehman's bankruptcy filing in September 2008, numerous sources reported on its increasingly precarious financial condition. Plaintiff will not attempt to list herein each and every report or other market information that was available to

BNY Mellon, but alleges the following are among those that BNY Mellon knew or should have known during this period.

31. In early 2008, BNY Mellon knew or should have known that Bear was determined by the Federal Reserve to be virtually insolvent and that on or about March 16, 2008 it was announced that J.P. Morgan Chase & Co. would acquire Bear at a small fraction of Bear's previous market price through a deal orchestrated by federal officials. Upon information and belief, BNY Mellon knew that after Bear's collapse, many market analysts and commentators noted similarities between the business structure of Bear and that of Lehman and warned that Lehman could suffer a similar fate. For example:

A. On or about March 17, 2008, Reuters reported that "[t]he cost of protecting Lehman Brothers debt rose on Monday after a fire sale of Bear Stearns."

B. That same day, Motley Fool analyst Morgan Housel wrote, in an article entitled "Is Lehman Brothers Next to Go?":

Some of the larger firms, such as Goldman Sachs . . . and Morgan Stanley . . ., have incredibly diverse operations that spread far past the subprime debt market, and they probably won't face anywhere near the fallout that Bear Stearns has seen. However, one Wall Street neighbor looks a bit too similar to Bear in terms of its operations: Lehman . . . .

Although Lehman has largely been able to sidestep major losses amid the subprime mess, like Bear Stearns, it does a disproportionately large amount of business in the fixed-income and mortgage-backed-securities market. For investors and clients facing Bear Stearns shares that now trade around 90% below their Friday closing, a similar "run on the bank" on Lehman's assets isn't far-fetched.

C. On or about March 18, 2008, The Times of London reported that shares in Lehman fell sharply "as traders worried that the investment bank would experience the

same lack of confidence from its counterparts and customers as Bear Stearns had faced at the end of last week and would suffer a surge in liquidity demands.”

32. Upon information and belief, BNY Mellon knew or should have known of the following ratings downgrades of Lehman in spring 2008:

A. On or about March 17, 2008, Moody’s lowered its outlook on Lehman from “positive” to “stable.”

B. On or about March 21, 2008, S&P cut its outlook on Lehman’s credit rating from “stable” to “negative.”

C. On March 24, 2008, Oppenheimer & Co. downgraded Lehman from “outperform” to “perform,” citing a “protracted challenging capital markets environment.”

D. On or about April 1, 2008, Fitch Ratings (“Fitch”) revised its rating outlook on Lehman from “stable” to “negative.”

33. Upon information and belief, BNY Mellon knew or should have known of the following negative information and ratings downgrades of Lehman in late May and early June 2008 :

A. On or about May 27, 2008, Bank of America forecast a second quarter loss for Lehman.

B. On or about June 2, 2008, S&P downgraded its credit rating of the Lehman bonds from A+ to A.

C. On or about June 4, 2008, Bloomberg reported that:

Lehman...may report this month its first quarterly loss since going public in 1994, increasing pressure on the company to raise capital, according to analysts at Oppenheimer & Co. and Bank of America Corp. Lehman may be forced either to sell all or part of itself to a



bigger financial firm or sell a large quantity of new shares to bolster its finances, the Wall Street Journal reported today.

34. Upon information and belief, BNY Mellon knew or should have known that on June 9, 2008 Lehman forecast a quarterly loss of \$2.8 billion and announced plans to raise additional capital of \$6 billion. BNY Mellon further knew or should have known of the following ratings downgrades of Lehman:

A. On or about June 9, 2008, Fitch downgraded its credit rating of the Lehman bonds from AA- to A+.

B. That same day, Moody's changed its rating outlook on Lehman from stable to negative.

C. On or about June 10, 2008, analysts at Credit Suisse downgraded Lehman Brothers from "outperform" to "neutral," while reducing their estimates for the company.

D. On or around that same day, Wachovia Bank also downgraded its rating of Lehman Brothers stock from out-perform to market perform, noting that Lehman's plan to raise capital would dilute profits by 20 percent.

35. Upon information and belief, on or about July 17, 2008, Robert Kelly, Chairman and Chief Executive Officer of BNY Mellon met with Timothy Geithner, then President of the Federal Reserve Bank of New York, to discuss issues related to the triparty repurchase ("repo") market. At or about this time, the Federal Reserve estimated Lehman's exposure to the triparty repo market at approximately \$200 billion.

36. Upon information and belief, on or about July 21, 2008, a meeting was scheduled to include BNY Mellon and the Securities Investor Protection Corporation (with members of the Federal Reserve Board staff in attendance) to discuss a possible bankruptcy or other financial failure involving Lehman.

37. Upon information and belief, in the summer of 2008, BNY Mellon asked Lehman to begin prefunding several programs in order to provide collateral support for BNY Mellon's credit exposure to Lehman. Over several weeks during the summer of 2008, BNY Mellon and Lehman negotiated the size of the deposit which BNY Mellon would require from Lehman to protect the Bank's own interests against a possible Lehman default.

38. Upon information and belief, on or about September 8, 2008, BNY Mellon and Lehman agreed in principal that Lehman would maintain funds in a money market account with BNY Mellon sufficient to cover BNY Mellon's intraday exposure.

39. Upon information and belief, BNY Mellon knew or should have known that on or about September 9, 2008, shares in Lehman fell sharply after Lehman failed to raise capital from the Korea Development Bank and that S&P and Fitch both announced that Lehman was on review for further downgrades.

40. Upon information and belief, BNY Mellon knew or should have known that on or about September 10, 2008, Lehman announced a projected third quarter loss of \$3.9 billion and a plan to raise cash by spinning off assets including its troubled real estate portfolio.

41. Upon information and belief, on or about September 11, 2008, BNY Mellon and Lehman executed a Collateral Deposit Agreement requiring Lehman to deposit \$125 million with BNY Mellon as collateral for its intraday transactions.

42. Upon information and belief, on or about September 12, 2008, Secretary of the Treasury Henry Paulson, Securities and Exchange Commission Chairman Christopher Cox, and then New York Federal Reserve Chairman Timothy Geithner met to discuss Lehman with CEOs from major financial institutions including Robert Kelly of BNY Mellon. During this meeting, federal officials confirmed that the federal government would not bail out Lehman.

43. Upon information and belief, as a result of follow-up meetings on or about September 13, 2008, BNY Mellon formed a crisis team called the Lehman Working Group, which consisted of senior officers, the chief risk officer, and top members of BNY Mellon's legal team.

44. Upon information and belief, in 2006 and 2007 BNY Mellon either had already purchased or was then purchasing Lehman debt on behalf of other clients for whom it was acting as an investment advisor or other fiduciary asset manager.

45. Upon information and belief, in 2006 and 2007 BNY Mellon either had already purchased or was then purchasing Lehman debt on its own behalf and/or on behalf of its corporate affiliates.

46. Upon information and belief, as a result of purchases of Lehman debt on behalf of itself, its corporate affiliates and its clients, including the State Treasurer, for whom it was acting as an investment advisor, fiduciary, or asset manager, BNY Mellon controlled a share of Lehman debt in excess of that which should have been controlled by a reasonably prudent fiduciary and/or bank acting as an agent in the operation of *inter alia* a securities lending program.

47. As a result of the size and excessive concentration of the positions in Lehman securities owned or controlled by BNY Mellon, the Bank was effectively unable or unwilling to sell or otherwise liquidate the Lehman Notes held in the accounts of the State Treasurer at the times when a reasonably prudent fiduciary would have acted to protect the interests of its principal.

48. BNY Mellon knew that it had the obligation to properly manage assets acquired as part of the securities lending program, including the Lehman Notes, and to otherwise perform

its contractual and fiduciary responsibilities with prudence and due care, in absolute good faith and fair dealing, and in the best interests of its principal, the State Treasurer.

49. BNY Mellon knew or should have known that as a fiduciary it had an obligation to disclose any potential conflicts of interest in any investments made as part of the securities lending program. Upon information and belief, BNY Mellon knew that it was serving in multiple capacities with respect to its purchases of interests in Lehman, but did not disclose this to the State Treasurer.

50. BNY Mellon did not provide or otherwise disclose information about the size, scope or concentration of its ownership of and/or control over Lehman-related investments, or otherwise disclose to the State Treasurer that the Bank's ability to divest the Lehman Notes it purchased and controlled on behalf of the State Treasurer was compromised by the size, scope, and concentration of the Lehman securities under BNY Mellon's control.

51. By controlling such large stakes in Lehman, BNY Mellon negligently, in bad faith and/or recklessly and willfully limited its ability to act in the best interests of the State Treasurer as required by its fiduciary obligations, thereby negligently, in bad faith and/or recklessly and willfully exposing the accounts entrusted to BNY Mellon by the State Treasurer to the risk of a Lehman default.

52. In a most egregious breach of its fiduciary duties to the State Treasurer, BNY Mellon did not provide the State Treasurer with information about its efforts to protect the Bank's own interests from the possibility of a Lehman default, or otherwise disclose the Bank's concern about the continued viability of Lehman, while doing nothing to protect the accounts entrusted to BNY Mellon by the State Treasurer from the risk of a Lehman failure.

**FOR A FIRST CAUSE OF ACTION**  
**Breach of Contract**

53. Each and every relevant and consistent allegation of this Complaint is incorporated and included herein as fully as if repeated verbatim.

54. The SLA imposed upon BNY Mellon restrictions and obligations to manage the securities lending program by investing cash collateral generated by securities lending only in Approved Investments and otherwise comply with the all terms and conditions of the SLA.

55. Also, South Carolina law imposes a duty of good faith and fair dealing upon every contract, including the SLA.

56. BNY Mellon's purchases and retention of Mortgage Backed Securities which did not meet the requirements of the SLA constituted failures to abide by the terms of the SLA and constituted breaches of the SLA entered into with the State Treasurer.

57. BNY Mellon's failure to abide by the SLA through its purchase and retention (despite knowledge of the insolvency concerns surrounding Lehman) of the Lehman Notes, even though the Bank took action to protect its own interests, constituted failures to abide by the terms of the SLA, and constituted breaches of the SLA entered into with the State Treasurer.

58. Under the SLA, BNY Mellon had a duty to provide the State Treasurer with monthly statements. *See* Exh. A, p. 6, Art. V, ¶ 11. BNY Mellon therefore had a contractual duty to provide accurate and truthful information in the monthly statements provided to the State Treasurer.

59. BNY Mellon's repeated failures to provide accurate and truthful information regarding the maturities of the Mortgage Back Securities constituted breaches of the SLA entered into with the State Treasurer.

60. The SLA established an agency relationship between BNY Mellon and the State Treasurer. As the State Treasurer's agent, BNY Mellon therefore had a contractual duty to disclose to the State Treasurer any potential conflicts of interest.

61. BNY Mellon's failures to disclose to the State Treasurer that it or its affiliates served in more than one capacity with respect to certain Mortgage Back Securities constituted breaches of the SLA entered into with the State Treasurer.

62. BNY Mellon's failure to disclose to the State Treasurer that it controlled Lehman securities in excess of that which should have been controlled by a reasonably prudent fiduciary and/or bank acting as an agent in the operation of a securities lending constituted a breach of the SLA entered into with the State Treasurer.

63. BNY Mellon's failures to disclose to the State Treasurer its knowledge of the insolvency concerns surrounding Lehman and/or the actions taken by the Bank to protect its own interests constituted breaches of the SLA entered into with the State Treasurer.

64. The State Treasurer has been directly and proximately damaged by Defendant's failure to abide by the SLA.

65. The SLA provides that BNY Mellon shall be liable for all costs, expenses, damages, liabilities or claims including attorneys' and accountants' fees incurred by the State Treasurer arising out of any negligence, bad faith or willful misconduct by BNY Mellon. *See* Exh. A, p. 5, Art. V, ¶ 1.

66. The breaches of contract alleged herein were the result of and/or constituted negligence, bad faith and/or willful misconduct by BNY Mellon.

67. Plaintiff is therefore informed and believes that the State Treasurer is entitled to (1) actual damages, (2) attorneys', accountants', and expert witness fees, (3) costs, (4)

prejudgment interest at the highest legal rate, and (5) such other relief as is just, equitable, and proper.

**FOR A SECOND CAUSE OF ACTION**  
**Breach of Fiduciary Duty**

68. Each and every relevant and consistent allegation of this Complaint is incorporated and included herein as fully as if repeated verbatim.

69. Under the SLA, BNY Mellon sought and accepted appointment as the agent of the State Treasurer. *See* Exh A, p. 2, Art. II, ¶ 1. Under the laws of South Carolina, any agent by virtue of its relationship with the principal is considered a fiduciary with respect to all matters within the scope of the agency. As a fiduciary, BNY Mellon was required to act with perfect good faith and undivided loyalty in the best interests of the State Treasurer.

70. Under South Carolina law, as the agent of the State Treasurer and thus a fiduciary, BNY Mellon owed its principal an undivided duty of loyalty, a duty to disclose to the State Treasurer any potential conflicts of interest in any investments made as part of the securities lending program, a duty to ensure that any potential conflict would not compromise BNY Mellon's objectivity and a duty to act in the best interests of its principal, the State Treasurer.

71. As a fiduciary, BNY Mellon also owed duties and obligations to the State Treasurer to fully inform the State Treasurer of all facts pertinent to all transactions in which BNY Mellon was representing the State Treasurer, to make full disclosure of all facts that materially affected the securities lending program and investments made pursuant to the SLA, and to exercise reasonable care, diligence, and prudence in the performance of its duties.

72. Defendant's conduct relating to the SLA in the purchase and retention of the Mortgage Backed Securities and the Lehman Notes constituted breaches of its fiduciary duties to the State Treasurer in one or more of the following particulars:

A. BNY Mellon purchased and retained the Mortgage Backed Securities so as to increase its earnings under the SLA while disregarding the greater risk of loss imposed upon the State Treasurer by these purchases.

B. BNY Mellon purchased Mortgage Backed Securities which violated the SLA by exceeding the maximum final maturity of 3 years and/or the maximum weighted average life of 1.5 years.

C. BNY Mellon purchased Mortgage Backed Securities without disclosing to the State Treasurer that their maximum final maturities exceeded the 3 year limit or that their maximum weighted average lives exceeded the 1.5 year limit imposed by the SLA.

D. BNY Mellon made multiple misrepresentations and/or omissions to the State Treasurer concerning the maximum final maturity dates and maximum weighted average lives of the Mortgage Backed Securities.

E. BNY Mellon failed to perform and/or disregarded its duty to ascertain and report to the State Treasurer accurate and truthful maximum final maturity dates and maximum weighted average lives of the Mortgage Backed Securities.

F. BNY Mellon retained Mortgage Backed Securities (the initial purchases of which constituted breaches of the SLA due to their failure to comply with the contractual maturity limitations) after the Bank knew or should have known that the actual performance of Mortgage Backed Securities would not comply with the SLA-imposed limitations on maximum final maturity and maximum weighted average life.

G. BNY Mellon purchased and retained Mortgage Backed Securities in which it and/or its affiliates served in more than one capacity without disclosing the fact of that capacity to the State Treasurer.



H. At the time BNY Mellon purchased and/or retained the Lehman Notes for the State Treasurer, BNY Mellon controlled Lehman securities in excess of that which should have been controlled by a reasonably prudent fiduciary and/or bank acting as an agent in the operation of a securities lending program.

I. BNY Mellon purchased and/or retained the Lehman Notes despite owning and/or controlling a share of Lehman debt in excess of that which should have been controlled by a reasonably prudent fiduciary without disclosing to the State Treasurer the size, scope and concentration of its interests in Lehman.

J. BNY Mellon retained the Lehman Notes despite knowledge of the insolvency concerns surrounding Lehman, while simultaneously taking action to protect its own interests but doing nothing to protect the interests of the State Treasurer.

K. BNY Mellon retained the Lehman Notes despite knowledge of the insolvency concerns surrounding Lehman, while simultaneously taking action to protect its own interests, without disclosing to the State Treasurer either the insolvency concerns or its own protective actions.

73. In one or more of the preceding particulars, Defendant acted with imprudence, negligence, gross negligence, recklessness, willful misconduct, fraudulent intent, and bad faith and thereby breached the fiduciary duties owed to the State Treasurer, proximately causing the State Treasurer to suffer damages.

74. Plaintiff is therefore informed and believes that the State Treasurer is entitled to (1) actual damages, (2) attorneys', accountants', and expert witness fees, (3) punitive damages for the gross negligence, recklessness, willful misconduct, bad faith, and/or misrepresentations

and omissions, in an amount to be determined by the finder of fact, (4) costs, (5) prejudgment interest at the highest legal rate, and (6) such other relief as is just, equitable and proper.

**FOR A THIRD CAUSE OF ACTION**

**Negligence, Gross Negligence and/or Reckless and/or Willful Misconduct**

75. Each and every relevant and consistent allegation of this Complaint is incorporated and included herein as fully as if repeated verbatim.

76. Defendant owed the State Treasurer a duty of undivided loyalty, absolute faithfulness, and a duty to exercise reasonable care, skill, prudence, and diligence under the circumstances with respect to the management and control of the State Treasurer's accounts.

77. Defendant breached these duties owed to the State Treasurer by committing the imprudent, negligent, grossly negligent, reckless, willful, fraudulent, and bad faith actions set forth in this Complaint.

78. Defendant's conduct relating to the SLA in the purchase and retention of the Mortgage Backed Securities and the Lehman Notes constituted imprudence, negligence, gross negligence, recklessness, bad faith and/or willful misconduct in one or more of the following particulars:

A. BNY Mellon, knowing the State Treasurer's investment needs in connection with the securities lending program, which included conservative investment objectives and liquidity, nevertheless developed and implemented a self-serving strategy not suited to the State Treasurer's circumstances, needs and objectives.

B. BNY Mellon purchased Mortgage Backed Securities which violated the SLA because their maximum final maturities exceeded the 3 year limit and/or their maximum weighted average lives exceeded the 1.5 year limit.

C. BNY Mellon purchased Mortgage Backed Securities without disclosing that their maximum final maturities exceeded the 3 year limit or that their maximum weighted average lives exceeded the 1.5 year limit imposed by the SLA.

D. BNY Mellon made multiple misrepresentations and omissions to the State Treasurer concerning the maximum final maturity dates and maximum weighted average lives of the Mortgage Backed Securities.

E. BNY Mellon failed to perform and/or disregarded its duty to ascertain and report accurately and truthfully the maximum final maturity dates and maximum weighted average lives of the Mortgage Backed Securities.

F. BNY Mellon retained Mortgage Backed Securities (the initial purchases of which constituted breaches of the SLA due to their failure to comply with the contractual maturity limitations) even after the Bank knew or should have known that the actual performance of Mortgage Backed Securities would not comply with the SLA-imposed limitations on maximum final maturity and maximum weighted average life.

G. BNY Mellon purchased those Mortgage Backed Securities in which it and/or its affiliates had conflicts of interest and owed duties to others than the State Treasurer without disclosing these conflicts and duties.

H. BNY Mellon purchased and/or retained the Lehman Notes although it owned and/or controlled a share of Lehman debt in excess of that which should have been controlled by a reasonably prudent fiduciary and without disclosing to the State Treasurer the size, scope, and concentration of its interests in and/or control over Lehman securities.

I. Due to BNY Mellon's exercise of control over excessive interests in Lehman and/or its extensive relationships with Lehman, it was unwilling or unable to protect or otherwise conflicted against protecting the interests of the State Treasurer by selling the Lehman Notes as it learned of the insolvency concerns surrounding Lehman and as it took steps to protect its own exposure to Lehman's potential insolvency.

79. In one or more of the preceding particulars, Defendant breached its duty to the State Treasurer to exercise reasonable care, skill, diligence and prudence and to perform all of its duties with undivided loyalty and in absolute good faith and fair dealing, proximately causing the State Treasurer to suffer damages.

80. The State Treasurer has been directly and proximately damaged by BNY Mellon's imprudence, negligence, gross negligence, recklessness, bad faith and/or willful misconduct as alleged herein.

81. The State Treasurer is therefore informed and believes that the State Treasurer is entitled to (1) actual damages, (2) attorneys', accountants', and expert witness fees, (3) punitive damages for the gross negligence, recklessness, willful misconduct, bad faith, and/or misrepresentations and omissions, in an amount to be determined by the finder of fact, (4) costs, (5) prejudgment interest at the highest legal rate, and (6) such other relief as is just, equitable and proper.

**FOR A FOURTH CAUSE OF ACTION**  
**Breach of Contract, Accompanied By Fraudulent Act**

82. Each and every relevant and consistent allegation of this Complaint is incorporated and included herein as fully as if repeated verbatim.

83. Defendant's fraudulent misconduct, as alleged in this Complaint, constituted a failure to abide by the terms of the SLA and constituted a breach of the SLA entered into with

the State Treasurer. The State Treasurer has been directly and proximately damaged as a result of Defendant's breaches.

84. Moreover, in breaching the SLA, Defendant exhibited a fraudulent intent relating to the breaches alleged in this Complaint.

85. Defendant's breaches of the SLA were accompanied by fraudulent acts and/or omissions on the part of BNY Mellon in one or more of the following particulars:

A. BNY Mellon breached the SLA when it failed to comply with the conservative investment guidelines after representing to the State Treasurer that it would follow those guidelines and then, through the acts and omissions alleged in this Complaint, attempted to disguise those breaches by misrepresenting and/or failing to disclose to the State Treasurer accurate and truthful information related to the unauthorized investments.

B. BNY Mellon breached the SLA when it purchased higher risk securities not in compliance with the SLA in an attempt to achieve higher returns and then, through the acts and omissions alleged in this Complaint, attempted to disguise those breaches by misrepresenting and/or failing to disclose to the State Treasurer accurate and truthful information related to the unauthorized investments.

C. BNY Mellon breached the SLA by purchasing Mortgage Backed Securities in which it had conflicts of interests and then, through the acts and omissions alleged in this Complaint, attempted to disguise those breaches by misrepresenting and/or failing to disclose to the State Treasurer accurate and truthful information related to the conflicts of interest.

D. BNY Mellon breached the SLA by purchasing and/or retaining the Lehman Notes even though it owned and/or controlled a share of Lehman debt in excess of that which should have been controlled by a reasonably prudent fiduciary and then, through the acts and omissions alleged in this Complaint, attempted to disguise those breaches by misrepresenting and/or failing to disclose to the State Treasurer the size, scope, and concentration of those interests and that control.

E. BNY Mellon breached the SLA by retaining the Lehman Notes even though it knew of the insolvency concerns surrounding Lehman and took action to protect its own interests and then, through the acts and omissions alleged in this Complaint, attempted to disguise those breaches by misrepresenting and/or failing to disclose to the State Treasurer either the insolvency concerns surrounding Lehman or its own protective actions.

86. As a direct, consequent and proximate result of Defendant's breach of contract accompanied by fraudulent intent, fraud, constructive fraud, and fraudulent concealment, the State Treasurer suffered injury all in direct violation of the laws of the State of South Carolina.

87. Plaintiff is therefore informed and believes that he is entitled to (1) actual damages, (2) attorneys', accountants', and expert witness fees, (3) punitive damages for the fraudulent acts accompanying the breaches of the SLA, in an amount to be determined by the finder of fact, (4) costs, (5) prejudgment interest at the highest legal rate, and (6) such other relief as is just, equitable and proper.

**PRAYER FOR RELIEF**

**WHEREFORE**, having set forth the State Treasurer's claims, Plaintiff prays for judgment against BNY Mellon as follows:

- a. For actual damages suffered by the State Treasurer including but not limited to the market losses that would not have occurred save for the wrongful conduct of Defendant and any increase in value that would have occurred if the assets in the securities lending program had been properly invested in Approved Investments;
- b. For punitive damages in an amount to be determined by the finder of fact;
- c. For prejudgment interest at the highest legal rate;
- d. For the costs of this action as provided by the Securities Lending Agreement for the prosecution of this action;
- e. For reasonable attorneys' fees, accountants' fees, and expert witness fees as provided by the Securities Lending Agreement for the prosecution of this action; and
- f. For such other and further relief as is just, equitable, and proper.

Respectfully submitted,



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Attorneys for the State Treasurer  
of the State of South Carolina

January 26, 2011  
Columbia, South Carolina



# **EXHIBIT A**

SECURITIES LENDING AGREEMENT AND GUARANTY

AGREEMENT, dated as of March 24, 2000, between The State Treasurer of the State of South Carolina ("Lender"), and The Bank of New York ("Bank").

ARTICLE I  
DEFINITIONS

Whenever used in this Agreement, unless the context otherwise requires, the following words shall have the meanings set forth below:

1. "Act of Insolvency" shall mean, (i) the filing by a Borrower of a petition in bankruptcy or a petition seeking reorganization, liquidation or similar relief, or the filing of any such petition against a Borrower which is not dismissed or stayed within 60 calendar days, (ii) the adjudication of a Borrower as bankrupt or insolvent, (iii) the seeking or consenting to the appointment of a trustee, receiver or liquidator by a Borrower, or (iv) the making of a general assignment for the benefit of creditors by a Borrower or a Borrower's admission in writing of its inability to pay its debts as they become due.
2. "Account" shall mean the custodial account established and maintained by Bank on behalf of Lender for the safekeeping of Securities and monies received by Bank from time to time.
3. "Approved Investment" shall mean any type of security, instrument, participation or interest in property in which Cash Collateral may be invested or reinvested, as set forth on Schedule I attached hereto (which may be amended from time to time by execution of a revised Schedule I).
4. "Authorized Person" shall mean any officer of Lender and any other person, whether or not any such person is an officer or employee of Lender, duly authorized by Lender to give Oral and/or Written Instructions on behalf of Lender, such persons to be designated in a Certificate which contains a specimen signature of such person.
5. "Book-Entry System" shall mean the Federal Reserve/Treasury book-entry system for receiving and delivering Government Securities (as defined herein), its successors and nominees.
6. "Borrower" shall mean any entity named on a list supplied to Lender by Bank (as such list may be amended from time to time), other than any entity deleted from such list pursuant to a Certificate.
7. "Business Day" shall mean any day on which Bank is open for business and on which the Book-Entry System and/or the applicable Depositories are open for business.
8. "Cash Collateral" shall mean either fed funds or New York Clearing House funds, as applicable for a particular Loan.
9. "Certificate" shall mean any notice, instruction, schedule or other instrument in writing, authorized or required by this Agreement to be given to Bank, which is actually received by Bank and signed on behalf of Lender by an Authorized Person or a person reasonably believed by Bank to be an Authorized Person.
10. "Collateral" shall mean Government Securities and/or Cash Collateral.
11. "Collateral Account" shall mean an account established and maintained by Bank for the purpose of holding Collateral, Approved Investments, Proceeds and any Securities Loan Fee paid by Borrowers in connection with Loans hereunder.
12. "Collateral Requirement" shall mean with respect to Loans an amount equal to 102% of the then current Market Value of Loaned Securities which are the subject of Loans as of the close of trading on the preceding Business Day.
13. "Depository" shall mean the Depository Trust Company, Participants Trust Company and any other securities depository or clearing agency (and their respective successors and nominees) registered with the Securities and Exchange Commission or otherwise authorized to act as a securities depository or clearing agency.

14. "Distributions" shall mean interest, dividends and other payments and distributions payable by Borrowers in respect of Loaned Securities.
15. "Government Security" shall mean book-entry Treasury securities (as defined in Subpart O of Treasury Department Circular No. 300, 31 C.F.R. 306) and any other securities issued or fully guaranteed by the United States government or any agency, instrumentality or establishment of the United States government.
16. "Loan" shall mean a loan of Securities hereunder.
17. "Loaned Security" shall mean any Security which is subject to a Loan.
18. "Market Value" shall mean (a) with respect to Government Securities, the price of such Securities as quoted by a generally recognized pricing information service at the time the determination of Market Value is made, plus accrued but unpaid interest, if any, on the particular Security, (b) with respect to other Securities, the price of such Securities as quoted by a generally recognized pricing information service at the time such determination is made, plus accrued but unpaid interest, if any, to the extent not included in the price as quoted, and (c) with respect to Cash Collateral, its amount.
20. "Oral Instructions" shall mean verbal instructions actually received by Bank from an Authorized Person or from a person reasonably believed by Bank to be an Authorized Person.
21. "Proceeds" shall mean any interest, dividends and other payments and distributions received by Bank in respect of Collateral and Approved Investments.
22. "Rebate" shall mean the amount payable by Lender to a Borrower in connection with Loans at any time collateralized by Cash Collateral.
23. "Receipt" shall mean an advice or confirmation setting forth the terms of a particular Loan.
24. "Securities Borrowing Agreement" shall mean the agreement pursuant to which Bank lends securities to a Borrower on behalf of its customers (including Lender) from time to time.
25. "Securities Loan Fee" shall mean the amount payable by a Borrower to Bank pursuant to the Securities Borrowing Agreement in connection with Loans collateralized by Collateral other than Cash Collateral.
26. "Security" shall include Government Securities, common stock and other equity securities, bonds, debentures, corporate debt securities, notes, mortgages or other obligations, and any certificates, warrants or other instruments representing rights to receive, purchase, or subscribe for the same, or evidencing or representing any other rights or interests therein.
27. "Written Instructions" shall mean written communications actually received by Bank from an Authorized Person or from a person reasonably believed by Bank to be an Authorized Person by letter, memorandum, telegram, cable, telex, telecopy, facsimile, computer, video (CRT) terminal or other on-line system, or any other method whereby Bank is able to verify with a reasonable degree of certainty the identity of the sender of such communications or the sender is required to provide a password or other identification code.

ARTICLE II  
APPOINTMENT OF BANK: SCOPE OF AGENCY AUTHORITY

1. Appointment: Lender hereby appoints Bank as its agent to lend Securities in the Account to Borrowers from time to time (except Securities which Lender has advised Bank in a Certificate are no longer subject to the representations set forth in article III, sub-paragraph (e) hereof), and Bank hereby accepts appointment as such agent and agrees to so act.
2. Securities Borrowing Agreement: Lender hereby acknowledges receipt of Bank's standard form(s) of Securities Borrowing Agreement and authorizes Bank to lend Securities in the Account to Borrowers pursuant to agreements substantially in the form thereof. Bank is hereby authorized to negotiate with each Borrower the amount of Rebates payable in connection with particular Loans. Bank shall deliver to Lender a Receipt relating to each Loan.
3. Loan Opportunities: Bank shall treat Lender equitably with other lenders of like circumstances in making lending opportunities available to it hereunder, taking into account the demand for specific securities, availability of securities, types of

collateral, eligibility of borrowers, limitations on investments of cash collateral and such other factors as Bank deems appropriate. Bank shall nevertheless have the right to decline to make any Loans pursuant to any Securities Borrowing Agreement and to discontinue lending under any Securities Borrowing Agreement in its sole discretion and without notice to Lender.

4. Use of Book-Entry System and Depositories. Lender hereby authorizes Bank on a continuous and on-going basis, to deposit in the Book-Entry System and the applicable Depositories all Securities eligible for deposit therein and to utilize the Book-Entry System and Depositories to the extent possible in connection with its receipt and delivery of Securities, Collateral, Approved Investments and monies under this Agreement. Where Securities, Collateral and Approved Investments eligible for deposit in the Book-Entry System or a Depository are transferred to Lender hereunder, Bank shall identify as belonging to Lender a quantity of securities in a fungible bulk of securities shown on Bank's account on the books of the Book-Entry System or the applicable Depository. Securities, Collateral and Approved Investments deposited in the Book-Entry System or a Depository will be represented in accounts which include only assets held by Bank for customers, including but not limited to accounts in which Bank acts in a fiduciary or agency capacity.

### ARTICLE III REPRESENTATIONS AND WARRANTIES

Lender hereby represents and warrants to Bank, which representations and warranties shall be deemed to be continuing and to be reaffirmed on any day that a Loan is outstanding, that:

(a) This Agreement is, and each Loan will be, legally and validly entered into, does not, and will not, violate any statute, regulation, rule, order or judgment binding on Lender, or any provision of Lender's charter or by-laws, or any agreement binding on Lender or affecting its property, and is enforceable against Lender in accordance with its terms, except as may be limited by bankruptcy, insolvency or similar laws, or by equitable principles relating to or limiting creditors' rights generally.

(b) The person executing this Agreement and all Authorized Persons acting on behalf of Lender has and have been duly and properly authorized to do so;

(c) Lender is lending Securities as principal for its own account and it will not transfer, assign or encumber its interest in, or rights with respect to, any Loans; and

(d) All Securities in the Account are free and clear of all liens, claims, security interests and encumbrances and no such Security has been sold. Lender shall promptly deliver to Bank a Certificate identifying any and all Securities which are no longer subject to the representations contained in this sub-paragraph (d).

### ARTICLE IV SECURITIES LENDING TRANSACTIONS

1. General Bank Responsibilities. Bank shall enter Loans pursuant to the Securities Borrowing Agreement and take all actions deemed necessary or appropriate in order to perform on Lender's behalf thereunder, including receiving Collateral having a Market Value of not less than the Collateral Requirement, collecting Distributions and applicable Securities Loan Fees, and demanding additional Collateral from the appropriate Borrowers when the Market Value of Collateral received by Bank from such Borrowers is less than the then current Market Value of all of the Loaned Securities. Whenever Bank demands additional Collateral pursuant to the foregoing, such additional Collateral together with the Collateral then held by Bank in connection with Loans shall have a Market Value of not less than the Collateral Requirement.

2. Approved Investments. (a) Bank is hereby authorized and directed, without obtaining any further approval from Lender, to invest and reinvest all or substantially all of the Cash Collateral received in any Approved Investment. Bank shall credit all Collateral, Approved Investments and Proceeds received with respect to Collateral and Approved Investments to the Collateral Account and mark its books and records to identify Lender's interest therein as appropriate, it being understood that all monies credited to the Collateral Account may for purposes of investment be commingled with cash collateral held for other lenders of securities for whom Bank acts as their respective agent. Bank reserves the right, in its sole discretion, to liquidate any Approved Investment and credit the net proceeds to the Collateral Account.

(b) Lender may deliver to Bank a Certificate from time to time instructing Bank not to make Approved Investments with particular financial institutions or issuers.

(c) All Approved Investments shall be for the account and risk of Lender. To the extent any loss (whether due to the issuer's or obligor's default in the payment of any Proceeds, or Bank's disposition of such Approved Investment for any reason) arising out of Approved Investments results in a deficiency in the amount of Collateral available for return to a Borrower, Lender agrees to pay Bank on demand cash in an amount equal to such deficiency.

(d) Except as otherwise provided herein, all Collateral, Approved Investments and Proceeds credited to the Collateral Account shall be controlled by, and subject only to the instructions of, Bank, and Bank shall not be required to comply with any instructions of Lender with respect to the same.

3. Termination of Loans. (a) Bank shall terminate any Loan as soon as practicable after:

- (i) receipt by Bank of a notice of termination from a Borrower;
- (ii) receipt by Bank of Written Instructions to do so;
- (iii) receipt by Bank of a Certificate instructing it to delete the Borrower to whom such Loan was made from the list referred to in Article I, paragraph 6 hereof;
- (iv) receipt by Bank of a Certificate advising that the Loaned Security is no longer subject to the representations contained in Article III, sub-paragraph (d) hereof;
- (v) receipt by Bank of notice or a Certificate advising that an Event of Default (as defined in the Securities Borrowing Agreement) has occurred and is continuing beyond any applicable grace period;
- (vi) whenever Bank, in its sole discretion, elects to terminate such Loan; or
- (vii) termination of this Agreement.

(b) Upon termination of any Loan (which shall be effected according to the standard settlement time for trades in the particular Loaned Security) and receipt from the Borrower of the Loaned Securities and any Distributions then due, Bank shall return to the Borrower such amount of Collateral as is required by the Securities Borrowing Agreement and pay the Borrower any Rebates then payable.

(c) In order for Bank to timely settle the sale of Loaned Securities, it shall be Lender's responsibility to ensure prompt notification to Bank regarding any such sale.

4. Securities Loan Fee. Bank shall receive any applicable Securities Loan Fee paid by Borrowers and credit all such amounts received to the Collateral Account.

5. Guarantee and Subrogation. (a) If as a result of an Act of Insolvency a Borrower fails to return any Loaned Securities, Bank shall take all actions which it deems necessary or appropriate to liquidate Approved Investments and Collateral in connection with Loans to such Borrower and, unless advised by Lender to the contrary, shall make a reasonable effort for two Business Days (the "Replacement Period") to apply the proceeds thereof to the purchase of Securities identical to the Loaned Securities (or the equivalent thereof in the event of a reorganization or recapitalization of the issuer) not returned. If during the Replacement Period the Collateral liquidation proceeds are insufficient to replace any of the Loaned Securities not returned, Bank shall, subject to satisfaction of Lender's obligations under Paragraph 2(c) of this Article, pay such additional amounts as are necessary to make such replacement. Purchases of replacement Securities shall be made only in such markets, in such manner and upon such terms as Bank shall consider appropriate in its sole discretion. Replacement Securities shall be credited to the Account upon receipt by Bank. If Bank is unsuccessful in purchasing any replacement Securities during the Replacement Period, the proceeds of the liquidation of Approved Investments and Collateral pursuant hereto shall be credited to the Account, and Bank shall, subject to satisfaction of Lender's obligations under Paragraph 2(c) of this Article, credit to the Account cash in an amount (if any) equal to (X) the Market Value of the Loaned Securities not returned, minus (Y) the Collateral liquidation proceeds, such calculation to be made on the date of such credit.

(b) Lender agrees, without the execution of any documents or the giving of any notice, that Bank is and will remain subrogated to all of Lender's rights under the Securities Borrowing Agreement or otherwise (to the extent of any credit pursuant to paragraph 5(a) above), including but not limited to, Lender's rights with respect to Loaned Securities and Distributions, and

Collateral, Approved Investments and Proceeds. Lender agrees to execute and deliver to Bank such documents as Bank may require and to otherwise fully cooperate with Bank to give effect to its rights of subrogation hereunder.

(c) Bank shall have no obligation to take any actions pursuant to Paragraph 5(a) above if it reasonably believes that such action will violate any applicable statute, regulation, rule, order or judgment. Furthermore, except as provided in Paragraph 5(a), Bank shall have no other liability to Lender relating to any Borrower's failure to return Loaned Securities and no duty or obligation to take action to effect payment by a Borrower of any amounts owed by such Borrower pursuant to the Securities Borrowing Agreement.

(d) Either party may terminate the provisions of Paragraph 5(a) above with respect to any Borrower at any time by delivery of a notice to the other party specifying a termination date not earlier than the date of receipt of such notice by the other party. No such termination shall be effective with respect to then existing rights of either party under this Paragraph 5 or outstanding Securities Loans hereunder.

(e) Bank may offset any amounts payable by Lender under this Agreement against amounts payable by Bank under Paragraph 5(a) of this Article.

6. Borrower Default. Lender understands and agrees that if a Borrower fails to return Loaned Securities for reasons other than an Act of Insolvency, Bank may, in its reasonable discretion, elect not to liquidate Approved Investments and such Approved Investments shall continue to be subject to Article IV, Paragraph 2(c). Bank shall be responsible to Lender for the Market Value of the Loaned Securities as of the date such Loaned Securities are credited to the Account.

#### ARTICLE V CONCERNING BANK

1. Standard of Care. Bank shall exercise reasonable care in the performance of its duties hereunder consistent with that exercised by banks generally in the performance of similar duties. Bank shall not be liable for any costs, expenses, damages, liabilities or claims including attorneys' and accountants' fees (collectively, "Losses") incurred by Lender, except those Losses arising out of the negligence, bad faith or wilful misconduct of Bank. Bank shall have no obligation hereunder for Losses, which are sustained or incurred by reason of any action or inaction by the Book-Entry System or any Depository or their respective successors or nominees. In no event shall Bank be liable for special, indirect or consequential damages, or lost profits or loss of business, arising under or in connection with this Agreement, even if previously informed of the possibility of such damages and regardless of the form of action.

2. No Obligation to Inquire. Without limiting the generality of the foregoing, Bank shall be under no obligation to inquire into, and shall not be liable for, the validity of the issue of any Securities, Collateral or Approved Investments held in the Account or Collateral Account, or the legality or propriety of any Loans hereunder.

3. Reliance on Borrowers' Statements, Representations and Warranties. Provided that it acts with reasonable care, Bank shall be entitled to rely upon the most recently available audited and unaudited statements of financial condition and representations and warranties made by Borrowers, and Bank shall not be liable for any loss or damage suffered as a result of any such reliance.

4. Advances, Overdrafts and Indebtedness. (a) Bank may, in its sole discretion, advance funds to Lender in order to pay to Borrowers any Rebates or to return to Borrowers Cash Collateral to which they are entitled. Bank may also credit the Account or Collateral Account with Securities Loan Fees payable by Borrowers prior to its receipt thereof. Any such credit shall be conditional upon receipt by Bank of final payment and may be reversed to the extent final payment is not received.

(b) Lender agrees to repay Bank on demand the amount of any advance or any other amount owed by Lender hereunder plus accrued interest at a rate per annum (based on a 360-day year for the actual number of days involved) not to exceed the fed funds rate as publicly announced to be in effect from time to time, such rate to be adjusted on the effective date of any change in such fed funds rate plus 50 basis points.

5. Advice of Counsel. Bank may, with respect to questions of law regarding an Event of Default by Borrower, apply or and obtain the advice and opinion of counsel and shall be fully protected with respect to anything done or omitted by it in good faith in conformity with such advice or opinion; provided that Bank implements such advice without negligence.

6. No Collection Obligations: Bank shall be under no obligation or duty to take action to effect collection of, or be liable for, any amounts payable in respect of Securities or Approved Investments if such Securities or Approved Investments are in default, or if payment is refused after due demand and presentation.
7. Pricing Services. Bank is authorized to utilize any generally recognized pricing information service in order to perform its valuation responsibilities with respect to Loaned Securities, Collateral and Approved Investments, and Bank shall not be liable for any loss or damage suffered or incurred by Lender as a result of errors or omissions of any such pricing information service.
8. Agent's Fee. (a) For its performance as Lender's agent in making and administering Loans, Lender shall pay to Bank a fee, accrued daily, equal to 2.5% of the sum of Proceeds and Securities Loan Fees (collectively, "Earnings") paid or payable by the relevant Borrowers, net of Rebates paid by Bank to relevant Borrowers and brokerage fees incurred in making Approved Investments ("Net Earnings"). Subject to Paragraph 8(b) below, Bank is authorized, on a monthly basis, to charge its fees and any other amounts owed by Lender hereunder against the Account and/or Collateral Account.
- (b) If the Rebates and brokerage fees paid by Bank in any month exceed the sum of all Earnings ("Shortfall"), the Bank will be responsible for 2.5% of the Shortfall. Bank will deduct Lender's 7.5% share of the Shortfall from Lender's future Net Earnings. Notwithstanding the foregoing, all Approved Investments shall be for the account and risk of Lender in accordance with Article IV, Paragraph 2(c).
9. Reliance On Certificates and Instructions. Bank shall be entitled to rely upon any Certificate, Written or Oral Instruction actually received by Bank and reasonably believed by Bank to be duly authorized and delivered. Lender agrees to forward to Bank Written Instructions confirming Oral Instructions in such manner so that such Written Instructions are received by Bank by the close of business of the same day that such Oral Instructions are given to Bank. Lender agrees that the fact that such confirming Written Instructions are not received or that contrary instructions are received by Bank shall in no way affect the validity or enforceability of the transactions authorized by Lender. In this regard, the records of Bank shall be presumed to reflect accurately any Oral Instructions given by an Authorized Person or a person believed by Bank to be an Authorized Person.
10. Disclosure of Account Information. It is understood and agreed that Bank is authorized to supply any information regarding the Account or Collateral Account which is required by any statute, regulation, rule or order now or hereafter in effect.
11. Statements. Bank will at least monthly furnish Lender with statements relating to Loans hereunder.
12. Force Majeure. Bank shall not be responsible or liable for any failure or delay in the performance of its obligations under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including without limitation, acts of God; earthquakes; fires; floods; wars; civil or military disturbances; sabotage; epidemics; riots; interruptions, loss or malfunctions of utilities, transportation, computer (hardware or software) or communications service; accidents; labor disputes; acts of civil or military authority; governmental actions; or inability to obtain labor, material, equipment or transportation; it being understood that Bank shall maintain a disaster recovery plan.
13. Insurance. To the extent that Lender incurs a loss that may be covered by Bank's insurance, Bank will file a claim on behalf of Lender.
14. No Implied Duties. Bank shall have no duties or responsibilities whatsoever except such duties and responsibilities as are specifically set forth in this Agreement, and no covenant or obligation shall be implied against Bank in connection with this Agreement.

ARTICLE VI  
TERMINATION

This Agreement may be terminated at any time by either party upon delivery to the other party of a written notice specifying the date of such termination, which shall be not less than 30 days after the date of receipt of such notice. Notwithstanding any such notice, this Agreement shall continue in full force and effect with respect to all Loans outstanding on the date of termination.

ARTICLE VII  
MISCELLANEOUS

1. Certificates. Lender agrees to furnish to Bank a new Certificate in the event that any present Authorized Person ceases to be an Authorized Person or in the event that any other Authorized Persons are appointed and authorized. Until such new Certificate is received, Bank shall be fully protected in acting upon Oral Instructions or signatures of the present Authorized Persons.

2. Notices. (a) Any notice or other instrument in writing, authorized or required by this Agreement to be given to Bank, shall be sufficiently given if addressed to Bank and received by it at its offices at 101 Barclay Street, New York, New York 10286, Attention: Securities Lending Division, or at such other place as Bank may from time to time designate in writing.

(b) Any notice or other instrument in writing, authorized or required by this Agreement to be given to Lender shall be sufficiently given if addressed to Lender and received by it at its office at P.O. Box 11778, Columbia, South Carolina 29211, or at such other place as Lender may from time to time designate in writing.

3. Cumulative Rights and No Waiver. Each and every right granted to Bank or Lender hereunder or under any other document delivered hereunder or in connection herewith, or allowed it by law or equity, shall be cumulative and may be exercised from time to time. No failure on the part of Bank or Lender to exercise, and no delay in exercising, any right will operate as a waiver thereof, nor will any single or partial exercise by Bank or Lender of any right preclude any other or future exercise thereof or the exercise of any other right.

4. Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations shall not in any way be affected or impaired thereby, and if any provision is inapplicable to any person or circumstances, it shall nevertheless remain applicable to all other persons and circumstances.

5. Entire Agreement; Amendments. This Agreement represents the entire understanding of the parties hereto with regard to the subject matter contained herein and may not be amended or modified in any manner except by a written agreement executed by both parties.

6. Successors and Assigns. This Agreement shall extend to and shall be binding upon the parties hereto, and their respective successors and assigns; provided, however, that this Agreement shall not be assignable by either party without the written consent of the other.

7. Governing Law; Consent to Jurisdiction; Waiver of Immunity. This Agreement shall be construed in accordance with the laws of the State of South Carolina. Lender and Bank hereby consent to the jurisdiction of a state or federal court situated in South Carolina in connection with any dispute arising hereunder.

8. No Third Party Beneficiaries. In performing hereunder, Bank is acting solely on behalf of Lender and no contractual or service relationship shall be deemed to be established hereby between Bank and any other person.

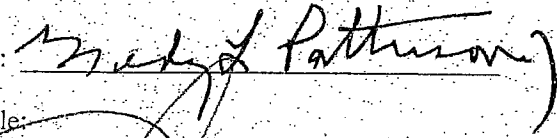
9. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but such counterparts shall, together, constitute only one instrument.

10. SIPA NOTICE. THE PROVISIONS OF THE SECURITIES INVESTOR PROTECTION ACT OF 1970 MAY NOT PROTECT LENDER WITH RESPECT TO LOANS HEREUNDER AND, THEREFORE, THE COLLATERAL DELIVERED TO BANK AS AGENT FOR LENDER MAY CONSTITUTE THE ONLY SOURCE OF SATISFACTION OF A BORROWER'S OBLIGATION IN THE EVENT SUCH BORROWER FAILS TO RETURN THE LOANED SECURITIES.

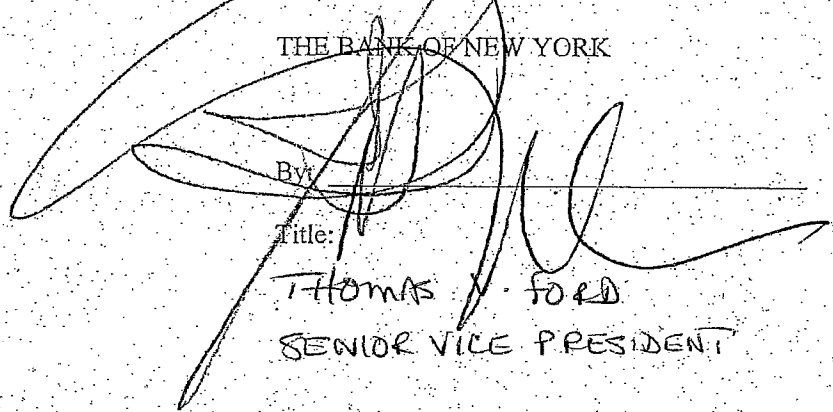


IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective corporate officers, thereunto duly authorized, as of the day and year first above written.

THE STATE TREASURER  
OF THE STATE OF SOUTH CAROLINA

By:   
Title:

THE BANK OF NEW YORK

By:   
Title:

THOMAS N. FORD  
SENIOR VICE PRESIDENT

Schedule I

The State Treasurer of the State of South Carolina authorizes Bank to purchase investments that meet the requirements set forth herein after.

I. Currency of Investments

Bank is authorized to invest in instruments which are denominated in the same currency as the cash collateral provided on a loan of securities.

II. Approved Instruments

Bank is authorized to invest in any of the instruments below, subject to the limitations contained in this schedule:

xx Direct Government Obligations  
xx US

xx Obligations of a Government Agency/Instrumentality  
xx US

xx Obligations of US Corporations

xx Asset-backed Securities

xx Repurchase Agreements collateralized by:  
US Government Obligations  
US Government Agency/Instrumentality Obligations  
Mortgage-backed Securities issued by US Government  
Agency/Instrumentality

III. Credit Quality Limitations

Bank will limit its investments to those which at the time of purchase are rated not lower than the ratings set forth below by any of the listed rating agencies. These credit criteria shall not apply to counterparties on repurchase agreements but shall apply to the instruments collateralizing such repurchase agreements. \* will only accept repurchase agreement collateral of the types authorized above.

|                                 | <u>Ratings</u>      |                     |
|---------------------------------|---------------------|---------------------|
|                                 | <u>Short Term *</u> | <u>Long Term **</u> |
| Moody's Investors Service, Inc. | P-1                 | A3                  |
| Standard & Poor's Ratings Group | A-1                 | A-                  |

\* Maturity of less than 13 months.

\*\* Maturity of 13 months or more.

#### IV. Interest Rate Risk/Investment and Loan Maximum Maturity Limitations

|                         | <u>Max. Final<br/>Maturity</u> | <u>Max. Reset<br/>Period</u> | <u>Max. Weight<br/>Avg. Life</u> |
|-------------------------|--------------------------------|------------------------------|----------------------------------|
| Fixed Rate Assets       | 90 days                        | n/a                          | n/a                              |
| Floating Rate Assets    | 3 years                        | 3 months                     | n/a                              |
| Asset-backed Securities | 3 years                        | 3 months                     | 1.5 years                        |

Maximum Net Weighted Average Days to Reprice/Maturity of the portfolio will not exceed 30 days.

#### V. Description of Instruments

The information set forth below is intended to describe the types of investments and transactions that the State Treasurer of the State of South Carolina may authorize Bank to make or enter into on his behalf. Depending on the actual elections made by the State Treasurer of the State of South Carolina, not all of the following information may be relevant to the services provided him by Bank.

US General Obligations. Means securities issued or guaranteed by the US Government and backed by the full faith and credit of the US Government. These securities include, among others, all Treasury securities as well as obligations of the Government National Mortgage Association.

Obligations of a US Government Agency or Instrumentality. Means obligations issued or guaranteed by US Government agencies or instrumentalities where the investor must look to the issuing or guaranteeing agency for ultimate repayment; some examples of agencies or instrumentalities issuing these obligations are the Federal Farm Credit System, the Farmers Home Administration, the Federal Home Loan Mortgage Corporation, and the Federal National Mortgage Association.

Repurchase Agreements. Means repurchase agreements with brokers, dealers, banks, or other counterparties. In a repurchase agreement, Bank buys a security on behalf of the State Treasurer of the State of South Carolina from a seller that has agreed to repurchase it at a mutually agreed date and price. For certain purposes, a repurchase agreement may also be viewed as a fully collateralized loan of money to the seller of the security, and for this reason, repurchase agreements are generally used by Bank as alternatives to short-term bank deposits. When entering into a repurchase agreement, Bank will obtain securities with a market value at least equal to the purchase price plus accrued interest, and this value will be maintained throughout the term of the repurchase agreement. Repurchase Agreements may be in the form of collateral held by a third party agent, provided there is a tri-party custody agreement signed by Bank, as agent. The State Treasurer of the State of South Carolina authorizes Bank to enter into repurchase agreements which are collateralized by the types of collateral authorized hereinabove. Any such collateral must satisfy the credit criteria set forth herein.

Corporate Debt Obligations. Means commercial paper, variable rate master demand notes and other short-term debt obligations issued by US corporations, including financing and bank holding companies. Variable rate master demand notes are demand obligations that permit Bank to invest fluctuating amounts at floating interest rates, adjusted periodically, pursuant to arrangements between the issuer and Bank. Corporate debt obligations also includes notes, bonds and debentures issued by US corporations.

Asset-Backed Securities. Means securities which directly or indirectly represent a participation in, or are secured by and payable from, a stream of payments generated by particular assets such as motor vehicle or credit card receivables. Asset-backed securities provide periodic payments that generally consist of both interest and principal payments. Consequently, the life of an asset-backed security varies with the prepayment experience of the underlying debt instruments. Asset-backed securities typically take the form of a beneficial interest in a special-purpose trust, a limited partnership interest of commercial paper or other debt securities issued by a special-purpose corporation.

#### VI. Definition of Maturity Limitations

Bank will take interest rate risk on behalf of the State Treasurer of the State of South Carolina to the extent that Bank buys investments with maturities that differ from the maturities of the loans funding such investments as well as to the extent that securities or term loans are liquidated prior to their final maturity. To manage interest rate risk,

Bank will ensure that the difference between the average weighted days to maturity of investments and the average weighted days to maturity of the loans funding such investments (i.e., the net weighted average days to maturity) does not exceed the limits specified hereinabove. The number of days to maturity for each investment will be based on the reprice date for floating rate assets and final maturity date for fixed rate assets. In addition, Bank will limit final maturity of floating rate assets to the limitations specified hereinabove.

Bank will not purchase (i) any floating rate obligation (defined to be a security whose coupon rate resets at least every six months) having a final maturity greater than the limit specified hereinabove, (ii) any fixed rate obligation having a final maturity greater than the limit specified hereinabove, provided that Bank may purchase a fixed rate obligation having a maturity up to the limit specified hereinabove if hedged into a floating rate obligation (whose coupon resets at least every six months) having a maturity not greater than the limit specified hereinabove, and (iii) any asset-backed securities having a weighted average expected life or a final maturity greater than the limit specified hereinabove. There are no restrictions on the maturity of obligations collateralizing repurchase agreements.

## VII. Governing Law

Notwithstanding the foregoing, all investments made by the Bank on behalf of the State Treasurer of the State of South Carolina shall comply with Section 11-9-660 of the Code of Laws, 1976, as amended, and any successor provisions thereto. In the event of any conflict between the provisions of this Schedule or the Securities Lending Agreement and Guaranty to which it is attached and the aforesaid the statute, the statute shall control.

# **EXHIBIT B**

**MORTGAGE BACKED SECURITIES PURCHASED BY BNY MELLON FOR**  
**THE STATE TREASURER PURSUANT TO THE SLA <sup>1</sup>**

|    | <u>Security Name</u>                                    | <u>CUSIP</u> | <u>Tranche</u> | <u>Purchase Date</u> |
|----|---------------------------------------------------------|--------------|----------------|----------------------|
| 1  | Accredited Mortgage Loan Trust 2006-2 †                 | 00437NAB8    | A-2            | 7/3/2006             |
| 2  | Ace Securities Corp. Home Equity Loan Trust 2006-OPT2 † | 00441YAB8    | A-2A           | 10/30/2006           |
| 3  | Argent Securities Trust 2006-M1B †                      | 04012MAP4    | A-2B           | 6/28/2006            |
| 4  | BNC Mortgage Loan Trust 2006-2                          | 055683AB2    | A-2            | 10/30/2006           |
| 5  | Carrington Mortgage Loan Trust 2006-FRE2                | 14454AAE9    | A-5            | 10/18/2006           |
| 6  | Carrington Mortgage Loan Trust 2006-NC2                 | 14453FAB5    | A-2            | 6/21/2006            |
| 7  | CBASS Mortgage Loan Asset-Backed Certificates 2006-CB8  | 1248P1AB0    | A-2A           | 10/30/2006           |
| 8  | CWABS Asset Backed Certificates Trust 2007-9            | 12670FAB6    | 2-A1           | 6/8/2007             |
| 9  | First Franklin Mortgage Loan Trust 2006-FF10            | 32028HAF0    | A-6            | 6/30/2006            |
| 10 | First Franklin Mortgage Loan Trust 2006-FF14            | 32027LAB1    | A-2            | 9/25/2006            |
| 11 | GSAA Home Equity Trust 2005-15                          | 362341D63    | 2-A1           | 12/29/2005           |
| 12 | GSAA Home Equity Trust 2006-3 †                         | 362334BQ6    | A-1            | 2/24/2006            |
| 13 | GSAA Home Equity Trust 2006-17                          | 362257AA5    | A-1            | 10/30/2006           |
| 14 | GSAA Home Equity Trust 2007-3 †                         | 3622EAAA8    | 1A1A           | 2/23/2007            |
| 15 | GSAMP Trust 2007-FM2                                    | 3622MHAB2    | A-2A           | 2/21/2007            |

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<sup>1</sup> This list does not include Mortgage Backed Securities which had maximum final maturities of more than 3 years and/or maximum weighted average lives of more than 1.5 years and were thus in violation of the SLA at the time of purchase and thereafter, but which have paid off prior to the inception of this litigation. The State Treasurer intends to conduct discovery into damages relating to these securities and reserves the right to update and/or supplement this list to add them.

|    |                                                             |           |        |            |
|----|-------------------------------------------------------------|-----------|--------|------------|
| 16 | GSAMP Trust 2007-NC1 †                                      | 3622MGAB4 | A-2A   | 2/20/2007  |
| 17 | HSI Asset Securitization Corporation Trust 2006-WMC1        | 40430MAB3 | A-1    | 8/4/2006   |
| 18 | Long Beach Mortgage Loan Trust 2006-5 †                     | 54251PAC1 | II-A-2 | 6/15/2006  |
| 19 | MASTR Asset Backed Securities Trust 2006-HE5                | 576455AA7 | A-1    | 12/28/2006 |
| 20 | MASTR Asset Backed Securities Trust 2006-NC3                | 55275RAB8 | A-2    | 12/28/2006 |
| 21 | MASTR Asset Backed Securities Trust 2006-WMC2               | 57644TAC2 | A-3    | 6/29/2006  |
| 22 | Merrill Lynch Mortgage Investors Trust 2006-HE3             | 590212AB2 | A-2    | 6/22/2006  |
| 23 | Merrill Lynch Mortgage Investors Trust 2006-HE6             | 59023XAB2 | A-2A   | 12/28/2006 |
| 24 | Morgan Stanley ABS Capital I Inc. Trust 2006-HE7            | 61750MAB1 | A-2fpt | 10/31/2006 |
| 25 | Morgan Stanley ABS Capital I Inc. Trust 2006-NC5            | 61749BAB9 | A-2fpt | 11/28/2006 |
| 26 | Morgan Stanley ABS Capital I Inc. Trust 2006-WMC2 †         | 61749KAB9 | A-2fpt | 6/28/2006  |
| 27 | Morgan Stanley IXIS Real Estate Capital Trust 2006-2 †      | 617463AP9 | A-fpt  | 11/28/2006 |
| 28 | Morgan Stanley Mortgage Loan Trust 2006-16AX                | 617487AB9 | 2-A-1  | 10/31/2006 |
| 29 | Nomura Home Equity Loan Inc. 2006-HE3                       | 65536QAB4 | II-A-1 | 8/31/2006  |
| 30 | SASCO Mortgage Pass-Through Certificates 2006-BC2           | 86361GAB2 | A-2    | 8/30/2006  |
| 31 | SASCO Mortgage Pass-Through Certificates 2006-NC1           | 86260PAF4 | A-6    | 6/22/2006  |
| 32 | Saxon Asset Securities Trust 2006-2                         | 80556XAD9 | A-3B   | 6/7/2006   |
| 33 | Securitized Asset Backed Receivables LLC Trust 2007-<br>BR4 | 81378EAA1 | A-2A   | 6/14/2007  |
| 34 | SG Mortgage Securities Trust 2006-FRE2                      | 784208AB6 | A-2A   | 7/13/2006  |
| 35 | Soundview Home Loan Trust 2006-OPT5                         | 83612CAC3 | II-A-2 | 6/19/2006  |
| 36 | SURF Trust 2006-BC5                                         | 84751NAB0 | A-2A   | 11/28/2006 |



|    |                                                  |           |     |           |
|----|--------------------------------------------------|-----------|-----|-----------|
| 37 | Structured Asset Investment Loan Trust 2006-BNC3 | 86361KAB3 | A-2 | 8/25/2006 |
| 38 | Structured Asset Investment Loan Trust 2006-4    | 86360WAC6 | A-3 | 6/30/2006 |

† Indicates that the security was purchased by BNY Mellon for more than one account of the State Treasurer.

# **EXHIBIT C**

**MORTGAGE BACKED SECURITIES PURCHASED BY BNY MELLON FOR THE STATE TREASURER  
IN WHICH BNY MELLON OR A CORPORATE AFFILIATE ACTED IN ADDITIONAL CAPACITY**

| <u>Security Name</u>                                      | <u>CUSIP</u> | <u>Purchase Date</u> | <u>Role in Transaction</u>                                                                                                    |
|-----------------------------------------------------------|--------------|----------------------|-------------------------------------------------------------------------------------------------------------------------------|
| 1. CBASS Mortgage Loan Asset-Backed Certificates 2006-CB8 | 1248P1AB0    | 10/30/2006           | Custodian (Bank of New York)                                                                                                  |
| 2. CWABS Asset Backed Certificates Trust 2007-9           | 12670FAB6    | 6/8/2007             | Trustee (Bank of New York); Co-trustee (Bank of New York Trust Company, N.A.); Swap contract administrator (Bank of New York) |
| 3. GSAA Home Equity Trust 2006-17                         | 362257AA5    | 10/30/2006           | Custodian (Bank of New York)                                                                                                  |
| 4. GSAA Home Equity Trust 2007-3                          | 3622EAAA8    | 2/23/2007            | Custodian (The Bank of New York Trust Company, N.A.)                                                                          |
| 5. Merrill Lynch Mortgage Investors Trust 2006-HE3        | 590212AB2    | 6/22/2006            | Cap contract counterparty (Bank of New York); Swap counterparty (Bank of New York)                                            |
| 6. Structured Asset Investment Loan Trust 2006-4          | 86360WAC6    | 6/30/2006            | Custodian (Mellon Bank, N.A.)                                                                                                 |
| 7. Structured Asset Investment Loan Trust 2006-BNC3       | 863661KAB3   | 8/25/2006            | Custodian (Mellon Bank, N.A.)                                                                                                 |
| 8. SASCO Mortgage Pass-Through Certificates 2006-BC2      | 86261GAB2    | 8/30/2006            | Custodian (Mellon Bank, N.A.)                                                                                                 |

**Exhibit C**  
**Page 2 of 2**

- |     |                                     |           |            |                                                                                    |
|-----|-------------------------------------|-----------|------------|------------------------------------------------------------------------------------|
| 9.  | Soundview Home Loan Trust 2006-OPT5 | 83612CAC3 | 6/19/2006  | Custodian (Mellon Bank, N.A.)                                                      |
| 10. | SURF Trust 2006-BC5                 | 84751NABO | 11/28/2006 | Cap contract counterparty (Bank of New York); Swap counterparty (Bank of New York) |