



Bond No.

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

WHEREAS Securities Investor Protection Corporation (hereinafter referred to as "SIPC") has been established pursuant to the Securities Investor Protection Act of 1970, as amended, (collectively hereinafter referred to as "SIPA") for the protection of the investing public, and

WHEREAS under the provisions of SIPA, SIPC is required, in the event of the liquidation of a registered broker dealer which is a member of SIPC, to advance money as may be required to pay or otherwise satisfy claims for the amount by which the Net Equity of each Customer exceeds that Customer's ratable share of Customer Property, subject to the maximum limits as set forth in SIPA, and

WHEREAS \_\_\_\_\_ (hereinafter referred to as the "Principal") wishes to provide its Customers with protection in excess of that afforded by SIPC pursuant to SIPA,

NOW THEREFORE, in consideration of payment of an agreed upon premium (the receipt of which is a condition precedent to effect coverage under this Surety Bond or any continuation certificate ("Continuation Certificate"), and upon the terms, conditions and limitations set forth below, Customer Asset Protection Company (hereinafter referred to as the "Company") agrees as follows:

**A. COVERAGE**

- (1) In the event SIPC files an application for a decree during the Bond Period in accordance with Section 5(a) of SIPA with respect to the Principal, and any Customer of the Principal discovers a loss of Securities and/or cash held by the Principal during such Bond Period, the Company, on behalf of the Principal, agrees to provide payment or, at the Company's sole option, replacement Securities in an amount equal to the total Net Equity (calculated as of the Filing Date under SIPA) of any Customer of the Principal; provided, such protection shall be excess over all receipts by a Customer with respect to the Customer's Net Equity, whether from the Principal, a Trustee or SIPC and whether funded by Customer Property, SIPC advances, the general estate of the Principal or otherwise ("Net Equity Receipts").
- (2) A Customer that would otherwise be protected under Section A (1) above shall not be denied coverage hereunder solely because such Customer is:
  - (a) a general partner, officer or director of the Principal, a beneficial owner of five percentum or more of any class of equity security of the Principal, a limited partner with a participation of five percentum or more in the net assets or net profits of the Principal, or a person who, directly or indirectly and through agreement or otherwise, exercises or has the power to exercise a controlling influence over the management or policies of the Principal;
  - (b) a broker or dealer or bank; or
  - (c) a prime brokerage customer.

- (3) If the Customer receives or has a right to full or partial satisfaction of its Net Equity from any source other than the Company, such receipt or right shall (a) be reported to the Company in the Customer's claim filed for recovery under this Bond ("Excess Claim") or in a filing supplemental thereto and (b) be paid over or assigned to the Company to the extent that the Customer has received from the Company corresponding satisfaction.
- (4) This Surety Bond does not cover and shall not compensate Customers for:
  - (a) any loss for which a Customer's Net Equity claim against a Principal ("Net Equity Claim") has been (i) denied by the Trustee or, (ii) in the event of a challenge to the Trustee's denial, denied by the entry of a final non-appealable order of a court of competent jurisdiction; provided, however, that either such denial is not based solely on the finding that the Customer making such claim is a Customer specified in Section A (2) above;
  - (b) any loss of repurchase agreements, reverse repurchase agreements or loans made to the Principal;
  - (c) any loss resulting from the diminution in the market value of a Security, even when such diminution is alleged to be caused by fraud or misrepresentation of, or on behalf of, the Principal; or
  - (d) any loss of any kind or nature whatsoever that is not a loss of (i) cash or (ii) Securities.
  - (e) any loss by any Customer deemed by SIPC, the Trustee, any duly constituted court or tribunal, or the Company, to have wrongfully caused or contributed to the loss and/or the insolvency of the Principal.
  - (f) any loss by any Customer that had dishonestly exaggerated its claim.

## **B. CONDITIONS AND LIMITATIONS**

- (1) Except as otherwise provided herein, the protection afforded under this Surety Bond is subject to and shall follow all the terms, definitions, conditions and limitations of SIPA, including any rules and regulations thereunder. Should any provision of SIPA be altered so as to affect the protection afforded by this Surety Bond, the Company shall have the option of accepting the alterations, renegotiating this contract with the Principal, or serving a cancellation notice 90 days prior to the date of cancellation; pending any such action however, such alterations shall be deemed accepted by the Company.

Subject to the foregoing, this Surety Bond shall be non-cancelable for any reason. However, as conditions precedent to effecting coverage under this Surety Bond or any Continuation Certificate, the Principal shall pay all premiums due hereunder and shall provide acceptable indemnity as required by the Company. All such premiums shall be deemed fully earned by the Company upon receipt. In the event there is a material misrepresentation in the information furnished to the Company by the Principal in applying for this Surety Bond, this Surety Bond shall be rendered null and void from inception.

In the event of cancellation by the Company, or non-renewal by the Company or Principal, of this Surety Bond, it shall be the responsibility of the Principal to duly notify its Customers and other investors of the discontinuance of coverage unless a succeeding company provides similar replacement protection without a lapse in coverage. The cancellation or non-renewal will be effective, however, even if the Principal fails to notify its Customers or other investors, and the Company shall have no obligation to notify Customers or other investors of the discontinuance of coverage.

- (2) The Customers of the Principal are the sole obligees under this Surety Bond, and only the Customers shall be entitled to exercise any right of the obligees hereunder, except as may otherwise be specifically set forth herein. Payment for any claim hereunder by the Company shall be made directly to the Customer of the Principal. In the event that the Customer is a broker or dealer or bank whose Net Equity Claim arose out of transactions for customers of such broker or dealer or bank, the Customer under this Surety Bond shall be the broker or dealer or bank on behalf of the customers of such broker or dealer or bank.

In the event that two or more persons make duplicative or conflicting claims against CAPCO whether or not under a single surety bond, the Company shall be entitled at its sole discretion to pay cash and/or replacement Securities into court or into an escrow account, pending a court or arbitral ruling authorizing the release of the cash and/or Securities, or the conclusion of any enforceable, written agreement entered into by the competing persons. Such payment shall, to the extent of that payment, be a defense to any action brought against the Company by any person in respect of any of such claims.

The Trustee and SIPC shall have no rights hereunder, except to the extent assigned to the Trustee or SIPC by any Customer.

A Customer of the Principal shall submit an Excess Claim on a form available (a) on the Company's website ([www.CAPCOEXCESS.com](http://www.CAPCOEXCESS.com)) or (b) by writing to the Company at the following address:

Customer Asset Protection Company  
c/o Marsh Management Services Inc.  
1166 Avenue of the Americas  
New York, NY 10036  
USA

In order to be eligible for coverage under this Surety Bond, an Excess Claim shall be submitted on the required form and received by the Company, duly completed, at the above address no later than six (6) months after the SIPA case is closed.

The Company shall make payment or, at the Company's sole option, provide replacement Securities in an amount equal to the total Net Equity of any Customer of the Principal (after deduction for any payments or Securities received by the Customer from the Principal, the Trustee or SIPC on account of its Net Equity Claim) promptly after the occurrence of all of the following events:

- (a) the appointment of a Trustee;
- (b) a settlement between a claimant and the Trustee or the final determination of the Net Equity of the Customer by the Trustee, or, in the event of a dispute, the entry of a final non-appealable order of a Court having appropriate jurisdiction;
- (c) the payment or delivery of Securities and or cash to the Customer in satisfaction of its Net Equity up to the SIPC limits;
- (d) the final distribution by the Trustee to the Customer from Customer Property;
- (e) the final distribution by the Trustee to the Customer from the general estate of the Principal;
- (f) the receipt by the Company of a written claim from a Customer on the required form, certified by the Customer as provided below and including:
  - (i) a copy of one of the following: (A) the final determination by the Trustee of the Net Equity of the Customer, (B) an agreement between the Customer and the Trustee settling the Customer's Net Equity Claim or (C) the final, non-appealable order of a court having appropriate jurisdiction, which order determines or confirms the Trustee's determination of the Net Equity of the Customer;
  - (ii) the instructions for payment of covered losses hereunder to the Customer; and
  - (iii) other information relevant to the Customer's claim as solely determined by the Company; and
- (g) the Customer shall have executed the assignment required in Section B (5) of this Surety Bond.

With respect to item (f) above, the Company shall require a certified statement from the Customer, sworn and notarized, in a form acceptable to the Company in its sole discretion, that the copies provided are true and accurate. In the case of Customers specified in Section A (2)(a), (b) or (c) above, or in the case of a settlement between a Customer and the Trustee with respect to a Net Equity Claim, or in the event that any component of Net Equity is not finally determined by the Trustee or by final non-appealable order of a Court having appropriate jurisdiction, the Company or its designated representative, instead of the Trustee, shall make any final determinations with respect to a Customer's Net Equity Claim.

- (3) A payment by the Company to a person in settlement of a claim, made under any CAPCO surety bond shall, to the extent of that payment, constitute a defense to the Company against any duplicative claim made under this Surety Bond by any person.

- (4) The Principal, or its successor by operation of law or regulation, shall promptly notify the Company of (i) any condition of the Principal which is reasonably likely to result in the Company being required to make payment pursuant to this Surety Bond or (ii) any assertion against the Principal of any claim or threatened claim, suit, or proceeding of which the Principal shall receive notice and that is reasonably likely to result in the Company being required to make payment pursuant to this Surety Bond. The Company shall not be required to assume control of the settlement or defense of any claims made or suits brought or proceedings instituted against the Principal, but the Company shall have the right and shall be given the opportunity to associate with the Principal or its successor in interest in the defense and control of any claim, suit or proceeding where the claim or suit involves or appears reasonably likely to affect payment under this Surety Bond, in which event the Principal and the Company shall cooperate in all things in the defense of such claim, suit or proceeding, but lack of cooperation on the part of the Company or the Principal shall not inure to the detriment of the Customer.

The Principal or its representative shall give the Company prompt notice of all material actions taken by the Principal or on its behalf with respect to allocation as and of Customer Property and the determination and payment of Net Equity Claims. In addition to any rights that the Company may otherwise have, the Company shall have the right and shall be given the opportunity to participate in any discussions with the Principal or its representative that involve a transfer of a bulk of the assets of the Principal or any other matter which involves or appears reasonably likely to affect payment by the Company under this Surety Bond.

- (5) Subject to any subrogation rights of SIPC, the Company shall be subrogated to the rights and claims of each Customer to whom the Company shall make payment under this Surety Bond to the extent of the Company's payment to the Customer on account thereof. Each Customer to whom the Company shall be obligated to make payment shall, as a condition to the receipt thereof, execute an assignment of such rights and claims in favor of the Company in a form acceptable to the Company and shall agree, at the Company's expense, to cooperate with the Company and exercise reasonable efforts to assist the Company to recover such payment, together with all costs and expenses (including attorneys' fees) incurred by the Company in connection therewith. The foregoing notwithstanding, the Company shall not assert any rights of the Customer for satisfaction of Net Equity Claims to which the Company is subrogated except to the extent the Company shall have satisfied such Net Equity Claims.
- (6) The Principal agrees that any advertising or marketing by or on behalf of the Principal which references the Company's name or coverage hereunder must be submitted, in advance, for the Company's approval.
- (7) 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.
- (8) All capitalized terms, if not defined herein, shall have the same meaning as used in SIPA. In the case of the term "Trustee" (which is not defined in SIPA), "Trustee" shall mean the trustee appointed under SIPA.
- (9) Any notice or other communication to be sent or delivered hereunder shall be made in writing and shall be deemed to have been sufficiently given as of the date of receipt if

mailed by overnight delivery service guaranteeing delivery or by certified mail return receipt requested, or personally delivered against receipt to the person to whom it is to be delivered,

In the case of the Company to:

Customer Asset Protection Company  
c/o Marsh Management Services Inc.  
1166 Avenue of the Americas  
New York, NY 10036  
USA

In the case of the Principal to:

(Name and Address of Principal)

or to such other address or facsimile number as the party shall have furnished in writing in accordance with this Section B (9).

- (10) For purposes of this Surety Bond, the Bond Period shall become effective at 12:01 a.m. EST on \_\_\_\_\_ and shall continue for a period of twelve (12) consecutive calendar months to expire at 12:01 a.m. on \_\_\_\_\_. At the option of the Company, the Bond Period may be extended for additional periods for which a premium is paid and the Company issues a Continuation Certificate. This Surety Bond shall respond to a covered loss only where the Filing Date occurs during the Bond Period.
- (11) This Surety Bond shall be governed and construed in accordance with the laws of the State of New York. If any provision of this Surety Bond is found not to conform with applicable laws, such provision shall be deemed null and void and all other provisions shall remain in full force and effect.
- (12) As a condition precedent to any coverage hereunder, the Principal represents and warrants that it has not purchased and will not purchase any coverage, whether primary, excess or contributory, whose primary purpose is to provide coverage to Customers in excess of, or supplementary to, coverage under SIPA from an insurer other than the Company. A breach of this representation and warranty shall render this Surety Bond null and void from inception.
- (13) Any dispute or difference between the Company and the Principal (or its successor by operation of law) relating to the interpretation or performance of this Surety Bond, including but not limited to its formation or validity, or any transaction under this Surety Bond, whether arising before or after termination, shall be submitted to binding arbitration (which shall be the sole remedy or method of resolving any such dispute or difference) in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award by the arbitrators may be entered in any court having jurisdiction thereof.

Upon written request of any party, each party shall choose an arbitrator and the two chosen shall select a third arbitrator. If either party refuses or neglects to appoint an arbitrator within thirty (30) days after receipt of the written request for arbitration, the requesting party may appoint a second arbitrator. If the two arbitrators fail to agree on

the selection of a third arbitrator within thirty (30) days of their appointment, either party shall petition the American Arbitration Association to appoint the third arbitrator. If the American Arbitration Association fails to appoint the third arbitrator within thirty (30) days after it has been requested to so do, either party may request a justice of a Court of general jurisdiction of the state, province, or other location in which the arbitration is to be held to appoint the third arbitrator. All arbitrators shall be attorneys and/or active or retired officers of insurance or surety companies with relevant insurance expertise, and disinterested in the outcome of the arbitration. Each party shall bear the expenses of its own arbitrator and shall share equally all other expenses of the arbitration, including the expenses of the third arbitrator.

The arbitration shall take place at New York, New York unless otherwise mutually agreed between the Company and the Principal.

An action by any party to this Surety Bond for preliminary injunction, temporary restraining order or similar prejudgment relief shall not constitute a waiver of that party's right to seek arbitration pursuant to the terms of this Section B (13).

The Principal agrees to keep all details of the arbitration and the underlying dispute confidential.

This Section B (13) shall remain in full force and effect in the event any other provision of this Surety Bond shall be found invalid or non-binding.

Any dispute or difference between the Company and a Customer with respect to coverage or claims payments hereunder shall be resolved by binding arbitration in a manner similar to that specified above and each Customer shall, when submitting a claim to the Company, be required to agree that such arbitration shall be the Customer's sole remedy as a condition to such Customer's receipt of any claim payment hereunder.

Signed as a deed, on behalf of the Company

\_\_\_\_\_  
\_\_\_\_\_  
President

Signed as a deed, on behalf of the Company

\_\_\_\_\_  
\_\_\_\_\_  
Secretary