



**Bond No.**

**EXCESS FSCS SURETY BOND**  
(the "Surety Bond")

**THIS SURETY BOND** is executed as a deed and is given by the Company to the Principal, in consideration of the premium.

**A. Definitions**

The Company – The Customer Asset Protection Company, a company incorporated under the laws of Vermont State, USA, and with an address for service of documents at c/o Marsh Management Services Inc., 100 Bank Street, Suite 610, Burlington, VT 05401, USA.

Investor – Any person (whether incorporated or not) who is a *client* of the Principal on the Determination Date, including, for the avoidance of doubt, prime brokerage *clients* and broker-dealer *clients*.

Principal – Insert Name and Address

Validity Period – From 12:01 a.m. EST on \_\_\_\_\_ to 12:01 a.m. EST on \_\_\_\_\_.

Determination Date – The date upon which the Trigger Event takes place.

Securities – Any "security" as defined by the United States' Securities Investor Protection Act of 1970, as amended from time to time.

Client Cash - Any sum of money (whether or not constituting *client money*) in any currency which, as at the Determination Date, is held by the Principal for the Investor or credited to the Investor's accounts with the Principal in relation to *designated investment business* in Securities or should in accordance with the FSA Handbook have been so held or credited, but not including any sum advanced by an Investor under a loan agreement.

Loss –	As defined in Section B below.
Equivalent Securities -	Securities of the same issuer, forming part of the same issue or class and of the same nominal amount, currency and description as Securities transferred by the Investor to the Principal and “equivalent to” shall be construed accordingly.
Collateral -	any Securities transferred to the Principal by way of collateral for the purpose of securing or otherwise covering the performance of the Investor's obligations in connection with margin lending or securities borrowing by the Investor (including any margin lending or securities borrowing arranged by a U.S. broker-dealer).
Title Transfer Collateral Arrangement -	any arrangement under which the Investor has transferred legal and beneficial ownership of Securities to the Principal as Collateral, subject to an obligation of the Principal to re-deliver those or Equivalent Securities to the Investor upon discharge of the obligations secured or covered by the Collateral. For the purposes of this Surety Bond, a repurchase agreement may not constitute a Title Transfer Collateral Arrangement.
Right of Use –	any arrangement under which the Principal can use and dispose of Securities transferred to the Principal as Collateral by way of pledge, charge or other security interest as if it were the owner of such Securities, subject to an obligation of the Principal to re-deliver to the Investor the Securities so used or disposed of or Securities equivalent to such Securities.
FSCS –	Financial Services Compensation Scheme.
FSA –	Financial Services Authority.
Recovery Rules –	The rules governing the payment of claims by the FSCS and currently set out in COMP 1-14 of the FSA Handbook.
Trigger Event -	The Principal being deemed to be <i>in default</i> by the FSA or FSCS, or the appointment of a Practitioner, or the making of any order by a court of competent jurisdiction for the winding up, dissolution, administration, or bankruptcy, of the Principal.
Practitioner –	Any person acting as liquidator, provisional liquidator, receiver, administrator, or trustee in bankruptcy, including the Official Receiver, and any person otherwise assigned to liquidate, wind up, or otherwise realise the assets of the Principal.

All terms in *italics* shall be given meanings as defined in the Glossary of the FSA Handbook. Where the Glossary attributes more than one meaning to any term, it shall be given the meaning bearing the closest connection to *designated investment business*.

**B. Coverage**

1. The Company will indemnify any Investor, subject to Section D (Claim Conditions), for any Loss incurred, provided that a Trigger Event has taken place in respect of the Principal during the Validity Period.

2. Loss is the sum of:

- (i) Any Client Cash, including any interest accrued,
- (ii) The value of the Investor's interest in Securities credited to the Investor's account with the Principal, and
- (iii) Insofar as not included under (i), the value of the Investor's rights to the delivery of Equivalent Securities under any Title Transfer Collateral Arrangement or Right of Use exercised by the Principal;

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- (iv) Any sums owed by the Investor to the Principal regardless of whether the Investor has a right of set-off in respect of such sums; and
- (v) Any sums, *client money*, Securities or Equivalent Securities recovered and/or reasonably recoverable by the Investor from:
  - (a) The FSCS, howsoever the FSCS purport to allocate any sum paid by them to the Investor (including without limitation, cases where any sum is allocated or paid to compensate the Investor for damages based on claims in tort or contract against the Principal), and/or
  - (b) Any other *person* (including, without limitation, the Principal and its estate), and any other investor compensation scheme treated as such under the *Investor Compensation Directive* where such sums, *client money* or Securities are partly or wholly recoverable in respect of Client Cash and/or Securities described in Sections B2 (i) to (iii) above,

and for such purposes a sum credited to, or forming part of a credit to, a *client bank account* shall be deemed to be recoverable from an *approved bank* notwithstanding the occurrence of a *secondary pooling event* in respect of the *approved bank*.

- 2A. In calculating the value of the Investor's Loss, except where this Surety Bond expressly requires the contrary, the Company:
- (i) shall perform its calculation as though the Securities in which the Investor's interests lie and the Client Cash credited to the Investor's accounts had been liquidated on the Determination Date;
  - (ii) if doubt arises as to the operation of this Surety Bond in any particular case, shall regard the Investor as having an interest in Securities where such an interest would constitute part of a customer's "net equity" as defined in the United States Securities Investor Protection Act 1970 (as amended from time to time) and shall not regard the Investor as having such an interest where it would not constitute such a part;
  - (iii) shall disregard the value of any assets in which the Investor's interest arose under a repurchase agreement;
  - (iv) shall include the value of any Securities or Client Cash in which the Investor's interest arose under a securities lending agreement;
  - (v) shall not treat any entitlement to damages as a sum to which the Investor may be entitled as Client Cash;
  - (vi) where arrangements between the Investor and the Principal include a close-out netting provision, and the transactions that are subject thereto have not been closed out and netted before the Determination Date, shall disregard the effects of netting (but not close-out) contemplated by or carried out pursuant to the close-out netting provision; and for these purposes: "**close-out netting provision**" means a contract term under which, on the occurrence of a default by the Principal, (a) the obligations of the parties are accelerated to become immediately due and expressed as an obligation to pay an amount representing the original obligations estimated current value or replacement cost, or are terminated and replaced by an obligation to pay such an amount, and/or (b) an account is taken of what is due from each party to the other in respect of such obligations and a net sum equal to the balance of the account is payable by the party from whom the larger amount is due to the other party; to "**close out**" means to operate the process described in part (a) of the definition of "close-out netting provision"; and to "**net**" means to operate the process described in part (b) of the definition of "close-out netting provision".
3. In the event that the Investor is an *eligible claimant* who is entitled to receive only 90% of its losses from the FSCS within a band defined in COMP 10.2.3 of the FSA Handbook, the remaining 10%, which is not recoverable from the FSCS, shall also not be recoverable under this Bond. For the purposes of calculating Loss under this Bond, the remaining 10% shall be deemed to have been recovered by the Investor under Section B2 (b)(i) above.

4. Any sums in foreign currency paid to or payable by the Investor are to be converted into pounds sterling using the rates published in the Financial Times:
  - (a) On the Determination Date, for sums calculated under Sections B2 (a); and
  - (b) For any sum calculated under Section B2 (b), on the day that the FSCS or any relevant *person* makes any offer which is subsequently accepted by the Investor; or on the day any relevant judgment debt accrues; or on the Determination Date but only where the sum was reasonably recoverable at any time but has not been so recovered.

Where more than one rate is published for any currency, the mid-point rate shall be used. In the event that the Financial Times is not published upon the appropriate date of calculation, the rates in the edition published most recently prior to the date of calculation shall be used.

5. In the event that the FSCS does not or is not required to adopt a value in respect of any Security, the Company shall adopt such value for that Security as at the Determination Date as it shall reasonably determine.
6. The Company may, in its sole discretion, provide replacement securities to an Investor in full or partial settlement of any claim made by that Investor, such securities being replaced by reference to the value of the Investor's interest in Securities credited to the Investor's account with the Principal at the Determination Date and not their value. In the case of any partial settlement, the Company will recalculate the Loss without reference to any securities so replaced prior to indemnifying the Investor.
7. Save for interest accrued on Client Cash prior to the Determination Date as provided for in Section B2 (a)(i) above, no interest is payable to an Investor on any claim.

C. **Rights of Third Parties**

1. Subject to Section C1A, Investors are the only third parties who may make any claim against the Company under this Surety Bond. The rights of any Investor against the Company are set out only in this Surety Bond. No additional rights may be implied in any way.
- 1A. Where any *client* of the Principal (a "**Relevant Client**") acts as intermediary (including agent or trustee) on behalf of customers of the Relevant Client, each such customer shall be deemed to be a separate Investor to the exclusion of the Relevant Client for the purposes of Clause B2. In such a case the Company may elect to deal exclusively with the Relevant Client in relation to claims made on behalf of its customers.

2. There is no contract between the Investor and the Company, but by making a claim under this Surety Bond, the Investor agrees to the Company exercising any and all options it may have under this Surety Bond.
3. If the Company rescinds, terminates or varies the terms of this Surety Bond at any time, it may do so without giving any notice to, or requiring the consent of, any Investor.
4. No Investor may assign any right they may have to recover under this Surety Bond to any other *person*, save that any such right may be assigned to a Practitioner.

**D. Claims Conditions**

The Company shall make a payment to an Investor if and only if:

1. The Investor has used its reasonable endeavours to recover its net *claim* from the Principal, the FSCS and/ or the Practitioner and/ or the issuer of any Securities if appropriate; and
2. The FSCS has paid the Investor all compensation it is entitled to receive under the Recovery Rules; and
3. The final dividend/ distribution of all the Principal's assets has been declared and paid to the Principal's creditors by the Practitioner; and
4. The required claim form (see Section H4) has been received by the Company, duly completed, no later than six months after that date upon which the final dividend/ distribution of all the Principal's assets has been declared by the Practitioner; and
5. The Investor supplies such information and/ or documentary proof regarding the Investor's claim as the Company may reasonably require; and
6. The Investor has authorised the Company to obtain any information it may reasonably require from any third party, including without limitation the Practitioner, and has reasonably cooperated with the Company to enable the Company to obtain such information; and
7. The Investor has executed the assignment required in Section G of this Surety Bond; and
8. The Company has completed its appraisal of the Investor's entitlement to claim and the value of that claim.

E. **Exclusions**

The Company will not pay any claims:

1. By any Investor who has been deemed by the FSCS, the Practitioner, any duly constituted court or tribunal, or the Company, to have wrongfully caused or contributed to the Loss and/ or the *default* of the Principal;
2. Which have been rejected (which includes when any offer has been withdrawn) by either the FSCS in circumstances in which the Investor is an *eligible Claimant*, or by any Practitioner, and where all relevant appeals have been exhausted or where the Investor has not pursued all such appeals;
3. Arising from any illegal act or omission by the Investor, including without limitation any fraudulent or dishonest act;
4. Where an Investor has dishonestly exaggerated its claim.

F. **Obligations of the Principal**

1. It is a condition precedent to any cover that the Principal pay the premium due to the Company under this Surety Bond.
2. It is a condition precedent to any cover that the Principal is at the inception of the Validity Period an *authorised person*.
3. As a condition precedent to any cover, the Principal represents that it has not purchased and will not purchase any coverage, whether primary, excess or contributory, whose primary purpose is to provide coverage to Investors in excess of, or supplementary to, coverage under the FSCS from an insurer other than the Company. A breach of this representation shall avoid this Surety Bond.
4. Without prejudice to Section C3 above, the Principal, or its successor, is obliged to use its reasonable endeavours to promptly notify Investors of any amendment to this Surety Bond. If the Principal fails to notify any Investor, this shall not affect the Company's ability to rely on that amendment in respect of that Investor or at all.
5. The Principal, or its successor, shall promptly notify the Company of anything that is reasonably likely to result in the Company being required to make a payment pursuant to this Surety Bond. Failure to notify shall not prejudice any rights an Investor may have to recover under this Surety Bond.
6. Without prejudice to the rights of any Practitioner, at any time the Company may at its option (but is not so obligated to) associate with the Principal or its successor in interest in the defence of any civil claim or criminal prosecution brought against the Principal, and/or any of its employees or directors where an unfavourable outcome for the Principal and/or any of its employees and/or directors is reasonably likely to result in the Company being required to make any payment pursuant to this Surety Bond. In the event the Company elects to so associate with the Principal, the Principal and the Company shall cooperate

in all things in such defence, but lack of cooperation on the part of the Company or the Principal shall not inure to the detriment of the Investor.

7. Without prejudice to its rights to exercise the option in Section F6 above, if any claim is made against the Principal which is reasonably likely to result in the Company being required to make any payment pursuant to this Surety Bond:
  - a) The Principal is obliged to keep the Company informed, at the Principal's cost, of the progress of its defence to the extent and frequency as the Company may reasonably require;
  - b) At the Company's request, the Principal shall consult the Company and shall have reasonable regard for the Company's opinions on any matter concerning the defence and/ or compromise of that claim.
8. The Principal shall promptly inform the Company of the transfer of its assets or any other matter which involves or appears reasonably likely to affect payment by the Company under this Surety Bond.
9. The Principal may not assign this Surety Bond to any other *person*.
10. The Principal must obtain the Company's consent before referring to the Company's name or coverage provided by this Surety Bond in any advertising or marketing by or on behalf of the Principal. It is the Principal's responsibility to ensure that any such advertising or marketing is in accordance with FSA rules and any other legislation or rules governing the placing, content and distribution of such advertising or marketing. The Principal agrees to hold harmless the Company for any liabilities, costs or expenses it may incur as a result of or in connection with any advertising or marketing by or on behalf of the Principal.
11. As a condition precedent to coverage hereunder, the Principal agrees to cooperate fully, at the Company's request, with the lead reinsurer (the "Lead Reinsurer") of this Surety Bond to facilitate the Lead Reinsurer's underwriting and the ongoing risk evaluation with respect to this Surety Bond.

**G. Subrogated rights**

1. As a condition of payment under this Surety Bond:
  - (a) The Investor shall agree, subject to any prior assignment or subrogation of rights to the FSCS or its nominees, to assign and shall execute an assignment of all rights it has against the Principal to the Company upon payment by the Company to the Investor, but only to the extent that payment is made to the Investor by the Company. The assignment shall be in a form acceptable to the Company; and



- (b) The Investor will, at the Company's expense, cooperate with the Company and use its reasonable endeavours to assist the Company to recover such payment, together with all costs and expenses incurred by the Company in connection with the claim.

#### H. **Other Terms**

1. The Principal agrees that the premium payable under this Surety Bond shall be deemed fully earned from the date of inception of cover, such that if this Surety Bond is cancelled, terminated or avoided, no premium shall be returned to the Principal.
2. Should the Recovery Rules be altered so as to affect the protection afforded by this Surety Bond, the Company shall be entitled, within 90 days of that alteration being effected, to serve a cancellation notice 90 days prior to the date of cancellation. Any alterations shall not be deemed accepted by the Company pending such action, during which time the unaltered Recovery Rules shall apply for the purpose of this Surety Bond.
3. In the event there is a material misrepresentation in the information submitted to the Company by the Principal when applying for this Surety Bond, this Surety Bond shall be rendered null and void from inception.
4. In order to submit a claim, an Investor must submit a duly completed claim form, which will be available on the Company's website or by writing to the Company at the following address:

The Customer Asset Protection Company  
c/o Marsh Management Services Inc.  
100 Bank Street, Suite 610  
Burlington, VT 05401  
USA

The Investor shall be required to sign a statement on the said claim form acknowledging that the submission of a false claim may expose them to civil and/ or criminal liability and will invalidate their claim.

5. Proof of posting will not be accepted as proof of delivery. All correspondence should be sent to the above address unless the Company informs the Investor and/ or Principal in writing of an alternative address or means of communication.
6. All offers of payment will be made in writing. Any offer made by the Company will only be deemed accepted upon receipt of written acceptance from the Investor or Principal as appropriate.
7. In the event that two or more persons make claims, whether or not under a single CAPCO surety bond, in respect of the same Loss or part of it ("the Disputed Sum"), the Company shall be entitled at its sole discretion to pay the Disputed Sum into court or into an escrow account, pending a court or arbitral

ruling authorising the release of the Disputed Sum, or the conclusion of any enforceable, written agreement entered into by the competing Investors. Such payment shall, to the extent of that payment, be a defence to any action brought against the Company by any Investor in respect of the Disputed Sum.

8. A payment made by the Company to a *person*, whether incorporated or not, in settlement of a claim made under any CAPCO surety bond shall, to the extent of that payment, constitute a defence to the Company against any duplicative claim made under this Surety Bond by any *person*, whether incorporated or not.
9. This Surety Bond constitutes the entire agreement between the Company and Principal. The Principal hereby acknowledges that there have been no representations, warranties or promises made to it by or on behalf of the Company. Any variation to or waiver of the terms of this Surety Bond must be agreed to by the Company in writing. The Company shall not be estopped by any prior conduct, waiver, or omission, from relying on the terms of this Surety Bond for their full effect.

#### **I. Governing Law**

This Surety Bond shall be governed and construed entirely by English Law, save for the term "security" in the definition of "Securities" and the term "net equity" used in Section B2A, which shall each be construed as defined by the United States' Securities Investor Protection Act of 1970, as amended from time to time, and in accordance with the laws of the United States of America.

#### **J. Disputes**

1. Any dispute between the Company and the Principal and/ or any Investor arising out of or in connection with this Surety Bond, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the London Court of International Arbitration ("LCIA") Rules, which Rules are deemed to be incorporated into this Surety Bond by reference into this Section.
2. There shall be three arbitrators, all of whom shall be lawyers, and/or active retired officers of insurance or surety companies, with relevant insurance expertise in the construction of surety bonds, insolvency surety bonds and/ or insurance.
3. Upon written request of any party, each party shall nominate an arbitrator within 30 days of receipt of that written request, failing which, that arbitrator shall be appointed at the sole discretion of the LCIA. If the LCIA refuses to appoint an arbitrator nominated by any party, that party may make one further nomination, within 30 days of the LCIA's refusal. The LCIA shall appoint the third arbitrator at their sole discretion.

4. The parties hereby agree to waive Article 6 of the LCIA Rules (Nationality of Arbitrators) such that the arbitrators may be of any nationality.
5. Prior to any determination of costs by the arbitration tribunal, the parties to the arbitration shall each bear their own costs and shall share the costs of the arbitration between them equally.
6. The seat, or legal place, of arbitration shall be London and the arbitration shall take place in London. The language of the arbitration shall be English.
7. Where more than one Investor has commenced an arbitration against the Company, the Company shall be entitled at its option to require that those arbitration proceedings be consolidated. The LCIA is entitled at its sole discretion to choose the three arbitrators at any consolidated arbitration.
8. In bringing any arbitration, the Investor is obliged to keep all details of the arbitration and the dispute confidential, failing which the Investor's claim will be forfeited. The Principal is obliged to keep all details of any arbitration or dispute confidential, including any arbitration brought by any Investor. The Company, however, may refer as it sees fit to any details of any previous arbitration brought by any other Investor.

Signed as a deed, on behalf of the Company

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Assistant Secretary

Signed as a deed, on behalf of the Company

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Assistant Secretary