中華民國證券商業同業公會委託專題研究

證券商受託買賣外國有價證券增加融資借券業務之架構及作法研究

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第一章　緒論

第一節　研究動機與目的

為落實我國金融國際化及自由化，並擴大證券商業務範圍及滿足各類投資人多樣化交易需求，我國於 1991 年 1 月依證券交易法第四十四條第四項規定，訂定公布「證券商受託買賣外國有價證券管理規則」（以下簡稱「管理規則」），正式開放證券商得辦理受託買賣外國有價證券業務，開放至今已逾 18 年，市場參與者與日俱增，交易金額亦屢創新高。另一方面，2006 年 1 月，證券交易法第六十條修正通過，於該條文增列證券商得經主管機關核准，辦理有價證券借貸或為有價證券借貸之代理或居間業務，除賦予我國現行集中式借券制度朝多數國外分散式借券市場發展之法源外，俾藉此健全證券市場交易制度，惟有價證券借貸的標的仍有所限制。

依「管理規則」第十九條第一項規定，證券商接受委託人委託買進之外國有價證券，除專業投資機構外，應由證券商以其名義或複受託證券商名義寄託於交易當地保管機構保管，並詳實登載於委託人帳戶及對帳單，以供委託人查對。由上述規定可知，證券商從事受託買賣外國有價證券業務的重要特性之一，即為股票需由受託之證券商進行保管，故相對而言，其券源較為穩定，且較可直接掌握外國有價證券及客戶之相關風險，故若能適度開放辦理此項業務之證券商同時可承做國外有價證券之借券業務，對於相關業務的活絡，及促進市場與客戶資金的靈活調度，應有極大的助益。此外，依現行「管理規則」第十三條規定，證券商受託買賣外國有價證券，不得為有價證券買賣之融資融券，惟本條意旨係禁止證券商代投資人買賣外國有證券時所為之融資融券，似非限制證券商自行所為之融資融券行為，亦難認證

券商不得透過轉融通之方式取得外國有價證券，故證券商得否辦理外國有價證券相關的融資及借券交易似仍有探討空間。

為促進台灣金融市場成為「亞太金融中心」，除需具備多樣化的籌融資工具，與交易相關之配套措施亦必須日益完善，方可吸引更多資金俾有效提升我國金融市場之競爭力。目前正值金融海嘯過後，金融市場日益復甦之際，為強化證券商之業務發展，是否開放證券商受託買賣外國有價證券增加融資借券業務？若開放其架構及作業應如何進行？相關的配套措施應如何設計以有效落實風險管控？實有必要進一步加以探討。

第二節　研究範圍與方法

本專案的重點在於蒐集國外有關證券商受託買賣外國有價證券融資借券業務之作法，以及國內證券商現行融資借券業務及受託買賣外國有價證券業務之現況與問題，並於分析國內法規與實務環境後，提出未來我國關於證券商於受託買賣外國有價證券時亦可辦理融資借券業務之可行架構及相關配套措施之建議。

本研究共分為五章，茲將其內容做一簡要說明：

第一章：包括研究動機與目的，以及界定本研究之範圍。

第二章：分析國內證券商受託買賣外國有價證券業務現況以及現行證券商有價證券借貸業務及法規相關規定。

第三章：蒐集國外證券商從事有價證券借貸及外國有價證券融資及借券業務之作法。

第四章：根據訪談結果及所蒐集之國內外資料，初步提出證券商受託買賣外國有價證券增加融資借券業務之架構、法規應配合修

正之處以及其他相關配套措施。

第五章：為本研究之結論與建議。彙整前面章節重點，並提出短期和中長期之具體執行建議。

第三節　研究流程

本研究的流程如下：

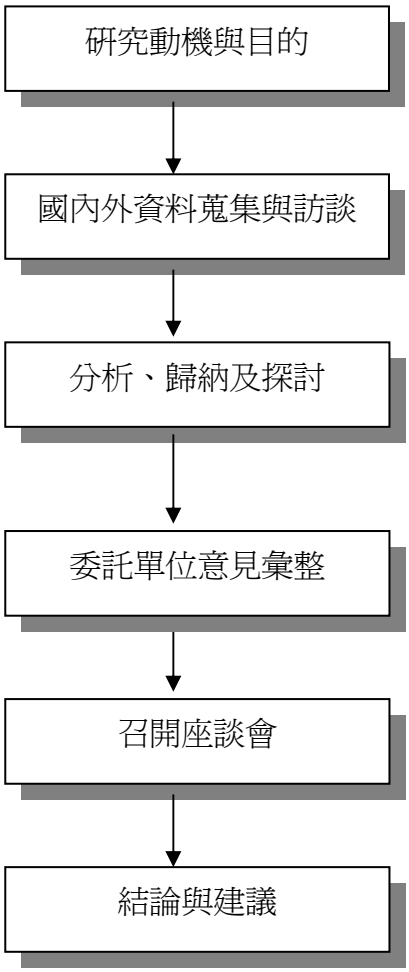


圖 1-1　研究流程圖

註 1：本會共計訪談富邦、永豐金、東亞、元大、凱基等五家證券商，訪談紀錄詳附錄一。

註 2：本會分別於 9/2 召開「如何健全證券商受託買賣外國有價證券業務並落實投資人保護」座談會、11/12 召開「證券商受託買賣外國有價證券增加融資借券業務之架構及作法研究」諮詢座談會，邀請產、官、學專家共同與談，座談會會議紀錄詳附錄二。

第二章　我國現行有價證券融資借券作業架構及法律規範

第一節　證券商受託買賣外國有價證券現況

一、業務發展

為增加國人投資管道並落實我國金融國際化及自由化政策，證券交易法主管機關財政部證券管理委員會（現為行政院金融監督管理委員會）於 1991 年 1 月 7 日依證券交易法第 44 條第 4 項規定，訂定發布「證券商受託買賣外國有價證券管理規則」，正式開放證券商得辦理受託買賣外國有價證券業務。證券商若具備在外國證券交易市場交易資格者，得直接為委託人於外國證券交易市場進行有價證券之買賣；若不具備在外國證券交易市場交易資格者，亦得以直接或間接方式委託具備外國證券市場交易資格之證券商（即「複受託證券商」），為委託人辦理外國有價證券之買賣。最早投入本項業務者為 2 家外資證券商－美商美林證券台灣分公司以及美商協利證券（即 Lehman Brothers 的前身）台北分公司。

該項業務開放迄今已逾 18 年，市場參與者與日俱增，交易金額亦逐年成長，而於 2007 年突破新台幣 1 兆元。歷年來，主管機關為促進市場活絡，曾多次開放各項措施，方造就今日市場之榮景，相關重要開放事項及措施說明如下：

（一）有關辦理本業務證券商資格之開放

本項業務開放之初，僅限證券商本身或其投資設立之附屬機構，具有美國紐約證券交易所、日本東京證券交易所及英國倫敦證券交易所會員資格者，始得經營本業務。1996 年 7 月 11 日，則開放直接受託證券商具備之資格不以上述三者為限，且另行開放證券商得以「複委託」方式委託具資格者辦理受託買賣外國有價證券業務，使未具有

外國證券交易市場會員資格的國內證券商，亦得參與受託外國有價證券買賣業務，有助於業務的活化。2000 年 10 月 5 日，除了直接受託以及複委託的方式外，主管機關又進一步開放證券商得以「間接複委託」的方式辦理本項業務，使證券商之經營業務更為多元化及經營模式更具彈性。

（二）有關得受託買賣之標的之開放

本業務開放之初，得受託買賣之市場範圍僅限於美國紐約證券交易所、日本東京證券交易所及英國倫敦證券交易所上市之有價證券，有價證券種類僅限於股票、中央政府發行之公債、公司債及受益憑證。使得投資人欲委託證券商買賣外國有價證券者，在交易市場和標的種類上均受到極大的限制，亦使本項業務無法順利開展。

1996 年 7 月 11 日，放寬受託買賣之外國有價證券為經主管機關指定之外國證券市場之股票、認股權證及受益憑證，另在外國債券部分，應取得一定評等等級（S&P BBB 級或 Moody’s Baa 級以上）以上方可受託買賣。同年 11 月 1 日，更公告得受託買賣之證券交易市場範圍，除中國大陸地區外全面開放；至於香港地區，則除由大陸地區政府、公司在港發行之有價證券外，得為國人投資標的。

2003 年 3 月、2005 年 8 月及 2006 年 7 月則修正受託標的種類，使得受託買賣之有價證券包括：1.於外國證券交易市場交易之股票、認股權證、受益憑證、存託憑證及其他有價證券；2.符合一定信用評等規定，由國家或機構保證或發行之債券，其中，一般債券係指本身之評等，連動債則指機構評等或債券本身之評等，惟不包括本國企業赴海外發行之公司債及以國內有價證券、本國上市櫃公司於海外發行之有價證券與國內投信事業於海外發行之受益憑證為連結標的之連動型或結構型債券；3.經主管機關核准或申報生效在國內募集及銷售

之境外基金；4.其他經主管機關核定之有價證券。

2007 年 11 月 20 日，主管機關基於市場管理考量，重新發布函令規範證券商受託買賣外國有價證券，不得涉及以下各款：1.大陸地區證券市場有價證券；2.大陸地區政府或公司在香港地區發行或經理的有價證券（國企股）；3.恆生香港中資企業指數成分股所發行的有價證券；4. 港澳地區由大陸政府、公司直接或間接持有 30%以上股權公司所發行有價證券（紅股）；至於其他外國證券交易市場掛牌之有價證券，不得受託買賣以下標的：1.大陸地區註冊公司在大陸地區及香港地區市場以外之其他證券交易市場掛牌之有價證券（含股票、存託憑證）；2.經政府認定陸資企業直接或間接持有股權 50%以上（含 50%）或低於 50%但具實質控制力之外國企業所發行之有價證券（不包括含有上開外國有價證券之 ETF 商品），另經主管機關表示香港地區成分股為 100%大陸有價證券之 ETF 不屬不得受託買賣之標的。

2009 年 8 月 21 日，有鑑於金融海嘯之發生，對於投資人產生重大影響，主管機關規定，證券商受託買賣外國有價證券之受益憑證，以指數股票型基金(ETF)為限，且委託人為非專業投資人[1]者，限受託買賣以投資股票、債券為主且不具槓桿或放空效果之 ETF；且除依規定辦理外，並不得涉及大陸地區或港澳地區之有價證券；外國中央

[1]依「境外結構型商品管理規則」第三條第三項之規定：本規則所稱專業投資人，係指投資人符合以下條件之一者：
一、專業機構投資人：係指國內外之銀行、保險公司、票券金融公司、證券商、基金管理公司、政府投資機構、政府基金、退休基金、共同基金、單位信託、證券投資信託公司、證券投資顧問公司、信託業、期貨商、期貨服務事業及其他經本會核准之機構。
二、最近一期經會計師查核或核閱之財務報告總資產超過新臺幣五千萬元之法人或基金。但中華民國境外之法人，其財務報告免經會計師查核或核閱。
三、同時符合以下三項條件，並以書面向受託或銷售機構申請爲專業投資人之自然人：
(一) 提供新臺幣三千萬元以上之財力證明；或單筆投資逾新臺幣三百萬元之等值外幣，且於該受託、銷售機構之存款及投資(含該筆投資)往來總資產逾新臺幣一千五百萬元，並提供總資產超過新臺幣三千萬元以上之財力聲明書。
(二) 投資人具備充分之金融商品專業知識或交易經驗。
(三) 投資人充分了解受託或銷售機構受專業投資人委託投資得免除之責任，同意簽署爲專業投資人。

債券、外國債券及外國證券化商品之發行者皆應符合信用評等機構評定達一定等級以上。此外，證券商受託買賣境外結構型商品，應依「境外結構型商品管理規則」之相關規定辦理。

（三）有關委託人資格之開放

本項業務原先僅開放國人從事，亦即委託人資格限於在中華民國境內居住，年滿 20 歲領有國民身分證或外僑居留證之個人及經中華民國政府核准設立登記之公司、行號或團體。後於 2001 年 10 月 23 日放寬外國法人亦得於本國開戶買賣外國有價證券，亦即經外國政府核准設立登記之公司、行號或團體亦得開戶買賣外國有價證券，以擴大交易對象範圍，進而拓展業務。

2009 年 8 月 21 日，主管機關規定證券商受託買賣外國中央政府債券、外國債券(含可轉換公司債及附認股權公司債) 、外國證券化商品及境外結構型商品，應依「非專業投資人」及「專業投資人」分級管理，其債務發行評等須符合信用評等機構評定達一定等級以上。有關「非專業投資人」及「專業投資人」，適用境外結構型商品管理規則第三條第四項及第三項之規定。

（四）其他開放事項

「證券商受託買賣外國有價證券管理規則」於 2003 年 3 月 26 日曾大幅修正，以因應時空變遷、符合實務運作，主要修正重點如下：

1. 客戶閒置資金運用：證券商得於委託人開戶時或開戶後，與委託人書面約定，於其結清某一證券投資後，由國外執行下單之證券機構將買賣價金轉投資於另一種委託人事前約定符合當地國市場規定之貨幣市場基金或債券型基金，以增加委託人資金運用之彈性，並節省委託人因資金匯入匯出產生之成本。
2. 委託方式：開放證券商得接受委託人以價格區間及有效期間下

單之委託方式。

3. 交割款項及費用收付幣別：放寬證券商與委託人交割款項及費用之收付得以新台幣或證券商委託人雙方合意指定之外幣為之。
4. 開戶方式：開放約定每日買賣最高額度不超過新台幣 100 萬元之自然人，得以網際網路、書信或其他方式申請開戶。
5. 得免交付買賣報告書之情形：開放經委託人簽具同意書且於確認成交當日將委託買賣相關資料以電話或電子郵件方式通知委託人者，得免交付委託人買賣報告書。

二、相關規範及實務交易流程

（一）相關重要規範

茲將「證券商受託買賣外國有價證券管理規則」之相關重要規範摘要整理如下：

1.證券商經營受託買賣外國有價證券業務之資格：

(1) 直接委託：

❶本公司或其子公司、分公司、或與其具轉投資(指持股超過任一方股份總額之 20%以上者)關係之證券機構，具有金管會指定外國證券交易市場之會員或交易資格。

❷具有即時取得前款外國證券市場之投資資訊及受託買賣之必要資訊傳輸設備。

(2) 複委託：未具上述條件者，得以直接或間接方式委託前項之證券商或具本會指定外國證券交易市場會員或交易資格之證券商，買賣外國有價證券。

2.受託買賣標的：可受託買賣之外國有價證券種類及外國證券市

場，依金管會發布之函令規定，目前可交易標的包括於符合規定之外國證券市場交易之股票、認股權證、受益憑證、存託憑證、符合一定信評等級的債券、在國內募集及銷售之境外基金及其他經核准之有價證券。

3.交易對象：目前證券商接受委託人簽訂受託買賣外國有價證券契約之交易對象包括國內、外自然人；國內公司、行號或團體；國內政府基金、證券投資信託基金、投資型保險專設帳簿資產及全權委託投資帳戶。

4.全權委託之禁止：證券商受託買賣之外國有價證券，經其推介者，應符合「證券商推介買賣外國有價證券之管理辦法」規定。證券商不得接受代為決定種類、數量、價格或買入、賣出之全權委託。（第 11、12 條）

5.融資融券之禁止：證券商受託買賣外國有價證券，不得為有價證券買賣之融資融券。（第 13 條）

6.委託人閒置資金之運用：證券商得與委託人以書面約定，於委託人結清某一證券投資後，由國外執行下單之證券機構將買賣價金轉投資於另一種委託人事前約定符合當地國市場規定之貨幣市場基金或債券型基金。（第 18 條）

7.國外保管機構：證券商接受委託人委託買進之外國有價證券，除專業投資機構外，應由證券商以其名義或複受託證券商名義寄託於交易當地保管機構保管，並詳實登載於委託人帳戶及對帳單，以供委託人查對。（第 19 條）

8.資料提供：證券商受託買賣外國有價證券，其提供予投資人之資料或對證券市場、產業或個別證券之研究報告，應以其本公司或經授權證券商使用者為限，並摘譯為中文，以利投資人閱

覽。但經投資人書面同意者，得不摘譯為中文。（第 21 條第 1 項）

9.轉介之禁止：證券商及其負責人、受僱人不得轉介投資人至國外證券商開戶、買賣外國有價證券。（第 26 條第 1 項）

（二）交易流程

1. 簽訂契約：證券商受託買賣外國有價證券，應與委託人簽訂「受託買賣外國有價證券契約」，始得接受委託辦理買賣有價證券。委託人為自然人者，應持身分證、外僑居留證或護照正本，親自簽訂受託契約並交付身分證明影本留存；委託人為未成年者，應由法定代理人親持本人及委託人之身分證、外僑居留證或護照辦理，並交付影本留存；委託人為法人者，應檢附法人登記證明文件、合法之授權書，由被授權人親持身分證或外僑居留證辦理，並交付影本留存。
2. 開戶：委託人開戶前，證券商應指派業務人員說明買賣外國有價證券可能風險，且應交付「風險預告書」，並由負責解說之業務人員與委託人簽章存執。委託人委託證券商買賣外國有價證券，應先開立台股帳戶，同時簽署海外交易開戶契約，並在指定銀行開立外幣圈存帳戶。外幣圈存帳戶主要用來圈存及收付交易行為中的交割股款，帳戶中除圈存之餘款可供客戶自由靈活運用。若僅交易境外基金，並選擇以台幣交割者，可不開立外幣圈存帳戶，惟須於每次申購時將台幣款項匯入證券商指定之申購帳戶，並於開戶時提供客戶本人台幣帳戶，作為贖回之約定匯入帳戶。
3. 證券交易流程：有關投資人在證券商買賣外國有價證券之流程如下圖所示。(以國內某券商為例)

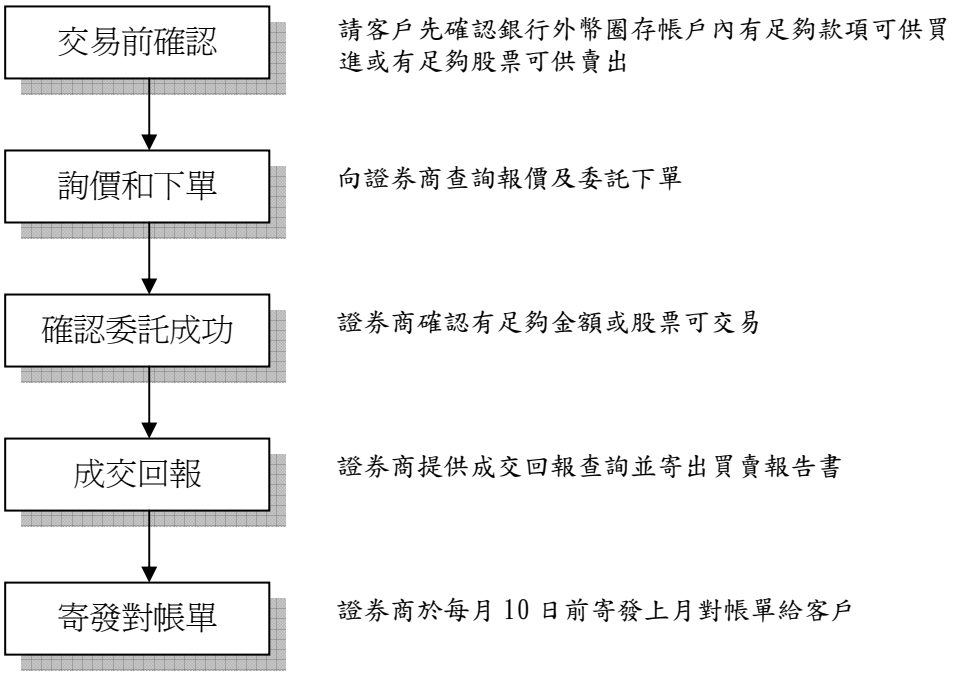


圖 2-1　投資人在證券商買賣外國有價證券流程圖

資料來源：元大證券

4.交割期限：證券商受託買賣外國有價證券，與委託人款券之交割應依各外國證券市場之交割期限辦理。

5.有價證券保管

買進外國有價證券時，證券商於各交易市場之保管機構均有開設保管專戶寄託保管並留存相關明細備查。受託證券商亦提供客戶股票與債券保管、股票分割、股票合併、有償認股／無償配股，債券配息等相關服務。境外基金部分則由境外基金公司所指定之境外保管銀行提供保管服務。

三、交易現況

最近十年來，除了去年受到金融海嘯的影響，國外證券市場大多呈現衰退，故受託從事外國有價證券買賣業務之交易金額亦隨之減少

外，其餘大多呈現逐年成長的趨勢，即使 2007 年受到次級房貸衝擊導致整體信用市場緊縮的因素，當年度與前一年相較亦仍持續成長。

（一） 經營本業務之證券商家數日益增加

有鑑於金融理財的無國界化，國人對於投資海外市場的需求與日俱增，因此，近年來，有愈來愈多證券商開辦受託買賣外國有價證券業務，以符合客戶的需要。截至 2008 年底止，得經營受託買賣外國有價證券業務的證券商計有 51 家，較 2000 年時的 20 家，約成長了 1.5 倍，其中尚不包括在這段期間內因合併或營業讓與而消滅之證券商，否則應有更高的數字。以 2008 年底辦理本項業務的 51 家證券商來看，本國證券商有 25 家，外國證券商在台灣分公司則有 16 家，顯見本項業務並非外資券商的專利，本國證券商亦正積極爭取此項業務發展。有關申請核准得經營受託買賣外國有價證券業務之證券商的家數統計如圖 2-2 所示。

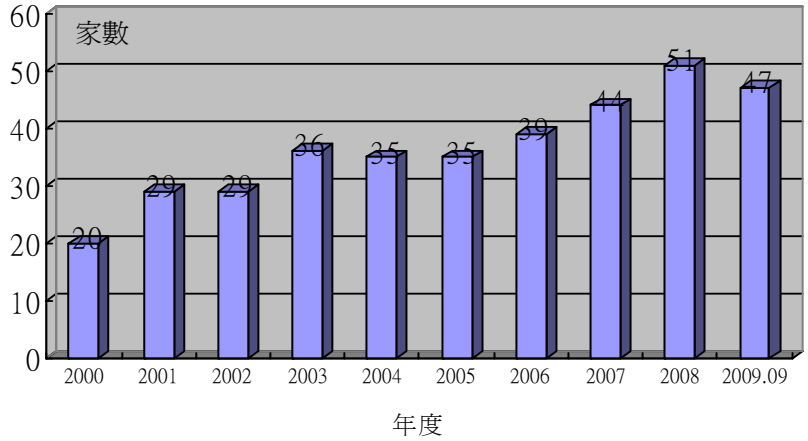


圖 2-2 經營受託買賣國外有價證券業務證券商家數統計

資料來源：中華民國證券商業同業公會（http://www.csa.org.tw）

（二） 年度交易總金額於 2007 年突破新台幣 1 兆元

由於國內投資人愈來愈能接受資產配置及投資組合分散的概念，並且在金融市場愈來愈國際化的激勵下，證券商受託買賣外國有證券的交易金額在 2000～2007 年間呈現逐年提高之趨勢，由 2000 年

的新台幣 729 億元，增加至 2007 年的新台幣 1 兆 484 億元，成長將近 14 倍。惟 2008 年，由於次貸風暴的後續發展以及金融海嘯的影響，造成全球金融市場低迷，也讓證券商受託買賣外國有價證券之交易金額下跌至 6,207 億，較 2007 年大幅減少約 40%。至於在開戶人數方面，截至 2009 年 9 月底止，法人開戶數計有 3,345 戶，個人開戶數計有 433,376 戶，合計 436,721 戶。有關 2000~2009 年 9 月證券商受託買賣國外有價證券交易金額統計如圖 2-3 所示。

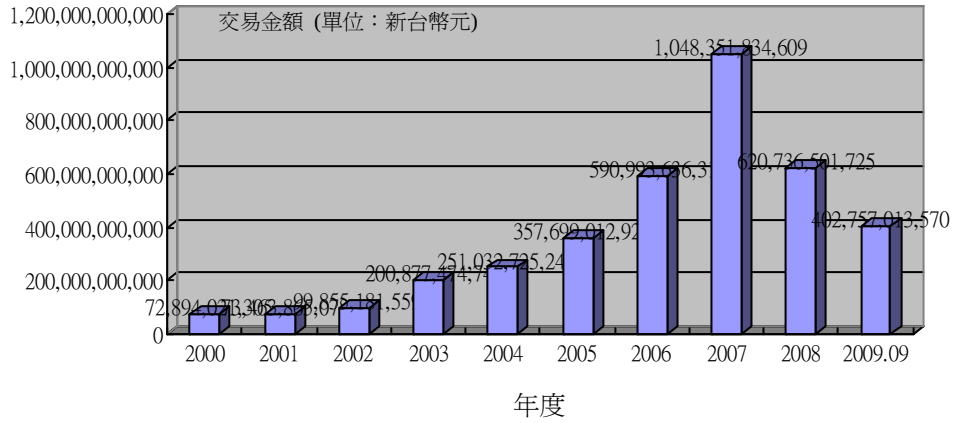


圖 2-3 證券商受託買賣國外有價證券交易金額統計

資料來源：中華民國證券商業同業公會（http://www.csa.org.tw）

以個別證券商來看，2008 年交易金額最高者為富達證券，全年交易金額高達新台幣 2,667 億元，約占所有交易金額的 43%，其次依序為摩根大通（新台幣 1,046 億元，約占 17%）、摩根富林明（新台幣 552 億元，約占 9%）、美商花旗美邦（新台幣 464 億元，約占 7%）、富通（新台幣 342 億元，約占 6%），由此可知 2008 年受託買賣外國有價證券之交易金額最高前五名均為外資證券商，顯示其在此部分業務仍具有一定優勢。

就 2008 年的交易市場來看，前三名分別是盧森堡的 89.79 億美元、美國的 55.93 億美元以及香港的 34.13 億美元，顯示國人仍偏好

投資證券市場發展制度較健全的國家地區。有關各市場之交易金額如圖 2-4。

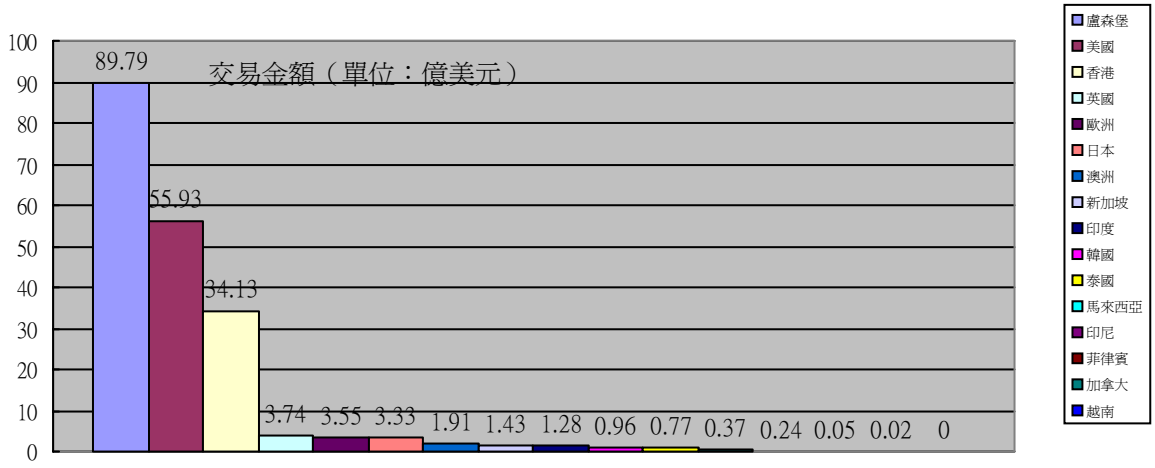
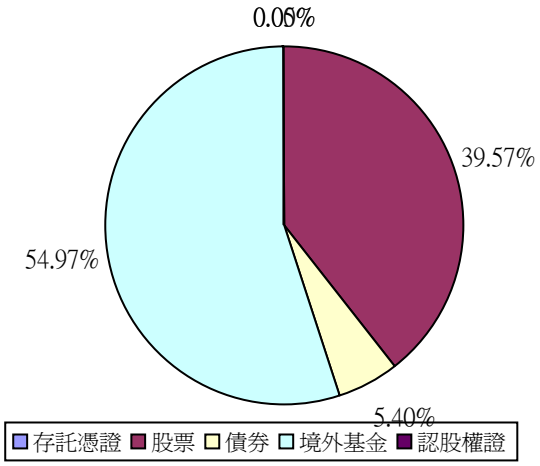


圖 2-4　2008 年受託買賣外國有價證券交易市場統計

資料來源：中華民國證券商業同業公會（http://www.csa.org.tw）

而就交易商品而言，以境外基金占最大多數，交易金額達 109 億美元，約占所有交易金額的 55%，其次為股票的 78 億，約占所有



交易金額的 40%，兩者合計已達 95%，其餘存託憑證、認股權證之交易金額均占極小的比例。有關各類商品之交易比例如圖 2-5。

圖 2-5　2008 年受託買賣外國有價證券交易商品統計

資料來源：中華民國證券商業同業公會（http://www.csa.org.tw）

第二節　國內證券商現行有價證券融資融券業務

我國融資融券交易的法令依據，除依 1988 年 1 月 29 日修正公布之證券交易法第 60 條規定，明定「證券商辦理有價證券買賣融資融券管理辦法」及修正的「證券金融事業管理規則」外，另有「臺灣證券交易所股份有限公司證券商辦理有價證券買賣融資融券業務操作辦法」、「證券商辦理有價證券買賣融資融券契約書」及證券金融事業對證券商轉融通業務操作辦法等規定。目前國內已有許多證券商依上開管理辦法開辦融資融券業務，而舉凡對於證券發行、交易之投資授信等證券金融業務則有復華、環華、富邦及安泰四家證券金融公司專責經營。

近年來，我國信用交易占市場買賣量值比率（總成交金額）已逐漸降低，而自然人投資比重亦逐年降低，2007 年已低於 70%，因此，信用交易比重之降低與市場投資人結構之變化有密切關係。有關我國上市、上櫃證券信用交易情形詳表 2-1 及表 2-2。

表 2-1　上市證券信用交易值分析表

年	總成交值 (A)	融資交易 (B)	融券交易 (C)	信用交易 (B+C)	資券相抵 (D)	融資餘額	融券餘額 (百萬股)
1999	29,423.78	24,070.22	1,940.69	26,010.96	6,554.88	455.61	568.43
2000	30,767.29	23,012.93	2,175.66	25,188.59	6,609.56	195.56	492.52
2001	18,398.34	12,394.37	1,694.49	14,088.86	4,782.19	203.43	793.37
2002	21,920.24	13,653.54	1,404.99	15,058.53	5,423.81	220.26	1,484.53
2003	20,481.40	11,712.78	1,110.36	12,823.13	4,488.92	273.47	813.10
2004	24,176.92	12,889.13	1,107.47	13,996.60	4,645.85	262.57	1,393.84
2005	19,050.24	8,957.16	974.38	9,931.55	3,952.56	227.82	876.73
2006	24,195.03	10,764.32	959.44	11,723.76	4,966.37	273.55	959.33
2007	33,504.37	15,334.02	962.34	16,296.36	5,890.85	325.97	390.98
2008	26,662.24	9,887.10	1,104.24	10,991.32	5,238.43	120.16	637.70
2009.09	21,413.89	8,781.15	935.43	9,716.58	5,149.24	218.56	945.16

資料來源：金管會證期局(http://www.sfb.gov.tw)

表 2-2　上櫃證券信用交易值分析表

年	總成交值 (A)	融資交易 (B)	融券交易 (C)	信用交易 (B+C)	資券相抵 (D)
1999	1,898.54	598.06	18.08	616.14	
2000	4,478.12	1,579.26	75.33	1,654.59	
2001	2,304.35	759.74	44.77	804.51	
2002	2,709.13	904.47	52.86	957.33	
2003	2,020.28	814.71	64.80	879.51	
2004	3,458.29	1,404.28	137.99	1,542.30	
2005	3,166.03	1,605.60	170.60	1,776.23	120.53
2006	5,128.98	2,888.37	263.75	3,152.09	818.65
2007	8,537.38	5,151.54	318.81	5,470.37	1,531.75
2008	3,285.46	1,835.00	151.56	1,986.57	595.80
2009.09	3,550.72	1,974.86	176.43	2,151.31	792.06

資料來源：金管會證期局(http://www.sfb.gov.tw)

有關我國現行信用交易相關規定分述如下：

一、得為融資融券標的

普通股股票、受益憑證及臺灣存託憑證上市（上櫃）滿半年，且無股價波動過劇、股權過度集中及成交量過於異常等現象者、但指數股票型證券投資信託基金受益憑證除外，其中普通股股票每股淨值需在票面以上，臺灣存託憑證年度或半年度合併財務報告無累積虧損，且單位數為六千萬個單位以上，由臺灣證券交易所（或櫃檯買賣中心）公告得為融資融券交易。

二、信用帳戶的開立

（一）融資融券交易的對象：為在證券商開戶買賣證券之委託人。

（二）信用帳戶的開立條件：

1. 須為年滿 20 歲有行為能力的中華民國國民，或依中華民國法律組織登記的法人。
2. 開立受託買賣帳戶滿 3 個月。

3. 最近 1 年內委託買賣成交 10 筆以上，累積成交金額達所申請之融資額 50%，其開立受託買賣帳戶未滿 1 年者亦同。
4. 最近 1 年內所得與各種財產合計達所申請額度之 30%，惟申請融資額度未逾新台幣 50 萬元者不適用之。所定財產證明以委託人本人或其配偶、父母、成年子女所有為限，但非本人所有者，其財產所有人應為連帶保證人。
5. 認售權證發行人、從事結構型商品業務之證券商與專、兼營期貨自營商同時擔任股票選擇權造市者、得為對沖避險所需，從事融券賣出，且不受平盤下不得融券賣出之價格限制。
6. 證券投資信託事業所經理之私募證券投資信託基金、證券投資信託事業或證券投資顧問事業所經理之全權委託投資帳戶，或證券經紀商兼營證券投資顧問事業辦理全權委託投資業務，全權委託及基金保管機構得代理客戶開立信用帳戶，融資融券餘額不得超過基金規模或淨資產價值之 50%。

三、信用交易管制措施

（一）融資融券的限額

1.融資限額：每戶最高限額 6,000 萬元，上市單一個股限額 1,500 萬元，上櫃單一個股限額 1,000 萬元。

2.融券限額：每戶最高限額 4,000 萬元，上市單一個股限額 1,000 萬元，上櫃單一個股限額 750 萬元。

其中非屬證券交易所公告之臺灣五十指數成分公司普通股、臺灣中型一百指數成分公司普通股、臺灣資訊科技指數成分公司普通股、指數股票型基金受益憑證（ETF）及其成分公司普通股，以及摩根士丹利資本國際公司（MSCI）公告之臺灣股價指數成分公司普通股部分，每戶最高融資限額為 3,000 萬元，最高融券限額為 2,000 萬元。

（二）融資融券的期限

融資融券的期限均為 6 個月，但主管機關規定得視投資人信用狀況，准予其展期 6 個月，並以一次為限。

（三）融資比率及融券保證金成數

融資比率及融券保證金成數係依據證券交易法及證券期貨局規定辦理，依 2007 年 6 月之規定上市、上櫃股票：最高融資比率分別為 60%、50%；最低融券保證金成數則均為 90%。

各證券金融公司及辦理有價證券買賣融資融券業務之證券商得於上述規定下，視投資人之信用狀況及有價證券之風險程度，自行訂定融資比率及融券保證金成數。

（四）市場授信限額的暫停與恢復

除了融資比率及融券保證金成數的管制之外，主管機關亦針對融資餘額及融券餘額加以限制。其內容可分為依全體市場管控及個別證券商管控等二部分：

1.全體市場管控部分

每種得為融資交易之股票，其融資餘額達該種股票上市股份總數 25%，暫停融資買進，俟其融資餘額低於 18%，才恢復其交易。每種得為融券交易之股票，其融券餘額達該種股票上市股份總數 25%，暫停融券賣出，俟其融券餘額低於 18%，才恢復其融券交易。

2.個別證券商管控部分

證券商本身可能因下列因素，而需全面暫停新增融資融券交易：

(1)證券商辦理有價證券買賣融資融券，對客戶融資或融券之總金額，分別不得超過其淨值 250%。

(2)其自有資本適足比率連續三個月達 250%以上者，其辦理有價證券

買賣融資融券，對客戶融資或融券之總金額，分別不得超過其淨值 400%。

(3)證券商依前項規定辦理後，自有資本適足比率連續二個月低於 250%且對客戶融資或融券之總金額超過其淨值 250%者，暫停對客戶融資或融券，俟其總金額低於淨值 250%或自有資本適足比率連續三個月達 250%以上後，分別依前二項規定辦理。

(4)證券商辦理有價證券買賣融資融券，對客戶融資總金額，加計辦理證券業務借貸款項之融通總金額，不得超過其淨值 400%；對客戶融券總金額，加計辦理有價證券借貸業務之出借有價證券總金額，不得超過其淨值 400%。證券商針對某一證券於其融資餘額達其淨值的 10%。

(5)證券商辦理有價證券買賣融資融券與辦理有價證券借貸業務，對每種證券融券與出借之總金額，合計達其淨值 5%。

有關我國融資融券之相關規定，彙整如表 2-3。

表 2-3　我國有關融資融券相關規定

	融資交易	**融券交易**
交易用途	借錢買入股票	借股票放空
參與人	本國自然人與一般法人	本國自然人與一般法人
標的	符合「有價證券得爲融資融券標準」之有價證券	符合「有價證券得爲融資融券標準」之有價證券
期限	6 個月。證金公司可視客戶信用狀況展延 6 個月，並以一次爲限。	6 個月。證金公司可視客戶信用狀況展延 6 個月，並以一次爲限。
原始擔保比率	融資比率： 上市有價證券最高 60%；上櫃最高 50%	最低 190%（不分上市櫃）
維持擔保比率	整戶擔保維持率下限 120%，低於下限會追繳保證金	整戶擔保維持率下限 120%，低於下限會追繳保證金

	融資交易	融券交易
是否回補	否	標的股票遇召開股東常會、除權息等，須強制回補。
交易限額	● 每一客戶融資限額爲 6,000 萬元，其中非屬台灣主要指數之成分股與指數股票型基金(ETF)及其成分股部分，最高可融資限額爲 3,000 萬元。 ● 每一客戶單一有價證券最高融資限額上市公司爲 1,500 萬元、上櫃公司爲 1,000 萬元	● 每一客戶融券限額爲 4,000 萬元，其中非屬台灣主要指數之成分股與指數股票型基金(ETF)及其成分股部分，最高可融券限額爲 2,000 萬元。 ● 每一客戶單一有價證券最高融券限額上市公司爲 1,000 萬元、上櫃公司爲 750 萬元

資料來源：陳俊佑(2009)，台灣上市股票融資融券維持率之探討－依個別公司、產業及全市場分別計算，貨幣觀測與信用評等 2009 年 1 月號，pp.17。

第三節　國內證券商現行有價證券借貸業務

一、 我國借券制度之發展

在探討借券制度之前，必須先釐清借券與融券之不同。融券制度主要係針對想要賣出股票而缺乏現股的人，給予融通的制度；借券則是由於有價證券持有人欲增加收益，而出借其持有的有價證券，或是為因應其交割、避險、策略性交易...等需求，而借入有價證券。以我國現行的作法，融券的券源主要係來自投資人融資買進所產生的有價證券，而借券則不需有融資做基礎。我國的融券制度最早起源於 1980 年復華證金公司辦理信用交易業務，允許投資人融券賣出，至 1990 年開放證券商自辦融資融券業務後，信用交易形成雙軌制。

我國真正借券系統的起源於 1996 年，證交所為支應證券經紀商因錯帳、投資人違約、瑕疵股票等無法及時完成券項交割時的缺券需求，建立交割需求借券系統。其後隨著衍生性商品市場蓬勃發展，為

滿足投資人避險、套利等策略操作之借券需求，證交所乃於 2003 年 6 月建置交易借券系統，提供國內特定機構法人集中式證券借貸平台，借貸雙方得因「策略性目的」透過此一平台行借券。2005 年 6 月，主管機關為進一步擴大外資參與有價證券借貸及活絡借貸市場，乃取消「策略性交易目的」及「外資間辦理議借交易需提供境內擔保品」等要求，即允許單獨借券放空、新增得為融資融券之上市上櫃股票為借券標的、開放外資間議借交易亦可提供境外擔保品，同時，市場整體控管改採整體借券賣出總量管制。

證券商辦理有價證券借貸業務的法源基礎確立，始自於 2006 年 1 月證券交易法第 60 條修正通過。同年 8 月，行政院金融監督管理委員會發布「證券商辦理有價證券借貸管理辦法」，開放證券商得以出借人身分出借有價證券予其客戶。自 2007 年 7 月起，辦理有價證券借貸業務之證券商與證金公司，可於其營業處所出借有價證券以借貸予證券商客戶（自然人及國內外機構法人）。2008 年 4 月，證交所修正發布「臺灣證券交易所股份有限公司有價證券借貸辦法」，明定證券商、證券金融公司依相關辦法辦理借券業務，應與證交所簽訂有價證券借貸交易契約並開立有價證券借貸帳戶後，始得透過其借券系統辦理借券交易，正式開啟我國借券市場分散式[2]與集中式[3]雙軌並存的時代。有關我國整體有價證券（不含中央登錄公債）借貸市場架構如下圖。

[2] 分散式係指借券單純由出借人、借券人兩方所構成，即出借人以其擬出借之證券，對已徵信之借券人辦理融通。如證券商及證券金融公司在其營業處所辦理有價證券借貸屬之。

[3] 集中式係指由單一專門機構彙總各出借人擬出借之證券，並同時統一協調整體借券人的需求以完成借券程序。如負責中央登錄公債借貸業務的櫃檯買賣中心借券系統及負責其他有價證券的交所集中借券系統屬之。

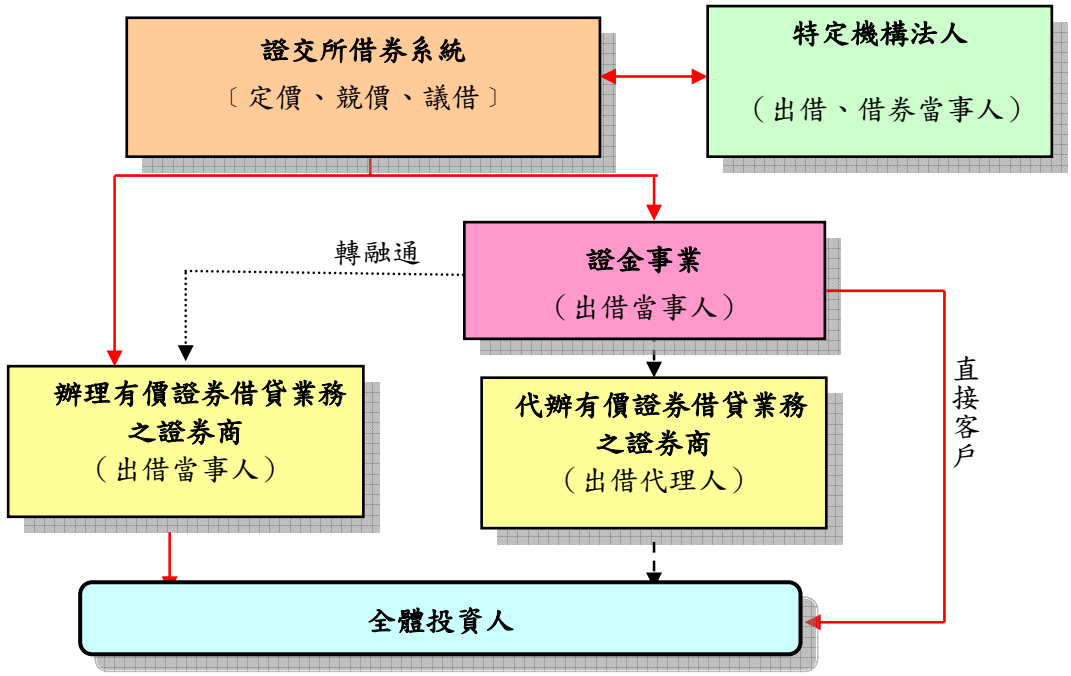


圖 2-6　我國整體有價證券借貸市場架構圖

資料來源：臺灣證券交易所

二、證券商辦理有價證券借貸業務現況

（一）現行架構

2006 年 1 月 11 日，修正通過證券交易法第 60 條，該條第 1 項第 3 款開放證券商從事「有價證券之借貸或為有價證券借貸之代理或居間」，另為因應證交法第 60 條修正，主管機關訂定「證券商辦理有價證券借貸管理辦法」，開放證券商經核准得自辦證券借貸或代理證券金融公司之證券借貸業務，而臺灣證券交易所配合規劃證券商辦理有價證券借貸制度之架構，訂定「證券商辦理有價證券借貸操作辦法」以及「證券商辦理中央登錄公債借貸操作辦法」。本文僅針對中央登錄公債以外的有價證券作為探討的標的。

證券商辦理有價證券借貸業務，係指出借有價證券予其客戶，並約定於一定期限，以同種類、同數量有價證券返還之業務行為。證券

借貸屬消費借貸與買賣斷不同，證券出借後，證券所有權即移轉至借券人，出借人應享有的權益由借券人補償，由出借人向借券人收取擔保品並洗價，借券人還券後出借人始退還擔保品。有關現行證券商辦理有價證券借貸業務相關規範說明如下：

1. 出借人：經主管機關核可之證券商。
2. 借券人：訂立委託買賣契約逾三個月以上客戶或其他經主管機關核准者。每一客戶於同一證券商，以開立一戶為限，且不得具他家證券商之身分。
3. 借貸券源：(1)自有有價證券；(2)自臺灣證券交易所借券系統借入之有價證券；(3)辦理有價證券買賣融資融券業務，取得之融資買進擔保證券。
4. 借貸標的：得為融資融券交易之有價證券或其他經主管機關核准之有價證券。
5. 借券費：證券商辦理有價證券出借，應與客戶依年利率 20%以下，自行議定借貸費率。費用計算及收取方式，由證券商與客戶自行議定，並載明於契約中。
6. 擔保品提交、更換、領回

   (1)證券商受理客戶申請借券，應收取不低於按該有價證券當日開盤參考價 140%之原始擔保比率計之擔保品。

   (2)證券商收取之擔保品種類及其抵繳價值如下：

   ①現金（不得收受外國貨幣）。

   ②中央登錄公債：按面額 9 折計算。

   ③得為融資融券之有價證券：其抵繳價值，上市有價證券按最近一次收盤價 7 折計算；上櫃有價證券按最近一次次日參考價 6 折計算。

(3)擔保品以客戶本人所有者為限，並應撥入證券商於臺灣集中保管結算所開立之證券借貸擔保品專戶。

(4)證券商收到客戶申請擔保品更換後，至遲應於次二營業日前辦理更換，其更換方式由雙方約定之。

(5)現金擔保品應支付利息予客戶，利率由雙方約定。

7. 借貸期限：自借貸成交日起算，不得超過6個月，但經證券商同意，於屆期前，客戶得申請展延，並以一次為限，且不得變更為其他借貸條件。

8. 借券用途限制：

(1)委託證券商賣出；

(2)返還借券或證券權益補償；

(3)融券賣出之現券償還；

(4)為認購（售）權證、股票選擇權或其他具有股權性質金融商品之履約；

(5)因應指數股票型證券投資信託基金之實物申購或買回；

(6)其他經主管機關核准之用途。

9. 借入證券之管理：

(1)借入證券須註記且不得再出借；

(2)借入證券不得領回；

(3)借入證券除依規定用途運用外，不得移作他用；

(4)借券賣出受「平盤下不得放空」之價格限制，委託賣出時須勾選，成交後應以借入券辦理交割；

10.交易型態：議借方式。

11.借券成本與融券成之比較如下表：

表 2-4　借券成本與融券成本之比較

	投資人提出擔保品成數	投資人券賣價金	總計保證金留存券商	投資人券賣後實際支付	借券費	券商支付保證金利息
融券	90%	投資人不可取回；100%留在券商	190%	90%	8/萬；一次	0.50%
借券	140%	100%投資人取回	140%	40%	不定每日	0.10%

資料來源：富邦證券

有關現行證券商辦理有價證券借貸業務主要架構如下圖所示：

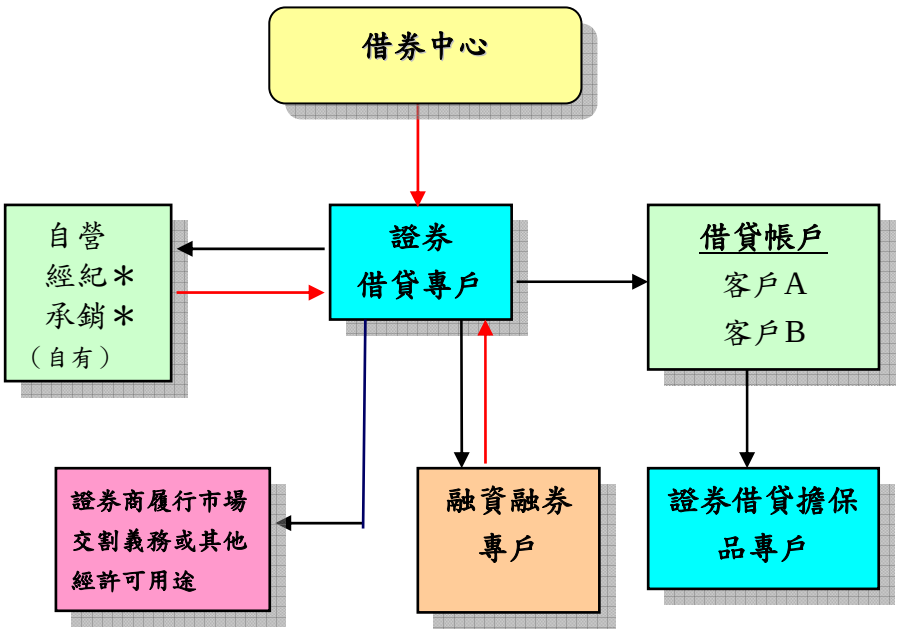


圖 2-7　我國證券商有價證券借貸市場架構圖

資料來源：臺灣證券交易所

（二）借券市場規模

依據證交所之統計資料顯示，最近一年來，國內借券市場規模（不含中央登錄公債部分的借券餘額），以 2008 年 10 月禁止放空為分水嶺，在此之前，證券商與證券金融公司的每日平均借券餘額呈現遞增的趨勢，至 2008 年 9 月達到 51 億元，約占整體餘額的 6%；2008 年 10 月以後，整體借券餘額受到禁止放空的限制而陡降，惟證券商及

證金部分的借券餘額較不受影響，至 2009 年 3 月每日平均借券餘額仍有 44 億元，約占整體借券餘額的 13%，顯示證券商與證金公司借券業務規模占整體市場規模乃屬有限。

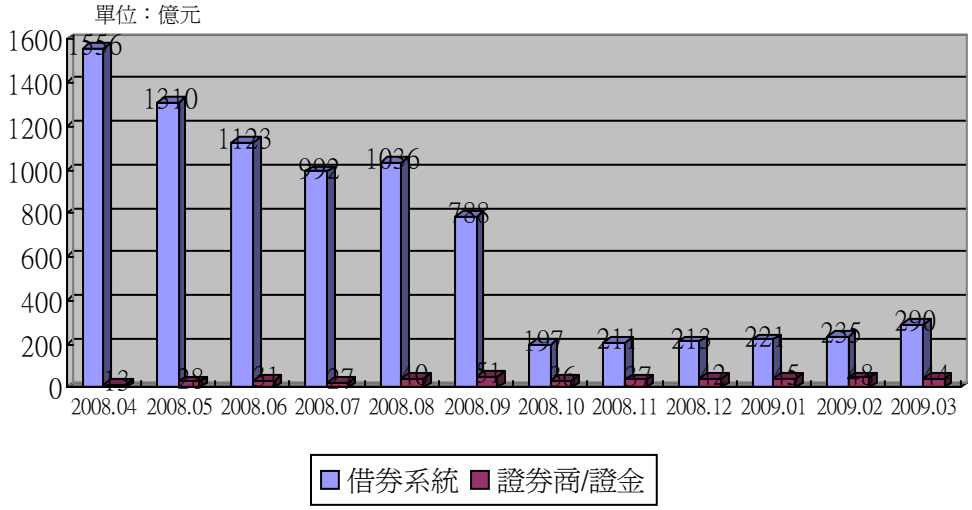


圖 2-8　證交所借券系統與證券商/證金借貸餘額比較圖

資料來源：臺灣證券交易所

（三）與證交所借券系統之比較

臺灣證券交易所借券系統在設計上係以特定法人市場為主，不與信用市場業務重疊，該借券系統提借定價、競價及議借等三種借券模式，前兩者下單前，需先圈存出借證券及提交擔保品，由證交所承擔風險。而議價方式則由借貸雙方自行承擔風險。其與證券商證券借貸之比較如下表所示：

表 2-5　證交所借券系統與證券商證券借貸之比較

	證交所借券系統	證券商/證金證券借貸
標的證券	● 得爲融資融券有價證券 ● 得發行認購售權證之標的證券 ● 已發行之個股選擇權、ETF、可轉(交)換公司債、海外存託憑證等衍	● 得爲融資融券有價證券 ● 經主管機關核准者

	證交所借券系統	證券商/證金證券借貸
	生性商品之標的證券	
出借人	特定機構法人	證券商
借券人	特定機構法人	● 開立買賣契約三個月以上者【但銀行、證券投資信託事業(基金)、期貨自營商、特定境外外國機構投資人等不受前開限制】 ● 證券商不得爲證券商客戶
證券商角色	● 與證交所簽署「有價證券借貸交易總契約」 ● 與證交所借券系統連線 ● 代理客戶開戶及辦理其他借貸相關作業	出借當事人(經主管機關核可之證券商)或證金代理人
開戶	委託人於證券商營業處所開立一戶爲限(多元帳戶不在此限,目前限於信託業與外資)	客戶於同一證券商以開立一戶爲限(不分總分公司)
營業時間	9:00-15:00	9:00-15:00
借貸期間	最長不得超過六個月 得申請續借一次，延長期間不得超過六個月	同左
交易型態	● 定價、競價交易-由交易所承擔風險 ● 議借交易-由交易相對方承擔風險	議借交易
擔保品種類	現金、得爲融資融券有價證券、中央登錄公債銀行保證(定、競價交易)	現金、得爲融資融券有價證券、中央登錄公債
原始擔保比率	140%(定、競價交易)	同左
擔保維持比率	120% (定、競價交易)	同左
追繳通知補繳期限	通知送達之次日	通知送達之日起二個營業日內
處分擔保品	未依約定期限返還有價證券、權益補償、更換不合格擔保品或給付相關費用	同左
違約處理	處分擔保品尚不足清償，經通知限期清償仍不清償者，即爲違約，終止其參與證券借貸交易	同左

	證交所借券系統	證券商/證金證券借貸
費用	● 借券費-定價爲年利率 3.5%、競價及議借以年利率 20%以下 ● 證交所借貸服務費- 定價、競價向每筆借貸交易雙方各收借券費用 2%之八成(1.6%) 議借依借貸成交金額 0.02% * (借券天數/365) ● 證券商手續費 定價、競價向每筆借貸交易雙方各收借券費用 2%之二成(0.4%) 議借由證券商與客戶自行議定_	出借費率及證券商服務手續費由雙方議定之
資訊揭露	證交所網站揭示： ■ 成交資訊 ■ 出借資訊 ■ 借券資訊	● 盤後傳送相關資料與證交所，供市場資訊揭露 ● 目前於證交所網頁有借券餘額表及證券商/證金公司可出借證券資訊可供查詢

資料來源：臺灣證券交易所

（三）現行有價證券借貸業務之問題探討

1.證券商承作業務有限

目前證券商辦理有價證券業務，僅有自營模式，亦即僅得以自身為出借人身分為之，無法依客戶需求水準不同提供更客製化的服務。若能開放居間與代理的模式，正可補其不足之處，使證券商得依其不同優勢，選擇相對適合的服務，發揮其競爭力。另一方面，若證券商得以居間或代理方式辦理借券業務，可提供更多元管道予自有券源有限之券商，憑以擴充券源規模，以提昇法人客戶服務，增加獲利。此外，如能透過代理借券模式提供彙整平台，使證券商得於彙整客戶部位後再予借出，將有助於擴大借券參與者，提昇借券市場規模。

2.有價證券借貸之券源有限

目前證券商辦理有價證券借貸業務之券源，僅限於自有有價證券、自證交所借券系統借入之有價證券、辦理有價證券買賣融資融券取得之融資買進擔保證券等三類。此一規定使得證券商法人客戶的自有證券部位無法列入券源之一，證券商無法協助法人客戶取得較佳的資產運用方式，亦無法充分發揮其客戶關係之最大效益。

3.單一交易對象承作規模限制

依有價證券借貸管理辦法第 33 條規定，證券商辦理有價證券借貸業務，對同一人、同一關係人之出借有價證券總金額，不得超過該證券商淨值之一定比率：

(1) 自然人不得超過證券商淨值 1%或新台幣二千萬元；法人不得超過證券商淨值 5%。

(2) 對同一關係人出借有價證券總金額不得超過證券商淨值之 10%，其中對自然人出借有價證券總金額，不得超過證券商淨值 2%。

究其規定之原意在於妥善管理證券商經營風險，避免風險過度集中，惟借券業務已要求擔保品作為保障，而目前大多數國家證券商之風險管理系統在主管機關監督下，運作尚稱良好，似可考慮適度放寬部分限制，保有證券商靈活營運的空間，使證券商借券業務得以進一步發展。

第四節　國內保險業從事外國有價證券借貸業務相關規範

根據統計，我國保險業截至 2005 年 4 月底止，國外投資金額已達 1 兆 5 千餘億元，在面對如此龐大的資產規模，如能透過借券業務之開放，以增加投資收益，活化國外投資資產之運用，對於保險業在面對低利率環境時，應能有助於改善其利差損之問題。有鑑於此，主

管機關於 2005 年 10 月 30 日，開放保險業辦理出借國外有價證券業務，並訂定「保險業辦理出借國外有價證券業務應注意事項」，以茲規範，其規範重點如下：

一、 資格條件

保險業符合下列資格條件者，得以持有之國外有價證券透過國外代理機構從事出借業務：

(一)最近年度自有資本與風險資本比率，達百分之二百以上。

(二)經 Standard & Poor's Corporation、Moody's Investors Service、Fitch Ratings Ltd.、中華信用評等股份有限公司、英商惠譽國際信用評等股份有限公司台灣分公司、穆迪信用評等股份有限公司評定為 BBB-級或相當等級以上。

所稱「國外代理機構」的資格條件為：

(一)成立滿三年以上，且在中華民國境內設有分支機構。

(二)最近一年資產或淨值排名居全世界前五百名以內且所保管之資產達五千億美元以上之保管銀行。

(三)長期債務信用評等經 Standard & Poor's Corporation、Moody's Investors Service、Fitch Ratings Ltd.、中華信用評等股份有限公司、英商惠譽國際信用評等股份有限公司台灣分公司、穆迪信用評等股份有限公司評定為 A-級或相當等級以上。

二、 內部處理準則

保險業辦理出借國外有價證券業務，應訂定「內部處理準則」，提報董事會通過，並報主管機關核備後實施。修正時亦同。其內部處理準則內容至少應包括：

(一)應指派具備專業知識或經驗之人員負責借出業務之執行。

(二)與國外代理機構簽訂借券業務合約時，其內容應注意防範契

約風險、交易對手風險、作業風險與擔保品風險等交易風險。

(三)與國外代理機構簽訂借券業務合約時，其內容至少應載明再投資資產種類、具體投資準則、借券人之標準及範圍、擔保品種類、擔保品維持比率、擔保品追繳流程、費用結構、約定管轄法院、代理機構定期報告事項、代理機構因交易對手違約損失之承擔義務，並定期追蹤績效。

(四)前款再投資標的，其到期日以不超過兩年為限，並應符合現行保險業辦理國外投資範圍與內容準則規定及相關函令之限制。

(五)擔保維持比率不得低於百分之一百。

(六)非現金擔保品之種類及信用評等標準，應符合現行保險業辦理國外投資範圍與內容準則規定及相關函令之限制。

三、 契約訂定

保險業與國外代理機構簽訂借券業務之代理契約後，應檢送契約乙份報主管機關備查。

四、 資訊揭露

保險業辦理本業務，應每季提供借券業務相關資訊予各該同業公會，由各該同業公會彙整後報主管機關備查。

如上所述，目前國內保險業者已得將所持有之外國有價證券出借以增加業者之投資收益，若證券商亦能協助客戶將其持有之外國有價證券出借或是協助其借入有價證券，應有助於客戶之策略應用與投資管道的多樣化。

第三章　國外證券商辦理外國有價證券融資借券比較分析

有價證券借貸（Securities Lending and Borrowing）在全球的發展逐漸受到重視，其對於發行人、投資人以及交易人均提供重要的助益。根據 Data Explorers 的資料顯示，全球可供借貸的證券市場價值，每年的成長率大約在 15~20%之間，達到 13.2 兆美元，2007 年借貸市場的市值(Value on loan)達 3.5 兆美元。而根據英國 FSA 以及美國 SEC 所做的研究調查結果顯示，借券(securities lending)和放空(shorting)對整體市場提供了流動性和價格穩定的功能。

近年來，借券市場的成長主要來自於需求面的創新，包括：1.衍生性金融商品市場的成長，以及避險基金的興起增加了槓桿的運用和借券的需求；2.低利率時代加速全球信用市場膨脹，促使各國央行面臨嚴格的考驗，包括：提高流動性和國際準備，並增加對於報酬率的要求；3.新興市場經濟體的崛起，刺激對於金融中介的需求，同時擴展對於證券的需求與供給；4.以控制通貨膨脹為目標以及間接機制的貨幣政策，進而支持促進借券市場流動性發展的政策。

本章將介紹美國、英國以及日本等國家現行有價證券借貸制度，並探討其針對外國有價證券借貸之相關作法。

第一節　美國

一、美國有價證券借貸概況

（一）有價證券借貸發展

美國現代化有價證券借貸雛形肇始於 1960 年代，為因應賣空交易之交割及可能發生交割失敗機率之提高，而發展出證券自營商之間的證券借貸市場（inter-dealer market）。1970 年代，美國的保管銀行

首次代表其客戶，例如保險公司、大學基金及公司投資組合等，出借特定證券給證券經紀自營商；此外，新種策略性交易之興起，例如可轉換債券之套利策略等，亦產生刺激借入證券需求的誘因。值此同時，在美國國庫券附條件交易（repo）市場，經紀商開始推動配對簿投資組合（matched book portfolio）以提供客戶流動性，同時使用附條件交易市場取得短天期殖利率曲線的部位，例如經紀商若預期未來附條件融資利率可能走低，則可借出附條件交易的證券一個月，然後利用其融資一個星期。基此，附條件交易在直接融資市場外成長為一項貨幣市場工具，成為銀行間存款及短期票券/定存單(CD)的另一項選擇。

1982 年，Drysdale Securities 的倒閉促使美國借券市場產生重大變化，包括：借券契約開始由債券市場協會（Bond Market Association，現已改為 Securities Industry and Financial Markets Association）加以標準化、指定擔保保證金、保管銀行修正其借券契約以揭露借券人和出借人的名單等。對機構投資人而言，借券成為保管銀行所提供的附屬業務，提供其賺取額外收入以抵銷保管費用的機會，而此一發展亦歸因於法規的改變，例如美國即開放企業退休基金借券給經紀自營商。1980 年代中期，由於操作全球衍生性商品交易而產生的套利、避險等借券需求，使美國證券借貸交易規模日益擴大，並促使大型保管銀行業務由原本的國內借券發展為跨國借券，擴展至歐洲、日本及北美洲等。

1990 年代，借券市場的全球化持續進行，尤其是擴展到新興市場，市場參加者借入證券以取得槓桿部位，例如根據對經濟和金融情勢的預估，認為兩項金融商品間的殖利率差(yield spread)將有所改變，則可在一項金融商品取得多頭部位，另一項則取得空頭部位。衍

生性金融商品市場的成長以及資訊科技的運用，促使投資人可以更有效維持其投資及避險策略，而借券市場則可確保其策略的流動性及穩定性。1994 年，美國短期利率上揚導致部分出借人（lenders）在現金擔保品上受到損失，即使法規不允許，但仍有許多保管銀行提供客戶補償，而此一經驗，亦使得出借人更注重由借券活動引發的投資管理，許多都採用了風險/報酬分析以及業界指標（industry benchmarking）。2004 年 7 月，美國證管會（SEC）公布實施證券賣空規則（SHO Regulation），規定一系列有關賣空者借券和交付證券的規範，並對證券交割失敗持續時間較長的，賣方會員施加更多交易限制，以限制無券放空行為。

目前美國投資人的有價證券的借貸業務，可分為透過保管銀行、透過第三代理機構，或是透過各證券借貸機構所包裝推出的計畫，如：Exclusive Principal Programs[4]。茲將此三種的優缺點彙整如下表：

表 3-1 各項有價證券借貸模式優缺點比較

	優點	缺點
透過保管銀行	● 作業上較簡化 ● 提供保管、借券以及現金管理的「一次購足」(one-stop shopping) ● 有保證(indemnification) ● 搭售價格(bundled prices)	● 可借資產的收入可能較低或僅達一般水準 ● 受限於撮合方式，顧客很可能 ”lost in the crowd” ● 出借人的彈性和控制受到限制 ● 缺少價格透明度
透過第三代理機構	● 不同團體間的利益取得較好的平衡 ● 與保管銀行相較，提供較高的彈性和控制	● 就個別交易而言，其成本較高 ● 有時券源深度不足 ● 不一定提供保證保險

[4] 透過該計畫借券可提供一個有效的工具，以確保借券人在一段期間內可由某一投資組合或是投資組合的一部分獲得確定的現金流量。該計畫提供借券人可由某一投資組合取得券源的特別權利(exclusive right)。對借券人來說，此一特別的供給具有相當的吸引力，原因在於借券人知道隨時都有足夠的券源供其使用，因此提供了借券人較大的交易彈性。而借券人通常也願意支付較一般傳統借券方式來得高的費率，以確保鎖定借券的券源。

	優點	缺點
	● 與傳統保管計畫相較通常提供較好的收入 ● 第三代理機構監督借券活動	
透過 Exclusive Principal Programs	● 出借人可在一段時間內取得保證的收入 ● 交易人常支付權利金以取得資產的特有權 (exclusive rights) ● 出借人所需監控的信用風險較低	● 沒有第三人監督借券活動 ● 並非所有證券/投資組合均適合該計畫 ● 過度集中風險在借券人，對出借人係重要考量 ● 由於固定的保證報酬，若投資組合中的證券過於特殊，出借人不一定可以獲利 ● 沒有保證保險 (indemnification insurance)

資料來源：http://www.esecuritieslending.com

（二）有價證券借貸規定

1.有價證券借貸市場概況

美國證券借貸係因需要而自然形成，乃典型之分散式證券借貸制度，惟其自 1981 年起亦設有集中之交割借券管道，亦即可透過美國全國證券結算公司（National Securities Clearing Corporation, NSCC）借券系統進行借券。以前者而言，在美國現行之制度下，客戶從事賣空（Short Sale）交易時，必須向機構投資人或證券經紀商借入所賣出之證券以供交割之用，但是並非所有的證券經紀商均持有該客戶欲賣出之證券，或是本身該證券之庫存量不足，故在此情況下，證券經紀商彼此間之證券借貸行為便應運而生；此外，當證券經紀商發生錯帳時，亦須有足夠之證券以完成交割，此時若能向同業或其他擁有該證券之機構商借，即可彌補此錯帳問題。然而，並非所有證券商均可順利自行調借證券，因此在證券借貸制度發展同時，產生滿足借券人與

出借人雙方需求之中介機構。

借券發生時，借方需提供對等之擔保品，當擔保品價值低於市價某一標準時，則借方需於規定期限內補足擔保品，以確保借券之存續。借券之收入由金融機構及其客戶依議定之比例分配之。投資人將其寄存於美國證券存管信託公司（Depository Trust Corporation, DTC）帳戶的股票及固定收益證券得經由 NSCC 借券系統出借給 NSCC 其他參加人，在連續淨額交割（CNS）制度下，所產生暫時性的證券短缺。NSCC 會將相當於借取證券市值的金額，撥入出借會員款項交割帳戶，會員可將該筆款項投資，以賺取隔夜利息。此外，會員可藉由此借券系統，加強證券庫存量管理。

2.市場參與者

(1)出借人(Lender)：在美國，其有價證券的出借人主要為擁有較多證券庫存量之法人機構，包含保險公司、退休基金、共同基金、金融機構與政府機構等。這些法人機構擁有較多的證券種類及庫存量，且為長期持有之投資者，其主要目的係藉由借券增加額外收益賺取借券費。上述法人機構各隸屬不同之主管機關，故管理法規亦不相同，例如美國勞工部(Department of Labor)對退休基金從事有價證券借貸交易時，規範禁止出借的對象，包括執行該退休基金委託買賣證券的證券經紀商與提供投資建議給該基金的證券商等。

(2)借券人(Borrower)：主為證券經紀或自營商、造市商、金融機構與避險基金等。從事賣空交易、衍生性商品套利交易、履行證券交易之交割及補正錯帳等，均為借券市場的主要需求。證券商(Broker-dealers)必須受到 SEC 和 FRB 相關法規的規範，在 1934 年證券交易法以及 Rule 15C3-3 下與客戶保護的相關規定

均必須包含在書面的借券契約，至少包括以下內容：A.每一筆證券借貸均必須有分別的借券時程，並明訂借券相關各方的權利和義務。B.提供出借人證券出借的實際時程。C.指出證券商(a)應提供出借人擔保品，其可能包括現金、國庫券、中長債券(T-Note)、信用狀，且須考量擔保品的流動性、波動性、市場深度和區位以及發行人的信用狀況足以完全擔保出借之證券；(b)至少每日洗價，一旦擔保品的市值低於出借證券價值的 100%，借券人應於次一營業日提供額外的擔保品予出借人，使其不低於出借證券價值的 100%。D.必須於契約中的顯著位置提醒出借人，借券交易中的出借人並未受到 1970 年證券投資人保護法(Securities Investor Protection Act of 1970)的保護。

(3)中介代理機構 (Agent)：多由保管銀行或專業之證券借貸機構為主，做為出借人的代理人，負責安排、管理有價證券借貸各項事宜，及擔保品之保管與洗價等，及負責評估借券人信用與借券風險， 提供出借人參考。中介機構並依約定收取中介費或分享擔保品中現金部分投資收益。1985 年，美國聯邦金融機構檢查委員會(Federal Financial Institutions Examinations Council, FFIEC)，發表一份有關金融機構從事有價證券借貸活動的文件，並被貨幣監理局(Office of the Comptroller of the Currency, OCC)、國家銀行監管機構以及美國聯邦準備理事會(FRB)所採用，對其所管轄的金融機構從事有價證券借貸交易時，提出原則性的規範。 A.金融機構應每天產生報表以顯示可供借券種類以及已借出種類，及相關重要事項；B.擔保品應每日洗價，擔保維持率(Collateral margin)應大於 100%；C.管理會議應於獨立的徵信後同意每一項借券交易，且必須對每一借券人設定信用

限制；D.借券需分別與借券人和出借人有書面契約，並明確銀行的責任與費用；E.若銀行補償出借人，則其顧問和會計師應出具書面意見以取得合適的法律和會計處理;F.貸款(Loan)和補償(indemnities)必須在銀行的 call report 上揭露。

3.市場交易型態

美國證券市場之借券機制，除了證管會、美國聯邦準備理事會(FRB)及部分出借之主管機關如勞工部，各有不同之法令規範外，市場參與者之權利義務主要透過契約加以規範。美國有價證券借貸交易契約分為授權書（Securities Lending Letter of Authorization, SLA）及主契約（Master Securities Lending Agreement , MSLA）兩種。授權書為一委任契約，由出借人與中介機構簽訂，規範兩者之權利義務；主契約是由借券人與中介人簽訂，承出借人之委託，規範有價證券借貸交易中，雙方應遵守之條款與可享受之權利。

中介機構與客戶簽定借券契約，取得券源，證券商可經常透過此借券制度以完成交割、賣空等。借券之範圍除股票外，尚有債券、政府有價證券等。借券發生時，借入方需提供擔保品，此擔保品可以是現金、信用狀或是其他經雙方契約同意的有價證券，出借人對於所收取的現金擔保品可以進行再投資（reinvestment）動作，再投資的標的的決定通常係由出借人（beneficial owner）與借券代理機構（lending agent）溝通後訂立再投資原則（Reinvestment Guidelines），常見的再投資標的如下：

表 3-2　常見現金擔保品再投資原則

保守	有些保守	有些彈性	彈性
● G7 政府公債隔夜附買回基金 ● 最大有效存續期間 1 天 ● 不允許浮動利率票券和衍生性商品 ● 限制隔夜附買回協議	● AAA 級政府公債附買回基金 ● 最大平均到期日 90 天 ● 任何金融工具的最大剩餘到期期間爲 13 個月	● 最大有效存續期間 120 天 ● 最大剩餘有效到期期間爲 2 年 ● 允許浮動利率票券和合格的衍生性商品 ● 信用品質：短期評等 A1/P1 以上；長期評等 A-/A3 以上	● 最大有效存續期間 120 天 ● 最大剩餘有效到期期間爲 5 年 ● 允許浮動利率票券和合格的衍生性商品 ● 信用品質：短期評等 A1/P1 以上；長期評等 A-/A3 以上

資料來源：Frank J. Fabozzi & Steven V. Mann (2005),"Securities Finance: Securities Lending and Repurchase Agreements", Wiley Finance.

當擔保品之價值低於借入證券市價某一標準時，則需於期限內補足擔保品與出借方，以確保借券之繼續。借券之收入由中介機構及其客戶（出借人）依議定之比例分配之。

4.借券契約主要內容

法律契約在借券市場中扮演了重要的角色，契約的主要目的在於：

(1) 規範利益雙方，避免因借券業務所衍生的爭議，以及任何一方有違約狀況產生時，另一方的權利可以受到保障。

(2) 標準化的市場文件有助於降低交易雙方依個別契約協商所需要的時間與成本，並降低個別法律對於契約可行性質疑的風險。

(3) 在業務正式進行前，先行清楚導入與商業和作業相關的重要

議題原則。

(4) 發展與出借人、借券人、借券／清算代理機構、擔保或安全性等相關之法律議題。其複雜程隨著每一個交易所涉及的司法管轄領域增加而增加。

(5) 避免法律風險，聘請當地國家的專業顧問極為重要。

有關證券借貸之法律契約架構如下圖所示：

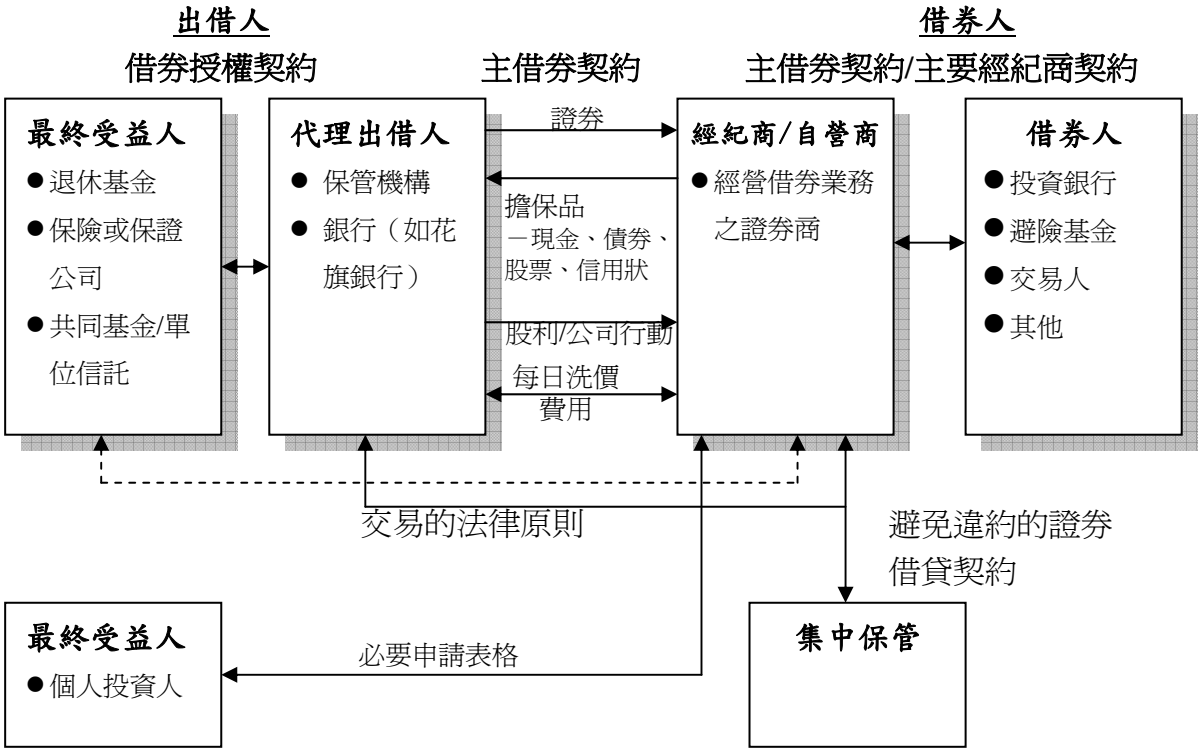


圖 3-1　有價證券借貸法律契約架構圖

資料來源：Lawrence Komo (2008), Securities and Lending: Trends and Opportunities.

目前美國有價證券借貸契約的主要範本，是由美國證券業及金融市場協會（SIFMA）所提出的 2000 年版主要證券借貸契約（Master Securities Loan Agreement, 2000 version），該契約雖非業界一致採用的標準契約，但已提供了一參考範本供借貸雙方了解彼此基本的權利義務關係。其內容共分為 27 條，摘要其部分重點如下：

(1) 適用性：說明本契約所規範的證券借貸係指借券人(Borrower)

提供擔保品(Collateral)以向出借人(Lender)取得所需之證券(Securities)之謂。證券借貸(Loan)交易需以書面約定方受到本契約的規範，包括本契約的任何補充條款。

(2) 證券借貸：借券人和出借人必須同意證券借貸相關的條件，包括證券發行人、借券數量、報酬的計算基礎、擔保品移轉數量以及其他。

(3) 出借證券移轉：除另有約定外，出借人應於雙方同意的截止點(Cutoff Time)前將出借證券(Loaned Securities)移轉給借券人；借券人應提供每一借券人出借證券清單的收據及時程(schedule)。

(4) 擔保品：除另有約定外，借券人應於收到出借證券移轉之前或同時，將擔保品移轉給借券人，其市值至少應等於出借證券的市值的擔保維持率(Margin Percentage)。借券人有權對擔保品（若包括現金）利用或再投資，並自行承擔風險。

(5) 借貸費用：除另有約定外，借券人應每日計算支付出借人借券費用(Loan Fee)；若擔保品包含現金，出借人應以雙方同意之費率，每日計算支付借券人現金擔保品費用(Cash Collateral Fee)。

(6) 借貸終止：除另有約定外，借貸雙方可在契約定之借貸結束日之前的營業日向另一方提出終止借貸的請求。

(7) 出借證券和擔保品的相關權利：在出借證券返還借券人之前，借券人對出借證券具所有權，包括可將出借證券移轉他人，出借人放棄投票權等相關行動。

(8) 利益分配(Distribution)：出借證券相關的利益分配歸屬於出借人；非現金擔保品相關的利益分配歸屬於借券人。

(9)每日洗價：擔保品應以每個營業日的收盤價每日洗價，擔保品市值不得低於出借證券市值的 100%，若低於此一數值，借券人應於次一營業日收盤前增加擔保品，使其相當於出借證券市值的 100%。

(10)責任(Representations)：契約雙方表示及擔保其具有執行本契約的能力，並擔負其應負的責任，並且採取契約中規定的必要行動、交割以及工作，本契約條文合於法律相關規定且具可行性。

(11)契約訂定(Covenants)：契約雙方應善盡其契約責任並應執行與遵守附錄相關的條款。

(12)違約事件：定義未違約的一方在何種情況發生時，可以立即終止契約的八種情形，亦即另一方出現何種情況即視為違約，例如出借證券未及時於借貸結束時移轉給出借人、擔保品未及時於借貸結束時移轉給借券人、契約任何一方破產(Insolvency)…等。

(13)補救措施(Remedies)：規範在違約情況發生時，借券人和出借人所得採取的補救措施。例如：借券人違約時，出借人有權買入與出借證券相同數量的替代證券(replacement securities)，賣出擔保品及其孳息以取得現金支付購買替代證券之價款。

(14)移轉稅賦：由借券人支付。

(15)移轉：所有借券人或出借人的出借證券或包含金融資產的擔保品、現金、信用狀等應以何種方式移轉。

(16)契約貨幣：任何與證券借貸有關之現金支付，均以借券人及出借人同意之貨幣支付，與利益分配有關的現金支付均以該

分配所支付之貨幣為之，任何現金報酬均以標的物移轉之貨幣為之。

(17)員工退休金收入證券法案(Employee Retirement Income Security Act of 1974, ERISA)：有關出借券源來自於美國相關法規規範之員工退休金計畫、應遵守該法案之特別規定。

(18)單一契約：出借人和借券人均同意本契約為其相互間證券借貸之單一契約，並基此建立證券借貸的單一業務和契約關係。

(19)適用法律：本契約不得違背及牴觸紐約州相關法律。

(20)放棄(Waiver)：任何與違約有關的棄權均必須以書面記載。

(21)補救措施的持續(Survival of Remedies)：與任何借券有關的補救措施及義務，應該在相關的借券結束時、返還抵押的借券有價證券時、以及合約結束時應繼續存在。

(22)注意事項和其他溝通管道：任何一方和他方的所有注意事項、文件、要求和其他溝通可透過電話、電子郵件、電子訊息、電報等方式進行，若有變更應予通知。

(23)管轄法院：說明本契約適用之管轄法院。

(24)雜項：本契約取代出借人和借券人雙方的其他任何契約，任何與契約有關的指派均必須事先以書面記載於契約否則將視為無效。

(25)名詞定義：說明本契約各重要名詞之定義。

(26)含義(Intent)：提醒借貸雙方注意的事項，包括證券借貸為破產法所指稱之證券契約；根據契約所進行的資、證券和其他財產的移轉均為保證金支付(margin payment)或清算支付(settlement payment)….等。

(27)與部分聯邦保護相關的資訊揭露：出借人(lender)未受到 1970

年證券投資人保護法的保護；出借人了解某些由借券人提供做為擔保品的有價證券並未受到美國的保證。

5.NSCC 交易流程

美國全國證券結算公司（NSCC）設立之借券系統（Stock Borrow Program）可供所有會員加入，會員得授權 NSCC 將其存放於 DTC 的股票及固定收益證券經由借券系統出借。其交易流程如下：

(1)NSCC 參加人於每個營業日傍晚，將其得出借證券清單，以主機對主機或個人電腦平台方式，通知 NSCC。次一營業日上午，NSCC 於第一次結算處理後，決定尚未交割證券其交割義務的先後順序，再透過股票借券系統向參加人借券，以滿足證券交割義務。

(2)若有意願出借同種證券者，不只一位時，NSCC 將以一定的規則，考慮參加人的平均出借額、結算費用及加上隨機亂數，排定出借人的順序。此方式允許一種證券可向多位潛在出借人借入。NSCC 將於優先順位的參加人可出借該種股票全數數量使用完後，再使用下一位參加人之股票。

(3)NSCC 於上午借券後，將證券出借數量，記入該參加人在 CNS 系統的證券出借子帳戶內，並將該出借證券市值金額，撥入該參加人於 CNS 的款項帳戶，參加人可運用該資金至隔日。還券時 NSCC 則以相反的程序為之，不收取 rebate。

(4) NSCC 於每日上午將報告分送給參加人，使其了解股票被借取的情形，供參加人作必要的處理。

二、美國信用交易現況[5]

（一）法源及得辦理融資融券證券商

美國辦理有價證券融資融券之相關法規，包括 1934 年美國證券交易法、聯邦存款準備理事會制定之規則 T (Regulation T)、規則 U (Regulation U)、規則 X (Regulation X) 以及規則 G (Regulation G)。

符合 1934 年美國證券交易法 Rule 15c3-1 對持有客戶有價證券的證券商(carrying broker- dealer)淨資本的規定，即具有辦理保證金交易的資格。持有客戶有價證券的證券商種類包括：全國性綜合證券商、大型承銷商、自營商及市場中介人、紐約證券交易所經紀商、紐約證券交易所多邊經營證券商、其他紐約證券交易所之專業會員、場內經紀人、結算證券商。

非持有客戶有價證券之證券商，本身無辦理信用交易資格，但其可以擔任仲介證券商(Introducing broker-dealer)，將信用交易帳戶之客戶仲介予持有有價證券客戶之證券商，但由非持有客戶有價證券的證券商為客戶辦理對帳單及買賣報告書寄交其客戶，並載明該筆信用交易為仲介證券商所促成。

由於美國並無證券金融公司，證券商融資來源除證券商自有資金及融券放空賣出之價款及融券應繳保證金等款項之外，如有不足時， 可向各商業銀行辦理質押。

（二）得為融資融券有價證券之標準

1.已在國家證券交易所上市之有價證券，可分為：

(1)權益證券(Equity Security)：普通股、優先股、認股權證、共同基金。

(2)債權證券(Debt Securities)：豁免證券(Exempt Securities)、

[5] 參考臺灣證券交易所(2009)，世界各國主要證券市場—美國部分。

公司債（Corporate Bond)、抵押權債券(Mortgage-Related Securities)、無息債券。

2.外國公司得為融資融券之規定，依據美國證券交易法及規則T （Regulation T）辦理。依目前 Regulation T 的規定，下列外國有價證券可進行信用交易：

(1)已在外國證券交易所或外國證券市場掛牌至少六個月的權益證券；

(2)於美國可透過電子報價系統接收到該外國有價證券掛牌外國證券交易所或證券交易市場傳輸之每日報價，包括買價與賣價。

(3)該外國有價證券所有權未受限制的股票市值不低於 10 億美元。

(4)過去六個月，該外國有價證券的平均週成交量達到至少 200,000 股或 100 萬美元。

(5) 該外國有價證券之發行人持續存在至少 5 年。

（三）市場之管制措施

美國並未設定整體市場融資、融券餘額之限制，亦無融資融券交易期限的限制。信用交易的借方（borrowers）及貸方（lenders）係經由一開放式的借貸契約（open-ended loan agreements）來約束管理，無論借方或貸方，欲終止雙方之借貸關係，均可以一簡短的通知函知對方。

在信用交易借貸的擔保品方面，目前包括政府公債、現金或信用狀等均可使用。融資或融券借貸期間，借方所提供之擔保品，將依所融借之股票市價進行增加或減少的調整。融券出借人同意將股票出借

給借券人時，該有價證券所有有關股利之收入及權利，仍屬於出借人所有，但有關行使股東投票選舉的權利， 則由借券人取得。

（四）授信機構辦理融資融券之資金來源、證券來源及擔保維持率

1.美國證券商辦理對客戶融資之資金包括：(1)自有資金。(2)客戶信用帳戶之貸方餘額。(3)向商業銀行質借貸款。

2.美國證券商辦理對客戶融券之券源包括：(1)信用交易帳戶中融資買進之擔保證券。(2)證券商自有庫存股票及自有資金購進之證券。(3)透過證券借貸制度方式取得。(4)客戶抵繳融資保證金之有價證券。

3.擔保維持率：根據美國 FRB 所制定之規則 T，僅規範期初保證金(Initial Requirements)之比率，維持保證券金(Maintenance Requirements)之比率，則由各證券交易所訂定。以紐約證券 交易所為例，其融資擔保維持率訂定為市價的 25%。融券保證金的擔保維持率則為市價的 30%。亦即當融通之有價證券其市價下跌或上漲的變動，致使其融資自備款之金額因挹注虧損而減少，如其自備款額度已低於融通有價證券市價的 30%，客戶即須面臨追繳。

（五）各證券商有價證券信用交易規定

目前美國各證券商可自行辦理有價證券信用交易，其各家可依其需求訂不同的標準，惟其融資成數多為最低要求的 50%，擔保維持率亦不得低於 30%，茲列舉美國 4 家證券商開立信用帳戶的要求，彙整如下表 3-1：

表 3-3 美國證券經紀商開立信用帳戶的要求

證券商 / 項目	Charles Schwab	TD Ameritrade	E*Trade	Fidelity
每季/每年帳戶維持費用	$0/$0	$0/$0	$40/$160***	$0/$0
開立帳戶最低金額(現金)	$1,000**	$2,000 ($1,000 for IRA)	$1,000	$2,500*
原始保證金	$5,000	$2,000	$2,000	$5,000
融資成數	帳戶中可供融資證券的50%	50%	50%	50%
擔保維持率	至少為權益的30%	＞30% 或每股$4.00	>30%	＞30% 或每股$3.00
7,500 借方餘額之擔保品利率	8.5%	9.25%	7.24%	8.825%
帳戶結清及轉出費用	$50	$75	$60	$0 ($50 for IRA)

資料來源：Lawrence Komo(2008), Securities and Lending: Trends and Opportunities.

除了上述的信用帳戶開立規定之外，各家證券商對於各類型證券的可融資金和擔保品的比率均有個別的規定，表 2-2 列示 Morgan Stanley Smith Barney 關於融資和擔保品的要求，表 3-2 則列示美林證券可借信用交易的有價證券種類。

表 3-4 Morgan Stanley Smith Barney 有關融資和擔保品的要求

證券型態	可貸價值	最低(擔保品/貸款)比率要求	
		原始	維持
股票(> 或= 每股$10) **共同基金(> 或= 每股$5)** **單位投資信託** **轉換債券：>$25**	65%	154%	143%
CDs			
未滿 1 年	85%	118%	112%
1~2 年	70%	143%	134%
超過 2 年	65%	154%	143%
		原始和維持	
市債	85%	118%	
公司債	75%	134%	

證券型態	可貸價值	最低(擔保品/貸款)比率要求	
		原始	維持
政府公債：			
未滿 1 年	95%	106%	
1~2 年	94%	107%	
3~4 年	93%	108%	
5~9 年	92%	109%	
超過 10 年	90%	112%	

資料來源：Lawrence Komo(2008), Securities and Lending: Trends and Opportunities.

表 3-5 美林證券可供信用交易的證券

可供信用交易的證券		不可供信用交易的證券
● 美國上市普通股	最多 50%	● 定期存單(CDs)
● 美國 Treasury Notes/Bills	95%	● 貨幣市場基金
● 美國 Treasury Bonds/Strips	92%	● CATS(Certificates of Accrual on Treasury Securities) & TIGRS(Treasury Income Growth Receipts)
● FNMAs	90%	
● FHLM, GNMA	90%	
● 美國政府代理公債	80%	● 非美國共同基金
● 市債	80%	● 特定管理帳戶 (Certain managed accounts)
● 公司債（不可轉換）	70%	
● 外國主權債券	70%*	● UGMA/UTMA 帳戶***
● 可轉債	50%	● 年金
● 共同基金	50%**	● TRAKRS (Total Return Asset Contracts)
● ETF	50%	● 退休帳戶
● 單位投資信託	50%	
● VRDOs (variable-rate demand obligation)	50%	
● 認購權證	50%	

資料來源：Lawrence Komo(2008), Securities and Lending: Trends and Opportunities.

* 約當於 AAA

** 持有 30 天之後

*** Uniform Gifts for Minors Act (UGMA) and the Uniform Transfer to Minors Act (UTMA):父母可為未成年子女開立的綜合帳戶

（六）美國證券經紀商對投資人的教育

1. Morgan Stanley Smith Barney 帳戶保護

(1)保護客戶在 Morgan Stanley Smith Barney 的帳戶：提供顧客交易活

動的文件和帳戶資訊，同時對於顧客管理帳戶的管道予以加密。

(2) Morgan Stanley Smith Barney 如何保護你的帳戶：描述 Morgan Stanley Smith Barney 的帳戶保護計畫以及在 SB 持有資產的優點。

2.美林證券信用借券計畫(Margin Lending Program)：

美林證券於其網站(Merrill Lynch Direct, 網址 http://www.mldirect.ml.com/)上，揭露與信用借券之相關資訊(Margin Lending Program Truth-in-Lending Disclosure Statement)，內容包括：基礎借券費率、費率可能調整的情形、收費期間、收費計算、允許放空、允許選擇權交易等，並說明與信用交易相關的風險，並告知顧客應詳細閱讀帳戶合約以確保其了解風險及相關的義務，同時告知客戶應如何降低風險。

三、美國近期價證券借貸發展趨勢及放空的規定

根據 SunGard 的研究統計顯示，2003~2007 年間，由於美國股市上揚且信用持續擴張，美國投資公司每日的借券金額由 800 億美元，倍數成長至 1,600 億美元，而共同基金所申報的每年借券收入亦由 3 億美元成長至 10 億美元，公共退休基金的借券收入則由 2.5 億美元增加到 5 億美元。由 2007 進入 2008 年，股市大跌 20%，借券收入和數量均達到新高，投資公司在 2008 年截至 7 月為止，就由借券賺了 15 億美元，平均借貸價差由 2005-2006 年間的 20-30 個基本點，大幅上升至 60 個基本點。

在美國由於大多數的借券擔保品都是現金的形式，通常都由出借機構(Lender)決定投資策略，典型的投資標的為高品質、短期的國庫券、商業本票和投資級的固定收益證券，但在金融海嘯期間，借券的現金擔保品管理計畫卻出現了一些問題，包括：部分計畫承擔過高的

風險、某些原本高品質的資產被調降信用評等、部分機構因持有的現金擔保品投資計畫之加權平均存續期間過高，導致其無法因應借券數量巨幅下跌的流動性擠壓(liquidity squeeze)。由於上述的問題，也讓借券實務轉而更重視現金擔保品的風險管理。

美國證管會(SEC)於 2009 年 7 月 27 日，公布遏止濫用放空交易以及增進市場透明度的多項措施：

（一）永久禁止無券放空：2008 年秋天，SEC 為搶救美國股市大跌發布「禁止無券放空」（Naked Short Selling）之緊急命令，這項禁止無券放空的規定原訂於 2009 年 7 月 31 日屆滿，SEC 將其改為永久性措施（Rule 204）。此一新規定並要求放空者在結算日（交易後第三日）前必須交割為放空而借入的股票，若發生違約交割，則處理該筆放空交易的券商必須受罰。

（二）強化放空資訊揭露：SEC 正與數個自律組織（SRO）商討每天在它們的網站揭露放空量與交易數據供大眾參考，此外，證管會並積極考慮提議放空價格測試(short sale price test)以及斷路機制(circuit breaker restrictions)等限制。

（三）舉行圓桌會議：除上述措施外，證管會並於 2009 年 9 月 30 日舉辦「有價證券借貸及放空圓桌會議(Securities Lending and Short Sale Roundtable)」討論借券、預借(pre-borrowing)和可能的放空資訊揭露。

四、美國境外有價證券借券融資相關規定

由於美國的有價證券借貸市場發展主要是以分散式的架構為主，亦即由有借券需求的客戶向機構投資人或證券經紀商借入所賣出之證券以供交割之用，在法律規範並未限制的情況下，借券雙方主要

是透過證券借貸契約的方式來規範其權利義務。因此，在外國有價證券的借券方面，亦可透過此種方式進行，由借券雙方依據契約範本修正相關之個別證券借貸細節，並對於契約內容達成共識即可，並未加以限制。而在 SIFMA 所提供的 Master Securities Loan Agreement 針對外國有價證券(Foreign Securities)部分，另提出若借券標的為外國有價證券，則其市值的計算應以該有價證券之主要上市市場之收盤價為其計算基礎。

依前述規定，美國之信用交易係由借貸雙方經由借貸契約約束管理，在境外有價證券信用交易部分，外國公司得為融資融券之規定，依美國證券交易法及 Regulation T 相關規定辦理。

第二節　英國

一、 英國證券市場發展及架構

傳統上英國的證券管理體系，是以對證券交易所及其會員採完全放任的政策為特色，相關法令包括公司法上有關公開說明書的規定、詐欺投資防止法（The Prevention of Fraud Investment Act，1958）中有關證券商特許、單位信託及資本發行管理等規則等規定組成。根據詐欺投資防止法，證券商除另經核准，必須取得商工部（Department of Trade and Industry）核發之執照。但詐欺投資防止法本身涵蓋範圍已不完整，該法過時規定已難以執行，且不能提供投資人完整的保護。

1984 年受工商部聘請的高爾教授（Pro. Jim Gower L.C.）提出的「投資保護檢討報告」，建議「詐欺投資防止法」應該由一新法律取代，基本政策之提出、整體性監督及投資事業之細節性管理等，應由政府機構或一新機構負責；日常之管理，應由政府或上述新機構承認的自律機構來負責。1985 年英國政府依據高爾教授之建議，發表政

府白皮書，並向國會提出金融服務法草案，以取代舊法律。1986 年 10 月 27 日英國下議院三讀通過金融服務法（Financial Services Act of 1986），並推動各項改革措施，英國證券界賦予一個統一的代號-Big Bang，其主要內容包括：（一）師法美國紐約證券交易所廢除固定手續費率制度；（二）將證券業分業制改為兼業制；（三）建立電腦化報價及交易系統；（四）破除二個債券自營商寡佔局面而改進債券市場；（五）設置投資局（SIB）；（六）改組倫敦證券交易所並建立全球二十四小時市場連線。

1997 年起，英國為建立更具效率之金融管理體系，預定將原本金融體系之九大管理機關整合為單一之管理機關。由證券投資局改名的金融管理局（FSA）將繼續 1986 年金融服務法所賦予之管理金融體系及投資活動、監督交易所及結算機構等權限，發揮監管銀行、貨幣市場、外匯市場，以及管理其他組織的功能。為達成上述目標，除於 1998 年 6 月 1 日立法通過將屬原英國中央銀行職權移轉金融管理局外，更制訂金融服務及市場法（Financial Services and Market Act，簡稱 FSMA），俾利金融管理局發揮整合監督的職權。

在「金融一元化」的構想下，有必要重新制訂一個能整合外匯、銀行、保險、證券及期貨的法律，以配合主管機關大一統的措施。歷經三年多的立法過程，金融服務及市場法業已於 2000 年 6 月 14 日三讀通過，並於 2001 年 12 月 1 日正式施行。新法已取代 1986 年金融服務法，成為規範英國金融證券市場之主要法規。

公司法的變革亦為英國證券法制改革之核心。歐盟頒布了多個有關公司法的指令，深刻地影響和改變勒各國的公司立法。近年來世界興起的公司法改革趨勢，主要是放鬆管制、鼓勵投資及降低公司競爭成本。英國順應此一趨勢，自 1998 年即成立了公司法改革小組，對

公司法的核心架構進行了根本性的審查，發表了多份公司法改革報告和白皮書。2005 年 11 月 3 日，英國政府也公布了英國公司法的改革方案。此次改革方案的重點可歸納為四大目標：（一）加強股東的參與，完善長期的投資文化和環境；（二）確保更好的管理和首先考慮小型公司；（三）使設立和管理公司更為容易；（四）增強在未來的適應性，俾利提高股東的參與，簡化小企業的手續、推動企業合併、增強企業未來發展得靈活性與適應性。此外，新公司法法案亦對強化股東資訊揭露、間接投資人的權益保障、董事會職責的落實、法定審計等方面多所著墨。新公司法已於 2006 年 11 月 8 日通過，此案將避免英國發生類似世界通訊的弊案之可能，並刺激投資。

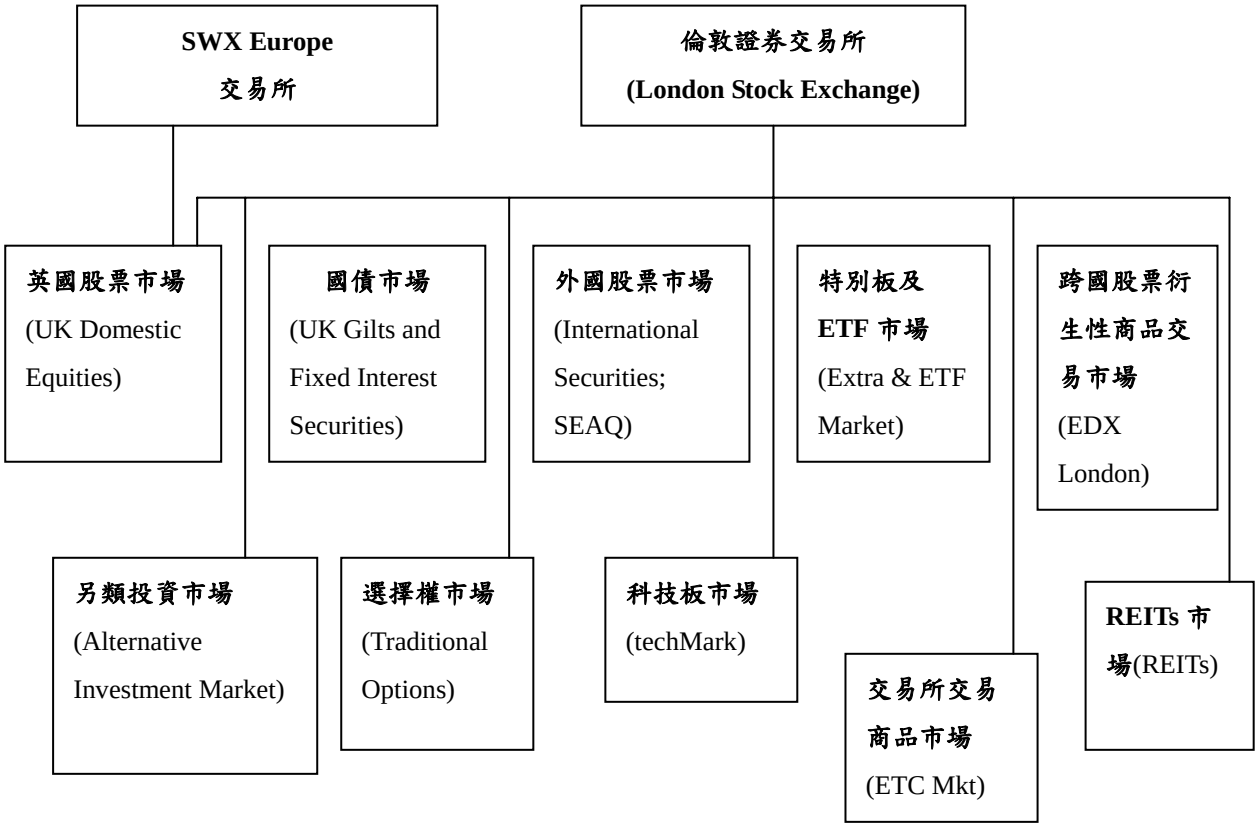


圖 3-2　英國證券市場架構圖例

資料來源: 臺灣證券交易所(2009)，世界各國主要證券市場-英國。

二、 英國有價證券借貸相關規定

英國有價證券借貸市場，係建構於有價證券市場與貨幣市場，由於市場創造者負有雙向報價調節市場義務，且其買賣證券與借券均得免課徵印花稅，故借券主要係來自市場創造之業務需求。供給面則涵蓋銀行、保險公司、投資信託公司、退休基金管理機構與證券商等法人機構。其目的為有價證券長期持有者，以出借證券方式取得現金，進而從事貨幣市場賺取短期附加利潤。

在英國，中介人係扮演借券當事人的角色，即中介人先與供給者進行有價證券借貸，再由中介人與需求者進行有價證券借貸。早期中介人多由貨幣市場經紀商壟斷，隨著市場自由化，已有大型證券商成為中介人，參與有價證券借貸市場的競爭。

英國證券市場實務：

1. 市場參與者

英國有價證券借貸市場屬於店頭型態之分散式架構，原則上由出借人、借券人及中介人(Intermediaries)三方構成，中介人在借券交易中主要擔任當事人(principal)或代理人(agent)的角色，區隔借券的需求面及供給面。

(1)出借人(Lenders)

借券市場的主要券源供應者，來自長期持有具規模之多種投資組合的最終受益人(beneficial owners)，例如退休基金、保險公司、共同基金與單位信託等，以確保有出借有價證券之品質。

出借人得直接或透過代理人間接參與市場，為達出借有價證券進入市場的目的，途徑如下：透過中介人安排出借計畫、直接將投資組合經競價方式出借予借券人、選擇一主要的借券人直接進行出借作業、或是結合部分投資策略。

(2)借券人(Borrowers)

最根本的借券需求大部分始於 Broker Dealers、避險基金、證券市場製造者與投資銀行之交易活動。

(3)中介人(Intermediaries)

中介人存在於出借人與借券人之間，扮演的角色分為代理人或當事人兩種。擔任代理人之中介人為選擇間接參與市場的 beneficial owners 安排有價證券出借事宜，主要包括保管銀行、資產管理人與 Third-party agents。Third-party agents 專做借券業務，保管銀行與資產管理人則除借券業務之外，尚承作其他業務。借券收益可由代理人與出借人依所協議的條件拆帳，考量因素得視代理人提供之服務而定。

擔任當事人之中介人主要包括 Broker Dealers、貨幣經紀商與 Prime brokers。中介人在此可因承擔擔保品風險、交易對手信用與流動性風險等因素收取報酬，例如，當借入有價證券採開放式期間(Open Basis)，但卻將此有價證券出借予某客戶以一約定期間時，必須承擔出借人要求提前還券，而需買回該部位以供還券的風險。

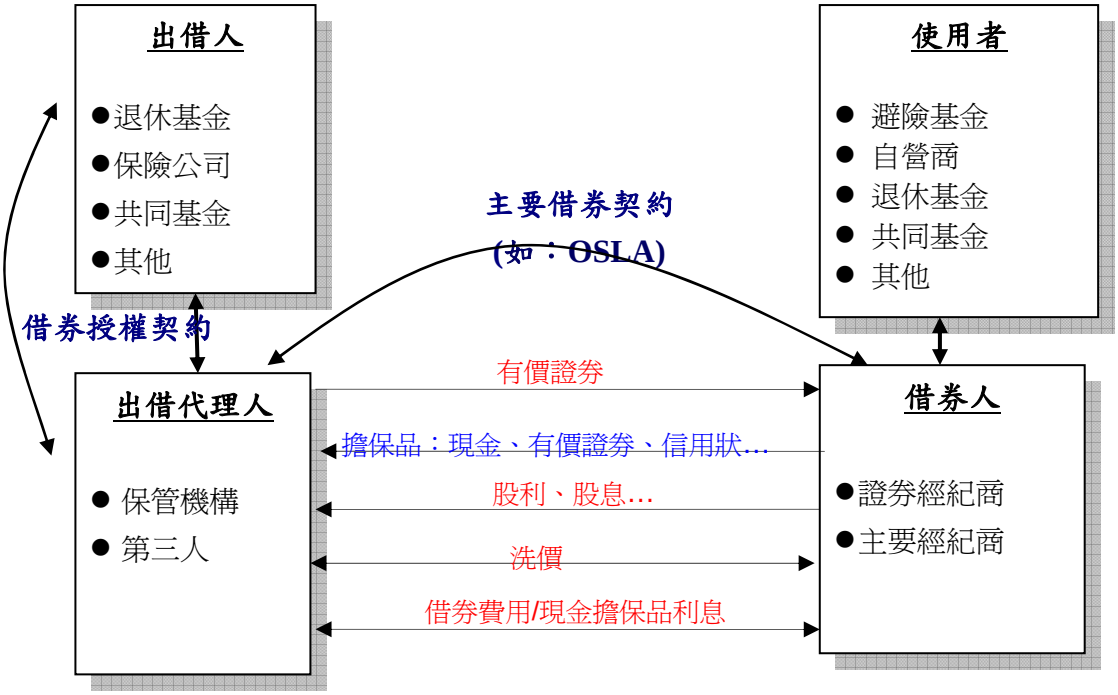


圖 3-3　英國有價證券借貸架構圖例

資料來源: 臺灣證券交易所。

2.有價證券借貸交易相關規則

(1)借券型態及需求

借入有價證券最普遍的理由係用以應付賣出之交割需求短缺部位 ，借券人亦因臆測未來某有價證券價格將下跌，得買入較便宜的股票來還券而借入有價證券放空賺取利差，當出借人察覺到相關有價證券之價格偏離，亦會利用借券操作獲取價差利潤。借券型態有提供有價證券或其他資產為擔保品者，亦有提供現金者。

並非所有的借券需求均因放空行為所致，融資需求亦驅動許多借券交易，比如有融資需求者得利用附買回條件交易（repo）、buy/sell backs 或收取現金擔保品之借券交易取得所需資金。另一大部分的借券交易與放空行為無關，主要係因暫時性移轉所有權而致，此所有權移轉的安排對出借人與借券人均有利。舉例說明

如下：

① 當出借人應扣繳股利所得或利息所得之稅款，而某些潛在的借券人不用扣繳時。此時產生借券交易，借券人收到股利之免稅利益，將以借券收入形式或權益補償形式與出借人分享。

② 當股票發行人提供股東選擇收取現金股利或是將現金股利以低於市價之價格再投資於本公司股票之選項時，但有些基金持有部位不可大於規定之投資限額，因此無法選擇後者選項，卻又想獲取此股票賣出之收益，於是產生借券交易，由借券人選擇後者選項，賣出該借入有價證券，然後將賣出的利益，以借券收入形式或權益補償形式與出借人分享。

(2)借券契約

英國有價證券借貸制度除以政府相關法令為依歸外，其運作重點為借貸雙方之契約規範。倫敦交易所法規明訂，倫敦交易所會員（以下簡稱會員）在辦理有價證券借貸之前，原則上必先與交易之另一方當事人簽訂符合倫敦交易所核准之標準化有價證券借貸契約。以下為經倫敦交易所核准之契約：

① Global Master Securities Lending Agreement (2009)

② Master Equity & Fixed Interest Stock Lending Agreement (1996)

③ PSA/ISMA Global Master Repurchase Agreement as extended by supplemental terms and conditions for equity repo forming Part 2 of Annex 1 of the agreement

(3)標的證券

所有可於證券交易所中交易的有價證券，均可為有價證券借貸交易之標的。

(4)擔保品

目前擔保品包含現金與非現金形式之政府債券、公司債、轉換公

司債、股票、擔保信用狀及其他貨幣市場工具等。但是仍須經過借貸雙方評估，取得合意者，始為合格擔保品。

擔保品應存入出借人或中介人或指定第三者帳戶中。所提交的擔保品價值應涵蓋出借有價證券價值及一定比率之保證金，此「一定比率」應由借貸雙方協議並明訂於借貸契約。擔保品市值與借券標的市值應維持契約所訂比率，並依前一營業日收盤價每日洗價，若有必要，亦得於盤中進行洗價。

多年來，現金擔保品的再投資利用已成為有價證券借貸交易之一環，尤其在美國，這種可以將現金擔保品再投資利用的機制，是驅動有價證券借貸交易的重要因素。

(5)借券費率

借券費率由借貸雙方協議訂之，通常會考量標的證券供需情形、擔保品的可供利用之彈性、權益補償金額多寡，以及出借人提前召回有價證券可能性等因素。

大多數的有價證券借貸活動是有提供擔保品的，通常提供其他有價證券或現金。當出借人收取有價證券擔保品時，借券人會給付出借人借券費用。

相較之下，當出借人收取現金擔保品時，出借人將給付借券人一定比率之利息（rebate rate，通常低於市場利率），出借人可將此現金擔保品再投資利用，獲取收益。

(6)借貸期間與還券

借貸期間可採開放式或封閉式，開放式表示雖無到期日，但可隨時召回，因為基本上出借人希望替基金經理人保留即使出借，仍可以隨時賣出的彈性；封閉式則表示借貸交易有一特定期間。

借貸雙方必須對於借貸天期為一特定期間或是無特定期間可隨

時召回出借有價證券，取得一致意見。若是借貸天期為一特定期間者，出借人得不接受提前還券，借券人亦得不理會出借人之提前召回動作。當借貸交易無特定期間者，通常表示借券人有長期的借券需求，因此出借人保留必要時可召回出借有價證券之權利。

(7)權益補償

依據有價證券借貸契約，出借人在借貸期間內所可能享有之任何股息紅利，借券人必須以等值現金或股票之形式償還，此即所謂「權益補償」，同樣地，當借券人提供有價證券擔保品時，出借人亦應對借券人權益補償。

(8)投票權

在英國，藉由借入股票故意影響股東會投票而取得公司經營控制權的作法，並非是不合法的，但機構法人出借人並不希望這種作法成為借入股票的合法用途之一。

(9)違約處理

有關違約處理程序應納入有價證券借貸契約。當借券人未能依出借人要求如期歸還有價證券或出借人未能依約返還擔保品時，應做財務上之補償（financial redress），金額計算包含下列項目：①產生的利息或透支數額，②由於借券人違約應支付出借人賣出交割義務之成本，③因借券人違約致使出借人必須自公開市場買回股票（buy-in）所需之總成本費用。

(10)稅賦問題

①印花稅（UK Stamp Duty/Stamp Duty Reserve Tax, SDRT）

當有價證券借貸交易係根據交易所之規定成交且依規定向交易所申報者，同時所借貸之標的有價證券係屬經常於交易所交

易者（如上市公司股票），並且借貸雙方當事人至少有一方屬倫敦交易所會員等上述條件成立時，可得豁免繳納英國賦稅署稅法規定下之印花稅。非倫敦交易所會員若透過倫敦交易所會員從事有價證券借貸業務者，亦得免納印花稅。

向倫敦交易所申報之有價證券借貸交易，係以借貸雙方意思合致之當天收盤後，由會員透過CREST 傳送至倫敦交易所之報表為準。

②權益補償課稅

根據經濟實質，權益補償代表的意義如同標的有價證券並未移轉，原則上，英國國內稅法規定應對英國居民之出借人與借券人課稅。亦即對其出借之英國股票的權益補償課稅，如同針對出借人未出借而持有該股票所生之股息課稅，然而當借券人有實際支付權益補償的事實，且符合一定資格條件者，其支付之權益補償得於所得稅申報中扣減。

（二）CREST 系統簡介

CRESTCo 係英國證券市場集中保管機構。2002 年，CRESTCo 併入Euroclear下。透過CREST 系統，提供下列三種服務的借券與擔保品之移轉交割功能：1.股票借貸交易Stock Loan、2.等值交付交易DBV, delivery by value）、3.自2001 年起推出附買回交易Repo，可視為Stock Loan 之反向交易。在CREST 系統中，允許借貸雙方以當事人或代理人身分進行交易，CREST 系統不擔任交易對手，僅以中介機構身分提供服務。

1.股票借貸交易（Stock Loan）

股票借貸交易使CREST 會員能夠出借及借取證券，其設計符合

2000年Global Master Securities Lending Agreement 以及之前的協議，CREST 並不負責監督或執行協議條款或其他任何協議。證券借貸協議的主要特色為，所有出借的證券與提供的擔保品，其所有權均由一方完全移轉至他方，屆時僅須歸還同種類的證券與擔保品即可。雖然名稱謂之股票融資借貸，然而此種交易實際上可應用於證券之借貸、附買回（或先賣出後買回, Repo）交易。

CREST 股票借貸交易將使證券於兩個會員帳戶間撥轉，當股票發生借貸交易時，CREST 將其視為兩筆不同的借貸（即兩筆股票的撥轉，先從出借人帳戶撥入中介人帳戶，再由中介人帳戶撥入借券人帳戶），此為獨立的交割且CREST在任何情況下均不將其聯結。以下就其借貸申請、交割、洗價、及歸還簡述如下：

(1)輸入借貸申請：股票借貸須由借券人與出借人雙方輸入借貸指令，除了識別出借證券、交易對手方及付款細節外，會員亦可設定現金擔保品條件與保證金比率。股票借貸可輸入不支付相對價金（free of payment），當設定現金擔保品條件時，該筆借貸將每日進行洗價作業，除非借貸雙方約定不進行洗價。當雙方輸入借貸條件比對一致後，保證金（margin）將自動計入現金擔保品計算，若會員未設定保證金比率，則系統將自動設定為預設值「0」，會員可自行設定約定的保證金比率（可為負值），但借貸雙方輸入的資料必須一致。會員亦可約定歸還日期，但僅為相關參考資訊，系統並不處理此部分的輸入，若輸入歸還日期早於次一營業日，將被系統拒絕。

(2)交割：股票借貸指令經過正常交割前的檢查後，循序等候處理。在交割時點，CREST應支付款項，係依雙方輸入時的約定，加上系統預設的保證金或是雙方約定的保證金。

(3)股票借貸的洗價：若股票借貸未設定現金擔保品條件，或雙方會員約定不作洗價，則系統將不執行洗價作業。對於需洗價之股票借貸，系統自交割當日起，每晚自動對未了結的證券借貸部位，參考該證券前一營業日收盤賣價（closing offer price）或其他相關參考價格，進行洗價作業。

洗價所產生的價差，將經由款項交割系統，由借貸雙方間撥付。例如若出借證券本日價格較前一營業日低，出借證券之價值將予以調整，並計算出借人應支付借券人之金額，反之亦然。計算產生之差價金額加入付款會員之現金支付項目排隊，視為交割項目，並賦予高優先等級，付款會員不得更改之。

(4)股票借貸的歸還：當股票借貸交易完成交割後，系統自動為借貸雙方產生一個預先配對的股票借貸歸還指令（SLR），其預設之交割日期為次一營業日，而其交割優先等級系統均設定為零，需經由借券人來提昇其優先等級，以完成其借券歸還的交割作業。

2.等值交付交易（DBV, delivery by value）

等值交付交易（DBV）通常係為會員產生之CREST 支付款項，使CREST會員能夠提供（give）與接受（receive）證券組合作為擔保品，此系統對於會員間之股票借貸、附買回交易並透過DBV 返還擔保品，並無連結。

DBV 交易需由雙方會員分別輸入指令，除了有關交易對手方及付款細節外，對每筆DBV 交易，會員必須指定所要移轉證券DBV 等級（DBV Class）、保證金、有無集中度限制（a concentration limit，例如每種證券不得超過該筆DBV總價值之10% ）、DBV 之證券總價值、優先順序、提供者或接受者、現金擔保品條件、原交易系統及

Repo 利率。

系統依前一營業日收盤買價或其他參考價格計算，將提供者之證券撥給接受者，直至滿足DBV 指令，然後系統依據標準交割處理產生對應之交割指令。

在DBV 交割後，系統自動為借貸雙方產生預先配對的DBV 歸還指令（DBRs），設定的歸還日期為現金擔保品流通期間之次一營業日，並設定高優先等級，雙方會員不得更改之。DBV 歸還指令可分割且在雙方合意下，可刪除。指令係按個別比例之CREST 支付款項，一個指令移動一種證券，而非一個指令移動多種證券。

三、 信用交易制度

（一）辦理有價證券融資融券之相關法規

英國財政服務法第 55 章（Financial Services Act Section 55）、證券記期貨規章（Securities Future Authority）第 3 章-170 條至 182 條之 5 及第 4 章全文。

（二）授信機構辦理融資融券應具備之資格條件

經英國中央銀行（Bank of England）核准之機構，才可以辦理績優類股之信用交易。而國內證券商及財務代理公司須經倫敦交易所核准方可辦理信用交易業務。經證券期貨局核准之限定證券交易之財務代理公司，則主要承做非英國發行之股票的信用交易。

（三）得為融資融券有價證券之標準

績優類股（gilt-edged securities）以及在倫敦交易所掛牌之在英國及愛爾蘭註冊之有價證券。

（四）融資融券契約

在英國信用交易所採行的標準化融資融券契約，係依以下三種契

約為主：

1.Master Equity and Fixed Interest Stock Lending Agreement（EFISLA）;

2.Gilt Edged Stock Lending Agreement（GESLA）;

3.Global Master Repurchase Agreement。

（五）授信機構確保債權的方法

法令無強制規定，依授信銀行或證券公司與客戶訂定之契約辦理。融券之借貸，為確保出借人借出股票取得借券費的權益，借方需繳納現金作為保證金及可認定的融資成數的股票或現金，融券的股票價值，依每日之市價調整之，而擔保品之價值不足以支應時，借方需補繳現金以補足部位。

四、 英國境外有價證券借券融資相關規定及作法

英國在外國有價證券借券業務方面，並沒有另訂法令規範。實務上則是根據有價證券借貸指導原則(Securities Borrowing and Lending Code of Guidance)、海外有價證券借券契約(Overseas Securities Lender's Agreement, OSLA)以及全球有價證券借貸主契約(Global Master Securities Lending Agreement, GMSLA)相關規定的重點來操作。有關 GMSLA 及 OSLA 內容詳附錄三及附錄四。

依有價證券借貸指導原則，對英國境外有價證券借券相關規定如下：

1. 所有借貸交易的參與者應該要注意可能產生的交割風險，並且提出具體措施來控制跨國跨時差的影響。這些措施應該包括擔保品的更換及更新。在有價證券和是擔保品不在同一交割系統或是同一個國家的情況下，交易成員更必須努力確保跨時區的交易風險及對手違約風險能降到最低。可行的方法之一，在某些情況下，

要求擔保品提前送達。

2. 市場參與者應取得雙方同意之契約，契約內必須揭示交易對手的信用評估報告，尤其是非屬英國企業或是自然人。若是出借人要求保管銀行進行對手的信用評估，此報告也必須在契約中揭示。
3. 當交易環境及使用的有價證券契約重要條款有因地不同者，市場參與者應該認真思考自己從事契約有效性的評估。當對手交易者為註冊在外國的公司時，出借人/借券人必須特別徵詢專業的法律意見，瞭解所簽訂的借貸合約是否在交易對手國也有法律效力。
4. 關於「營業日」，市場參與者必須決定要以哪一個時區來衡量一個營業日，依常規會以有價證券或擔保品所交易的時區。同樣的，參與者也必須決定一天之中，那一個期限時間以前的通知是有效力的，實務上會以有價證券交易的市場休市時間為準。所以不同時區的出借人/借券人要特別注意對手所在國交易市場的休市時間。

第三節　日本

一、有價證券借貸現況

（一）有價證券借貸的發展

日本的證券借貸法源依據為其民法第 587 條之消費借貸，依該條文定義，消費借貸係指當事人一方將現金或物品交付他方，而他方同意以相同種類、品質、數量之現金或物品返還前者而生效力之契約。另根據日本「金融商品交易法」第 35 條的規定，金融商品交易業者的業務範圍，包括有價證券借貸及借貸交易之中介人等規定。

日本證券借貸的發展，最初係源自於日本信用交易制度體系內，大部分為證券商對客戶融券之「信用交易」（Margin Transaction），

其次則為普通交易交割發生券源不足或為彌補錯帳之證券借貸需求，及證券商因辦理信用交易交割時款、券不足而向證券金融公司辦理之「借貸交易」（Loan Transaction），惟其所指借貸交易，與歐美之證券借貸交易係存在差異。

為健全證券市場發展之基礎配套機制，1997 年 6 月 13 日，日本大藏省（現為財務省）證券交易會議確認成立證券借貸市場之必要性。1998 年 2 月 20 日，東京證券交易所（TSE）與日本證券業協會（JSDA）成立借券市場研究小組，依該小組之規劃，原有證券金融公司信用交易制度中，證券金融公司對證券商的「借貸交易」不變，但證券商對客戶的融券，重新被定義為「制度信用交易」；另在證券金融體系之外，規劃新種證券借貸制度，開放證券商得直接向信託銀行、保險公司或其他證券商等主要機構投資人借入證券，以提供證券商對個人投資人之「議借信用交易（Negotiable Margin Transaction）」，與證券商對機構投資人之「議借有價證券借貸（Negotiable Securities Borrowing and Lending）」之券源。

（二）有價證券借貸規定[6]

1.市場參與者

目前日本信用交易市場的參與者為證金公司、證券商與個人投資人、機構投資人。至於有價證券借貸市場的參與者，為機構投資人與證券商，其中出借人係指保險公司等機構投資人。

2.市場交易型態

在 1998 年借券市場研究小組規劃之前，原本證券商的主要借入券源， 是以透過「借貸交易」的方式向證券金融公司轉融通而來， 但

[6]參考臺灣證券交易所(2009)，世界各國主要證券市場—日本部分。

由於「借貸交易」與原信用交易融券的借券費用係於融券交易成交後一天才可競價產生，因此交易成本無法預知，非常不利於需要事前預估借券成本之有套利需求等操作之投資人，同時，部份持有大量股票的機構投資人亦表明想出借股票賺取出借收益的意願，因此，規劃新種借券制度，就「議借信用交易」與「議借有價證券借貸制度」開放證券商得直接向信託銀行、保險公司或其他證券商等主要機構投資人借入股票。

3.交易流程

(1)借貸交易

在日本，證券借貸交易的主要參與人為交易所會員證券商與證券金融公司，係因交易所會員證券商為辦理每日標準信用交易融券券源不足時之轉融通，交易乃透過交易所結算系統為之，當證券金融公司發生券源不足的時候也會對外借券，其借券的對象主要為保險公司。會員證券商須於轉融通前繳納 3 成現金或股票為保證金，成交後將等同於借入股票市值 100%之現金作為擔保品，轉融券期間為 6 個月，所提供擔保品每日洗價，不足時證券金融公司將發出追繳通知。證券金融公司轉融通之標的證券以上市股票中經交易所特別指定者為限，此種股票稱為「借貸股票」。

(2)制度信用交易

此種信用交易主要參與人為交易所會員證券商與個人投資人，交易乃透過交易所為之，似我國的信用交易融券，在證券商幫客戶融券賣出之前，客戶應先繳納 3 成之現金或股票為保證金，俟證券商幫客戶融券賣出後，客戶應將等同於賣出股票市值 100%之現金作為擔保品， 融券期間為 6 個月，所提供擔保品每日洗價，不足時證券商

將發出追繳通知。合格之標的證券以上市股票中經交易所特別指定者為限。

(3)「議借信用交易」與「議借有價證券借貸制度」

「議借信用交易」係由證券商將取借自機構投資人的股票，以議借型態對個人投資人融券信用交易制度，提共個人投資人除標準信用交易外，其他交易方式的選擇。議借信用交易採雙方協議為之，借貸合約條款（如借券期間、借券費用、現金擔保品之利率等）由交易雙方自行議定。在證券商幫客戶融券賣出之前，客戶應先繳納 3 成之現金或股票為保證金，賣出價金留於證券商處作為擔保品，擔保品每日洗價，不足時有追繳機制。此種議借信用交易可滿足想事前控制交易成本的個人投資人之需，且借券期間亦不受限於 3 至 6 個月而可自行議定。

為避免機構投資人因借券賣出的券量較多，需提交大筆保證金，致使降低機構投資人參與市場的意願，並考量機構投資人之違約風險較個人投資人為低的事實，於是在信用交易融券賣出的機制之外，新增「議借有價證券借貸制度」，即證券商得將向機構投資人借入之股票， 出借予機構投資人之借券制度。借券交易方式採雙方協議為之，借貸合約條款（如借券期間、借券費用、現金擔保品之利率等）由交易雙方自行議定。證券商必須提交等同於借入股票市值 100%之現金擔保品給出借人，擔保品每日洗價，不足時有追繳機制。

有關議借信用交易及議借有價證券借貸制度之架構如下圖所示：

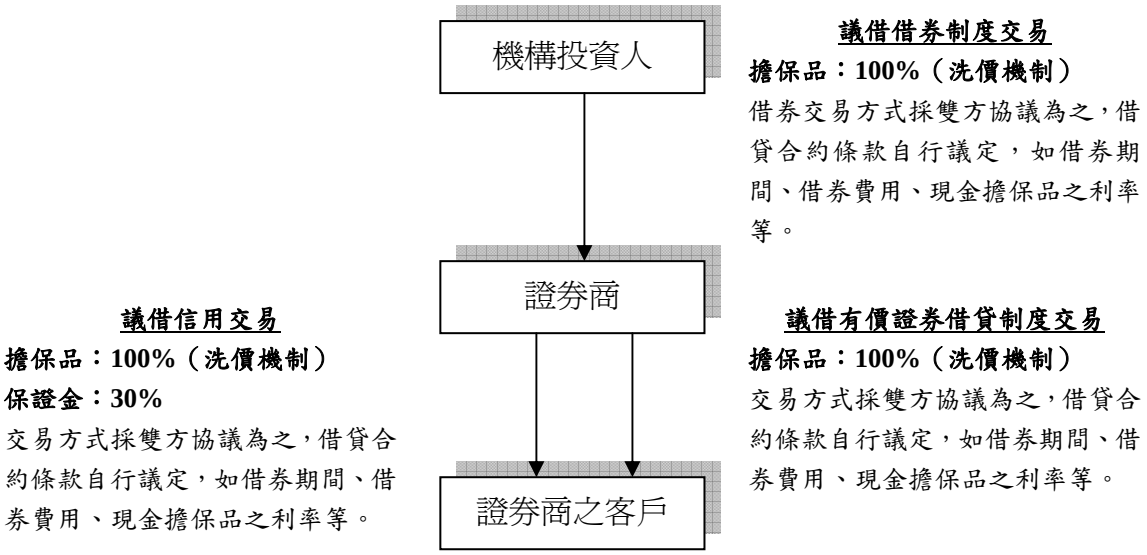


圖 3-4　日本議借信用交易及議借有價證券借貸制度之架構圖

資料來源：臺灣證券交易所(2009)，世界主要證券市場－日本，臺灣證券交易所。

二、信用交易現況[7]

（一）法源及辦理資格

日本辦理有價證券信用交易的法源為日本證券交易法第 49 條、第 51 條、第 54 條、第 130 條、第 156-3 條、第 156-7 條、第 156-8 條、第 205 條、第 208 條。授信機構辦理融資融券者，應具備證券交易所正會員資格之證券商。

（二）得為融資融券有價證券之標準

目前日本得為信用交易之有價證券以日本交易所第一類上市股票為限。而第一類上市股票中有下列情事之一者，認定為除外股票，不得辦理貸借交易：

1.上市股數不足六千萬股者(換算資本額為三十億日元以下之發行公

[7]參考臺灣證券交易所(2009)，世界各國主要證券市場—日本部分。

司)。

2.股數分佈情況需符合：(1)前十名大股東及特別利害關係人之持股總數超過該公司上市股數百分之七十者。(2)除前開股東外，其餘持有一交易單位以上股份之股東人未達一定標準者。

3.即將下市之股票。

4.符合下市基準，被移至整理專櫃進行交易之股票。

5.因大量買占或其他原因，致其信用交易或貸借交易遭受管制措施，且該原因須經相當時間始能排除，不宜續行貸借交易者。

6.其他參酌該企業業績、股價、產業別等因素，認為不宜貸借交易者。

（三）委託保證金之比率

日本財務省依據證券交易法第 161-2 條第 1 項規定，以信用交易方式購入股票須繳納之委託保證金比率授權日本財務省定訂之，但最低不得少於 30% （依購買股票價格的 30%），最低委託保證金不得少於三十萬元日幣，借貸期間為 6 個月（1999 年 5 月 26 日時之比率及規定）。融券與融資比率及期間均相同，融券保證金同為 30%，借貸期間亦為 6 個月。

除財務省具有法定調整權外，東京證券交易所依章程第 36 之 1 條及「受託買賣有價證券之管制措施」規定，在財務省所定比率之上，得視市況調整全部或個別股票委託保證金比率，報經財務省核可後發佈實施， 因此在 1987 年 2 月時委託保證金比例曾經達到 70%。

證券商為加強債權確保，亦可在財務省及東京證券交易所訂定比率之上，自行斟酌就全部或個別股票訂定較高之委託保證比率。

（四）辦理融資融券之資金來源及證券來源

1.證券金融公司部分：(1)自有資金。(2)委託保證金。(3)銀行借款。(4) 發行商業本票。(5)拆放市場短期借款。(6)轉融券擔保價款。

2.證券商部分：(1)自有資金。(2)向證券金融公司轉融通。(3)銀行借款。(4)融券擔保價款。(5)委託保證金。

（五）轉融通制度

目前日本證金公司辦理證券商轉融資的保證金成數比例為30%。轉融通證券商得向證券金融公司申請貸借交易者，以符合下列條件之一種為限：

1.為對其客戶融資融券，而向證券金融公司轉融通，以辦理交割。

2.為證券商自己之信用交易，而向證券金融公司融資融券以辦理交割。

3.證券商原以自有款券對其各戶融資融券辦理交割，嗣為繼續辦理信用交易之必要而向證券金融公司融通款券。

在轉融通部分並有貸借配額及貸借總額規範：

1.貸借配額：為防止證券商過度膨脹信用，日本證金公司訂有「貸借交易基準額算定基準」，依據市場總體信用供需規模、證券市況、金融情勢等因素，視各證券商之淨值、負債比率、資金調度能力、買賣成交值、通常貸借交易量、營業狀況等財務業務結構及其與日證金之合作程度， 設定各證券商可得申請貸借之融資限度總額，上開總額細分為：(1)基本分配額(一年調整一次)(2)短期分配額(三個月調整一次)(3)短期分配額等三種， 必要時並得隨時調整之。在分配後，證券商申請貸借之融資減融券餘額如超過其配額時，則就超過部份，按其超過比率累進加收擔保金，通常如超過百分之一百五十以上，則同時累進增收現金擔保金(即以一定比率之擔保金以現金繳納，不得以有價證券抵繳)，上開增加擔保之比率係按照市況動向因應而調整之。

2.貸借總額

除前開各證券商之貸借配額外，茲據日證金透露，該公司對全市場貸額度設有 700 億元之限額。此項限額係日證金公司依據經驗判斷並與日本之銀行共同決定，以維護市場秩序，原則上財務省不予干涉。

三、外國有價證券借券融資相關規定

現行日本證券商可協助客戶買賣外國有價證券的方式，包括透過外國證券商以複委託方式買賣外國有價證券、以及買賣在日本證券交易所掛牌的外國有價證券等方式。

（一）上市外國有價證券

日本目前在東京證券交易所設有外國股票（日本稱之為「外國株」）市場，亦即引進外國企業到東京掛牌上市，其交易相關規定大致上均比照日本國內上市股票，截至 2009 年 4 月 28 日止，計有 15 家外國企業在東京證券市場的「外國股票市場」掛牌交易。為鼓勵外國發行人到日本上市，並使東京證券交易所邁向國際化，2007 年 4 月，東京證券交易所引進外國股票的信用交易制度，使投資人得以融資融券方式買賣外國股票。

目前東京證券交易所在外國有價證券的信用交易方面之規定如下表：

表 3-6　東京證券交易所外國有價證券信用交易制度

項目	內容
1.引進外國有價證券信用交易	分爲「制度信用交易」及「一般信用交易」
2.權利處理	
(1) 制度信用交易 ● 股息分配 ● 股利分配	● 現金股息：融資買進的顧客自金融商品交易業者取得；融券賣出的顧客則由金融商品交易業者支付。 ● 股票股利：支付融資買進顧客；融券賣出顧客取得。

項目	內容
(2)一般信用交易	與國內股票信用交易相同，由交易參加者顧客間協議處理
3.信用（借貸）交易標的選定及取消標準	參考日本國內股票信用（借貸）交易之選取及取消標準
(1) 選定標準 ● 上市股數 ● 股東人數 ● 成交量及週轉率 ● 企業業績	 ● 10,000 (20,000) 單位以上 ● 日本國內股東 1,100（1,700）人以上 ● 最近 6 個月月平均成交量在 100 單位以上，週轉率 80%以上 ● a.最近年度當期純利益爲正；b.最近年度終了之利益剩餘金爲負，但資產總額在 20 億日圓以上。
(2) 取消標準 ● 上市股數 ● 股東人數 ● 成交量	 ● 未滿 10,000 (20,000) 單位 ● 本國內股東未滿 600（1,200）人 ● 最近一年月平均成交量不足 10 單位又 3 個月內沒有任何成交

資料來源：東京證券交易所(http://www.tse.co.jp)

（二）店頭交易外國有價證券

根據日本證券業協會之 JASDAQ「信用取引・貸借取引規程」第 3 條的規定[8]，當外國發行人發行之有價證券，符合下市櫃基準之股票，以及該當交易所列為不適時之股票時，則不能進行信用交易，但亦並未特別限制借貸交易的部分，此點應與我國現行的規定相當。但在以外國有價證券做為擔保品的部分，證金公司（如大阪證券金融公司）則是可以接受的，但必須要依市價折扣一定成數（如打八折計算）。

（三）日本大型證券商信用交易標準

茲將日本大型證券商信用交易客戶之資格及保證金相關規定彙

[8] 條文內容如下：「取引参加者は、外国法人の発行する株券（外国株預託証券（外国法人の発行する株券に係る権利を表示する預託証券をいう。）を含む。）、新株予約権証券、出資証券（特別の法律により設立された法人の発行する出資証券をいう。）、上場廃止の基準に該当した銘柄その他当取引所が適当でないと認めた銘柄について、信用取引を行ってはならない。」

如下表：

表 3-7　日本大型證券商信用交易客戶資格

項目 / 證券公司	最低管理資產 (Minimum AUM)	原始保證金存入	保證金比率 (Margin rates)
野村證券	2 千萬日圓	300,000 日圓	30%
日興證券	2 千萬日圓	無最低要求	30%
大和證券	1 千萬日圓	300,000 日圓	30%
松井證券	Nil	2 百萬日圓	50%
岩井證券	Nil	1 百萬日圓	40%

資料來源：Lawrence Komo(2008), Securities and Lending: Trends and Opportunities.

第四節　　小結

美國與英國的借券及信用交易制度，基本上建立在雙方當事人對於合約精神的尊重，主管機關方面並未對個別之費率、擔保品等項目做出強制性的規定，僅設有原則性的規範。目前美國多家保管銀行及證券商均可提供外國有價證券借貸，使投資人可以增加投資收益；而美國在外國有價證券之信用交易部分，目前亦可以契約的方式進行，其可供信用交易之外國有價證券種類，原則上受到美國證券交易法及 Regulation T 的規範。

在英國部分，有關非英國公司有價證券的借券制度，僅以「有價證券指導原則」提醒借貸雙方對於跨國部分的法律、跨國時差的影響以及匯率計算等要得別注意，並未特別規範外國有價證券之借貸細節。

在日本部分，目前東京證券交易所對於在東京證券交易所掛牌之外國有價證券可提供借券及信用交易，至於店頭市場的外國有價證券借券制度並未特別限制。

綜上所述，未來我國如欲開放證券商受託買賣外國有價證券增加借券業務，證券商者可參酌美、英等國之借券架構以及相關之借券契約內容，與國內投資人訂定適合我國國情之授權借券契約，或由主管機關或證券商公會制定契約範本，提供證券商參考。在契約內容部分，應保持部分彈性，讓契約雙方可以協調彼此能同意的出借費率、擔保品以及再投資標的等項目，並應制定再投資準則(Reinvestment Gudeline)，協助出借人依其風險/報酬屬性選擇適合的再投資標的，並應提供借券人清單(Borrower List)，使出借人了解其證券的流向。

由於美、英等國之借券業務，以契約精神為主，其外國有價證券的借券業務，主管機關並未特別規範，僅依照交易雙方契約進行交易的作法，與我國國情不盡相同，應有更多的教育宣導及投資人保護措施，俾確保借券人切實了解借券之風險，並評估自身的狀況後，再考慮是否參與借券。

至於在開放外國有價證券融資部分，為因應國外市場無漲跌幅限制以及匯率變動可能的風險，參考美國相關規定，應限制外國有價證券得為融資的對象，建議初期可以國外大型績優股為限，待熟悉市場運作後，再開放至符合一定規模、交易量等標準之外國有價證券。

茲將美、英、日等國之借券及融資制度彙整比較如下表：

表 3-8　美、英、日之借券及融資制度比較

項目	美國	英國	日本
借券制度	● 主要採分散式架構。 ● 證券商以當事人角色與客戶從事借券交易或中介借貸雙方之借券業務。 ● 主要契約架構為：出借人與中介代理機構間簽訂授權契約；出借人與中介代理機構簽訂主借券契約。	● 主要採分散式架構。 ● 證券商以當事人角色與客戶從事借券交易或中介借貸雙方之借券業務。 ● 主要契約架構為:出借人與中介代理機構間簽訂授權契約;出借人與中介代	由證券商從事有價證券借貸活動，可向證金公司以外之特定法人機構借券，再借給投資人。

項目	美國	英國	日本
	● 主要參考契約範本：SIFMA 訂定之 Maseter Securities Loan Agreement…等。	理機構簽訂主借券契約。 ● 主要參考契約範本：ISLA 訂定的 Global Master Securities Lending Agreement (2009)…等。	
	● 集中架構部分由 NSCC 辦理。	● 集中架構部分透過 CREST 系統辦理。	
融資（信用交易）制度	● 無證金公司，而由證券商主導。 ● 由證券商對客戶授信，若資金不足，則向銀行借；若券源不足，則向同業借調。		● 設有證金公司。 ● 由證券商對委託者提供融資融券，證金公司轉融通。

資料來源：本研究整理。

第四章　證券商受託買賣外國有價證券增加融資借券業務之架構及相關配套措施

第一節　融資架構及相關配套措施探討

一、實務運作

（一）需求面與供給面之探討

為使本研究報告之結論更為可行，本案除蒐集國內外現行借券及融資作法外，並實際訪談數家從事受託買賣外國有價證券業務之證券商，並召開產官學座談會，了解業界對於從事外國有價證券融資業務的意願及期望之架構作法。茲將業者所提出之主要意見，彙整如下：

1. **需求面：**在增加外國有價證券融資業務方面，有券商表示目前已有許多客戶詢問相關之融資業務，未來市場應有此部分需求。
2. **供給面：**在證券商增加融資的業務部分，有業者認為證券商向銀行進行外幣融資再借給客戶的成本過高，再加上外匯風險的避險需求，故就此項業務而言，似乎並無競爭利基。惟亦有券商表示，基於服務客戶的立場，業務若能開放將有意願承做。
3. **期望架構：**在確定開放本項業務之下，有券商建議可比照現行的融資架構，就融資標的而言，建議採逐步開放的方式進行；在融資成數方面，初期為考量風險，加上國外部分市場沒有漲跌幅限制，故不宜給予太高的成數；此外，並建議在融資業務開放後，可同時開放對應的融券業務，以使市場運作更為完整。惟此項業務開放的前提是央行必須先開放券商得持有外幣部位，亦為本項業務開放與否的關鍵。除參考國內現行融資（融券）架構外，亦有券商建議採用 back-to-back 的方式，證券商

僅擔任中間傳遞的功能，賺取價差和手續費，則可以降低持有外幣的風險。

（二）融資架構運作分析

目前國內有價證券的融資作業可分為證券商自辦融資融券與證券金融公司的融資融券業務。由於融資的幣別係採用新台幣，並不涉及台幣與外幣的匯率問題，故在推行時並不會面臨外匯政策的考量。然而，證券商受託買賣外國有價證券，欲增加融資業務，必須借給客戶的是外幣，若是金額不大，對本國匯率的影響自然不大，倘若國外證券市場大好，國內投資人希望有更多資金投資在外國市場因而舉借大筆外幣，是否會造成國內匯率的波動？此為貨幣主管機關對於開放此一業務的最重要考量。另一方面，倘若開放此一業務，證券商的外幣資金不足應如何因應？是否可考量開放證券商參與外幣拆款市場，以取得外幣資金來源？都需要進一步研議。

根據外匯主管機關表示，目前央行的政策傾向擴張外幣需求，因此，若能開放外幣融資，並不與政策方向相違背。茲將開放此一業務的可能進行模式，嘗試分析說明如下：

1. 由證券商直接融資給客戶

欲採此種模式開放外國有價證券融資業務，首先必須增加證券商本身持有外幣部位，惟為基於風險管理的考量，仍須有適當的限額，一方面降低外匯波動可能造成證券商匯兌損失的風險，另一方面降低大量外幣在外匯市場進出造成國內匯率不穩定的風險。故可由整體市場限額及個別證券商的限額來加以規範。

另一方面，若放寬證券商持有外幣部位，以提供外幣融資之需求，則證券商對於閒置之外幣必須有良好的投資政策及部位控管機

制，避免證券商因增加外幣融資業務所可能面臨的匯率風險。

2.證券商依客戶需求向銀行取得外幣， 再融資給客戶

此種作法係由證券商向彙整個別客戶之外幣融資需求，再向銀行一次取得較大量的外幣，再融資給客戶，證券商本身在帳上並不持有外幣，因而形成自然避險的情形。其優點為證券商向銀行取得之外幣量較大，理論上，應可享有較佳的匯率，此種作法因不涉及證券商外匯部位的持有，較可能在不調整過多現行的法規下執行，另一方面因不涉及證券商外幣的兌換，故可能造成的匯率穩定問題亦應較小。初步規劃之架構如下：

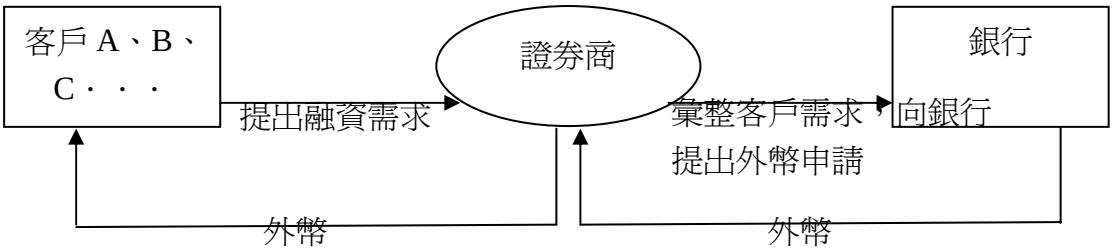


圖 4-1　證券商依客戶需求向銀行取得外幣， 再融資給客戶

茲將以上兩種做法之優缺點比較分析如下：

表 4-1　兩種融資模式的比較

比較項目	優點	缺點
由證券商直接對客戶提供融資	● 證券商直接將持有之外幣提供予客戶，並進行客戶擔保品的控管	● 涉及證券商外幣持有的風險管理 ● 涉及證券持有外幣的相關法規修正問題 ● 可能引發對匯率穩定問題的疑慮
證券商依客戶需求向銀行取得外幣，再融資給客戶	● 降低證券商外幣持有的風險管理需求 ● 較不涉及法規修正的問題 ● 相當於由銀行體系直接進行的融資，較不影響匯率穩定	● 證券商取得外幣資金來源的穩定性 ● 法律關係及架構安排應進一步釐清

資料來源：本研究整理

（三）外幣融資相關規範重點

除了外幣的取得之外，有關證券商受託買賣外國有價證券之外幣融資模式，建議可比照現行國內有價證券融資融券辦法，惟因融資所投資的標的為外國有價證券，其考量的層面與單純的國內有價證券略有不同，建議其開放進程可採循序漸進方式進行：

1. 在融資成數方面：基於國外部分證券市場未設有漲跌幅限制，故融資成數不宜過高，參考美國一般證券商的融資成數約在50%左右，建議開放初期可採用此一成數（目前國內有價證券的融資成數為 60%）即可，力求降低投資人與證券商可能面臨的風險。
2. 在得融資的標的方面：建議以目前受託買賣外國有價證券（尤其是股票部分）業務量較大的香港市場及美國市場標的為主，日後再視辦理情況，擴及至其他證券市場。而在標的的挑選上，初期建議應以國外績優股為得為融資的標的，以減少股價劇烈波動所可能產生的追繳情形與相關的糾紛。
3. 在融資的幣別方面：建議初期得為融資的幣多種類不宜過多，可考量以香港證券市場及美國證券市場採用的港幣及美元為優先開放的種類，一者因目前大多數複委託買賣外國有價證券之投資人仍以此兩者為主要投資市場，一者因市場及投資人對此兩種外匯的熟悉度均較高，待本項業務開放一段時日後，再視開放融資標的配合增加融資幣別。
4. 在融資利息方面：應以融資幣別為主，參考銀行之短期外幣存款利率採取加減碼的方式計算，以使融資標的與孳息一致，其計算方式並應明訂於投資人與證券之融資契約中。
5. 考量融券的開放方面：配合外幣融資業務的開放，可考量併同

開放融券業務，或於融資施行順暢後，再研議開放本項業務。

二、法規面

根據前述實務運作的分析，目前已可考慮開放證券商受託買賣外國有價證券的融資業務，但在法令部份有以下幾點必須注意：

（一）依現行證券商受託買賣外國有價證券管理規則第十三條規定，係明文禁止證券商受託買賣外國有價證券，不得為有價證券買賣之融資融券。窺其當初禁止理由，可能在於法令訂定當時市場需求小，再加上國際化程度較低，然而，信用交易與證券商受託買賣外國有價證券業務皆已實施數十年，再上目前中央銀行希望擴張外幣需求的政策下，證券商受託買賣外國有價證券的融資業務似乎可解除禁令，如此，證券商受託買賣外國有價證券管理規則第十三條勢必加以刪除。

（二）證券商若要從事受託買賣外國有價證券的融資業務，應開放證券商從事外匯交易。金管會於本(2009)年 8 月 21 日發布「證券商外幣風險上限管理要點」，其中第二點規定，「證券商外幣風險部位（含衍生性金融商品），不得超過最近期經會計師查核簽證之財務報告淨值之百分之十五，並不得超過五千萬美元。證券商應於前項限額內，自行決定其外幣風險金額，向中央銀行外匯局申請核備。」以五千萬美元的外幣風險上限為例，主要並非指業務量限於五千萬，而是指每天結算後所承擔的外匯部位風險不超過五千萬，至於業務量則不在限制之列。

（三）目前我國相關函令（台財證二字第 0930000022 號）規定證券

商持有外幣之總額度，以公司資本淨值之 30%為限，此部分應適度放寬，證券商才能持有足夠的外匯部位，提供客戶融資。

三、其他配套措施

（一）證券商自辦外幣融資之風險管理

未來若主管機關放寬證券商持有外幣部位之限制，並開放證券商得以自辦外國有價證券之融資，則證券商首要面對的便是外匯風險管理的問題。由於證券商並不像銀行對於外匯業務相當熟悉，亦能進行有效的風險控管，因此，如何借鏡銀行業的風險管理經驗，或是自行建構包含外匯風險的風控系統，即成為未來證券商必須要努力的方向。

在外匯風險管理方面，證券商必須了解承受過度的外匯風險，會對其盈餘及資本適足的水準構成重大威脅。因此主要可從三方面處理因外匯業務所引致的風險以及外匯風險額：

1. 維持有效的內部管控系統，以識別、評估、監察及管控風險的程度與性質；
2. 定下適當的風險限額，以避免出現任何風險集中情況；
3. 持有足夠資本以應付可能蒙受的損失。

此外，證券商亦應留意外匯風險與其他風險之間的相互關係對其組合的潛在影響。例如在不利的市場情況下，匯率與利率的不利變動通常都是相關的，因此可能會使整體風險增加。

（二）確實評估投資人承擔外匯風險能力

投資人若得以融資方式取得外幣後買進外國有價證券，在市況好

的時候，隨著外國證券的上漲，的確可為其增加收入。然因證券持有至出售通常會經過一段時間，此時匯率若產生重大波動，很可能使投資人賺了股票的價差，卻賠了新台幣與外幣之間的匯差，更有甚者，倘若外國證券市場下跌，外國貨幣卻跟著升值，因而必須用更多的新台幣才能換到借來的外幣金額，導致投資人兩邊皆未達到預期的獲利，甚至造成大量虧損。

對於大部分的機構投資人而言，其通常具有一定的風險管理能力，然若為一般投資人，則必須由證券商協助提醒其風險所在，並協助告知管理的方式及管道，或是在進行融資之前，先行評估投資人風險承受能力以及匯率風險管理的能力。

（三）外幣融資資訊之揭露

有關證券商因辦理外幣融資所持有之外幣部位相關資訊，應定期彙報主管機關，其外匯風險管理策略、避險結果檢討、外幣融資相關收入等項目，亦應一併向主管機關申報，俾使投資人了解證券商辦理相關業務之能力及其辦理成效。另一方面，在外幣融資的匯率及利率相關資訊亦須提供即時管道供投資人查詢。

第二節　借券架構及相關配套措施探討

一、 實務運作

（一）需求面與供給面之探討

為使本案之結論更為可行，本案除蒐集了解國內外現行信用交易作法外，並實際訪談數家從事受託買賣外國有價證券業務之證券商，了解其從事外國有價證券借券業務的意願及期望之架構作法。茲將業者所提出之主要意見，彙整如下：

1. **需求面**：有受訪之業者認為，外國有價證券借券的確有其市場性，亦確曾由客戶聽到借券的需求，而券商新金融商品部門在設計產品上亦會產生相應的券源需求，若能增加借券業務，對於客戶在避險管道的增加上以及券商開發新金融商品上均有所助益。此外，亦有業者認為或許目前並未有聽到客戶有此需求提出，但可搭配其他商品包裝成客戶所需的型態，例如透過股權交換、股權連結債券、保本型債券等商品設計的方式，用合理合法的方式吸引投資人購買相關商品及提供借券。
2. **供給面**：在證券商提供此一業務的意願上，大部分券商或是基於增加新種業務、或是基於加強對投資人的服務，均表達若開放後將提供本項服務的意願。惟亦有券商基於目前業務狀況，表示屆時雖會配合政策提供該項業務，但或許無法提供相當的人力與資源投入。
3. **期望架構**：在借券的架構上，可能的做法有三種：第一、首先透過證券商與客戶簽約，取得客戶借券的授權，然後再由**證券商與國外保管機構簽約**，以確保取得客戶所需的券種及數量，亦可將客戶的證券出借，以協助客戶取得額外的收入。第二、透過**證券商係與其上手證券商（通常是國外大型證券商，且本身即經營借券業務）簽約**取得券源，而不另外透過保管機構，至於證券商與客戶的契約簽訂則與前者相同。第三、於**國內建立外國有價證券借券平台**，集中處理外國有價證券的借券供給與需求建議可由證券商業同業公會或集中保管結算所...等機構統籌規劃建立此一平台。惟由於受託買賣國外有價證券之券源並不在國內，採行此種架構或有疊床架屋之議。

（二）借券架構運作分析

依證券商受託買賣外國有價證券管理規則第 19 條之規定，證券商接受委託人委託買進之外國有價證券，除專業投資機構外，應由**證券商以其名義**或**複受託證券商名義**寄託於交易當地保管機構保管，並詳實登載於委託人帳戶及對帳單，以供委託人查對。基此，客戶所買賣之證券除專業投資機構外，其名義上之所有權並非客戶本人，而是證券商或上手證券商。經參考國外跨國借券實務及受訪證券商意願，證券商受託買賣外國有價證券若欲增加借券業務，採行的運作架構可由客戶是借券人或出借人的角色分析。

1. 客戶擔任借券人 (securities borrowers)與出借人(securities lenders)：若客戶需擔任借券人的角色，則牽涉到券源的問題，將使架構上更為複雜。由於國內證券商本身受託買賣外國有價證券的券種及數量均可能受限於本身的業務量，因此，如何擴大券源提供客戶所需的證券種類及足夠數量，成為此項業務首先必須考量的問題，故就客戶擔任出借人可能的架構有下列幾種：

(1)由國內受託券商與**國外保管機構**簽約取得券源：受託券商本身之子公司、分公司、或與其具轉投資關係之證券機構，具有金管會指定外國證券交易市場之會員或交易資格。而證券商係透過其至國外證券市場下單，此類型證券商或許因為規模仍舊不足，故其仍須取得額外券源，此時可向其國外保管機構簽訂借券契約以協助客戶取得所需的券源。其架構如下圖：

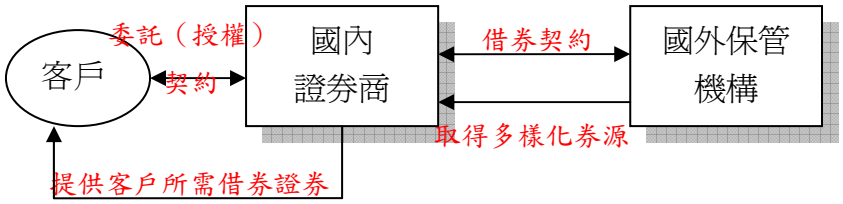


圖 4-2　透過國外保管機構取得券源之借券架構

(2)由國內受託券商與國外上手券商簽約取得券源:若國內受託證券商本身或其關係企業並不具備外國證券交易所會員資格，則須透過國外證券商下單至海外，此時，有些券商會找大型的券商做為其上手券商,這些國外券商有些本身即可從事證券借貸業務，且由於其買賣單量夠大，券源深度及廣度均足，因此受託券商可直接與其上手證券商簽約取得券源。其架構如下圖所示：

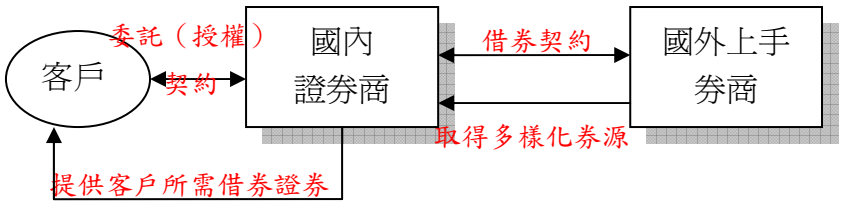


圖 4-3　透過國外上手券商取得券源之借券架構

(3)僅由國內券商就其受託買賣之外國有價證券作為券源：此一架構係由國內個別受託券商僅就其名義持有之有價證券做為借券的來源，其優點在於與客戶之法律關係較為清楚，且不涉及其他第三團體，惟此一做法之外國有價證券廣度及深度均不足，故實務可行性並不高。

(4)由國內所有受託買賣外國有價證券之券商整合其外國有價證券券源，作為客戶證券借貸之基礎，並建立一平台，提供外國有價證券借貸需求者雙方登錄資料及撮合借券交易。建議可由證券商業同業公會，或是集中保管結算所等保管機構規劃建置。惟由於外國有價證券的標的均在國外且不透過國內交易所及保管機構，以此種方式進行外國有價證券借貸，不僅在系統建置前置時間較久，無法在短期內滿足客戶借券的需求，且由於券源較受限制，其所能借出的券種和數量不一定符合客戶所需。其架構如下圖：

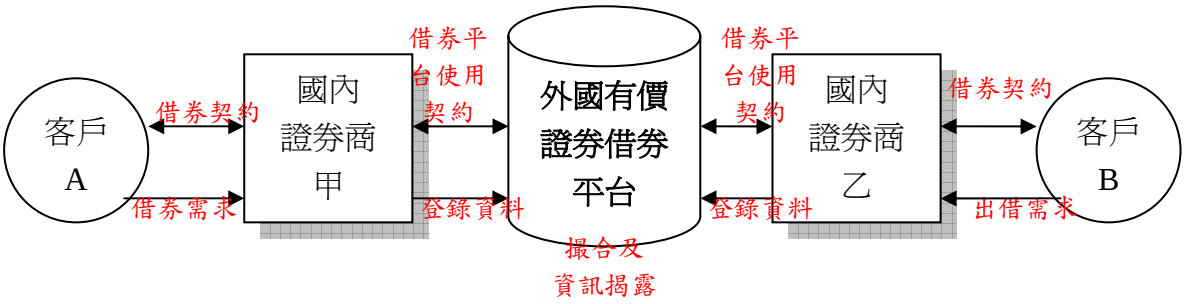


圖 4-4　於國內建立外國有價證券借券平台之借券架構

茲將採用以上四種模式的優缺點分析說明如下：

表 4-2　四種借券模式的比較

項目	優點	缺點
由國內受託券商與國外保管機構簽約取得券源	● 券源深度及廣度均夠 ● 借券作業上較爲簡化	● 契約簽訂涉及多方 ● 相關之契約內容以外文訂定，應特別留意雙方之權利義務規定
由國內受託券商與國外上手券商簽約	● 券源深度及廣度均夠 ● 較前一方式，契約關係	● 相關之契約內容以外文訂

項目	優點	缺點
取得券源	較爲簡化 ● 借券作業上較爲簡化	定，應特別留意雙方之權利義務規定
僅由國內券商就其受託買賣之外國有價證券作爲券源	● 契約關係最爲單純 ● 所涉及的權利義務個體最少	● 券源較少，可能無法滿足客戶需求
整合國內受託券商建立借券平台	●權利義務關係較爲明確 ●範圍僅限國內券商，不涉及第三人，較爲單純 ●借券資訊揭露清楚且方便查詢 ●券源較個別券商提供服務要來得廣	●券源並未透過國內集保，由其建立借券平台或整合相關資訊，似不甚合理 ●借券系統的建立與運作需一定期間

資料來源：本研究整理

2.客戶僅擔任出借人(securities lenders)：

(1)借券架構

此部分的業務比較單純，亦即客戶將其欲長期持有的外國有價證券，透過證券出借(securities lending)的方式，取得額外的收入，此部分的業務需求者，通常是保險公司或機構投資人，目前主管機關已開放保險業者可以將其持有的外國有價證券出借，建議應放寬此項限制至其他符合一定資格條件之大型機構投資人或其他專業投資人，使其得擔任有價證券借貸交易的出借人(lenders)。

由於投資人在透過國內券商複委託外國券商進行買賣外國有價證券業務時，其買入的外國有價證券係存在國外保管機構，且是以券商的名義存在，而非交易人本人的名義，因此，客戶若欲將本身持有外國證券出借時，應與證券商簽訂委託（授權）契約，再由證券商與外國上手證券商或是國外保管

機構簽訂代理契約或借券契約，將其所持有的外國有價證券出借。其架構如下圖所示：

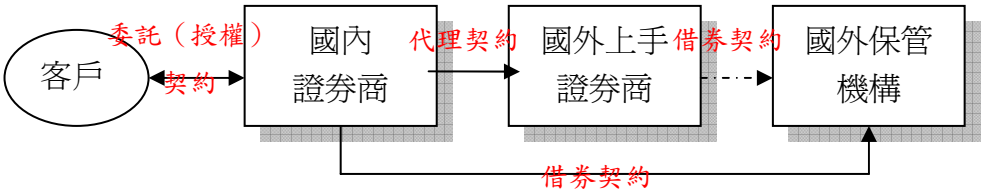


圖 4-5　僅開放國內客戶擔任出借者之借券架構

(2)借券需求者

而客戶擔任出借人的角色，除了可借給國外證券市場的參與者外，亦可借給國內有金融商品設計需求的證券商或其他金融機構，以及有避險需求的投資人。

（三）外國有價證券借券相關規定擬議

參考國外有價證券借券契約相關規定，初期開放我國證券商受託買賣外國有價證券之借券相關作法建議如下：

1.借券型態及需求

出借有價證券主要係以取得投資收益為目的，然並非完全無風險，考量風險控管能力以及所持有之券源種類及數量，建議開放初期，仍應以專業投資人為主要出借人，另一方面則應持續加強教育宣導，使一般投資人熟悉外國有價證券借券運作模式後，再逐步擴及其他對象。

至於借券人方面，初期亦應以符合一定資格之專業投資人為主，

並應以交割或策略性交易為主要目的，且遵循國外證券市場發展趨勢，禁止借券放空，以維持各市場之穩定發展。

2.借券契約

參考美、英等國有價證券借貸制度除以政府相關法令為依歸外，其運作重點為借貸雙方之契約規範。原則上必先與交易之另一方當事人簽訂符合倫敦交易所核准之標準化有價證券借貸契約。建議參考Global Master Securities Lending Agreement (2009)、Master Equity & Fixed interest Stock Lending Agreement (1996)、Overseas Securities Lender's Agreement (1996)、Master Securities Loan Agreement (2000)，並訂定相關契約範本（以中文撰寫）提供投資人與證券商訂約時之參考。

3.標的證券

考量投資人對於國外證券市場的熟悉度以及借券可能產生的風險，建議初期開放以美國、香港等地區之大型績優股，或資產規模、信用評等等級達到一定標準的外國有價證券為主要借券標的，其後，再陸續開放至其他交易所之其他股票，建議可由主管機關參考各國證券市場發展定期公布可供借貸之證券市場及證券類別…等之原則性規範（非個別證券名稱），以供業者參考。

4.擔保品

目前國外之擔保品包含現金與非現金形式之政府債券、信用評等達一定等級的公司債、股票、信用狀及其他貨幣市場工具等，惟仍需取得雙方同意，並明訂於借貸契約，方為合格擔保品。有價證券借貸雙方並應約定擔保品存入出借人或中介人或指定第三者帳戶中，所提交的擔保品價值應涵蓋出借有價證券價值及一定比率之保證金，此「一定比率」應由借貸雙方協議並明訂於借貸契

約，目前國外原則性的規範，擔保品價值應高於出借證券的價值，美國的規定為 102%，而我國則為 140%。考慮跨國借券應以遵守各國相關規範為宜，可參考各國家關於有價證券借貸之慣例要求借券人提供適合的擔保品。

此外，由於跨國跨時差的影響，對於非現金擔保品的價格變動應有更多管控，例如可要求擔保品的更換及更新。在有價證券和是擔保品非屬同一交割體系或市場的情況下，應儘可能確保跨時區的交易風險及對手違約風險能降到最低，必要時，可要求提高擔保品的比率或要求擔保品提前送達。惟任何有關於擔保品的特殊規定，應明確訂於契約當中，以降低糾紛產生的可能性。

5.現金擔保品再投資

有價證券借貸通常要求提供擔保品，其中現金擔保品為常見的擔保品種類，有價證券契約通常約定出借人可將此現金擔保品再投資利用，以獲取收益。而為確保保管銀行代為運用現金擔保品的投資方向，符合出借人的風險/報酬屬性，應由出借人提出原則性的再投資準則 (Reinvestment Guideline)，由保管銀行依該原則對現金擔保品加以運用。

6.借券費率

借券費率應由借貸雙方協議訂之，並應考量標的證券供需情形、擔保品的可供利用之彈性、權益補償金額多寡，以及出借人提前召回有價證券可能性等因素，建議可參考國外一般之借券費率即可。此外，在出借人收取現金擔保品情況時，依一般慣例，出借人應給付借券人一定比率之利息（rebate rate），惟此一利率通常低於市場利率。

7.借貸期間與還券

借貸期間可採開放式或封閉式，開放式雖無到期日，但可隨時召回，亦即出借人保留即使出借，仍可以隨時賣出的彈性；封閉式則表示證券借貸期間確定，目前一般常見的借券期間為180天。借貸雙方必須對於借貸天期為一特定期間或是無特定期間可隨時召回出借有價證券，訂明於契約中。

8.權益補償

依據國外有價證券借貸契約，出借人在借貸期間內所可能享有之任何孳息（股息、股利…等），借券人必須以等值現金或股票之形式償還；而當借券人提供有價證券擔保品時，出借人亦應對借券人因借券所減少之利得提供補償，此部分應於契約中明訂。

9.違約處理

參考國外有價證券價借貸契約，有關違約處理程序應納入有價證券借貸契約。當借券人未能依出借人要求如期歸還有價證券或出借人未能依約返還擔保品時，應予以財務上的補償，其項目應包括：產生的利息或透支數額、因借券人違約應支付出借人賣出交割義務之成本、因借券人違約致使出借人必須自公開市場買回股票所需之總成本費用。

10.稅負問題

(1)借券費用課稅

就出借人而言，其有價證券借貸交易之借券費用，係出借人在海外從事有價證券借貸交易之行為而產生之所得，應屬海外所得，若出借人為自然人，自2010年起，個人海外所得全年超過新台幣100萬元，即須併入最低稅負計算；若總額超過600萬元，依所得基本稅額條例第13條第1項規定，須課徵20%所得稅。若出借人為營利事業，則出借人出借有價證券向借券人收取之

借券費用，即為出借人提供有價證券與借券人使用、收益所收取之代價，屬出借人銷售勞務之行為，應由出借人依法繳納營業稅。

(2)權益補償課稅

依據財政部現行關於有價證借貸制度，權益補償課稅規定部分，係依實際受益原則，亦即按出借人自行領取權益孳息所應負擔之稅負，課徵出借人之所得稅，惟若係出借外國有價證券，此部分係屬海外所得，應依海外所得課稅原則課稅。

（四）小結

綜上所述，增加外國有價證券之借券業務之架構，應以由證券商與國內投資人簽訂授權契約，再由證券商與國外保管機構或國外上手證券商簽訂借券契約之方式較佳，亦即國內證券商僅站在代理或居間的角色，協助出借人尋得借券人，或是協助借券人取得券源。

在考量一般投資人對於借券業務的需求以及對該業務的熟悉程度，建議開放初期，應以機構投資人、法人、基金以及高淨值(High Net Worth)個人等專業投資人為開放對象，並以開放出借(lending)外國有價證券為初期開放的方向，再循序漸進開放其他投資人的參與並增加借入(borrowing)外國有價證券的業務。

二、 法規面

（一）證券商辦理外國有價證券複委託買賣業務法律架構

證券商接受投資人買賣外國有價證券之委託後，由該受託證券

商複委託他證券商買賣外國有價證券，並由該受託證券商以其名義；或複受託證券商名義寄託於交易當地保管機構保管。因此，在證券商辦理有價證券複委託買賣業務之場合，該等外國有價證券之實際所有權人雖為投資人，然依目前之操作架構，其形式上係由受託證券商或複受託證券商為名義所有權人，即由受託證券商或複受託證券商代投資人持有外國有價證券。

（二）外國有價證券得否為出借券源？

1.反對理由

（1）95 年 2 月 22 日金管證 2 字第 0950000858 號函

「證券商出借之有價證券應以自營、承銷或投資取得者為限，但不包括以借券交易或附條件買賣所取得者，且出借之標的，應以臺灣證券交易所股份有限公司及財團法人中華民國證券櫃檯買賣中心公告合格之借貸標的及中央登錄公債為限。」

按其禁止出借以借券交易或附條件買賣交易所取得、且以自營、承銷或投資取得之有價證券之意旨，無非係為避免證券商任意出借代他人持有；或他人得隨時請求返還之有價證券，因而造成證券商將來無券可還之窘境。若依此函觀之，無論是否為外國有價證券，只要係以借券交易或附條件買賣交易所取得之有價證券，即不得為證券商出借有價證券借貸之券源。

另有認為：該函之所以限制，乃因複委託所持有之有價證券，實際上並非形式上之所有人所有，而係由形式所有人（證券商）代實際所有人（投資人）持有，為保障實際所有人之權利，故限制複委託所取得之有價證券為券源。

2.贊成理由

（1）證券商辦理有價證券借貸管理辦法第 15 條

「本章所稱有價證券借貸交易標的，係指得為融資融券交易之有價證券或其他經主管機關核准之有價證券。」

依財政部 81 年 2 月 1 日台財證(二)字第 50778 號函規定：「按財政部七十六年九月十二日（76）臺財證（二）第〇〇九〇〇號函依證券交易法第六條第一項規定核定『外國之股票、公司債、政府債券、受益憑證及其他具有投資性質之有價證券，凡在我國境內募集、發行、買賣或從事上開有價證券之投資服務，均應受我國證券管理法令之規範。』故外國股票依前函規定已屬證券交易法第六條第一項所稱經財政部核定之其他有價證券。」之意旨，外國之股票、公司債、政府債券、受益憑證及其他具有投資性質之有價證券均應屬證券交易法第 6 條第 1 項所稱經主管機關核定之有價證券。因此，依證券商辦理有價證券借貸管理辦法第 15 條規定，外國有價證券當然亦為該辦法所規範之對象，換言之，證券商當得依該辦法之規定，出借其持有之外國有價證券。

（2）95 年 8 月 11 日金管證二字第 0950003782 號令

證券商辦法有價證券借貸管理辦法第 22 條

「證券商辦理有價證券借貸管理辦法」係依金管證二字第 0950003782 號令發佈施行，該辦法第 22 條第 1 項規定：「證券商辦理有價證券借貸業務之券源，以下列為限：一、自有有價證券。二、自證券交易所借券系統借入之有價證券。三、辦

理有價證券買賣融資融券業務取得之融資買進擔保證券。」同條第 2 項規定：「證券商為因應還券所需而無標的證券可供返還時，得向證券金融事業辦理轉融通。」

「證券商辦理有價證券借貸管理辦法」直接廢棄過去金管會 95 年 2 月 22 日金管證二字第 0950000858 號函之規定，使證券商辦理有價證券出借之券源已不再以證券商因自營、承銷或投資取得之有價證券為限，即使係透過有價證券借貸而來；或係他人供擔保之用之有價證券，亦得為證券商從事有價證券借貸業務之券源。

此外，證券商辦理有價證券借貸管理辦法第 22 條之立法理由：「一、明定證券商辦理有價證券借貸業務之券源，包含證券商自有之有價證券；及辦理有價證券買賣融資融券業務取得之融資買進擔保證券，及向證券交易所借券系統借入之有價證券。二、明定證券商為因其借入證券之到期還券或提前還券，或因應出借融資擔保證券時，融資客戶現償之還券，得向證券金融事業辦理轉融通。至於轉融通相關之規範則於證券金融事業管理規則中定之。」因此，主管機關已透過「轉融通」方式，解決前揭金管證二字第 0950000858 號函之避免證券商任意出借代他人持有或他人得隨時請求返還之有價證券，造成證券商將來無券可還窘境之考量。換言之，即使證券商所持有之有價證券，係代他人持有或他人得隨時向證券商請求返還，證券商仍得透過「轉融通」之方式因應其於還券時無標的證券可供返還之情況。

因此，倘若於證券商辦理外國有價證券複委託買賣業務，

代投資人持有外國有價證券之場合，該受託證券商若得透過轉融通方式，因應還券時無標的證券可供返還之情形，即與金管證二字第 0950003782 號令所發布施行之證券商辦理有價證券借貸管理辦法第 22 條第 1 項規定意旨相符。

（三）小結

根據前述實務運作與法規面的分析，建議開放證券商外國有價證券之借券業務，理由如下：

1. 依現行相關法令規定，並無禁止外國有價證券為出借券源之明確規範，即使證券商以辦理外國有價證券複委託買賣業務所取得之有價證券，因證券商辦理有價證券借貸管理辦法已賦予證券商得透過「轉融通」方式因應無券可還之情形，故證券商以辦理外國有價證券複委託買賣業務所取得之有價證券為出借有價證券之券源，於法並無不合。
2. 目前保險公司依照「保險業辦理出借國外有價證券業務應注意事項」得出借其外國有價證券，基於監理一元化，避免有監理套利的情況產生，證券商亦應比照開放該項業務。
3. 此外，於建議開放證券商從事外國有價證券借券業務的同時，針對現行「證券商辦理有價證券借貸業務」相關法規與業務限制部分，一併建議開放之：
   （1）就證券商承作方式有限部分，鑒於個別客戶交易習性不同，願意承擔可能信用風險的意願不同，建議依證券交易法第 60 條修正後條文第 1 項第 3 款，開放證券商除得以出借人身分辦理借券業務外，亦得透過居間或代理方式辦理借券業務，使證券商得依客戶需求，

選擇合適服務模式，如果信用程度出借人與借券人雙方相互接受，則證券商得以居間的角色協助撮合；若客戶希望由證券商代為處理借出或借入證券事宜，或欠缺相關專責人員，則證券商得以代理人角色為客戶提供專業服務。

（2）就券源有限部分，建議參照「證交所有價證券借貸辦法」第 5 條規定，開放保險公司、銀行、信託投資公司、證券商、證券投資信託事業、專營期貨商、證券金融事業、特定境外外國機構投資人、政府基金、信託業及其他經主管機關核准得為證券商逕行借入之券源來源，以充分整合運用證券商既有客戶關係，發揮最大效益。另一方面，一般投資人持有之現股部分，亦可考量是否可做為借券之券源，俾增加一般投資人之投資收益。

（3）就單一對象承作規模設限部分，建議門檻調整如下：

①借券方式採居間方式辦理者，因證券商並未涉入承擔交易風險，建議得予排除納入借券業務規模計算。

②參照銀行局有關銀行對同一人、同一關係人或同一關係企業授信限額規定中有關擔保授信規範，對同一法人出借有價證券總金額（視同擔保授信）不得超過之比率提高為證券商淨值百分之十，對同一關係人不得超過之比率提高為證券商淨值百分之二十。

三、 其他配套措施

(一)證券商辦理外國有價證券借券業務之風險管理

有價證券借貸對於證券商來說，其所面臨的主要風險，包括交易對手風險、擔保品風險、契約風險以及作業風險，茲將各風險類型及可能降低風險的因素，彙整如下表：

表 4-3 有價證券借貸之風險類型及其風險降低因子

風險類型	如何降低風險
交易對手風險（Counterparty Risk）	● 增強信用分析能力 ● 借券給信用等級高的借券者 ● 擔保保證金+每日洗價
擔保品風險（Collateral Risk）	● 採用現金、政府公債作爲擔保品 ● 規定違約賠償金
契約風險（Contractual Risk）	● 標準化契約 ● 違約事件的明確定義
作業風險（Operational Risk）	● 事先或同時取得擔保品 ● 持有大量證券做爲替代品 ● 規定過失賠償金

資料來源：Lawrence Komo(2008), Securities and Lending: Trends and Opportunities.

針對證券商辦理外國有價證券借券業務之風險，大致仍為上述四項，惟若證券商本身不進行借券，而係透過國外證券商或保管機構借券，則其並不存在交易對手風險，但在契約風險的管理上需要更為謹慎，可透過專業法律顧問及法規遵循人員的設置，或是由藉由國際性標準化的契約，以使可能的合約糾紛以及未來可能爭議降至最低。另若證券商係自行辦理借券，則需特別注意借券者的徵信問題，避免借券者無法還券等違約情事的產生。

1.在內部控制制度方面，至少應包括下列項目：

(1)瞭解客戶程序及徵信相關程序

(2)辦理外國有價證券借貸作業手續、權責劃分、借貸交易額度

控管及帳戶管理等事項

(3)相關風險管理機制

2.在風險管理政策方面，至少應包括下列風險類型：

(1)交易對手風險

(2)擔保品風險

(3)契約風險

(4)作業風險

(5)其他風險：如市場風險、流動性風險、匯率風險...等項目。

(二)投資人保護議題

1.借券相關契約產生的問題

由於投資人經由複委託方式買賣外國有價證券，除專業機構投資人外，外國證券實際上並不在投資人的名下，因此，無論採行何種模式，投資人若欲進行證券借貸交易，均必先與證券商簽訂借券契約，或授權（委任）借券契約，同意證券商使用實質上屬於投資人的有價證券從事證券借貸交易。一般而言，此類型證券借貸契約已有國際性的標準化契約可為參考，而國內的證券借貸契約亦可做為訂約的基礎並因應外國有價證券的特性加以增刪，以降低投資人及證券商雙方的風險，然亦須保留彈性部分，例如借券的費率、借券的期間等事項。

在擔保維持率以及保證金追繳的規定部分，必須特別注意維持投資人的權益。由於外國有價證券借貸之資訊係透過證券商轉知，在保證金的追繳方面，如上手證券商或是保管機構通知證券商補繳，是否先由證券商代墊，或是要等投資人自行繳交？若有時間的落差，造成違約的情事發生，是否會導致投資人權益受到影響？均必須事先加以防範或明確規定。

2.出借人交易對手的選擇

投資人若在證券借貸交易中擔任出借人的角色,則必須注意管控其交易對手的風險。一般而言，應由保管機構或證券商提供借券人清單(borrower list)予投資人，使其了解借券的對象，而借券對手的篩選標準，可參考下列準則：

表 4-4　借券交易相對人篩選原則

- **財務強度**：交易對手必須爲法律上的個體，並解其與關係企業間是否存在任何保證或關聯交易？
  - 長短期信用評等
  - 獲利能力
  - 資產負債表規模
  - 法定資本
- **承諾**
  - 參與管理、行銷、協商、作業和行政的人員
  - 全球服務當地客戶的據點位置及其數量
- **經驗**
  - 交易對手從事本項業務的時間
  - 主要人員的經驗
- **專注區域**
  - 全球總部的據點
  - 地理性需求和配銷能力和持有的存貨是否有關？
- **計畫的規模**
  - 交易對手是否爲小型特殊券種的利基交易者？
  - 是否具備大量借券或配銷能力？
  - 與你有相同規模的機構對交易對手而言是特殊的，或是大部分都如此？
- **擔保品的彈性**
  - 交易對手能否提供你想要的而非持續性試圖要你接受你不想要的
  - 若爲中介機構，是否接受市場所想給的
- **法規架構**
  - 交易對手由誰監管
  - 偏好何種法律架構
  - 業務人員是否有登記
- **技術和作業能力**
  - 交易對手使用何種系統
  - 是否提供任何技術支援（不包括”自動傳真”）
  - 如何互相溝通
  - 將接收到何種報告
- **通路及配銷能力**

- 大量配銷的能力如何
- 有多少借券人
- 位於何處
- 取得那些市場區塊

- **代理中介機構**：配置規則(allocation algorithms)
  - 公式如何計算
  - 何種情況下，規則將無效
  - 代理機構將如何使保證帳戶優先成交
- **保證（補償）**：若代理機構提供保證（補償），包含下列那些部位？
  - 所有財務損失
  - 借券人違約
  - 擔保品違約
  - 重大損害
  - 保證或補償需要多少成本（占過去收入的比例）
- **透明度**
  - 揭露與否
- **出借人可否取得以下線上資訊？**
  - 已出借有價證券（總額和個別借券交易）
  - 擔保品投資組合（總額和個別借券交易）
- **出借人可否指定其投資組合給特定的借券人群組**
- **擔保品再投資政策**
  - 代理機構是否有能力管理多樣化擔保品
  - 是否有三方／契約的能力
  - 是否爲有能力的現金管理者
  - 出借人可否明訂其「現金再投資原則」
- **保管銀行**
  - 出借代理人是否堅持資產交付指定的保管銀行
- **主要中介機構－需求驅動**

  需求由華爾街(“the street”)、特許交易商、主要經紀商客戶驅動的比率各占多少？
- **特許原則－交易策略**

  需求是由以下交易策略驅動所占的比率：
  - 無券放空（Naked shorts）
  - 配對交易（Pairs trading）
  - 轉換公司債套利
  - 交割需求
  - 指數套利
  - 造市
  - 風險套利
  - 認股權證套利
  - 其他

資料來源：Frank J. Fabozzi & Steven V. Mann (2005), ”Securities Finance”, Wiley.

3.協助出借人建立適當之擔保品再投資原則

投資人從事有價證券借券，將取得擔保品，依國外實務，此擔保品歸屬於出借人，若依國外有價證券借貸契約之相關規定，擔保品可能為現金、信用狀或其他經核准之有價證券，如為現金擔保品則可能涉及再投資的情形。證券商應依據出借人的風險/報酬屬性（保守穩健或積極冒險），協助其訂立合適的再投資原則，並與國外保管機構溝通，為出借人在其可承擔的風險範圍內，取得除了借券費用以外的穩定收益。尤其，在金融海嘯期間，看似風險極低的現金擔保品再投資行為，承受了極大的信用風險及流動性風險，亦導致出借人的損失，未來，證券商基於服務投資人的立場，應更謹慎協助出借人建立適合不同出借人風險/報酬屬性之再投資原則。

4.借券相關資訊揭露

為達投資人保護的目的，資訊透明度的強化乃是一項重要的措施。與借券相關的資訊揭露，依其採行的模式不同而有不同的要求，若採行由國內券商與國外保管機構或國外上手券商簽約的方式，則由於相關借券資訊皆由國外先傳送至證券商處，再由證券商傳送給國內投資人（包括借券人或出借人），為確保參與借券之投資人，及時且完整了解其借券交易的對手及借券之後的收益支出狀態，券商應按時將相關資訊提供予借券參與者參考，並應將資訊更新頻率明訂於相關契約。此外，若投資人僅擔任出借人者，證券商亦應向國外保管機構取得合格借券人清單(borrower list)，並定期提供予投資人，使其了解借出證券的流向以及券的運用方式和運用收益。

若採用國內建立外國有價證券借券平台的方式，則必須更清楚揭露有關的借券人與出借人資訊、借券（出借）有價證券種類及數量、

擔保品、借券（出借）費率、借券期限、成交量...等資訊，完整的資訊內容建議可參考現行臺灣證券交易所之借券平台資訊揭露事項。

5.投資人教育

參考國內外證券商對於投資人之證券借貸業務，均會在證券商網站上有較詳細的說明，以及問答集等方式解除投資人對於有價證券借貸的疑慮，而外國有價證券的借貸，在運作流程上以及權利義務的關係上，較國內的有價證券借貸應更複雜，因此，證券商應提供投資人更多更為詳盡的資料，以使其確實了解從事此項交易的流程、款券的流向、投資人的權利義務以及其可能的報酬與風險等事項。

6.業務推廣與投資人保護的平衡

一旦開辦外國有價證券之借券業務，單純以借券交易的收入作為推廣的誘因，可能無法吸引投資人的興趣，因此，業者或可結合其新金融商品部門，採行與其他金融商品或工具再行組合包裝的方式，設計成投資人所希望的風險報酬型態，例如以結構型商品的方式呈現與銷售。惟若以結構型商品銷售給投資人，則必須要注意銷售時的風險與報酬揭露，且必須避免錯誤的銷售說明導致投資人未能明確判斷其所承擔的風險。以去(2008)年連動債的案例來看，投資人糾紛產生的主要原因，即在於對產品本身的不理解，以及銷售銀行對產品說明的不詳細或是對相關的風險未明顯揭露等。因此，未來若以結構型商品吸引投資人從事借券交易，應注意不要因為業績而忽略投資人權益。

第五章 結論與建議

我國自 1991 年開放證券商受託買賣外國有價證券迄今已逾十八年，期間交易金額成長迅速，甚至於 2007 年超過新台幣 1 兆元，惟仍集中在境外基金為主，其次才是股票交易。由於證券市場的日益國際化，國人投資海外市場的需求日益提高，歷年來，主管機關為促進市場活絡，曾多次開放各項措施，方造就今日市場之榮景。然為促進台灣金融市場成為「亞太金融中心」，除需具備多樣化的籌融資工具，與交易相關之配套措施亦必須日益完善，方可吸引更多資金俾有效提升我國金融市場之競爭力。分析各國對外國有價證券融資借券之相關規定如下：

一、 美國部分：美國借券制度主要採取分散式架構，由證券借貸雙方依據契約進行，業界訂有契約範本可供參考。外國有價證券的借貸，主要可以透過大型證券商或是國際保管銀行等持有大量外國有價證券之中介代理機構(agent)進行；同樣地，美國在外國有價證券的信用交易方面，主要仍採契約原則，由融資融券雙方採取契約方式約定擔保品、費率等信用交易相關內容。

二、 英國部分：英國的借券制度，基本上建立在出借人以及借券人對合約精神的尊重，主管機關方面並沒有對費率、擔保品等項目做出強制性的規定。有關非英國公司有價證券的借券制度，也只有以「有價證券指導原則」，提醒借貸雙方對於跨國部分的法律及匯率計算等要得別注意。至於融資部分，英國對於信用交易亦依授信銀行或證券公司與客戶訂定之契約辦理。

三、 日本部分：目前東京證交所允許於其交易所掛牌之外國有價證券進行信用交易及借券，其標準及相關規定儘量比照日本國內一般上市有價證券，至於買賣一般外國有價證券之借券交易，應與我國相同，未明文禁止。

觀諸美、英等國對於有價證券之借券業務，主要均採取契約原則，由借券人與出借人雙方根據契約訂定借券相關權利義務，借券人可以獲得交割、套利等所需之券源，而出借人亦可透過有價證券交易增加投資收益。我國證券商受託買賣外國有價證券，若能增加借券及融資制度，應有助於強化我國證券市場競爭力。本報告根據研究結果，提出以下初步建議，惟更深入的業務操作細節，則有待後續更進一步研究。

一、 本研究經由與業者訪談及召開兩場產官學座談會得知，部分業者已表示投資人在複委託買賣外國有價證券方面，的確存在融資融券需求，亦曾有客戶詢問借券相關規定；另一方面，外匯主管機關亦表示在目前中央銀行希望擴張外幣需求的政策下，若能適時開放受託買賣外國有價證券之融資融券業務，與政策並不違背。

二、 依現行相關法令規定，並無禁止外國有價證券為出借券源之明確規範，故證券商以辦理外國有價證券複委託買賣業務所取得之有價證券為出借有價證券之券源，於法並無不合。另一方面，目前保險公司依照「保險業辦理出借國外有價證券業務應注意事項」得出借其外國有價證券，基於監理一元化，避免有監理套利的情況產生，證券商亦應比照開放該項業務。

三、 參酌我國現行受託買賣外國有價證券業務發展現況、投資人需求以及業者之風險管理能力，建議分短期及中長期開放融資及借券相關業務。考量投資人的專業程度與對借券制度的了解，短期可先開放專業投資人從事外國有價證券的借券或融資業務，待運作一段時期後，中長期再開放一般非專業投資人之借券或融資業務，並思考採集合借券的方式辦理，俾利擴大券源。

四、 短期之建議措施

（一）有鑑於證券商受託買賣外國有價證券增加借券業務，並不涉及法令修訂問題，因此，建議優先開放本項業務，且初期可考慮僅限於擔任出借人。由於除大型機構投資人外，受託買賣之外國有價證券一般存在受託證券商的名下，故其架構可由證券商與客戶間簽訂授權契約，再由證券商與國外保管銀行（或上手證券商）簽訂主借券契約，以取得較多的借券券源與出借管道，同時為客戶取得較佳的借券收益。

（二）相關之借券契約內容，目前國際上已有相關範本，包括 SIFMA 訂定的 Master Securities Loan Agreement、ISLA 訂定的 Global Master Securities Lending Agreement、甚至我國有價證券借貸交易契約等均可做為借券契約訂定的參考。而在交易對手的選擇上，證券商應基於投資人之利益，參考相關之篩選準則，選擇適當之交易對手。

（三）初期開放對象建議以專業投資人為限，專業投資人之定義建議比照「境外結構型商品管理規則」第三條第三項之相關規定，同時包括專業機構投資人、法人、基金以及自然人。待

施行一段期間，市場了解其運作之後，再考量是否開放至其他非專業投資人。

（四）有關外國有價證券之借券資訊揭露應由證券商向保管機構取得，並定期提供予投資人，至少應包含借券人清單(borrower list)、借入與借出的種類與數量、可供借券的種類與數量、再投資標的清單以及再投資績效等資訊。

五、 中長期之建議措施

（一）法規面

1. 建議刪除「證券商受託買賣外國有價證券管理規則」第十三條規定，以開放證券商受託買賣外國有價證券，得為有價證券買賣之融資融券。
2. 建議探討開放證券商從事外國有價證券借券業務，亦針對目前證券商辦理借券法規與業務限制部分，一併建議開放之：
   (1) 就證券商承作方式有限部分，建議依證券交易法第 60 條修正後條文第 1 項第 3 款，開放證券商除得以出借人身分辦理借券業務外，亦得透過居間或代理方式辦理借券業務，使證券商得依客戶需求，選擇合適服務模式。
   (2) 就券源有限部分，建議參照「證交所有價證券借貸辦法」第 5 條規定，開放保險公司、銀行、信託投資公司、證券商、證券投資信託事業、專營期貨商、證券金融事業、特定境外外國機構投資人、政府基金、信託業及其他經主管機關核准得為證券商逕行借入之券源來源，以充分整合運用證券商既有客戶關係，發揮最大效益。另一方面，一般

投資人持有之現股部分，亦可考量是否可做為借券之券源，俾增加一般投資人之投資收益。

(3) 就單一對象承作規模設限部分，建議門檻調整如下：

①借券方式採居間方式辦理者，因證券商並未涉入承擔交易風險，建議得予排除納入借券業務規模計算。

②參照銀行局有關銀行對同一人、同一關係人或同一關係企業授信限額規定中有關擔保授信規範，對同一法人出借有價證券總金額（視同擔保授信）不得超過之比率提高為證券商淨值百分之十，對同一關係人不得超過之比率提高為證券商淨值百分之二十。

3. 有關受託買賣外國有價證券無法參與 IPO 的問題，將使投資人缺少參與證券上市的好處，若能適時開放本項業務，將可有效提升投資人透過複委託買賣外國有價證券的意願。

（二）實務運作面

1. 依前階段開放專業投資人從事外國有價證券借券之成效，進一步思考是否開放一般非專業投資人出借外國有價證券，使一般投資人亦能享有借券收益。惟一般投資人所持有之外國有價證券券種及數量均遠不及機構投資人，建議可採集合借券的方式辦理，但有關借出之券種及相關收益歸屬應有更明確的規範，並加強資訊揭露，避免日後糾紛的產生。
2. 為協助證券商有效執行外國有價證券融資借券業務，建議由證券商公會協助訂定相關業務之「最佳實務守則」(Best Practice)，做為證券商從事外國有價證券融資借券之指引。

六、其他配套措施

（一）資訊揭露與投資人保護面

1.借券相關資訊揭露

除由證券商定期提供借券相關資訊予投資人參考外，建議可建立國外有價證券借貸之資訊揭露平台，清楚揭露有關的借券人與出借人資訊、借券（出借）有價證券種類及數量、擔保品、借券（出借）費率、借券期限、成交量...等資訊，完整的資訊內容建議可參考現行臺灣證券交易所之借券平台資訊揭露事項。

2.外幣融資資訊之揭露

有關證券商因辦理外幣融資所持有之外幣部位及因應之風險管理相關資訊，應定期彙報主管機關，在外幣融資的匯率及利率相關資訊亦須提供即時管道供投資人查詢。

3.確實評估投資人承擔外匯風險能力

證券商應協助從事融資之投資人提醒其外幣風險所在，並協助告知風險管理的方式及管道，並在進行融資之前，先行評估投資人風險承受能力以及匯率風險管理的能力。

4.建立出借人交易對手篩選標準

投資人若在證券借貸交易中擔任出借人的角色，則必須注意管控其交易對手的風險。一般而言，應由保管機構或證券商提供借券人清單予投資人，使其了解借券的對象，而交易對手的選擇則應由其財務強度、經驗、能力等多項指標加以考量。

5.建立現金擔保品再投資原則

現金擔保品涉及再投資，證券商應依據出借人的風險報酬屬性，協助其訂立再投資原則(Reinvestment Guideline)，為出借

人取得合適的收益。

6.投資人教育

有鑑於外國有價證券的借貸，在運作流程上以及權利義務的關係上，較國內的有價證券借貸應更複雜，證券商應提供投資人詳實且易讀之教育宣導資料，以使其確實了解從事此項交易的流程、款券的流向、投資人的權利義務以及其可能的報酬與風險等事項。

（二）證券商風險管理

1.建立外國有價證券借券契約範本

為降低客戶與證券商個別簽訂契約所可能產生的風險，建議由券商公會協助建立外國有價證券借券契約範本，以明確雙方之權利義務，並降低可能的法律風險。

2.有效管理辦理外國有價證券借券業務之風險

因應從事證券商受託買賣外國有價證券融資借券業務，從事上述業務券商應考量交易對手風險、擔保品風險、契約風險、作業風險等構面訂立相關風險管理政策及內部控制制度。

表 5-1　開放證券商受託買賣外國有價證券增加融資借券業務之建議

構面	建議因應措施
實務運作面	● 短期：先開放專業投資人之外國有價證券借券業務，專業投資人定義比照「境外結構型商品管理規則」之規定。 ● 中長期： ■ 進一步開放一般非專業投資人之外國有價證券借券業務，並思考採用集合借券方式。 ■ 在不違背央行外匯政策原則下，開放受託買賣外國有價證券增加融資業務。

構面	建議因應措施
風險管理面	● 建立外國有價證券借券契約範本，釐清客戶與證券商及證券商與保管銀行（或上手券商）的權利義務，降低法律風險。 ● 因應開放證券商受託買賣外國有價證券融資借券業務，從事上述業務券商應訂立相關風險管理政策。 ● 由證券商公會訂定最佳實務守則，做為證券商從事外國有價證券融資借券之指引，並落實風險管理。
投資人保護面	● 借券資訊揭露透明化。 ● 建立出借人交易對手篩選標準。 ● 建立擔保品再投資原則。 ● 建立整合借券資訊揭露平台。 ● 確實評估投資人承擔風險能力。 ● 加強投資人教育宣導。
監理面	● 短期：證券商受託買賣外國有價證券增加借券業務，應訂定相關內部控制準則。 ● 中長期： ■ 刪除「證券商受託買賣外國有價證券管理規則」第十三條規定，開放外國有價證券之融資融券業務。 ■ 檢討證券商辦理有價證券借貸相關規定，包括：開放居間或代理、開放券源以及放寬單一門檻限制等。 ■ 檢討現行證券商受託買賣外國有價證券業務之投資標的及範圍，包括參與海外 IPO、以及放寬得投資之 ETF 類型等。

資料來源：本研究整理

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2. 行政院金融監督管理委員會證券期貨局網站：http://www.sfb.gov.tw
3. 臺灣證券交易所網站：http://www.twse.com.tw
4. 東京證券交易所網站：http://www.tse.or.jp
5. 美國證管會(SEC)網站：http://www.sec.gov/
6. 美國證券業及金融市場協會(Securities Industry and Financial Markets Associaiton)網站：http://www.sifma.org/
7. 國際借券協會(International Securities Lending Association)網站：http://www.isla.co.uk/
8. 英國金融服務局網站 http://www.fsa.gov.uk/
9. 英格蘭銀行網站：http://www.bankofengland.co.uk/

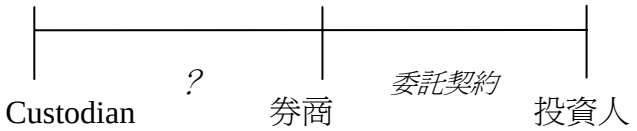
附錄一、訪談內容摘要

一、富邦證券

訪談對象：富邦證券趙菁菁副總經理
訪談人員：本會研究處葉淑玲處長、高儀慧研究員、陳維哲副研究員
時間：98 年 7 月 13 日上午 9:40~10:40
地點：台北市仁愛路四段 169 號 2 樓

訪談問題	回答內容摘要
一、受託買賣外國有價證券業務現況 (一)請問貴公司目前受託買賣外國有價證券的業務情況如何？	1. 目前本公司承做之受託買賣外國有價證券業務包括三大部分：股票、海外基金以及連動債。 2. 股票主要是美股和港股。基金則分為受託買賣以及擔任代銷，前者透過國外基 Fund House（具有證券商資格，例如 JF）簽訂受託契約，買賣海外基金，後者則是透過集保平台之海外基金總代理。至於連動債的部分，在發生 Lehman Brothers 事件之前很活絡，之後則幾乎是零。 3. 台灣的稅賦採最低稅賦制之後，海外收入將併入最低稅賦，此點亦會衝擊到投資人買賣海外有價證券的意願。
(二)您認為現行關於受託買賣外國有價證券部分相關法律規範，是否有必要加以放寬或修正之處？	1. 目前全權委託和信託均可投資大陸 B 股，惟設有「量」的限制。證券商如要受託買賣大陸股票，必須要透過香港券商開戶，要讓香港券商賺一手，增加台灣券商的成本。 2. 建議主管機關就大陸已准許台灣證券商可從事的業務相對放寬限制，例如大陸已開放證券商可直接到大陸開戶買賣 B 股，以及台灣證券商 B 股席位的部分，主管機關亦應立即開放。
二、增加借券業務相關問題 (一)請問貴公司認為有關增加外國有價證券之借券業務的市場性如何？若開放是否願意承做？其架構作法為何？	1. 根據紐約銀行(Bank of New York, BONY)的實務作法，在進行借券業務時，會建立借券人清單（borrower list）、擔保品以及再投資商品清單（reinvestment list），讓出借人可以清楚了解借貸狀況，而其成交則是採自動撮合的方式。海外證券部位出借，必須透過外國的 custodian，而且須取得出借代理人（lending agent）資格。 2. 目前國內的借券方式主要分為台灣證券交易所的借券系統以及證券商辦理的借券。對出借者而

	言，可獲得借券收入（在台灣列入租金收入），定期匯入出借者的帳戶。 3. 目前香港有關借券的法規，並不似台灣對於擔保品市值、標的物市值以及擔保維持率等都規範的很不清，建議可以透過台灣券商在香港分公司，蒐集了解香港關於借券的作法。
(二)請問貴公司認為有關增加外國有價證券之借券業務的可行性如何？	1. 證券商必須要創造出 Story，才能有市場性。例如：告訴客戶為什麼要借券？借券可以創造出什麼樣的好處？（例如節稅等）亦即必須由證券商設計出合適的借券商品，提供投資人借券的誘因，並透過包裝與行銷的方法，用合理合法的方式吸引投資人購買相關商品及提供借券。 2. 建議可在取得主管機關同意下，透過股權交換(Equity Swap)、股權連結債券 (Equity-Linked Notes, ELN)、保本型債券(Principal Guaranteed Notes, PGN)等商品設計的方式，進行借券。
(三)請問透過何種架構進行外國有價證券之借券業務，較能符合貴公司的期待與實務需求？	1. 建議可參考 BONY 的架構進行借券。 2. 在借券的流程及架構設計上，應符合客戶的需求（如 reinvestment 的需求），參考客戶的交易習性，以及國際實務，並了解國外借券的目的，以期符合實務需求。 3. 若將借券包裝成 ELN、PGN 等結構型商品，則其收入要納入財產所得，課徵 6% ~40%的稅，會失去其吸引力。

(四)請問若增加外國有價證券之借券業務，則在與國外保管機構、複委託證券商以及證券投資人的契約應如何訂定，較能保障貴公司與投資人？	1. 前述 BONY 的地位即是屬於 Custodian 的地位，就國內來看，其實集保應最適合擔任此一角色，券商則是站在創造商品的地位。 2. 就保管機構、券商和投資人三方在借券架構下的關係來看，國內券商和投資人簽訂借券契約較無疑問，但券商和國外的 Custodian 之間的關係則比較不明確。  3. 有關與國外保管機構簽訂契約部分，部分保管機構會要求契約內容比照 GMSLA(Global Master Securities Lending Agreement)，若依其規定則仲裁、訴訟地點均在海外，此點將較不利於證券商。
三、增加融資業務相關問題 (一)請問貴公司認為有關增加外國有價證券之融資業務的市場性如何？若開放是否願意承做？	1. 證券商增加外國有價證券之融資業務涉及到本身外匯部位的「融資」及「避險」的問題。 2. 若採用 Back-to-back 的方式進行融資，則可僅擔任中間傳遞的功能，賺取價差和手續費。 3. 證券商向銀行進行再融資與避險的成本高，且外匯風險高，證券商因目前法律限制，沒有外匯市場交易經驗，就此項業務而言，似乎並無競爭利基。 4. 此外，融資業務牽涉到很多繁瑣的問題，例如保證金追繳（margin call），可能要請保管機構協助，其中的成本也是一項很重要的考量，不應為增加業務而增加。
(二)請問貴公司認為有關增加外國有價證券之融資業務的可行性如何？	證券商增加外國有價證券融資業務有許多問題必須考量，在現階段可行性並不高。
(三)請問透過何種架構進行外國有價證券之融資業務，較能符合貴公司的期待與業務需求？	如前所述，證券商增加外國有價證券融資業務較無利基，且有許多問題需要考量，故對本項業務仍採取較為保留的態度。
(四)請問若增加外國有價證券之融資業務，則在契	建議若欲增加此項業務，應先開放證券商成為外匯

約訂定及內部控制上應如何進行，較能符合貴公司風險管理的需要，並兼顧投資人的保障？	市場的主要交易者(Prime Broker)，取得外匯交易資格，俾利商品設計與風險管理的進行。

二、東亞證券

訪談對象：東亞證券胡馨文副總經理 訪談人員：本會研究處葉淑玲處長、高儀慧研究員、陳恩儀副研究員、陳維哲副研究員 時間：98 年 7 月 21 日 14:00~15:10 地點：台北市敦化南路一段 2 號 8 樓	
訪談問題	**回答內容摘要**
一、受託買賣外國有價證券業務現況 (一)請問貴公司目前受託買賣外國有價證券的業務情況如何？	目前本公司承做之受託買賣外國有價證券業務主要以股票為主，另有買賣 ETF 及債券，但結構債在金融風暴之後即停止銷售。
(二)您認為現行關於受託買賣外國有價證券部分相關法律規範,是否有必要加以放寬或修正之處？	1. 券商的客戶屬性較銀行的客戶積極，交易量較大，需要比較寬鬆的法規來活絡交易。因此希望主管機關不要拿對銀行從事結構債業務的規定來規範券商。 2. 有關 ETF 的部份，ETF 有涉及一倍以上槓桿的交易，一般證券商不得承作，扼殺券商的國際競爭能力。但國內民眾卻可透過網路向國外券商下單，此項法令不符合公平原則。若是可以買放空型的 ETF 其實是可以代替借券放空。 3. 國內券商受託買賣外國有價證券受到重複課稅的問題。政府於國內券商交易後課稅一次，於國內券商支付上手券商時須扣繳營業稅，但事實上皆由券商吸收。券商對於此部份營業稅課稅問題希望主管機關能予以免稅。 4. 投資香港掛牌股票中資限制希望能取消，至少比照投信基金辦理。
二、增加借券業務相關問題 (一) (若為外國證券商在台分公司)請問貴公司之國外母公司或其他國家子公司在進行受託買賣外國證券業務時,得否進行借券業務？若得進行,則其目前之架構為何？	券商可擔任 Broker 的角色，撮合借券的供給者(如：保險公司)及需求者(如：海外基金及其他機構法人)。

(二)請問貴公司認為有關增加外國有價證券之借券業務的市場性如何？若開放是否願意承做？其架構作法為何？	1. 市場性來說只有機構法人對機構法人比較能有足夠的業務量作交易，散戶目前可能無法達到此規模。 2. 承作意願方面，因為組織重整，對於未來是否能承作外國有價證券借券業務方面，無法確定是否承作。 3. 架構上有兩種可能：本國集保公司 VS 外國集保公司；我國證券商 VS 外國證券商
(三)請問貴公司認為有關增加外國有價證券之借券業務的可行性如何？	1. 國內要從事借券業務在硬體上比較沒問題，但是在法規及實務作法的軟體部分則有許多問題要釐清，例如：除權息的問題等等。 2. 較可行的方式是由券商協助借券的供給者找到借券的需求者。 3. 主要能承作的市場短期內以美國股票為主。
(四)請問透過何種架構進行外國有價證券之借券業務，較能符合貴公司的期待與實務需求？	以成本上來考量，機構投資者對機構投資者的架構將比較符合實務的作法。
(五)請問若增加外國有價證券之借券業務，則在與國外保管機構、複委託證券商以及證券投資人的契約應如何訂定，較能保障貴公司與投資人？	目前券商買賣境外有價證券採用以自己名義的複委託方式，契約方面券商要分別跟國內客戶及國外券商簽訂合約，須徵得客戶同意將證券置於券商名下。合約裡權利義務較為複雜，所以合約的訂定可能要請教律師。
三、**增加融資業務相關問題** (一)請問貴公司認為有關增加外國有價證券之融資業務的市場性如何？若開放是否願意承做？	1.國內融券賣出買賣很零散，加上受限於券源，所以市場性並不大，只限於某些股票才有市場性，例如：美股。 2.有獲利機會，如客戶未準時交割，可以洽收利息。 3.時常客戶想做的交易，券商沒有；券商有的券，客戶卻不想做，需要撮合。
(二)請問貴公司認為有關增加外國有價證券之融資業務的可行性如何？	中小型證券商增加外國有價證券融資業務有許多問題必須考量，在現階段可行性並不高。
(三)請問透過何種架構進行外國有價證券之融資業	1. 採用類似台股的架構，在本身庫存的券裏取一固定比率範圍從事借券及融資的業務。

務，較能符合貴公司的期待與業務需求？	2.目前我國相關函令(台財證二字第 0930000022 號)規定證券商持有外幣之總額度，以公司資本淨值之 30%為限，此部分應適度放寬，證券商才能持有足夠的外匯部位，提供客戶融資。
(四)請問若增加外國有價證券之融資業務，則在契約訂定及內部控制上應如何進行，較能符合貴公司風險管理的需要，並兼顧投資人的保障？	1. 建議以公會立場請律師來訂定契約範本以供從事外國有價證券融資業務之券商參考。 2. 為有效控管券商的風險，建議應於同意融資前對客戶加強徵信。

三、元大證券

訪談對象：元大證券林廖進協理
訪談人員：本會研究處葉淑玲處長、高儀慧研究員、陳維哲副研究員
時間：98 年 8 月 3 日下午 2:00~3:00
地點：台北市南京東路三段 225 號 13 樓

訪談問題	回答內容摘要
一、受託買賣外國有價證券業務現況 (一)請問貴公司目前受託買賣外國有價證券的業務情況如何？	目前本公司承做受託買賣外國有價證券業務市占率為第一名（股票部分第一），共可接受下單至全球 15 個國家地區，其中以香港市場為主，占所有券商受託買賣香港有價證券業務部分的 39%；日本占 21%；韓國、新加坡均分別占 20%；美國部分則剛在起步階段，約占 3~5%。
(二)您認為現行關於受託買賣外國有價證券部分相關法律規範，是否有必要加以放寬或修正之處？	1. 外國有價證券的 IPO，目前複委託不能承做，但許多客戶已反應有這部分需求，建議能夠開放。 2. 台灣股票的 ECB、ADR 目前本土券商不能受託買賣，但外資券商可以，形成不對等現象，希望主管機關可以開放。 3. 有關香港紅籌股及國企股部分的限制，目前仍受限於陸委會不同意的問題，希望主管機關能多加以溝通協調，協助業者爭取。 4. 有關受託買賣外國有價證券不得為融資融券的規定，希望能以限制申請融資融券者身分的方式去管理，而不要從根本上完全限制本項業務的進行。 5. 台灣自從新任政府團隊上任後，提出亞太金融中心（包括資產管理中心、籌資中心）的構想，立意甚佳，然卻未對相應的配套措施加以通盤考量，許多業務仍然受到限制，例如，遺贈稅雖然已經下降，但購買大陸國企紅籌股票仍有限制，導致投資人雖然看好大陸市場，但受限於資金匯回台灣後無法自由運用，影響其資金匯回的意願，無法有效發揮亞太金融中心的功能，甚為可惜。
二、增加借券業務相關問題 (一)請問貴公司認為有關增加外國有價證券之借	1. 目前受託買賣外國有價證券僅規定不得進行融資融券，但並未限制借券業務的進行，惟亦未明文

券業務的市場性如何？若開放是否願意承做？其架構作法為何？	開放，故雖有許多客戶已提出相關需求，但基於保護投資人的立場，在主管機關法規及配套措施尚未完備之前，本公司仍未從事相關業務。未來一旦開放，本公司承做意願高。 2. 此外，新金融商品部需要外國有價證券包裝成各項衍生性金融商品，故有券源的需求，而機構投資人亦有國際理財中心的需求，因此，此項業務應有其市場性。 3. 在借券架構方面，建議可採參國際慣例，與客戶訂定相關之借券契約，契約內容比照一般國際契約範本即可。
(二)請問貴公司認為有關增加外國有價證券之借券業務的可行性如何？	此部分業務在國外已行之有年，且由於目前我國受託買賣外國有價證券相關法規並未限制借券業務的進行，故此部分法規似無須修改，僅需另行增加業務相關規範，使投資人保護更為周全，故可行性應甚高。
(三)請問透過何種架構進行外國有價證券之借券業務，較能符合貴公司的期待與實務需求？	建議比照國際慣例即可。
(四)請問若增加外國有價證券之借券業務，則在與國外保管機構、複委託證券商以及證券投資人的契約應如何訂定，較能保障貴公司與投資人？	建議比照國際慣例即可。
三、**增加融資業務相關問題** (一)請問貴公司認為有關增加外國有價證券之融資業務的市場性如何？若開放是否願意承做？	目前已有許多客戶詢問外國有價證券之融資業務，未來市場應有此部分需求，此項業務若能開放，基於服務客戶的立場，本公司將有意願承做。
(二)請問貴公司認為有關增加外國有價證券之融資業務的可行性如何？	今年（尤其是自 2 月以來）有關複委託業務，股票部分的成長率高，正可思考研議增加相關業務內容，以符合市場需求。
(三)請問透過何種架構進行	1. 就融資標的而言，建議採逐步開放的方式進

外國有價證券之融資業務，較能符合貴公司的期待與業務需求？	行。例如：可先開放香港市場、先開放恆生指數或其他指數成分股做為融資標的。 2. 在融資成數方面，初期為考量風險，加上國外部分市場沒有漲跌幅限制，故不宜給予太高的成數，可先採五五成或六四成。 3. 在融資業務開放後，可同時開放對應的融券業務，以使市場運作更為完整。 4. 在融資架構方面，建議採證券商自辦即可，不用透過證金公司。
(四)請問若增加外國有價證券之融資業務，則在契約訂定及內部控制上應如何進行，較能符合貴公司風險管理的需要，並兼顧投資人的保障？	1. 現行「證券商受託買賣外國有價證券管理規則」第十三條規定，證券商受託買賣外國有價證券，不得為有價證券買賣之融資融券，此部分應修法。 2. 未來開放此項業務的時候，開融資戶時，應比照現行融資契約，規範股票下跌一定程度即砍倉的規範，以控制證券商的風險。

四、永豐證券

訪談對象：永豐金證券黃秀緞副總（結算部）、王馨儀協理（國際業務部） 訪談人員：本會研究處高儀慧研究員、陳維哲副研究員、陳恩儀副研究員 時間：98 年 7 月 22 日上午 10:00~12:00 地點：台北市重慶南路一段 2 號	
訪談問題	**回答內容摘要**
一、受託買賣外國有價證券業務現況 (一)請問貴公司目前受託買賣外國有價證券的業務情況如何？	1.以受託買賣外國有價證券業務來說，排除外資券商，本公司的市佔排名第五。本公司走差異化市場(niche market)，主要是美國和香港市場。但仍會根據市場需求申請新的市場，例如新加坡、韓國等。 2.客戶中機構法人佔 20~25%，其餘為散戶。
(二)您認為現行關於受託買賣外國有價證券部分相關法律規範，是否有必要加以放寬或修正之處？	建議開放可受託買賣中國大陸有價證券。
二、增加借券業務相關問題 (一)請問貴公司認為有關增加外國有價證券之借券業務的市場性如何？若開放是否願意承做？其架構作法為何？	1.對本土券商而言，若開放市場性不大，另外還要花建置系統、維護資料的成本。(黃) 2.就正常市場而言，多空兩方的產品都應該要有，因此贊成開放外國有價證券借券。(王)
(二)請問透過何種架構進行外國有價證券之借券業務，較能符合貴公司的期待與實務需求？	1.由單一窗口集保對國外保管銀行。(黃) 2.建議透過海外上手，可能是海外複受託券商和其他券商借券，也可能是海外複受託券商本身客戶有券，如此券源包含所有上手持有的有價證券。(王)

(三)請問若增加外國有價證券之借券業務，則在與國外保管機構、複委託證券商以及證券投資人的契約應如何訂定，較能保障貴公司與投資人？	1.客戶要開 cash account 以及 margin account，另外會有一些 margin 的規定等。 2.我們和國外保管機構沒有直接的契約關係，而是由上手複受託券商與保管機構訂定契約。
三、**增加融資業務相關問題** (一)請問貴公司認為有關增加外國有價證券之融資業務的市場性如何？若開放是否願意承做？	不贊成，國外有價證券風險更高，很難管控。我倒建議開放外國人做現行證交所的融資融券業務。(王)(黃)
(二)請問貴公司認為有關增加外國有價證券之融資業務的可行性如何？	若真的要做，為了管控風險，會將融資成數依公司可承受的比例降低。
(三)請問透過何種架構進行外國有價證券之融資業務，較能符合貴公司的期待與業務需求？	可能會用台灣永豐金名義融資給客戶，但要做必須先修法。
(四)請問若增加外國有價證券之融資業務，則在契約訂定及內部控制上應如何進行，較能符合貴公司風險管理的需要，並兼顧投資人的保障？	可比照台股融資之內控相關規範加以訂定。融資成數一定比國內有價證券低，除風險考量外，亦顧慮到某些國家的股票是沒有帳跌幅限制，例如美國。

附錄二、座談會會議紀錄

第一場：「如何健全證券商受託買賣外國有價證券業務並落實投資人保護」座談會

記錄：高儀慧、陳維哲

時間：98 年 9 月 2 日（星期三）下午 2 時 30 分

地點：台北市南海路 3 號 6 樓（保險事業發展中心）第一會議室

主 持 人：丁董事長克華

出 席 者：中華大學社會管理學院陳院長春山、政治大學財務管理學系李教授志宏、中央銀行外匯局盧專員薇冰、行政院金融監督管理委員會證券期貨局詹組長靜秋、財團法人證券投資人及期貨交易人保護中心邱董事長欽庭、寶來證券陳執行長烜台、美林證券劉副總裁昭明、安智證券李副總經理怡欣、元大證券林副總經理昌興、日盛證券楊經理曜嘉

列 席 者：邱總經理靖博、羅主任秘書清安、葉處長淑玲、陳副處長莉貞、陳副研究員恩儀

壹、主席致詞（略）

貳、背景說明（略）

參、與會人員發言摘錄

- **李副總經理怡欣**

一、 主管機關對買賣外國有價證券的管理上，是先有政策主導，才制訂相關的規定。目前政策面朝向讓投資人有更多的選擇，能

在境內找到券商提供外國有價證券的買賣的服務，應已確認。此政策走向可以減少投資人作業成本，也能達成保護投資人的目的。

二、 在管理方面，所有法規的管制都是有成本的，以最近通過的法規中有關專業投資人的規定為例，其執行亦有相當的成本。法規對於專業投資人的規定為自然人資產需新台幣三千萬以上、需有專業投資知識或經驗及能自行負責任三要件。然而三千萬的要件限制，使得許多學經歷豐富的投資人無法被歸類專業投資人，此項達一定資產的要件是否允當，宜予檢視。

三、 另外在跨業監理一致性的問題，金管會成立後對於金融商品在跨業管理上，採取一致性的管理。規範上應以行為別的方式來管制，還是以產品別的方式來管制，是個值得探討的問題。近來法規有以產品別進行管制（本次結構債之規範即為適例）的趨勢，然而因為金融商品創新速度快，若以產品別來管制是否會有法令規範總是落在市場行為之後，而無法事先預防的可能性。金融產品的銷售途徑有銀行、投信、保險及券商等等，其業務性質有異，一致性的規範到底該在哪一方面做出一致性，也是值得探討的地方。

四、 風險承受的迷思。現在法令規定不得販賣超過客戶可承受風險的商品，然而從資產配置的觀點來看，單一產品的高風險在客戶本身整體的投資組合中，實質風險可能並不大。在認定上，究應由單一產品的投資逐一檢視，或由投資人的整體投資組合綜合認定是否超過投資人可承受之風險，亦值得深思。

- **劉副總裁昭明**

一、 從國際競爭的角度來看，亞洲鄰近國家自由化的程度似乎比我國腳步快，對國內投資人也產生往外的誘因，我們可以觀察市場較自由化的國家，投資人保護是否有比我國做得更好。從這次結構債的議題來看，香港及新加坡在金融海嘯後的管制也不是以產品面來管制，而是以讓投資人能夠知道投資某種商品的風險方面著手，這方面可供我國主管機關日後立法參考。

二、 關於受託買賣有價證券，主管機關在可承作對象業已做大幅開放，目前開放對象已經包括國內自然人及法人，還有外國自然人及法人，但是不能服務大陸投資人。主管機關擔心陸資進入台灣會影響金融秩序，然而關於從事外國有價證券的買賣，並沒有牽涉到幣別的問題,衝擊應有限,是否將來有開放的空間？

三、 因為可承作的外國有價證券有限制不得與中國資金有關，在海外多元的金融商品中，業者要篩選出可投資的標的，需要付出極大的成本。將來適度開放投資標的，也與政府要與大陸建立正常的經貿關係政策走向一致。

四、 有關海外所得併入最低稅賦制，對投資人有很大的影響。投資人會將資金匯出稅賦較低的國家，對於國內券商來說，競爭力相對下降。稅率方面，我國稅率相對於香港及新加坡金融界屬偏高，希望未來有配套措施時，可以降低專業金融從業人員的所得稅率，把最優秀的人才留在我國。

五、 ETF 產品的定位，目前 ETF 歸類為受益憑證，未來在管制較為結構單純的 ETF 時，對於業者的推廣行為的規範能夠適當放寬。目前 ETF 是完全不能推廣，只能很間接的接受客戶的詢問及指示，若是好的商品，業者應該要有機會向客戶推介。

六、 產品面的限制方面。1. 台股 IPO 在我國已經行之有年，國外的

IPO 案件數量更多，制度更健全，主管機關是否能開放國內券商提供外國 IPO 的服務，讓國內投資人也可以參與國際金融市場。2. 外國有價證券借券融資部分，國外的券源供給不成問題，而國內多年來在融資融券的制度也日趨成熟，只要參酌國外的法規及實務，開放這項業務是可以讓投資人資金操作上更自由。3. 專業投資人是否不要以三千萬的限制排除其他專業投資人士。4. 共同基金是否能採報備生效制，Money Market Fund 是否也可採報備制？目前制度券商無法與銀行競爭。5. 債券部分，目前在主權國家債券來說，需要是專業投資人的身份才得受買賣之信用評等以上的規定，相對於以前只要是投資等級的債券都能買賣，限制其實嚴格很多。債券評等方面認定，日後也希望能跟主管機關報告。

七、 關於投資人保護方面，業者在衝刺業務時也不想要有糾紛，希望主管機關讓守法的業者有空間去發展業務。另一方面，主管機關也要對不守法的業者採取重罰，以維持市場的合理競爭。

八、 我國受託買賣外國有價證券是委託買賣的關係，與國外的作業方式不盡相同。若與國外有紛爭時有幾個方向可以考慮：1. 應先釐清責任歸屬。2.如果願意接受仲裁，國外券商是否願意接受，因為國內券商在國內利益較大，國內券商應為仲裁的當事人之一。

九、 有關受託買賣外國有價證券借券及融資融券來說，雖然在總體上因為我國外匯存底高，所以不需要此業務。但是對個別投資人來說，此類業務可以提供他們資金及資產投資組合的調整。以美林為例，資金來源就是美金，若是開放能借給投資人，基本上沒有問題。相信主管機關能促成我國外幣的貨幣市場及外

幣的資本市場在國內發展的可能。而融資融券會是一個相輔相成的誘因結果。

- **陳執行長烜台**

一、 金融風暴後，主管機關對於投資人的保護更行重視，業者也希望在符合此一精神下，能夠開放更多的業務。然而金融風暴是全球事件，影響不只我國，主管機關若因此把之前運作十分順利的制度緊縮，對業者而言乃雪上加霜，迫使投資人到海外開戶交易，屆時保護投資人將更加困難。我國法規常採用正面表列，沒提到的項目讓業者不知道該不該做，若是採負面表列方式將會比較清楚。

二、 台灣客戶十分喜愛追逐流行，所以市場上熱門的商品如：槓桿放空 ETF、避險基金及紅籌、國企股等，皆是投資人想投資的熱門標的，也是過去市場中報酬率較高的標的。全球市場資訊是透明的，因此客戶的資金也自然會往投資報酬率高的市場移動，若客戶因到海外開戶而發生糾紛，到時客戶將投訴無門。另有關放空 ETF 方面，ETF 的受限讓業者也頗為不解，因為在金融風暴的洗禮下並沒有投資人因 ETF 而受傷，也沒有任何發行 ETF 的公司惡意倒閉，導致 ETF 下市，讓投資人蒙受損失。業者不是要鼓勵投資人靠放空去賺錢，而是讓投資人有一個工具去調整自己投資組合的風險。所以在 ETF 的推廣上，要如何才能讓投資人可以自由交易，並獲得應有的保護，也是一重要的課題。

三、 若是以產品別來監管，主管機關將耗費大量成本去追蹤定義每個新發售的金融商品，實非長久之計。建議從法規面去規範執業人員與業者，若有違反規定的情事發生，主管機關可限制其

未來業務的發展與範疇，這個方式或許會更有效率。

- **林副總經理昌興**

一、 目前主管機關修法的方向，是以投資人保護作為最大目的，因此許多能投資的商品類別都限縮掉，故與此次座談會主題有點背道而馳。

二、 境外結構型商品法令雖然確定實施，業者仍有一些建議。新法著重於事前的審查以及商品與投資範圍分級。事前審查方面，此一作法若是提前兩三年實施，並無法讓投資人不被金融風暴波及，因此是否有效不得而知。商品分級及投資範圍的限縮，會把客戶逼向台面下的投資，主管機關更難保護投資人。

三、 我國專業投資人與非專業投資人的認定，與外國的認定方式不同。以香港為例，在風險揭露時，對非專業投資人需提供完整的風險揭露文件；對於專業投資人則可以免除這樣的揭露。我國的認定方式，可能會造成非專業投資人出售商品給專業投資人的奇怪現象。

四、 商品面的管制不如銷售面的管制。近來的修法方面，都無法看到有關銷售面管制的討論，大部分都著重於商品面的管制。希望日後修訂時，可以採取銷售面管制的思考。在銷售面方面管制可以採 KYC (Know Your Client)的立法、風險揭露方式的立法以及客戶合適性的立法。

五、 境外結構性商品立法過程，希望主管機關能夠多多採納業者的意見，讓法案的建立更為完備。

- **楊經理曜嘉**

一、ETF受限及專業投資人的問題，這裡轉達一些客戶的意見。投資

ETF商品的客戶，本身就認為自己對風險有理解力，這樣的客戶是否要受資產三千萬的限制，值得探討。一些原來已經購買ETF的客戶，因為新法令也無法加碼賺回一些資本，只能被套牢。法令快速的改變也讓客戶措手不及，無法先行做資產的規劃。

二、建議：（一）不要以3000萬財力來評斷客戶是否為專業投資人，客戶是否為專業投資人應視客戶之交易經驗，並請客戶填寫KYC後，再來決定其是否符合專業投資人之身分。（二）海外投資所得納入最低稅賦制會影響投資人資金回流之意願，若開放關於紅籌國企、最低稅賦制以及外國有價證券操作，可提升投資人將資金匯回台灣的意願。（三）再來在投資人的教育方面，要教導客戶認知自己的風險承受能力，並從客戶教育訓練做起。（四） 加強查緝非法在國內招募投資人的外國券商，以加強對投資人的保護及維持我國資本市場的秩序。若是開放國內券商承作相關業務，將可大大減少國內投資人轉向國外的誘因。

- **陳院長春山**

一、 雷曼給我們很好的教育意義，在投資人保護方面可以好好思考。如何將投資人保護落實為企業文化，並且成為銷售人員應遵守的制度和規範，愈形重要。巨大公司董事長曾提到：我們不是在賣腳踏車而是在賣一個文化，同樣的思考模式，亦可運用在金融商品銷售上。隨著證券商規模的日益增大，有必要將投資人保護當成企業基本的價值觀和經營哲學，調整到較高的角度來執行。在此金融風暴過後，投資銀行家可以思考如何將投資人保護當成願景、目標、哲學、文化和行為準則，雖然和公司的績效並無直接相關，但與公司能否永續經營有密切關

係。又依證券交易法的立法宗旨，即在發展國民經濟及保障投資，要使投資人一方面要能從證券市場獲利，一方面又能獲得完善的保護。

二、 一般散戶對於投資文件往往無法完全理解，在立法保護投資人的原則下，散戶與專業投資人的區分應該予以維持，目前的原則應該是合宜的。不可否認地，目前有些委託受限於現行的標準，可能會跑到檯面下，主管機關受限於人力，無法完全調查出，但不能因要促使檯面下的交易回到檯面，就將標準放寬，此點在邏輯上還有再思考的空間。寧可對檯面上做合理的放寬，但做嚴格的監管，才能達到保護投資人的目的。

三、 商品和業務行為的規範，尤其業務行為的規範應該要從嚴。證券商的業務應儘量放寬，取得執照後可從事任何業務，但當發生違法情事時，應予嚴厲處分，例如之前日本即對某外國證券商處以停業處分。在業務流程上可以做嚴格的管控，但商品面則可以思考適度的放寬，證券商應更注重誠信經營(fiduciary relationships)及投資人保護，若發現有利益衝突處理不當時，則加以嚴格處罰，如此證券商間才能有優質的競爭。

四、 未來十年，大陸應該都是 Booming Economy，在目前政治因素逐漸降低，再加上大陸對於上市公司的公司治理要求也越來越嚴謹，從資產管理中心的角度來看，將來證券商有多元的 Licenses，投資人有多元的投資需求，似乎不宜再一味禁止投資大陸相關標的，大陸地區的開放對於投資人、資金資產管理的能力是有幫助的。

五、 保護投資人是有彈性，在業務放寬的情形下，監管應該更為嚴格，對於不誠信的證券商應有更重的處罰，如此，才能讓證券

商長大，彼此間進行優質的競爭，達到投資人保護的目的。

- **李教授志宏**

一、 Warrant Buffett 在雪球（The Snowball）一書中提到所羅門事件，也提到利益衝突和誠信問題可能會存在於任何機構。因此，對於券商的開放與法治的監管是必須同時重視的，投資人保護不僅是透過法律來保護，也必須對自己的投資決策負責，投資必須了解其投資的風險與報酬存在抵換關係(trade-off)，重點在於其是否清楚被告知所有相關的資訊。

二、 投資人投資失利甚至傾家盪產、導致退休生活出問題的例子屢見不鮮。投資人除了需要法律保護之外，亦必須給予「教育」。但有時候教育他們，他們不一定能聽進去重點，理財規劃師在市場上原則上應扮演某種角色，但在我們的市場上理財規劃師並沒有充分發揮其應有的作用，投資人也不見得願意付錢取得理財規劃的服務，應該要有一合理的架構。

三、 若從以台灣做為全球資產管理中心的定位來看，許多投資人保護措施應與全球資產管理中心定位相互連結，以國際市場的競爭力為思考的基礎，應有「適度」的管制，而非過度的管制，否則將導致檯面下的交易盛行。檯面上的市場如何和檯面下的市場競爭？有多少部位進出？大概是那些投資人？投資商品的風險程度如何？這些資訊如果能夠建立的話，在管理上亦較容易。檯面上的市場比較能夠進步發展，才能誘導檯面下的交易轉至檯面上的市場。

四、 從全球資產管理中心的角度來看，不論國內或國際投資人都希望選擇對自己有利的市場或資產管理中心來交易，即使國內的

投資人存在著 home-bias 的投資行為，只要預期投資利益夠大，其仍會選擇對其有利的市場來交易。從複委託的角度來看，其實這項業務並不見得有競爭力，因為複委託還有上手券商，必須多收一層費用，若能力許可的話，投資人將選擇直接到國外交易，以降低成本，除非國內複委託券商提供充分的服務與資訊以保護投資人的權益，善盡投資人所面對可能風險的告知義務，而非一味地推銷投資商品。對國內投資人而言，國內證券商可以提供更多的服務，另一方面也較可以保護投資人，惟國外證券市場亦有投資人保護機制，如果此一機制完善的話，則要比較國內證券商給投資人的服務夠不夠好？資訊夠不夠透明？此項業務要有競爭力，必須要使交易成本低、資訊透明度高、手續要簡便，商品種類要能滿足投資人不同策略性交易的需求，至於融資融券所引發的風險問題及配套措施，亦必須加以考量。

五、 台灣要成為全球資產管理中心，市場本身的基本面要好，以過去十年證券市場的報酬來看，台灣在全球主要市場排名並不前面，比起香港、大陸、美國等都要來得差。就開放大陸市場來看，台灣最近開放了三檔大陸的 ETF，均以透過香港的方式進行，其實提高了交易成本，對國際投資人而言，吸引力較低。這些問題，都是未來達成資產管理中心的障礙。若不由政治面的角度，而由經濟面來看，大陸股市不過是全球資產配置的一部分，個人贊成應予以開放。就資產管理中心而言，除了台灣投資人到國外去，國外投資人也可以透過券商來台交易金融商品，如果像最近三檔 ETF 上市的方式，可能不具國際競爭力，此點值得進一步思考。

- **邱董事長欽庭**

一、 投資人保護在國內由不同單位負責。以雷曼債而言，就不在投資人保護中心的保護範圍。各位剛剛談到的範圍，包括財富管理、複委託的範圍甚至連動債，和投保中心的業務仍有部分不相容。其實，最能保護投資人的應該是自己；其次應該是業者及其從業人員；最後一道才是法規面，包括行政機關和立法。

二、 是否屬於投保中心業務範圍，要看受託買賣的是不是有價證券，如果是結構債可能是金融商品，但不一定是有價證券。外國有價證券是否為證交法上的有價證券？若以證交法第六條來看，應該不是；但是依「證券商受託買賣外國有價證券管理規則」第六條則似乎隱含將它視為有價證券。

三、 就投保中心處理投資人保護業務來看，可分為以下範圍：

（一） 償付機制：目前還未有案例，若有券商倒閉時才會運用到。依投保法第 21 條來看，買賣外國有價證券並無法適用此項機制，但可適用外國的投資人保護機制，例如在美國有 IPC，因此投資人未必沒有被保護。此種情況下，投保中心可以設法儘量提供投資人必要的協助。李教授提到複委託制度是否為一個好的制度？因為多增加一手，多被賺一次手續費，成本增加；多增加一手，也會多增加風險。如果國內的證券商倒閉，而國外複委託證券商沒有倒閉，就投保法 21 條理解，亦無償付機制的適用。

（二） 調處機制：國內有價證券買賣過程發生糾紛，依投保法的規定可以到投保中心進行調處。至於買賣外國有價證券能否適用國內投保法進行調處，首先要釐清買賣標的是否為證交法上的有價證券，若為是，則經雙方當事人的同意至

投保中心進行調處，個人認為亦無不可。但誰是當事人的問題，亦必須釐清，投資人無疑是當事人之一，但另一個當事人為國內券商或是國外券商？若為國內券商，則沒有問題；若為國外券商，其是否願意接受投保中心調處？此點難度可能較高。若雙方當事人均同意依投保法 22 條規定進行調處，雙方也都接受調處結果，投保中心亦樂於協助調處。

（三） 團體訴訟或仲裁：就此部分來看，投保中心可以著墨的範圍比較有限。有於受託買賣的地點在國外，受託標的所表彰的發行人也在國外，由投保中心來打團體訴訟或仲裁並無實益。在團體訴訟主要可以分為兩個類型：

1. 交易面：包括炒作或是內線交易等。
2. 發行面：可能是公開說明書不實、財報不實等。

若投資人的交易市場、交易標的及其發行人均在國外，則在國內提出訴訟並無實益。訴訟應到被告有財產的地方進行，俾便執行。此類訴訟的管轄法院在國外，如由投保中心幫投資人打團體訴訟會碰到很多問題。依投保法的規定，投保中心在國內提起團體訴訟有很多優勢，如：訴訟費減免、免供擔保進行保全程序等優惠待遇。但是到國外去提訴訟則沒有這些優勢，甚且對於國外法令的掌握相較於訴訟對手亦將顯不足，因此，在打這類官司時，還是要聘請國外律師比較實際而有效。

- **盧專員薇冰**

一、 基本上，受託買賣外國有價證券涉及外匯業務是架構在金管會許可之下，各證券商在開辦受託買賣外國有價證券前要取得央

行的許可，若涉及結匯者，憑央行資金匯入匯出的許可函，免計入證券商和客戶每人每年累積結匯金額。原則上，個人得逕行辦理涉及新台幣結匯，每年累積結匯金額匯入匯出各為五百萬；公司則是各五千萬，惟受託買賣外國有價證券已放寬為免計入結匯額度，央行每個月彙整相關的報表，了解證券商匯出匯入之情形。

二、 從央行收到的報表顯示，證券商做結構債的金額不大，境外基金最多，再來是股權，最後才是連動債和一般的債券。如同前面丁董事長提到的，境外結構型商品的管理規則是妥協（Compromise）的結果。在五次會議當中，I-Bank 的聲音最大，主要從發行人的立場來談，銀行則是代表銷售機構的立場，但在會場上並沒有投資人的聲音，因此金管會必須代表沒有聲音的投資人。也許現在發行人和銷售機構都會抱怨，但必須試行一段時間，讓主管機關放心，才有機會往前進一步放寬。

三、 過去海外連動債之銷售過程，有許多令人詬病的地方，某些結構型商品的 Term-Sheet，英文的部分厚厚一疊，中文卻只有兩頁，而且有不一致的地方（例如英文不是 100%保本，中文卻寫 100%保本），詢問銷售機構，則推說照錄自發行人的翻譯，這樣很不負責任。因此，境外結構型商品管理辦法即規定中文的說明書內容要很詳細、確實。另外銀行並未落實專業機構投資人和非專業機構投資人的分級，造成投資人多希望有專業機構的產品彈性，又希望得到對非專業投資人的保護；所以我們希望銷售機構都能落實客戶的 KYC 和 Suitability，對客戶要區分專業和非專業投資人，而發行人要詳實揭露相關條件與風險，希望經過一段時間實行後，大家都能真正落實，未來再討論進

一步開放。

四、 在場唯一提到和外匯局較有關的意見是美林證券所提希望開放外幣的融資融券業務。此業務牽涉到外幣貸款，在外匯指定銀行管理部分，承作對象限國內顧客，並憑顧客提供之國外交易文件辦理，且外幣貸款不能結售為新台幣。央行對於外幣貸款規定較嚴謹，因為台灣是 Surplus 的國家。舉外債很高的國家例如丹麥，在市場反轉的時候反應不及。若要央行開放這部分業務給證券商來做，仍應審慎評估研究。此外，銀行收受外幣存款之來源，可承做外幣貸款，但證券商欠缺外幣資金來源，兩者實為不同的架構，因此不能完全比照，必須相當審慎再考慮。

- **詹組長靜秋**

一、 今天很高興有機會可以多聽聽業者的心聲，也從不同的角度來思考產業的發展和投資人保護之間的衡平性。本組的業務在協助券商業務健全發展，進而帶動證券市場的發展，另一方面亦必須致力於投資人保護，惟兩者間時有衝突之處。

二、 由過去開放的歷程來看，主管機關的決策過程均相當審慎，但業者總是會抱怨，主管機關開放腳步過慢，且監理不一致，讓業者處於不公平競爭情況。例如：買賣外國結構型商品部分，券商得依受託買賣外國有價證券管理規則，而在銀行是透過指定信託，保險業者則透過投資型保單。這次由於金融風暴發生，主管機關檢討相關法規，訂出三業一致性的規範。惟在制定相關法規時，需考慮行業的衡平性及產業發展暨投資人保護，形成共識有其困難之處，因此，未能盡如人意，未來仍有檢討調整的空間，業者不必過於憂慮。

三、 這次修法，除了結構型商品之外，主管機關連帶檢討了證券商受託買賣外國有價證券的相關規定，部分業務範圍可能因而限縮。過去證券商可能覺得業務受到相當多的限制，但這次雷曼債的問題，券商即可不必像銀行一樣，面對投資人求償的問題。因此，在競爭的過程中，必須考慮公司或產業長遠的發展，而非短期的利益。

四、 主管機關一直朝向建立台灣為亞太籌融資中心、資產管理中心努力，也陸續鬆綁相關規定，逐漸由正面表列朝向負面表列，這次有關境外結構型商品管理規則，其實是參考全球金融主管機關在金融風暴後在監理理念上的調整而訂定。根據國外的監理及研究報告顯示，自由競爭的市場，業者自律是一個理想，完全由業者自律不太可能實現，主管機關的介入是必要的，尤其誠信問題和利益衝突存在時，必須由外在的法律架構來監理規範。金融商品的創新思潮在這次金融風暴亦重新被檢視，一般散戶投資人無法理解太複雜的商品，因此，有必要對於複雜化的商品予以規範。

五、 在這次法規修正，主管機關將可投資的境外結構型商品評等等級提高且增加審查機制。審查的目的在於透過專家來檢視其風險與揭露是否一致？揭露內容是否易於理解？第二個部分是加重金融機構責任，促使其約束銷售人員。如何使投資人、從業人員和主管機關達到一個三贏的局面，是我們努力的目標。投資人與在銷售過程中與銷售人員的互動相當重要。過程中，第一線銷售人員需了解客戶對於商品的適合度及風險承擔能力，此部分有待銷售人員落實 KYC。如業者能落實執行，未來主管機關才能更放心開放相關業務，在產業未來發展和投資人保護

之間努力找到一個平衡點。

六、 未來兩岸 MOU 若能順利簽訂，大陸或香港有價證券部分的相關業務會儘快開放。此外，地下非法交易的部分，主管機關只要接到檢舉，都會移送有關機關處理；投資人教育的部分亦委請證基會持續進行宣導，教育投資人相關的金融知識，並且向下紮根，從小開始學習投資理財。

七、 由於今天討論的主題範圍很廣，受限於時間的關係僅說明到此，未來主管機關會持續努力，在產業發展及投資人保護間找到一個最合理的平衡點。

- **丁董事長克華總結**

非常謝謝各位今天知無不言，言無不盡的與談，綜合各位今天的意見如下：

一、 業者在相互競爭過程中，必須兼顧公司及產業長遠的發展，而非追求一時的利益。

二、 發展台灣成為資產管理中心，業者必須加強自律，而依 G20 規範，主管機關仍須適時介入監理。

三、 一般散戶投資人無法理解太複雜的金融商品，主管機關有必要予以規範，金融商品銷售人員則應加強對客戶的了解與對產品的說明。

四、 有關現行可投資的境外結構型商品信用評等提高，以及相關揭露事項配合調整等問題，可於法規施行一段期間後，再檢討是否有修正的必要。

五、 大陸、香港等區域的投資標的，未來在兩岸 MOU 簽訂後，預期將有大幅度開放。

六、 有關地下非法買賣外國有價證券部分應嚴格禁止，然僅靠檢舉或有不足，業者和主管機關可再思考應如何配合。

七、 有關外國有價證券融資融券和借券等業務的開放，建議由央行和主管機關由總體及個體面等不同角度予以審慎考量，而本會亦將彙整業者今天的意見提供參考，有些建議或許短期無法達成，但就中長期而言，可再進一步討論。

八、 在境外結構型商品相關規範部分，應共同思考在不影響市場風險之下，如何增加業者的經營績效同時落實投資人保護。而投資人也必須自己保護自己，在投資前確實了解商品的報酬與相對風險。

第二場：「證券商受託買賣外國有價證券增加融資借券業務之架構及作法研究」諮詢座談會

紀錄：高儀慧、陳恩儀、陳維哲

時間：98 年 11 月 12 日（四）下午 2:30

地點：本會會議室（台北市南海路三號九樓）

主席：丁董事長克華

魏董事長寶生

出席：吳教授光明、莊教授永丞、黃教授銘傑、謝教授易宏、行政院金融監督管理委員會證券期貨局王副局長詠心、中央銀行外匯局黃副局長阿旺、美國紐約梅隆銀行台北分行劉總經理宗仁、美商大都會人壽邱投資長華創、富邦證券趙副總經理菁菁、群益證券鄭協理武隆、台証證券陳課長沛瑄

列席：中華民國證券商業同業公會：外國有價證券業務委員會副召集人美林證券劉副總裁昭明、元大證券楊副理國斌、龔專員姵禎、葉處長淑玲

壹、 背景說明（略）

貳、 主席致詞（略）

參、 與會人員發言摘錄

- **魏董事長寶生**

一、 目前保險業資金大概有兩兆多在海外持有股票或債券，且已可出借持有的海外股票和債券，但證券商尚未開放。保險業的券在海外出借，大部分未透過國內的券商，而是透過保管銀行。券商的複委託在 2007 年達到 1 兆多元，但由於目前法令上的規範不明確，並沒有借券的機會，若能讓國內券商在接受複委託

時，可以有積極的借券行為，將增加投資人的投資收益。而國內的四大基金已參與國內的借券且獲得收益，若能開放其持有之外國有價證券，尤其是透過複委託投資海外，並且提供融資融券和借券的功能，則可以增加國內券商提供服務的機會。

二、 透過本研究計畫，希望能讓國內的券商可以有更多的券源和機會，增加受託買賣外國有價證券之融資借券業務，對於券商、投資人以及保管銀行達成三贏的局面。至於如何拓展券商經營的商機則不在本研究案的研究範圍內。

- **趙副總經理菁菁**

一、 依據目前的法規規定，的確並未明文禁止證券商受託買賣外國有價證券不得進行借券業務，而在跟國外券商簽訂複委託契約時，其實已可包含借券的部分，但在主管機關未正式開放前，業者並未冒然進行該項業務。

二、 海外在做借券的時候，一般的做法是將券借出去，擔保品進來，擔保品再進行投資(Reinvestment)。若要將客戶的券借出去，一定要先簽訂 Agreement，取得客戶的同意再將客戶的券借出去，如果客戶要賣出的時候，券商也要確保有券可以及時讓客戶賣出。至於擔保品的部分，究竟是用現金，或是其他有價證券？若是其他有價證券，證券商是否有能力去評價？另外，在維持率的部分，如果國內和國外的要求不同時，其差額應如何處理？都是需要進一步探討的問題。

三、 在券源的部分，證券商的券存在保管機構，散戶的券在券商名下，基金公司等大型機構投資人則是透過 Third-party Settlement，則很可能在券商進行外國有價證券業務的時候缺少

少券源。過去曾向主管機關建議，國內大型機構法人，如四大基金及投信業者，可否皆透過複委託投資外國有價證券，並將券存在國內券商底下，如此即可擴大未來借券的券源。

四、 券借出去以後，若出借人要贖回，可能發生 Agent 來不及處理的狀況，例如，借券之後所拿到的擔保品或是再投資的標的發生問題，因此，應該要有合格的 Borrower List，並且要對 Reinvestment 標的物定期 Review，讓投資人了解他的券到底借給誰，擔保品又投資到那些標的，其績效如何？力求借券相關資訊的透明化。

- **鄭協理武隆**

一、 有關複委託增加借券業務，持中立意見。一方面，目前需求也許沒那麼大，另一方面，國外有些證券市場，如美股沒有漲跌幅，對於風險控管是比較大的挑戰，而且在保證金的追繳通知上可能會比較麻煩，一旦事情發生，如何做好投資人保護，亦是很重要的考量。

二、 今年八月份主管機關發文禁止複委託購買槓桿型 ETF 和商品 ETF，對券商及投資人影響很大，建議開放此兩項商品，風險較借券小很多，也較符合證券商的需求。

- **陳課長沛瑄**

目前複委託的借券部分，的確有客戶詢問，但不多。若真要開放，目前由於每一家證券商的上手不太一樣，可以交易的市場也不盡相同，是否需要建置一個共同的資訊揭露平台，以揭露借券相關的資訊（如借券的條件..等），可再進一步研議。

- **劉副總裁昭明**

一、 台灣如果能夠成為資產管理中心，券源可以於台灣保管，則共同借券平台才有成立的要件。就客戶的需求而言，融資融券要較借券常被提出，如果能夠適度開放，應可增加吸引部分的資金。

二、 本研究報告提出了幾個借券的方向，個人認為彼此間並無互斥，未來若開放借券，或可同時並行，透過自然的競爭結果，決定何種方式留下來。

三、 在券源方面，大型機構法人都有自己的保管機構，如果都透過複委託出去，讓券留在券商這邊，依現行的法規仍然沒有辦法進行借券，因此必須有相關的配套。

四、 有關融資融券部分，因國外市場很多並沒有漲跌幅限制，遇到市況劇烈變動，則必須依照外國主管機關、交易所、或上手券商的要求，在幾小時內補券，是否有辦法即時完成，亦是必須考量的問題。

- **楊副理國斌**

若開放借券業務，則主管機關應對如何篩選標的，有原則性的規定，以降低借券的風險。

- **趙副總經理菁菁**

同意針對合格的借券標的、合格的擔保品標的可以有原則的規定，另一方面，證券商並應提供投資人充分的資訊，使其了解標的的風險。

- **邱投資長華創**

一、 目前保險業兩兆的券源都是很好的券，保險法規定信用評等要A-級以上、非私募、必須是公開發行的，因此流動性高且資訊較為透明。

二、 保險業有使用保管銀行，但保險公司本身即可以擔任 Lender，券商在借券架構中所擔任的角色為 Agent Lender 或 Broker Lender。

三、 在選擇 Agent 時，應考慮幾個面向：

（一） Agent 可否協助找到好的 Counterparty？也許是有很多的 Borrowers，也可能是有一個主要的 Borrower，例如 Goldman Sachs 等大型的 I-bank，此外，並要求要清楚揭露 Borrowers 是那些對象？

（二） Reinvestment Ability：包括 Collateral Management，以及是否做 Daily Check，並以公平市價衡量擔保品的價值。Counter-party Risk 是不是我們可以承受？一般而言，借券期間不會超過 180 天，一方面要確保資產的安全性，一方面又要能夠為借券人創造收益。以國外而言，保險業的 Reinvestment 做得比較好，因為他們有比較好的 Counterparty。保險業會自行評估，應透過券商或是透過保管銀行來借券，其 Settlement 的風險如何？

（三） Reporting 方面是否即時？Open-loan、Close-loan 到底有多少？Reinvestment List 有那些投資標的？Accrued Interest 有多少？這些都是必須要考慮的因素。

- **劉總經理宗仁**

一、 保管銀行保管客戶很多有價證券，但不能任意做主借給別人。

一個多月前，美國證管會召開了一個會議，討論借券制度透明化及可能產生的風險。保管銀行在借券架構中擔任 Agent 的角色，而保管銀行亦會告知客戶，藉由出借證券可以創造額外的收益。保管銀行提供予客戶被核准的借券人名單，每一借券人均有額度上限。實務上，借券時徵提現金做為擔保品，同幣別時為 102%；不同幣別則是 105%，以此涵蓋可能的風險。

二、 至於現金擔保品拿來以後則產生另一個問題－Reinvestment。由於此擔保品仍屬於 Lender，因此必須符合 Lender 的 Investment Guideline 由 Agent 替其再投資，但風險仍屬於 Lender。除再投資風險外，尚有 Operational Risk，在借券過程的各個環節作業都是緊緊相扣的，若稍有疏失即可能產生風險。

三、 如開放借券業務，本人樂觀其成，但必須要教育市場投資人，使其了解借券的用途不限於放空，並透過充分的資訊揭露使其了解相關的風險。

- **趙副總經理菁菁**

券商在外匯上比較保守，對於外幣操作的敏改度較低。券商從事外幣融資，若跟銀行借外幣再借給客戶，有金額上的限制，限制為不得超過淨值的 20%。當匯率波動時，券商要特別注意每日洗價及擔保品的問題。另外國外得為融資的標的，券商自己要去研究，選擇性的從事外幣融資的業務。

- **劉副總裁昭明**

目前的匯款作法，比較費時，若是券商能有融資的額度，客戶可以在較短的時間內，抓取賺取價差的機會。因為這些機會，券商也能收取較高的利息。

- **趙副總經理菁菁**

希望主管機關能夠開放外國 IPO 的部分，搭配外幣的融資業務。若是能有機會參與 IPO，當投入資金越多時，中籤的機率就越高。IPO 券商可以控制的因素比較多，相對的風險比較小，不管中籤與否，投資人權益不至於受影響。

- **劉副總裁昭明**

關於 IPO 部分，國內沒有開放的業務，在香港的券商已經拿著台灣投資人的錢，在香港投資賺錢。若是開放 IPO 業務，可以增加國內券商的競爭力、減少客戶去香港另外找券商的成本、以及開放後主管機關更能有效監理該項業務。主管機關及券商應該建立一個平台，讓投資人有需求時可以使用。

- **楊副理國斌**

建議次級市場部分，可以開放一些成分股（例如：道瓊成分股）的融資，應該該類交易基本上是相當的安全。

- **吳教授光明**

一、 在券商受託買賣外國有價證券的實務上，券商雖然名為受託，但是常常是券商向客戶推介特定有價證券。

二、 接下來談我國的法律文化，以法律觀點來看，應該是要尊重契約自由原則，但由於我國政治民粹，投資人在賠錢時常常就以選票要脅主政者破除合約精神。因此證券商的風險，其實比投資人還大，因為只要投資人發起抗議，券商只能接受主管機關的處置。

三、 關於投資人可以分為兩部分，法人投資人部分，因為其專業性較高，也有遵守契約自由的精神，所以不必特別保護或教育。然而自然人相對沒有專業的投資常識，對合約精神也不尊重，所以主管機關及券商應該要好好教育自然人投資人，免除日後的紛爭。

- **謝教授易宏**

一、 美國對相關業務的作法，其實是蠻嚴格的，特過 Regulation T、Regulation U 以及 Regulation X 來規範券商交易的券種。美國證交法也對 Broker 融資以及銀行借券業務豁免到證交法之外。

二、 目前台灣的氛圍，做借券及融資融券，PE Fund 應該是會蠻有興趣，不管是套利或是避險基金的部分。現在台灣市場相對屬於低點，許多國外機構對台灣標的很有興趣。因此，PE Fund 如果用 Share Swaps 方式，然後再把有價證券借出去，將會把風險分散出去。因為 PE FUND 通常是炒短線，這樣一個會把風險散播出去的作法，是值得大家關注的事項。

三、 揭露的問題以及 Qualified Securities 的控管問題，也是開放此項業務要注意的重點。

- **黃教授銘傑**

一、 首先可以先考慮當初為何主管機關沒有開放此業務？沒有開放的原因是過去式，還是該原因還存在？這是個可以探討的問題。我們也可以先把風險列出來，哪些風險是券商可以自行克服，哪些風險是需要主管機關介入的。

二、 在考量 Institution Competition 時，若是國內券商比較分散，在

對外國上手的 Bargaining Power 會較薄弱。這樣開放後反而不會對券商有利，因此在未來制度設計上，可以讓券商在競爭後，選出一個最好的作法。

三、 風險部分，除了投資客體的限制以外，投資主體的限制也是個考量的方向。對於專業投資人，規範可以少一點，但對於一般投資人則要加以保護。試行階段就先讓專業投資人先進行交易，有了規模後，再開放一般投資人進入該市場。

四、 日本在 2007 開放外國有價證券融資融券業務，當初未開放的原因為：需求太低，必要性太小。但後來開放的原因則為：為鼓勵外國人到日本上市，讓東京證交所邁向國際。我國可以借鏡日本的情況，視是否有開放此業務的必要性。

- **莊教授永丞**

一、 投資人及主管機關，最重視的就是券商是否能穩健經營，若不能穩健經營，則會造成流通市場的系統風險。為何在券商買賣外國有價證券部分，不得做融資融券。請產業界先將不准的理由找出來，在就各個不准的理由一一克服，說服主管機關。

二、 開放外國有價證券融資部分，會牽涉到外匯管制的問題，需視央行政策的走向是否能配合。另外，開放相關業務，是否會加速台灣產業空洞化的速度，投資人不將資金留在國內，券商應提供理由讓主管機關可以解決產業空洞化的質疑。

三、 要從事外國有價證券融券，最大的問題就是券源從哪裡來。若業務很少，融券的成本就會相對偏高很多，偏高的成本是否會對券商的穩健經營有不利的影響。

- **趙副總經理菁菁**

一、 有關專業投資人部分，業界對於這方面樂觀其成，相信也可以減少不必要的紛爭。若外國有價證券開放融資融券，可以先從專業投資人的方式做起。

二、 對於外國相關交易的 Guideline，希望可以參酌相關作法，做適度的開放。

三、 關於剛才提到 PE FUND 的部分，Share Swap 與 Equity Swap 可以當作借券業務開放的參考。

- **魏董事長寶生**

一、 個人當初在保險司開放海外有價證券借券，只認四大保管銀行，當時想法是保險公司是專業機構，所持有的有價證券透過保管機構出借，風險很小，截至目前為止運作上還算順利。

二、 自從金融海嘯後，國外制訂的法令嚴格許多，現在推動證券商受託買賣外國有價證券的借券業務，相對風險是較低的，或許可嘗試仿照當初保險業開放外國有價證券借券，從退休基金或專業投資人逐步開放該業務，慢慢學習一些國際經驗。

三、 回應黃教授問題，當初訂定複委託禁止融資融券的理由很單純，因為相關法令都是如此規範，主要是希望證券商在從事受託買賣外國有價證券時，不用融資融券的方式。但目前討論的重點是投資人所委託買賣的外國有價證券要出借，若釐清法律關係的話，是有解釋的空間。

- **丁董事長克華**

過去禁止的原因可能是需求小，再加上國際經驗不足。但以目前環境來看，證券商受託買賣外國有價證券的業務逐年成長，而我們借券業務也有一定的經驗，是應該可朝逐步開放的角度思考，當然其間

不免有風險，但只要控制在可忍受的範圍內，為使證券商的業務有進一步發展，是應該開放。

- **王副局長詠心**

一、 剛才大家提到我們目前受託買賣外國有價證券的量有一兆多，事實上，其中涵蓋結構債的部份，若扣除後可能真正的量沒這麼大。

二、 若要將受託買賣的外國有價證券出借，國內目前市場不夠大，因此必須借到國外，以目前複委託的架構來看，要借到國外則須透過上手券商，原則上量要夠大，否則賺來的借券費根本不夠支應成本，所以只有法人或是資本雄厚的散戶才有可能將券借到國外，以現狀考量，針對專業投資人或許是可嘗試的方向。

三、 然而，國內券商所能扮演的角色有限，因為有券源的大客戶，例如：保險公司、共同基金、四大基金與銀行等，這些機構大部分都是委託保管銀行或國外機構代操，從投資人的需求端來看，證券商能著力的部份只剩下大型機構或一般投資人，面對專業性較低的投資人，擔保品的再投資風險，是證券商必須加以審慎考量的。

四、 針對融券的部份，當與國外券商借券時，首先必須先作信用調查，倘若國內券商的客戶不夠大，不見得借得到券；若客戶夠大，可能也不需要透過國內券商。因此，目前這部份的需求尚屬有限。

五、 針對受託買賣外國有價證券融資部分，國內有這部份的需求。然而因授信是在國內完成，故不適用像是美國 Regulation T 的相關規定，以美國融資融券的規範，保證金為 50%，並訂有得為融資融券標的之規範，這僅是大方向的規定，事實上，每家

券商都有各自的細部規範。其次，以國內目前受託買賣外國有價證券較為熱門的市場，是屬於香港或美國的股票，如何訂定一套有效的風險控管制度，是很重要的，因為有些國外市場是無漲跌幅限制，另一方面國內投資人對國外市場的敏感度不似國內股票，這部份的風險是需要被關注的；最後，個人比較擔心的是，若開放買賣外國有價證券融資，是否意味著政策上我們鼓勵投資國外？

- **趙副總經理菁菁**

依現行證券交易法第六十條允許證券商從事借券業務，擔保品部分包括現金，想請教央行長官，為什麼這裡的現金僅限於新台幣，卻不包括外幣？

- **黃副局長阿旺**

一、 目前中央銀行的政策是希望外資來台買股票，但不要把外幣帶進來；此外，也希望擴張外幣的需求，因此，針對受託買賣外國有價證券的融資融券，事實上是與政策方向相符的。

二、 依據央行目前規定，當證券商辦理受託買賣外國有價證券融資業務，而有外幣需求時，就外幣貸款部分，按照銀行業辦理外匯業務管理辦法規定，只要憑國外交易文件，可直接向銀行辦理外幣融資。另外若需要短期資金，而不向銀行借貸時，也可用 Swap 方式。目前也在研議證券商若辦理外匯業務時，設定外幣部位風險上限的規範，例如五千萬美金的外匯上限，並非指業務量限於五千萬，而是指每天結算後所承擔的外匯部位風險不超過美金五千萬。

- **劉副總裁昭明**

信用交易業務已開放二十年，證券商經過這麼多年的學習，也已逐漸重視風險的管理，因此，若是能開放證券商受託買賣外國有價證券的融資業務，我們也會慎選客戶。

- **劉總經理宗仁**

建議是否可考慮集合多數小額投資人在一個交易帳戶中，透過國內證券商與國外上手證券商從事外國有價證券的借券業務？如此，可讓證券商的業務更加多元。

- **魏董事長寶生**

請教王副局長，在共同基金的部份，有很大一部分是國內募資投資海外有價證券，這裡是否可透過證券商的複委託？

- **王副局長詠心**

一、 國內投信發行之海外基金是否可由國內證券商複委託買賣外國有價證券？這個部份個人覺得完全是成本考量，因為國外交易的成本是看單量，量大才有議價能力，若經由國內證券商勢必要透過國外上手，成本可能會較高；另外就是服務與信用的問題，只要國內證券商具有競爭力，這部份法令是沒有限制的。另外是否開放投信發行之海外基金得將持有之證券出借，也是未來可研擬開放之方向。

二、 業者建議「散戶集合借券」不失為未來可研議的方向，但配套措施可能得更加完備，因為牽涉到的法律關係更加複雜。

- **丁董事長克華結論**

一、 證券商經過多年的努力，已具備相當能力，也夠謹慎，可以逐步在業務上更加開放。

二、 在短期部分，可先從專業投資人開放，讓具備專業能力的投資人或機構法人能從事外國有價證券的借券或融資等業務；同時，在證券商的風險控管上，設計部分的限制，以便外國有價證券的借券業務可先行開放。另外在融資部分，若要開放則必須在擔保品的評價、信用風險的控管等皆須有完善的配套。

三、 中長期的規劃，則包括散戶集合借券、外國有價證券 IPO 的受託買賣等，另外，是否可由證券商公會訂定證券商在從事外國有價證券借券、融資業務時，應注意的最佳實務準則，使得各方面的風險能降到最低。

附錄三、Global Master Securities Lending Agreement

VERSION: JULY 2009

GLOBAL MASTER SECURITIES LENDING AGREEMENT

FRESHFIELDS BRUCKHAUS DERINGER

CONTENTS

AGREEMENT

BETWEEN:

(***Party A***) a company incorporated under the laws of acting through one or more Designated Offices; and

(***Party B***) a company incorporated under the laws of acting through one or more Designated Offices.

1. APPLICABILITY

1.1 From time to time the Parties acting through one or more Designated Offices may enter into transactions in which one party (***Lender***) will transfer to the other (***Borrower***) securities and financial instruments (***Securities***) against the transfer of Collateral (as defined in paragraph 2) with a simultaneous agreement by Borrower to transfer to Lender Securities equivalent to such Securities on a fixed date or on demand against the transfer to Borrower by Lender of assets equivalent to such Collateral.

1.2 Each such transaction shall be referred to in this Agreement as a ***Loan*** and shall be governed by the terms of this Agreement, including the supplemental terms and conditions contained in the Schedule and any Addenda or Annexes attached hereto, unless otherwise agreed in writing. In the event of any inconsistency between the provisions of an Addendum or Annex and this Agreement, the provisions of such Addendum or Annex shall prevail unless the Parties otherwise agree.

1.3 Either Party may perform its obligations under this Agreement either directly or through a Nominee.

2. INTERPRETATION

2.1 In this Agreement:

Act of Insolvency means in relation to either Party:

(a) its making a general assignment for the benefit of, or entering into a reorganisation, arrangement, or composition with creditors; or

(b) its stating in writing that it is unable to pay its debts as they become due; or

(c) its seeking, consenting to or acquiescing in the appointment of any trustee, administrator, receiver or liquidator or analogous officer of it or any material part of its property; or

(d) the presentation or filing of a petition in respect of it (other than by the other Party to this Agreement in respect of any obligation under this Agreement) in any court or before any agency alleging or for the bankruptcy, winding-up or insolvency of such Party (or any analogous proceeding) or seeking any reorganisation, arrangement, composition, re-adjustment, administration, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such petition not having been stayed or dismissed within 30 days of its filing (except in the case of a petition for winding-up or any

analogous proceeding in respect of which no such 30 day period shall apply); or

(e) the appointment of a receiver, administrator, liquidator or trustee or analogous officer of such Party over all or any material part of such Party's property; or

(f) the convening of any meeting of its creditors for the purpose of considering a voluntary arrangement as referred to in Section 3 of the Insolvency Act 1986 (or any analogous proceeding);

Agency Annex means the Annex to this Agreement published by the International Securities Lending Association and providing for Lender to act as agent for a third party in respect of one or more Loans;

Alternative Collateral means Collateral having a Market Value equal to the Collateral delivered pursuant to paragraph 5 and provided by way of substitution in accordance with the provisions of paragraph 5.3;

Applicable Law means the laws, rules and regulations (including double taxation conventions) of any relevant jurisdiction, including published practice of any government or other taxing authority in connection with such laws, rules and regulations;

Automatic Early Termination has the meaning given in paragraph 10.1(d);

Base Currency means the currency indicated in paragraph 2 of the Schedule;

Business Day means:

(a) in relation to Delivery in respect of any Loan, a day other than a Saturday or a Sunday on which banks and securities markets are open for business generally in the place(s) where the relevant Securities, Equivalent Securities, Collateral or Equivalent Collateral are to be delivered;

(b) in relation to any payments under this Agreement, a day other than a Saturday or a Sunday on which banks are open for business generally in the principal financial centre of the country of which the currency in which the payment is denominated is the official currency and, if different, in the place where any account designated by the Parties for the making or receipt of the payment is situated (or, in the case of a payment in euro, a day on which TARGET operates);

(c) in relation to a notice or other communication served under this Agreement, any day other than a Saturday or a Sunday on which banks are open for business generally in the place designated for delivery in accordance with paragraph 3 of the Schedule; and

(d) in any other case, a day other than a Saturday or a Sunday on which banks are open for business generally in each place stated in paragraph 6 of the Schedule;

Buy-In means any arrangement under which, in the event of a seller or transferor failing to deliver securities to the buyer or transferee, the buyer or transferee of such

securities is entitled under the terms of such arrangement to buy or otherwise acquire securities equivalent to such securities and to recover the cost of so doing from the seller or transferor;

Cash Collateral means Collateral taking the form of a transfer of currency;

Close of Business means the time at which the relevant banks, securities settlement systems or depositaries close in the business centre in which payment is to be made or Securities or Collateral is to be delivered;

Collateral means such securities or financial instruments or transfers of currency as are referred to in the table set out under paragraph 1 of the Schedule as being acceptable or any combination thereof as agreed between the Parties in relation to any particular Loan and which are delivered by Borrower to Lender in accordance with this Agreement and shall include Alternative Collateral;

Defaulting Party has the meaning given in paragraph 10;

Delivery in relation to any Securities or Collateral or Equivalent Securities or Equivalent Collateral comprising Securities means:

(a) in the case of Securities held by a Nominee or within a clearing or settlement system, the crediting of such Securities to an account of the Borrower or Lender, as the case may be, or as it shall direct, or,

(b) in the case of Securities otherwise held, the delivery to Borrower or Lender, as the case may be, or as the transferee shall direct of the relevant instruments of transfer, or

(c) by such other means as may be agreed,

and ***deliver*** shall be construed accordingly;

Designated Office means the branch or office of a Party which is specified as such in paragraph 6 of the Schedule or such other branch or office as may be agreed to in writing by the Parties;

Equivalent or ***equivalent to*** in relation to any Loaned Securities or Collateral (whether Cash Collateral or Non-Cash Collateral) provided under this Agreement means Securities or other property, of an identical type, nominal value, description and amount to particular Loaned Securities or Collateral (as the case may be) so provided. If and to the extent that such Loaned Securities or Collateral (as the case may be) consists of Securities that are partly paid or have been converted, subdivided, consolidated, made the subject of a takeover, rights of pre-emption, rights to receive securities or a certificate which may at a future date be exchanged for Securities, the expression shall include such Securities or other assets to which Lender or Borrower (as the case may be) is entitled following the occurrence of the relevant event, and, if appropriate, the giving of the relevant notice in accordance with paragraph 6.7 and provided that Lender or Borrower (as the case may be) has paid to the other Party all and any sums due in respect thereof. In the event that such Loaned Securities or Collateral (as the case may be) have been redeemed, are partly paid, are the subject of a capitalisation issue or are subject to an event similar to any of the foregoing events described in this paragraph, the expression shall have the following meanings:

(a) in the case of redemption, a sum of money equivalent to the proceeds of the redemption;

(b) in the case of a call on partly-paid Securities, Securities equivalent to the relevant Loaned Securities or Collateral, as the case may be, provided that Lender shall have paid Borrower, in respect of Loaned Securities, and Borrower shall have paid to Lender, in respect of Collateral, an amount of money equal to the sum due in respect of the call;

(c) in the case of a capitalisation issue, Securities equivalent to the relevant Loaned Securities or Collateral, as the case may be, together with the securities allotted by way of bonus thereon;

(d) in the case of any event similar to any of the foregoing events described in this paragraph, Securities equivalent to the Loaned Securities or the relevant Collateral, as the case may be, together with or replaced by a sum of money or Securities or other property equivalent to that received in respect of such Loaned Securities or Collateral, as the case may be, resulting from such event;

Income means any interest, dividends or other distributions of any kind whatsoever with respect to any Securities or Collateral;

Income Record Date, with respect to any Securities or Collateral, means the date by reference to which holders of such Securities or Collateral are identified as being entitled to payment of Income;

Letter of Credit means an irrevocable, non-negotiable letter of credit in a form, and from a bank, acceptable to Lender;

Loaned Securities means Securities which are the subject of an outstanding Loan;

Manufactured Payment means any sum payable under paragraph 6.2;

Margin has the meaning specified in paragraph 1 of the Schedule with reference to the table set out therein;

Market Value means:

(a) in relation to the valuation of Securities, Equivalent Securities, Collateral or Equivalent Collateral (other than Cash Collateral or a Letter of Credit):

(i) such price as is equal to the market quotation for the mid price of such Securities, Equivalent Securities, Collateral and/or Equivalent Collateral as derived from a reputable pricing information service reasonably chosen in good faith by Lender; or

(ii) if unavailable the market value thereof as derived from the mid price or rate bid by a reputable dealer for the relevant instrument reasonably chosen in good faith by Lender,

in each case at Close of Business on the previous Business Day, or as specified in the Schedule, unless agreed otherwise or, at the option of either Party where in its reasonable opinion there has been an exceptional

movement in the price of the asset in question since such time, the latest available price, plus (in each case):

(iii) the aggregate amount of Income which has accrued but not yet been paid in respect of the Securities, Equivalent Securities, Collateral or Equivalent Collateral concerned to the extent not included in such price,

provided that the price of Securities, Equivalent Securities, Collateral or Equivalent Collateral that are suspended or that cannot legally be transferred or that are transferred or required to be transferred to a government, trustee or third party (whether by reason of nationalisation, expropriation or otherwise) shall for all purposes be a commercially reasonable price agreed between the Parties, or absent agreement, be a price provided by a third party dealer agreed between the Parties, or if the Parties do not agree a third party dealer then a price based on quotations provided by the Reference Dealers. If more than three quotations are provided, the Market Value will be the arithmetic mean of the prices, without regard to the quotations having the highest and lowest prices. If three quotations are provided, the Market Value will be the quotation remaining after disregarding the highest and lowest quotations. For this purpose, if more than one quotation has the same highest or lowest price, then one of such quotations shall be disregarded. If fewer than three quotations are provided, the Market Value of the relevant Securities, Equivalent Securities, Collateral or Equivalent Collateral shall be determined by the Party making the determination of Market Value acting reasonably;

(b) in relation to a Letter of Credit the face or stated amount of such Letter of Credit; and

(c) in relation to Cash Collateral the amount of the currency concerned;

Nominee means a nominee or agent appointed by either Party to accept delivery of, hold or deliver Securities, Equivalent Securities, Collateral and/or Equivalent Collateral or to receive or make payments on its behalf;

Non-Cash Collateral means Collateral other than Cash Collateral;

Non-Defaulting Party has the meaning given in paragraph 10;

Parties means Lender and Borrower and ***Party*** shall be construed accordingly;

Posted Collateral has the meaning given in paragraph 5.4;

Reference Dealers means, in relation to any Securities, Equivalent Securities, Collateral or Equivalent Collateral, four leading dealers in the relevant securities selected by the Party making the determination of Market Value in good faith;

Required Collateral Value has the meaning given in paragraph 5.4;

Sales Tax means value added tax and any other Tax of a similar nature (including, without limitation, any sales tax of any relevant jurisdiction);

Settlement Date means the date upon which Securities are due to be transferred to Borrower in accordance with this Agreement;

Stamp Tax means any stamp, transfer, registration, documentation or similar Tax; and

Tax means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) imposed by any government or other taxing authority in respect of any transaction effected pursuant to or contemplated by, or any payment under or in respect of, this Agreement.

2.2 Headings

All headings appear for convenience only and shall not affect the interpretation of this Agreement.

2.3 Market terminology

Notwithstanding the use of expressions such as "borrow", "lend", "Collateral", "Margin" etc. which are used to reflect terminology used in the market for transactions of the kind provided for in this Agreement, title to Securities "borrowed" or "lent" and "Collateral" provided in accordance with this Agreement shall pass from one Party to another as provided for in this Agreement, the Party obtaining such title being obliged to deliver Equivalent Securities or Equivalent Collateral as the case may be.

2.4 Currency conversions

Subject to paragraph 11, for the purposes of determining any prices, sums or values (including Market Value and Required Collateral Value) prices, sums or values stated in currencies other than the Base Currency shall be converted into the Base Currency at the latest available spot rate of exchange quoted by a bank selected by Lender (or if an Event of Default has occurred in relation to Lender, by Borrower) in the London inter-bank market for the purchase of the Base Currency with the currency concerned on the day on which the calculation is to be made or, if that day is not a Business Day, the spot rate of exchange quoted at Close of Business on the immediately preceding Business Day on which such a quotation was available.

2.5 The Parties confirm that introduction of and/or substitution (in place of an existing currency) of a new currency as the lawful currency of a country shall not have the effect of altering, or discharging, or excusing performance under, any term of the Agreement or any Loan thereunder, nor give a Party the right unilaterally to alter or terminate the Agreement or any Loan thereunder. Securities will for the purposes of this Agreement be regarded as equivalent to other securities notwithstanding that as a result of such introduction and/or substitution those securities have been redenominated into the new currency or the nominal value of the securities has changed in connection with such redenomination.

2.6 Modifications etc. to legislation

Any reference in this Agreement to an act, regulation or other legislation shall include a reference to any statutory modification or re-enactment thereof for the time being in force.

3. LOANS OF SECURITIES

Lender will lend Securities to Borrower, and Borrower will borrow Securities from Lender in accordance with the terms and conditions of this Agreement. The terms of each Loan shall be agreed prior to the commencement of the relevant Loan either orally or in writing (including any agreed form of electronic communication) and confirmed in such form and on such basis as shall be agreed between the Parties. Unless otherwise agreed, any confirmation produced by a Party shall not supersede or prevail over the prior oral, written or electronic communication (as the case may be).

4. DELIVERY

4.1 Delivery of Securities on commencement of Loan

Lender shall procure the Delivery of Securities to Borrower or deliver such Securities in accordance with this Agreement and the terms of the relevant Loan.

4.2 Requirements to effect Delivery

The Parties shall execute and deliver all necessary documents and give all necessary instructions to procure that all right, title and interest in:

(a) any Securities borrowed pursuant to paragraph 3;

(b) any Equivalent Securities delivered pursuant to paragraph 8;

(c) any Collateral delivered pursuant to paragraph 5;

(d) any Equivalent Collateral delivered pursuant to paragraphs 5 or 8;

shall pass from one Party to the other subject to the terms and conditions set out in this Agreement, on delivery of the same in accordance with this Agreement with full title guarantee, free from all liens, charges and encumbrances. In the case of Securities, Collateral, Equivalent Securities or Equivalent Collateral title to which is registered in a computer-based system which provides for the recording and transfer of title to the same by way of book entries, delivery and transfer of title shall take place in accordance with the rules and procedures of such system as in force from time to time. The Party acquiring such right, title and interest shall have no obligation to return or deliver any of the assets so acquired but, in so far as any Securities are borrowed by or any Collateral is delivered to such Party, such Party shall be obliged, subject to the terms of this Agreement, to deliver Equivalent Securities or Equivalent Collateral as appropriate.

4.3 Deliveries to be simultaneous unless otherwise agreed

Where under the terms of this Agreement a Party is not obliged to make a Delivery unless simultaneously a Delivery is made to it, subject to and without prejudice to its rights under paragraph 8.6, such Party may from time to time in accordance with market practice and in recognition of the practical difficulties in arranging simultaneous delivery of Securities, Collateral and cash transfers, waive its right under this Agreement in respect of simultaneous delivery and/or payment provided that no such waiver (whether by course of conduct or otherwise) in respect of one transaction shall bind it in respect of any other transaction.

4.4 **Deliveries of Income**

In respect of Income being paid in relation to any Loaned Securities or Collateral, Borrower (in the case of Income being paid in respect of Loaned Securities) and Lender (in the case of Income being paid in respect of Collateral) shall provide to the other Party, as the case may be, any endorsements or assignments as shall be customary and appropriate to effect, in accordance with paragraph 6, the payment or delivery of money or property in respect of such Income to Lender, irrespective of whether Borrower received such endorsements or assignments in respect of any Loaned Securities, or to Borrower, irrespective of whether Lender received such endorsements or assignments in respect of any Collateral.

5. COLLATERAL

5.1 **Delivery of Collateral on commencement of Loan**

Subject to the other provisions of this paragraph 5, Borrower undertakes to deliver to or deposit with Lender (or in accordance with Lender's instructions) Collateral simultaneously with Delivery of the Securities to which the Loan relates and in any event no later than Close of Business on the Settlement Date.

5.2 **Deliveries through securities settlement systems generating automatic payments**

Unless otherwise agreed between the Parties, where any Securities, Equivalent Securities, Collateral or Equivalent Collateral (in the form of securities) are transferred through a book entry transfer or settlement system which automatically generates a payment or delivery, or obligation to pay or deliver, against the transfer of such securities, then:

(a) such automatically generated payment, delivery or obligation shall be treated as a payment or delivery by the transferee to the transferor, and except to the extent that it is applied to discharge an obligation of the transferee to effect payment or delivery, such payment or delivery, or obligation to pay or deliver, shall be deemed to be a transfer of Collateral or delivery of Equivalent Collateral, as the case may be, made by the transferee until such time as the Collateral or Equivalent Collateral is substituted with other Collateral or Equivalent Collateral if an obligation to deliver other Collateral or deliver Equivalent Collateral existed immediately prior to the transfer of Securities, Equivalent Securities, Collateral or Equivalent Collateral; and

(b) the Party receiving such substituted Collateral or Equivalent Collateral, or if no obligation to deliver other Collateral or redeliver Equivalent Collateral existed immediately prior to the transfer of Securities, Equivalent Securities, Collateral or Equivalent Collateral, the Party receiving the deemed transfer of Collateral or Delivery of Equivalent Collateral, as the case may be, shall cause to be made to the other Party for value the same day either, where such transfer is a payment, an irrevocable payment in the amount of such transfer or, where such transfer is a Delivery, an irrevocable Delivery of securities (or other property, as the case may be) equivalent to such property.

5.3 **Substitutions of Collateral**

Borrower may from time to time call for the repayment of Cash Collateral or the Delivery of Collateral equivalent to any Collateral delivered to Lender prior to the date on which the same would otherwise have been repayable or deliverable provided that at or prior to the time of such repayment or Delivery Borrower shall have delivered Alternative Collateral acceptable to Lender and Borrower is in compliance with paragraph 5.4 or paragraph 5.5, as applicable.

5.4 **Marking to Market of Collateral during the currency of a Loan on aggregated basis**

Unless paragraph 1.3 of the Schedule indicates that paragraph 5.5 shall apply in lieu of this paragraph 5.4, or unless otherwise agreed between the Parties:

(a) the aggregate Market Value of the Collateral delivered to or deposited with Lender (excluding any Equivalent Collateral repaid or delivered under paragraphs 5.4(b) or 5.5(b) (as the case may be)) (***Posted Collateral***) in respect of all Loans outstanding under this Agreement shall equal the aggregate of the Market Value of Securities equivalent to the Loaned Securities and the applicable Margin (the ***Required Collateral Value***) in respect of such Loans;

(b) if at any time on any Business Day the aggregate Market Value of the Posted Collateral in respect of all Loans outstanding under this Agreement together with, if the Income Record Date has occurred in respect of any Non-Cash Collateral, the amount or Market Value of Income payable in respect of such Non-Cash Collateral and all amounts due and payable by the Lender under this Agreement but which are unpaid exceeds the aggregate of the Required Collateral Values in respect of such Loans together with, if the Income Record Date has occurred in respect of any securities equivalent to Loaned Securities, the amount or Market Value of Income payable in respect of such Equivalent Securities and all amounts due and payable by the Borrower under this Agreement but which are unpaid, Lender shall (on demand) repay and/or deliver, as the case may be, to Borrower such Equivalent Collateral as will eliminate the excess;

(c) if at any time on any Business Day the aggregate Market Value of the Posted Collateral in respect of all Loans outstanding under this Agreement together with, if the Income Record Date has occurred in respect of any Non-Cash Collateral, the amount or Market Value of Income payable in respect of such Non-Cash Collateral and all amounts due and payable by the Lender under this Agreement but which are unpaid falls below the aggregate of Required Collateral Values in respect of all such Loans together with, if the Income Record Date has occurred in respect of Securities equivalent to any Loaned Securities, the amount or Market Value of Income payable in respect of such Equivalent Securities and all amounts due and payable by the Borrower under this Agreement but which are unpaid, Borrower shall (on demand) provide such further Collateral to Lender as will eliminate the deficiency;

(d) where a Party acts as both Lender and Borrower under this Agreement, the provisions of paragraphs 5.4(b) and 5.4(c) shall apply separately (and without

duplication) in respect of Loans entered into by that Party as Lender and Loans entered into by that Party as Borrower.

5.5 Marking to Market of Collateral during the currency of a Loan on a Loan by Loan basis

If paragraph 1.3 of the Schedule indicates this paragraph 5.5 shall apply in lieu of paragraph 5.4, the Posted Collateral in respect of any Loan shall bear from day to day and at any time the same proportion to the Market Value of Securities equivalent to the Loaned Securities as the Posted Collateral bore at the commencement of such Loan. Accordingly:

(a) the Market Value of the Posted Collateral to be delivered or deposited while the Loan continues shall be equal to the Required Collateral Value;

(b) if at any time on any Business Day the Market Value of the Posted Collateral in respect of any Loan together with, if the Income Record Date has occurred in respect of any Non-Cash Collateral, the amount or Market Value of Income payable in respect of such Non-Cash Collateral and all amounts due and payable by the Lender in respect of that Loan but which are unpaid exceeds the Required Collateral Value in respect of such Loan together with, if the Income Record Date has occurred in respect of Securities equivalent to any Loaned Securities, the amount or Market Value of Income payable in respect of such Equivalent Securities and all amounts due and payable by the Borrower in respect of that Loan, Lender shall (on demand) repay and/or deliver, as the case may be, to Borrower such Equivalent Collateral as will eliminate the excess; and

(c) if at any time on any Business Day the Market Value of the Posted Collateral together with, if the Income Record Date has occurred in respect of any Non-Cash Collateral, the amount or Market Value of Income payable in respect of such Non-Cash Collateral and all amounts due any payable by the Lender in respect of that Loan falls below the Required Collateral Value together with, if the Income Record Date has occurred in respect of Securities equivalent to any Loaned Securities, the amount or Market Value of Income payable in respect of such Equivalent Securities and all amounts due and payable by the Borrower in respect of that Loan, Borrower shall (on demand) provide such further Collateral to Lender as will eliminate the deficiency.

5.6 Requirements to deliver excess Collateral

Where paragraph 5.4 applies, unless paragraph 1.4 of the Schedule indicates that this paragraph 5.6 does not apply, if a Party (the ***first Party***) would, but for this paragraph 5.6, be required under paragraph 5.4 to provide further Collateral or deliver Equivalent Collateral in circumstances where the other Party (the ***second Party***) would, but for this paragraph 5.6, also be required to or provide Collateral or deliver Equivalent Collateral under paragraph 5.4, then the Market Value of the Collateral or Equivalent Collateral deliverable by the first Party (*X*) shall be set off against the Market Value of the Collateral or Equivalent Collateral deliverable by the second Party (*Y*) and the only obligation of the Parties under paragraph 5.4 shall be, where X exceeds Y, an obligation of the first Party, or where Y exceeds X, an obligation of the second Party to repay and/or (as the case may be) deliver Equivalent Collateral or to

deliver further Collateral having a Market Value equal to the difference between X and Y.

5.7 Where Equivalent Collateral is repaid or delivered (as the case may be) or further Collateral is provided by a Party under paragraph 5.6, the Parties shall agree to which Loan or Loans such repayment, delivery or further provision is to be attributed and failing agreement it shall be attributed, as determined by the Party making such repayment, delivery or further provision to the earliest outstanding Loan and, in the case of a repayment or delivery up to the point at which the Market Value of Collateral in respect of such Loan equals the Required Collateral Value in respect of such Loan, and then to the next earliest outstanding Loan up to the similar point and so on.

5.8 **Timing of repayments of excess Collateral or deliveries of further Collateral**

Where any Equivalent Collateral falls to be repaid or delivered (as the case may be) or further Collateral is to be provided under this paragraph 5, unless otherwise provided or agreed between the Parties, if the relevant demand is received by the Notification Time specified in paragraph 1.5 of the Schedule, then the delivery shall be made not later than the close of business on the same Business Day; if a demand is received after the Notification Time, then the relevant delivery shall be made not later than the close of business on the next Business Day after the date such demand is received.

5.9 **Substitutions and extensions of Letters of Credit**

Where Collateral is a Letter of Credit, Lender may by notice to Borrower require that Borrower, on the third Business Day following the date of delivery of such notice (or by such other time as the Parties may agree), substitute Collateral consisting of cash or other Collateral acceptable to Lender for the Letter of Credit. Prior to the expiration of any Letter of Credit supporting Borrower's obligations hereunder, Borrower shall, no later than 10.30 a.m. UK time on the second Business Day prior to the date such Letter of Credit expires (or by such other time as the Parties may agree), obtain an extension of the expiration of such Letter of Credit or replace such Letter of Credit by providing Lender with a substitute Letter of Credit in an amount at least equal to the amount of the Letter of Credit for which it is substituted.

6. **DISTRIBUTIONS AND CORPORATE ACTIONS**

6.1 In this paragraph 6, references to an amount of Income:

(a) ***paid*** by the issuer in respect of any Loaned Securities or Non-Cash Collateral shall be to the gross amount paid by the issuer, assuming no withholding or deduction for or on account of Tax notwithstanding a payment of such Income made in certain circumstances may be subject to such a withholding or deduction; and

(b) ***received*** by any Party in respect of any Loaned Securities or Non-Cash Collateral shall be to an amount received from the issuer after any applicable withholding or deduction for or on account of Tax.

6.2 **Manufactured payments in respect of Loaned Securities**

Where the term of a Loan extends over an Income Record Date in respect of any Loaned Securities, Borrower shall, on the date such Income is paid by the issuer, or on such other date as the Parties may from time to time agree, pay or deliver to Lender such sum of money or property as is agreed between the Parties or, failing such agreement, a sum of money or property equivalent to (and in the same currency as) the type and amount of such Income paid by the issuer in respect of such Loaned Securities.

6.3 **Manufactured payments in respect of Non-Cash Collateral**

Where Non-Cash Collateral is delivered by Borrower to Lender and an Income Record Date in respect of such Non-Cash Collateral occurs before Equivalent Collateral is delivered by Lender to Borrower, Lender shall on the date such Income is paid, or on such other date as the Parties may from time to time agree, pay or deliver to Borrower a sum of money or property as is agreed between the Parties or, failing such agreement, a sum of money or property equivalent to (and in the same currency as) the type and amount of such Income that would be received by Lender assuming Lender:

(a) retained the Non-Cash Collateral on the Income Record Date; and

(b) is not entitled to any credit, benefit or other relief in respect of Tax under any Applicable Law.

6.4 **Indemnity for failure to redeliver Equivalent Non-Cash Collateral**

Unless paragraph 1.6 of the Schedule indicates that this paragraph does not apply, where:

(a) prior to any Income Record Date in relation to Non-Cash Collateral, Borrower has in accordance with paragraph 5.3 called for the Delivery of Equivalent Non-Cash Collateral;

(b) Borrower has given notice of such call to Lender so as to be effective, at the latest, five hours before the Close of Business on the last Business Day on which Lender would customarily be required to initiate settlement of the Non-Cash Collateral to enable settlement to take place on the Business Day immediately preceding the relevant Income Record Date;

(c) Borrower has provided reasonable details to Lender of the Non-Cash Collateral, the relevant Income Record Date and the proposed Alternative Collateral;

(d) Lender has indicated to Borrower that such Alternative Collateral is acceptable to it and Borrower shall have delivered or delivers such Alternative Collateral to Lender; and

(e) Lender has failed to make reasonable efforts to transfer Equivalent Non-Cash Collateral to Borrower prior to such Income Record Date,

Lender shall indemnify Borrower in respect of any cost, loss or damage (excluding any indirect or consequential loss or damage or any amount otherwise compensated by Lender, including pursuant to paragraphs 6.3 and/or 9.3) suffered by Borrower that it would not have suffered had the relevant Equivalent Non-Cash Collateral been transferred to Borrower prior to such Income Record Date.

6.5 **Income in the form of Securities**

Where Income, in the form of securities, is paid in relation to any Loaned Securities or Collateral, such securities shall be added to such Loaned Securities or Collateral (and shall constitute Loaned Securities or Collateral, as the case may be, and be part of the relevant Loan) and will not be delivered to Lender, in the case of Loaned Securities, or to Borrower, in the case of Collateral, until the end of the relevant Loan, provided that the Lender or Borrower (as the case may be) fulfils its obligations under paragraph 5.4 or 5.5 (as applicable) with respect to the additional Loaned Securities or Collateral, as the case may be.

6.6 **Exercise of voting rights**

Where any voting rights fall to be exercised in relation to any Loaned Securities or Collateral, neither Borrower, in the case of Equivalent Securities, nor Lender, in the case of Equivalent Collateral, shall have any obligation to arrange for voting rights of that kind to be exercised in accordance with the instructions of the other Party in relation to the Securities borrowed by it or transferred to it by way of Collateral, as the case may be, unless otherwise agreed between the Parties.

6.7 **Corporate actions**

Where, in respect of any Loaned Securities or any Collateral, any rights relating to conversion, sub-division, consolidation, pre-emption, rights arising under a takeover offer, rights to receive securities or a certificate which may at a future date be exchanged for securities or other rights, including those requiring election by the holder for the time being of such Securities or Collateral, become exercisable prior to the delivery of Equivalent Securities or Equivalent Collateral, then Lender or Borrower, as the case may be, may, within a reasonable time before the latest time for the exercise of the right or option give written notice to the other Party that on delivery of Equivalent Securities or Equivalent Collateral, as the case may be, it wishes to receive Equivalent Securities or Equivalent Collateral in such form as will arise if the right is exercised or, in the case of a right which may be exercised in more than one manner, is exercised as is specified in such written notice.

7. **RATES APPLICABLE TO LOANED SECURITIES AND CASH COLLATERAL**

7.1 **Rates in respect of Loaned Securities**

In respect of each Loan, Borrower shall pay to Lender, in the manner prescribed in sub-paragraph 7.3, sums calculated by applying such rate as shall be agreed between the Parties from time to time to the daily Market Value of the Loaned Securities.

7.2 **Rates in respect of Cash Collateral**

Where Cash Collateral is deposited with Lender in respect of any Loan, Lender shall pay to Borrower, in the manner prescribed in paragraph 7.3, sums calculated by

applying such rates as shall be agreed between the Parties from time to time to the amount of such Cash Collateral. Any such payment due to Borrower may be set-off against any payment due to Lender pursuant to paragraph 7.1.

7.3 **Payment of rates**

In respect of each Loan, the payments referred to in paragraph 7.1 and 7.2 shall accrue daily in respect of the period commencing on and inclusive of the Settlement Date and terminating on and exclusive of the Business Day upon which Equivalent Securities are delivered or Cash Collateral is repaid. Unless otherwise agreed, the sums so accruing in respect of each calendar month shall be paid in arrears by the relevant Party not later than the Business Day which is the tenth Business Day after the last Business Day of the calendar month to which such payments relate or such other date as the Parties shall from time to time agree.

8. DELIVERY OF EQUIVALENT SECURITIES

8.1 **Lender's right to terminate a Loan**

Subject to paragraph 11 and the terms of the relevant Loan, Lender shall be entitled to terminate a Loan and to call for the delivery of all or any Equivalent Securities at any time by giving notice on any Business Day of not less than the standard settlement time for such Equivalent Securities on the exchange or in the clearing organisation through which the Loaned Securities were originally delivered. Borrower shall deliver such Equivalent Securities not later than the expiry of such notice in accordance with Lender's instructions.

8.2 **Borrower's right to terminate a Loan**

Subject to the terms of the relevant Loan, Borrower shall be entitled at any time to terminate a Loan and to deliver all and any Equivalent Securities due and outstanding to Lender in accordance with Lender's instructions and Lender shall accept such delivery.

8.3 **Delivery of Equivalent Securities on termination of a Loan**

Borrower shall procure the Delivery of Equivalent Securities to Lender or deliver Equivalent Securities in accordance with this Agreement and the terms of the relevant Loan on termination of the Loan. For the avoidance of doubt any reference in this Agreement or in any other agreement or communication between the Parties (howsoever expressed) to an obligation to deliver or account for or act in relation to Loaned Securities shall accordingly be construed as a reference to an obligation to deliver or account for or act in relation to Equivalent Securities.

8.4 **Delivery of Equivalent Collateral on termination of a Loan**

On the date and time that Equivalent Securities are required to be delivered by Borrower on the termination of a Loan, Lender shall simultaneously (subject to paragraph 5.4 if applicable) repay to Borrower any Cash Collateral or, as the case may be, deliver Collateral equivalent to the Collateral provided by Borrower pursuant to paragraph 5 in respect of such Loan. For the avoidance of doubt any reference in this Agreement or in any other agreement or communication between the Parties (however expressed) to an obligation to deliver or account for or act in relation to

Collateral shall accordingly be construed as a reference to an obligation to deliver or account for or act in relation to Equivalent Collateral.

8.5 **Delivery of Letters of Credit**

Where a Letter of Credit is provided by way of Collateral, the obligation to deliver Equivalent Collateral is satisfied by Lender delivering for cancellation the Letter of Credit so provided, or where the Letter of Credit is provided in respect of more than one Loan, by Lender consenting to a reduction in the value of the Letter of Credit.

8.6 **Delivery obligations to be reciprocal**

Neither Party shall be obliged to make delivery (or make a payment as the case may be) to the other unless it is satisfied that the other Party will make such delivery (or make an appropriate payment as the case may be) to it. If it is not so satisfied (whether because an Event of Default has occurred in respect of the other Party or otherwise) it shall notify the other Party and unless that other Party has made arrangements which are sufficient to assure full delivery (or the appropriate payment as the case may be) to the notifying Party, the notifying Party shall (provided it is itself in a position, and willing, to perform its own obligations) be entitled to withhold delivery (or payment, as the case may be) to the other Party until such arrangements to assure full delivery (or the appropriate payment as the case may be) are made.

9. **FAILURE TO DELIVER**

9.1 **Borrower's failure to deliver Equivalent Securities**

If Borrower fails to deliver Equivalent Securities in accordance with paragraph 8.3 Lender may:

(a) elect to continue the Loan (which, for the avoidance of doubt, shall continue to be taken into account for the purposes of paragraph 5.4 or 5.5 as applicable); or

(b) at any time while such failure continues, by written notice to Borrower declare that that Loan (but only that Loan) shall be terminated immediately in accordance with paragraph 11.2 as if (i) an Event of Default had occurred in relation to the Borrower, (ii) references to the Termination Date were to the date on which notice was given under this sub-paragraph, and (iii) the Loan were the only Loan outstanding. For the avoidance of doubt, any such failure shall not constitute an Event of Default (including under paragraph 10.1(i)) unless the Parties otherwise agree.

9.2 **Lender's failure to deliver Equivalent Collateral**

If Lender fails to deliver Equivalent Collateral comprising Non-Cash Collateral in accordance with paragraph 8.4 or 8.5, Borrower may:

(a) elect to continue the Loan (which, for the avoidance of doubt, shall continue to be taken into account for the purposes of paragraph 5.4 or 5.5 as applicable); or

(b) at any time while such failure continues, by written notice to Lender declare that that Loan (but only that Loan) shall be terminated immediately in accordance with paragraph 11.2 as if (i) an Event of Default had occurred in relation to the Lender, (ii) references to the Termination Date were to the date on which notice was given under this sub-paragraph, and (iii) the Loan were the only Loan outstanding. For the avoidance of doubt, any such failure shall not constitute an Event of Default (including under paragraph 10.1(i)) unless the Parties otherwise agree.

9.3 **Failure by either Party to deliver**

Where a Party (the ***Transferor***) fails to deliver Equivalent Securities or Equivalent Collateral by the time required under this Agreement or within such other period as may be agreed between the Transferor and the other Party (the ***Transferee***) and the Transferee:

(a) incurs interest, overdraft or similar costs and expenses; or

(b) incurs costs and expenses as a direct result of a Buy-in exercised against it by a third party,

then the Transferor agrees to pay within one Business Day of a demand from the Transferee and hold harmless the Transferee with respect to all reasonable costs and expenses listed in sub-paragraphs (a) and (b) above properly incurred which arise directly from such failure other than (i) such costs and expenses which arise from the negligence or wilful default of the Transferee and (ii) any indirect or consequential losses.

10. EVENTS OF DEFAULT

10.1 Each of the following events occurring and continuing in relation to either Party (the ***Defaulting Party***, the other Party being the ***Non-Defaulting Party***) shall be an Event of Default but only (subject to sub-paragraph 10.1(d)) where the Non-Defaulting Party serves written notice on the Defaulting Party:

(a) Borrower or Lender failing to pay or repay Cash Collateral or to deliver Collateral on commencement of the Loan under paragraph 5.1 or to deliver further Collateral under paragraph 5.4 or 5.5;

(b) Lender or Borrower failing to comply with its obligations under paragraph 6.2 or 6.3 upon the due date and not remedying such failure within three Business Days after the Non-Defaulting Party serves written notice requiring it to remedy such failure

(c) Lender or Borrower failing to pay any sum due under paragraph 9.1(b), 9.2(b) or 9.3 upon the due date;

(d) an Act of Insolvency occurring with respect to Lender or Borrower, provided that, where the Parties have specified in paragraph 5 of the Schedule that Automatic Early Termination shall apply, an Act of Insolvency which is the presentation of a petition for winding up or any analogous proceeding or the appointment of a liquidator or analogous officer of the Defaulting Party shall

not require the Non-Defaulting Party to serve written notice on the Defaulting Party (*Automatic Early Termination*);

(e) any warranty made by Lender or Borrower in paragraph 13 or paragraphs 14(a) to 14(d) being incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated;

(f) Lender or Borrower admitting to the other that it is unable to, or it intends not to, perform any of its obligations under this Agreement and/or in respect of any Loan where such failure to perform would with the service of notice or lapse of time constitute an Event of Default;

(g) all or any material part of the assets of Lender or Borrower being transferred or ordered to be transferred to a trustee (or a person exercising similar functions) by a regulatory authority pursuant to any legislation; or

(h) Lender (if applicable) or Borrower being declared in default or being suspended or expelled from membership of or participation in, any securities exchange or suspended or prohibited from dealing in securities by any regulatory authority, in each case on the grounds that it has failed to meet any requirements relating to financial resources or credit rating;

(i) Lender or Borrower failing to perform any other of its obligations under this Agreement and not remedying such failure within 30 days after the Non-Defaulting Party serves written notice requiring it to remedy such failure.

10.2 Each Party shall notify the other (in writing) if an Event of Default or an event which, with the passage of time and/or upon the serving of a written notice as referred to above, would be an Event of Default, occurs in relation to it.

10.3 The provisions of this Agreement constitute a complete statement of the remedies available to each Party in respect of any Event of Default.

10.4 Subject to paragraphs 9 and 11, neither Party may claim any sum by way of consequential loss or damage in the event of failure by the other Party to perform any of its obligations under this Agreement.

11. CONSEQUENCES OF AN EVENT OF DEFAULT

11.1 If an Event of Default occurs in relation to either Party then paragraphs 11.2 to 11.7 below shall apply.

11.2 The Parties' delivery and payment obligations (and any other obligations they have under this Agreement) shall be accelerated so as to require performance thereof at the time such Event of Default occurs (the date of which shall be the *Termination Date*) so that performance of such delivery and payment obligations shall be effected only in accordance with the following provisions.

(a) The Default Market Value of the Equivalent Securities and Equivalent Collateral comprising securities to be delivered and the amount of any Cash Collateral (including sums accrued) to be repaid and any other cash (including interest accrued) to be paid by each Party shall be established by

the Non-Defaulting Party in accordance with paragraph 11.4 and deemed as at the Termination Date.

(b) On the basis of the sums so established, an account shall be taken (as at the Termination Date) of what is due from each Party to the other under this Agreement (on the basis that each Party's claim against the other in respect of delivery of Equivalent Securities or Equivalent Collateral comprising securities equal to the Default Market Value thereof) and the sums due from one Party shall be set off against the sums due from the other and only the balance of the account shall be payable (by the Party having the claim valued at the lower amount pursuant to the foregoing) and such balance shall be payable on the next following Business Day after such account has been taken and such sums have been set off in accordance with this paragraph. For the purposes of this calculation, any sum not denominated in the Base Currency shall be converted into the Base Currency at the Spot Rate prevailing at such dates and times determined by the Non-Defaulting Party acting reasonably.

(c) If the balance under sub-paragraph (b) above is payable by the Non-Defaulting Party and the Non-Defaulting Party had delivered to the Defaulting Party a Letter of Credit, the Defaulting Party shall draw on the Letter of Credit to the extent of the balance due and shall subsequently deliver for cancellation the Letter of Credit so provided.

(d) If the balance under sub-paragraph (b) above is payable by the Defaulting Party and the Defaulting Party had delivered to the Non-Defaulting Party a Letter of Credit, the Non-Defaulting Party shall draw on the Letter of Credit to the extent of the balance due and shall subsequently deliver for cancellation the Letter of Credit so provided.

(e) In all other circumstances, where a Letter of Credit has been provided to a Party, such Party shall deliver for cancellation the Letter of Credit so provided.

11.3 For the purposes of this Agreement, the ***Default Market Value*** of any Equivalent Collateral in the form of a Letter of Credit shall be zero and of any Equivalent Securities or any other Equivalent Collateral (other than cash) shall be determined in accordance with paragraphs 11.4 and 11.6 below, and for this purpose:

(a) the ***Appropriate Market*** means, in relation to securities of any description, the market which is the most appropriate market for securities of that description, as determined by the Non-Defaulting Party;

(b) the ***Default Valuation Time*** means, in relation to an Event of Default, the close of business in the Appropriate Market on the fifth dealing day after the day on which that Event of Default occurs or, where that Event of Default is the occurrence of an Act of Insolvency in respect of which under paragraph 10.1(d) no notice is required from the Non-Defaulting Party in order for such event to constitute an Event of Default, the close of business on the fifth dealing day after the day on which the Non-Defaulting Party first became aware of the occurrence of such Event of Default;

(c) ***Deliverable Securities*** means Equivalent Securities or Equivalent Collateral comprising securities to be delivered by the Defaulting Party;

(d) ***Net Value*** means at any time, in relation to any Deliverable Securities or Receivable Securities, the amount which, in the reasonable opinion of the Non-Defaulting Party, represents their fair market value, having regard to such pricing sources and methods (which may include, without limitation, available prices for securities with similar maturities, terms and credit characteristics as the relevant Equivalent Securities or Equivalent Collateral) as the Non-Defaulting Party considers appropriate, less, in the case of Receivable Securities, or plus, in the case of Deliverable Securities, all Transaction Costs incurred or reasonably anticipated in connection with the purchase or sale of such securities;

(e) ***Receivable Securities*** means Equivalent Securities or Equivalent Collateral comprising securities to be delivered to the Defaulting Party; and

(f) ***Transaction Costs*** in relation to any transaction contemplated in paragraph 11.3 or 11.4 means the reasonable costs, commissions (including internal commissions), fees and expenses (including any mark-up or mark-down or premium paid for guaranteed delivery) incurred or reasonably anticipated in connection with the purchase of Deliverable Securities or sale of Receivable Securities, calculated on the assumption that the aggregate thereof is the least that could reasonably be expected to be paid in order to carry out the transaction.

11.4 If between the Termination Date and the Default Valuation Time:

(a) the Non-Defaulting Party has sold, in the case of Receivable Securities, or purchased, in the case of Deliverable Securities, securities which form part of the same issue and are of an identical type and description as those Equivalent Securities or that Equivalent Collateral, (and regardless as to whether or not such sales or purchases have settled) the Non-Defaulting Party may elect to treat as the Default Market Value:

(i) in the case of Receivable Securities, the net proceeds of such sale after deducting all reasonable costs, commissions (including internal commissions) fees and expenses incurred in connection therewith; provided that, where the securities sold are not identical in amount to the Equivalent Securities or Equivalent Collateral, the Non-Defaulting Party may, acting in good faith, either (A) elect to treat such net proceeds of sale divided by the amount of securities sold and multiplied by the amount of the Equivalent Securities or Equivalent Collateral as the Default Market Value or (B) elect to treat such net proceeds of sale of the Equivalent Securities or Equivalent Collateral actually sold as the Default Market Value of that proportion of the Equivalent Securities or Equivalent Collateral, and, in the case of (B), the Default Market Value of the balance of the Equivalent Securities or Equivalent Collateral shall be determined separately in accordance with the provisions of this paragraph 11.4; or

(ii) in the case of Deliverable Securities, the aggregate cost of such purchase, including all reasonable costs, commissions (including internal commissions) fees and expenses incurred in connection therewith; provided that, where the securities purchased are not identical in amount to the Equivalent Securities or Equivalent

Collateral, the Non-Defaulting Party may, acting in good faith, either (A) elect to treat such aggregate cost divided by the amount of securities purchased and multiplied by the amount of the Equivalent Securities or Equivalent Collateral as the Default Market Value or (B) elect to treat the aggregate cost of purchasing the Equivalent Securities or Equivalent Collateral actually purchased as the Default Market Value of that proportion of the Equivalent Securities or Equivalent Collateral, and, in the case of (B), the Default Market Value of the balance of the Equivalent Securities or Equivalent Collateral shall be determined separately in accordance with the provisions of this paragraph 11.4;

(b) the Non-Defaulting Party has received, in the case of Deliverable Securities, offer quotations or, in the case of Receivable Securities, bid quotations in respect of securities of the relevant description from two or more market makers or regular dealers in the Appropriate Market in a commercially reasonable size (as determined by the Non-Defaulting Party) the Non-Defaulting Party may elect to treat as the Default Market Value of the relevant Equivalent Securities or Equivalent Collateral:

(i) the price quoted (or where more than one price is so quoted, the arithmetic mean of the prices so quoted) by each of them for, in the case of Deliverable Securities, the sale by the relevant market maker or dealer of such securities or, in the case of Receivable Securities, the purchase by the relevant market maker or dealer of such securities, provided that such price or prices quoted may be adjusted in a commercially reasonable manner by the Non-Defaulting Party to reflect accrued but unpaid coupons not reflected in the price or prices quoted in respect of such Securities;

(ii) after deducting, in the case of Receivable Securities or adding in the case of Deliverable Securities the Transaction Costs which would be incurred or reasonably anticipated in connection with such transaction.

11.5 If, acting in good faith, either (A) the Non-Defaulting Party has endeavoured but been unable to sell or purchase securities in accordance with paragraph 11.4(a) above or to obtain quotations in accordance with paragraph 11.4(b) above (or both) or (B) the Non-Defaulting Party has determined that it would not be commercially reasonable to sell or purchase securities at the prices bid or offered or to obtain such quotations, or that it would not be commercially reasonable to use any quotations which it has obtained under paragraph 11.4(b) above the Non-Defaulting Party may determine the Net Value of the relevant Equivalent Securities or Equivalent Collateral (which shall be specified) and the Non-Defaulting Party may elect to treat such Net Value as the Default Market Value of the relevant Equivalent Securities or Equivalent Collateral.

11.6 To the extent that the Non-Defaulting Party has not determined the Default Market Value in accordance with paragraph 11.4, the Default Market Value of the relevant Equivalent Securities or Equivalent Collateral shall be an amount equal to their Net Value at the Default Valuation Time; provided that, if at the Default Valuation Time the Non-Defaulting Party reasonably determines that, owing to circumstances affecting the market in the Equivalent Securities or Equivalent Collateral in question, it is not reasonably practicable for the Non-Defaulting Party to determine a Net Value

of such Equivalent Securities or Equivalent Collateral which is commercially reasonable (by reason of lack of tradable prices or otherwise), the Default Market Value of such Equivalent Securities or Equivalent Collateral shall be an amount equal to their Net Value as determined by the Non-Defaulting Party as soon as reasonably practicable after the Default Valuation Time.

Other costs, expenses and interest payable in consequence of an Event of Default

11.7 The Defaulting Party shall be liable to the Non-Defaulting Party for the amount of all reasonable legal and other professional expenses incurred by the Non-Defaulting Party in connection with or as a consequence of an Event of Default, together with interest thereon at such rate as is agreed by the Parties and specified in paragraph 10Schedule 10 of the Schedule or, failing such agreement, the overnight London Inter Bank Offered Rate as quoted on a reputable financial information service (***LIBOR***) as at 11.00 a.m., London time, on the date on which it is to be determined or, in the case of an expense attributable to a particular transaction and, where the Parties have previously agreed a rate of interest for the transaction, that rate of interest if it is greater than LIBOR. Interest will accrue daily on a compound basis.

Set-off

11.8 Any amount payable to one Party (the *Payee*) by the other Party (the *Payer*) under paragraph 11.2(b) may, at the option of the Non-Defaulting Party, be reduced by its set-off against any amount payable (whether at such time or in the future or upon the occurrence of a contingency) by the Payee to the Payer (irrespective of the currency, place of payment or booking office of the obligation) under any other agreement between the Payee and the Payer or instrument or undertaking issued or executed by one Party to, or in favour of, the other Party. If an obligation is unascertained, the Non-Defaulting Party may in good faith estimate that obligation and set off in respect of the estimate, subject to accounting to the other Party when the obligation is ascertained. Nothing in this paragraph shall be effective to create a charge or other security interest. This paragraph shall be without prejudice and in addition to any right of set-off, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

12. TAXES

Withholding, gross-up and provision of information

12.1 All payments under this Agreement shall be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any Applicable Law.

12.2 Except as otherwise agreed, if the paying Party is so required to deduct or withhold, then that Party (*Payer*) shall:

(a) promptly notify the other Party (*Recipient*) of such requirement;

(b) pay or otherwise account for the full amount required to be deducted or withheld to the relevant authority;

(c) upon written demand of Recipient, forward to Recipient documentation reasonably acceptable to Recipient, evidencing such payment to such authorities; and

(d) other than in respect of any payment made by Lender to Borrower under paragraph 6.3, pay to Recipient, in addition to the payment to which Recipient is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the amount actually received by Recipient (after taking account of such withholding or deduction) will equal the amount Recipient would have received had no such deduction or withholding been required; provided Payer will not be required to pay any additional amount to Recipient under this sub-paragraph (d) to the extent it would not be required to be paid but for the failure by Recipient to comply with or perform any obligation under paragraph 12.3.

12.3 Each Party agrees that it will upon written demand of the other Party deliver to such other Party (or to any government or other taxing authority as such other Party directs), any form or document and provide such other cooperation or assistance as may (in either case) reasonably be required in order to allow such other Party to make a payment under this Agreement without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document, or the provision of such cooperation or assistance, would not materially prejudice the legal or commercial position of the Party in receipt of such demand). Any such form or document shall be accurate and completed in a manner reasonably satisfactory to such other Party and shall be executed and delivered with any reasonably required certification by such date as is agreed between the Parties or, failing such agreement, as soon as reasonably practicable.

Stamp Tax

12.4 Unless otherwise agreed, Borrower hereby undertakes promptly to pay and account for any Stamp Tax chargeable in connection with any transaction effected pursuant to or contemplated by this Agreement (other than any Stamp Tax that would not be chargeable but for Lender's failure to comply with its obligations under this Agreement).

12.5 Borrower shall indemnify and keep indemnified Lender against any liability arising as a result of Borrower's failure to comply with its obligations under paragraph 12.4.

Sales Tax

12.6 All sums payable by one Party to another under this Agreement are exclusive of any Sales Tax chargeable on any supply to which such sums relate and an amount equal to such Sales Tax shall in each case be paid by the Party making such payment on receipt of an appropriate Sales Tax invoice.

Retrospective changes in law

12.7 Unless otherwise agreed, amounts payable by one Party to another under this Agreement shall be determined by reference to Applicable Law as at the date of the relevant payment and no adjustment shall be made to amounts paid under this Agreement as a result of:

(a) any retrospective change in Applicable Law which is announced or enacted after the date of the relevant payment; or

(b) any decision of a court of competent jurisdiction which is made after the date of the relevant payment (other than where such decision results from an action taken with respect to this Agreement or amounts paid or payable under this Agreement).

13. LENDER'S WARRANTIES

Each Party hereby warrants and undertakes to the other on a continuing basis to the intent that such warranties shall survive the completion of any transaction contemplated herein that, where acting as a Lender:

(a) it is duly authorised and empowered to perform its duties and obligations under this Agreement;

(b) it is not restricted under the terms of its constitution or in any other manner from lending Securities in accordance with this Agreement or from otherwise performing its obligations hereunder;

(c) it is absolutely entitled to pass full legal and beneficial ownership of all Securities provided by it hereunder to Borrower free from all liens, charges and encumbrances; and

(d) it is acting as principal in respect of this Agreement, other than in respect of an Agency Loan.

14. BORROWER'S WARRANTIES

Each Party hereby warrants and undertakes to the other on a continuing basis to the intent that such warranties shall survive the completion of any transaction contemplated herein that, where acting as a Borrower:

(a) it has all necessary licences and approvals, and is duly authorised and empowered, to perform its duties and obligations under this Agreement and will do nothing prejudicial to the continuation of such authorisation, licences or approvals;

(b) it is not restricted under the terms of its constitution or in any other manner from borrowing Securities in accordance with this Agreement or from otherwise performing its obligations hereunder;

(c) it is absolutely entitled to pass full legal and beneficial ownership of all Collateral provided by it hereunder to Lender free from all liens, charges and encumbrances;

(d) it is acting as principal in respect of this Agreement; and

(e) it is not entering into a Loan for the primary purpose of obtaining or exercising voting rights in respect of the Loaned Securities.

15. INTEREST ON OUTSTANDING PAYMENTS

In the event of either Party failing to remit sums in accordance with this Agreement such Party hereby undertakes to pay to the other Party upon demand interest (before as well as after judgment) on the net balance due and outstanding, for the period commencing on and inclusive of the original due date for payment to (but excluding) the date of actual payment, in the same currency as the principal sum and at the rate referred to in paragraph 11.7. Interest will accrue daily on a compound basis and will be calculated according to the actual number of days elapsed. No interest shall be payable under this paragraph in respect of any day on which one Party endeavours to make a payment to the other Party but the other Party is unable to receive it.

16. TERMINATION OF THIS AGREEMENT

Each Party shall have the right to terminate this Agreement by giving not less than 15 Business Days' notice in writing to the other Party (which notice shall specify the date of termination) subject to an obligation to ensure that all Loans which have been entered into but not discharged at the time such notice is given are duly discharged in accordance with this Agreement.

17. SINGLE AGREEMENT

Each Party acknowledges that, and has entered into this Agreement and will enter into each Loan in consideration of and in reliance upon the fact that, all Loans constitute a single business and contractual relationship and are made in consideration of each other. Accordingly, each Party agrees:

(a) to perform all of its obligations in respect of each Loan, and that a default in the performance of any such obligations shall constitute a default by it in respect of all Loans; and

(b) that payments, deliveries and other transfers made by either of them in respect of any Loan shall be deemed to have been made in consideration of payments, deliveries and other transfers in respect of any other Loan.

18. SEVERANCE

If any provision of this Agreement is declared by any judicial or other competent authority to be void or otherwise unenforceable, that provision shall be severed from the Agreement and the remaining provisions of this Agreement shall remain in full force and effect. The Agreement shall, however, thereafter be amended by the Parties in such reasonable manner so as to achieve as far as possible, without illegality, the intention of the Parties with respect to that severed provision.

19. SPECIFIC PERFORMANCE

Each Party agrees that in relation to legal proceedings it will not seek specific performance of the other Party's obligation to deliver Securities, Equivalent Securities, Collateral or Equivalent Collateral but without prejudice to any other rights it may have.

20. NOTICES

20.1 Any notice or other communication in respect of this Agreement may be given in any manner set forth below to the address or number or in accordance with the electronic messaging system details set out in paragraph 5 of the Schedule and will be deemed effective as indicated:

(a) if in writing and delivered in person or by courier, on the date it is delivered;

(b) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);

(c) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or

(d) if sent by electronic messaging system, on the date that electronic message is received,

unless the date of that delivery (or attempted delivery) or the receipt, as applicable, is not a Business Day or that communication is delivered (or attempted) or received, as applicable, after the Close of Business on a Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Business Day.

20.2 Either Party may by notice to the other change the address or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

21. ASSIGNMENT

21.1 Subject to paragraph 21.2, neither Party may charge, assign or otherwise deal with all or any of its rights or obligations hereunder without the prior consent of the other Party.

21.2 Paragraph 21.1 shall not preclude a party from charging, assigning or otherwise dealing with all or any part of its interest in any sum payable to it under paragraph 11.2(b) or 11.7.

22. NON-WAIVER

No failure or delay by either Party (whether by course of conduct or otherwise) to exercise any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege as herein provided.

23. GOVERNING LAW AND JURISDICTION

23.1 This Agreement and any non-contractual obligations arising out of or in connection with this Agreement shall be governed by, and shall be construed in accordance with, English law.

23.2 The courts of England have exclusive jurisdiction to hear and decide any suit, action or proceedings, and to settle any disputes or any non-contractual obligation which may arise out of or in connection with this Agreement (respectively, ***Proceedings*** and ***Disputes***) and, for these purposes, each Party irrevocably submits to the jurisdiction of the courts of England.

23.3 Each Party irrevocably waives any objection which it might at any time have to the courts of England being nominated as the forum to hear and decide any Proceedings and to settle any Disputes and agrees not to claim that the courts of England are not a convenient or appropriate forum.

23.4 Each Party hereby respectively appoints the person identified in paragraph 7 of the Schedule pertaining to the relevant Party as its agent to receive on its behalf service of process in the courts of England. If such an agent ceases to be an agent of a Party, the relevant Party shall promptly appoint, and notify the other Party of the identity of its new agent in England.

24. TIME

Time shall be of the essence of the Agreement.

25. RECORDING

The Parties agree that each may record all telephone conversations between them.

26. WAIVER OF IMMUNITY

Each Party hereby waives all immunity (whether on the basis of sovereignty or otherwise) from jurisdiction, attachment (both before and after judgement) and execution to which it might otherwise be entitled in any action or proceeding in the courts of England or of any other country or jurisdiction relating in any way to this Agreement and agrees that it will not raise, claim or cause to be pleaded any such immunity at or in respect of any such action or proceeding.

27. MISCELLANEOUS

27.1 This Agreement constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.

27.2 The Party (the ***Relevant Party***) who has prepared the text of this Agreement for execution (as indicated in paragraph 9 of the Schedule) warrants and undertakes to the other Party that such text conforms exactly to the text of the standard form Global Master Securities Lending Agreement (2009 version) posted by the International Securities Lending Association on its website except as notified by the Relevant Party to the other Party in writing prior to the execution of this Agreement.

27.3 Unless otherwise provided for in this Agreement, no amendment in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the Parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.

27.4 The Parties agree that where paragraph 11 of the Schedule indicates that this paragraph 27.4 applies, this Agreement shall apply to all loans which are outstanding as at the date of this Agreement and which are subject to the securities lending agreement or agreements specified in paragraph 11 of the Schedule, and such Loans shall be treated as if they had been entered into under this Agreement, and the terms of such loans are amended accordingly with effect from the date of this Agreement.

27.5 The Parties agree that where paragraph 12 of the Schedule indicates that this paragraph 27.5 applies, each may use the services of a third party vendor to automate the processing of Loans under this Agreement and that any data relating to such Loans received from the other Party may be disclosed to such third party vendors.

27.6 The obligations of the Parties under this Agreement will survive the termination of any Loan.

27.7 The warranties contained in paragraphs 13, 14 and 27.2 and in the Agency Annex will survive termination of this Agreement for so long as any obligations of either of the Parties pursuant to this Agreement remain outstanding.

27.8 Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

27.9 This Agreement (and each amendment in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.

27.10 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

EXECUTED by the **PARTIES**

SIGNED by	)
	)
duly authorised for and	)
on behalf of	)

SIGNED by	)
	)
duly authorised for and	)
on behalf of	)

SCHEDULE

1. COLLATERAL

1.1 The securities, financial instruments and deposits of currency set out in the table below with a cross marked next to them are acceptable forms of Collateral under this Agreement.

1.2 Unless otherwise agreed between the Parties, the Market Value of the Collateral delivered pursuant to paragraph 5 by Borrower to Lender under the terms and conditions of this Agreement shall on each Business Day represent not less than the Market Value of the Loaned Securities together with the percentage contained in the row of the table below corresponding to the particular form of Collateral, referred to in this Agreement as the ***Margin***.

Security/Financial Instrument/ Deposit of Currency	Mark "X" if acceptable form of Collateral	Margin (%)

1.3 Basis of Margin Maintenance:

Paragraph 5.4 (aggregation) shall not apply* ☐

Paragraph 5.4 (aggregation) applies unless the box is ticked.

1.4 Paragraph 5.6 (netting of obligations to deliver Collateral and redeliver Equivalent Collateral) shall not apply* ☐

Paragraph 5.6 (netting) applies unless the box is ticked

1.5 For the purposes of Paragraph 5.8, Notification Time means by ☐ , London time.

1.6 Paragraph 6.4 (indemnity for failure to redeliver Equivalent Non-Cash Collateral) shall not apply* ☐

Paragraph 6.4 (indemnity for failure to redeliver Equivalent Non-Cash Collateral) applies unless the box is ticked.

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* Delete as appropriate.

* Delete as appropriate.

* Delete as appropriate.

2. **BASE CURRENCY**

The Base Currency applicable to this Agreement is provided that if that currency ceases to be freely convertible the Base Currency shall be [US Dollars] [Euro] [specify other currency]*

3. **PLACES OF BUSINESS**

(See definition of Business Day.)

4. **MARKET VALUE**

(See definition of Market Value.)

5. **EVENTS OF DEFAULT**

Automatic Early Termination shall apply in respect of Party A ☐

Automatic Early Termination shall apply in respect of Party B ☐

6. **DESIGNATED OFFICE AND ADDRESS FOR NOTICES**

(a) **Designated office of Party A:**

Address for notices or communications to Party A:

Address:

Attention:

Facsimile No:

Telephone No:

Electronic Messaging System Details:

(b) **Designated office of Party B:**

Address for notices or communications to Party B:

Address:

Attention:

Facsimile No:

Telephone No:

Electronic Messaging System Details:

7. (a) **Agent of Party A for Service of Process**

Name:

Address:

(b) **Agent of Party B for Service of Process**

Name:

Address:

8. AGENCY

– Party A [may][will always]* act as agent ☐

– Party B [may][will always]* act as agent ☐

– The Addendum for Pooled Principal Transactions may apply to Party A ☐

– The Addendum for Pooled Principal Transactions may apply to Party B ☐

9. PARTY PREPARING THIS AGREEMENT

Party A ☐

Party B ☐

10. DEFAULT INTEREST

Rate of default interest:

11. EXISTING LOANS

Paragraph 27.4 applies* ☐

[Overseas Securities Lenders Agreement dated]*

[Global Master Securities Lending Agreements dated]*

12. AUTOMATION

Paragraph 27.5 applies* ☐

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* Delete as appropriate.

AGENCY ANNEX

1. TRANSACTIONS ENTERED INTO AS AGENT

1.1 Power for Lender to enter into Loans as agent

Subject to the following provisions of this paragraph, Lender may enter into Loans as agent (in such capacity, the ***Agent***) for a third person (a ***Principal***), whether as custodian or investment manager or otherwise (a Loan so entered into being referred to in this paragraph as an ***Agency Loan***).

If the Lender has indicated in paragraph 8 of the Schedule that it may act as Agent, it must identify each Loan in respect of which it acts as Agent as an Agency Loan at the time it is entered into. If the Lender has indicated in paragraph 8 of the Schedule that it will always act as Agent, it need not identify each Loan as an Agency Loan.

1.2 [Pooled Principal transactions

The Lender may enter into an Agency Loan on behalf of more than [one] Principal and accordingly the addendum hereto for pooled principal transactions shall apply.]*

1.3 Conditions for Agency Loan

A Lender may enter into an Agency Loan if, but only if:

(a) it provides to Borrower, prior to effecting any Agency Loan, such information in its possession necessary to complete all required fields in the format generally used in the industry, or as otherwise agreed by Agent and Borrower (***Agreed Format***), and will use its best efforts to provide to Borrower any optional information that may be requested by the Borrower for the purpose of identifying such Principal (all such information being the ***Principal Information***). Agent represents and warrants that the Principal Information is true and accurate to the best of its knowledge and has been provided to it by Principal;

(b) it enters into that Loan on behalf of a single Principal whose identity is disclosed to Borrower (whether by name or by reference to a code or identifier which the Parties have agreed will be used to refer to a specified Principal) either at the time when it enters into the Loan or before the Close of Business on the next Business Day after the date on which Loaned Securities are transferred to the Borrower in the Agreed Format or as otherwise agreed between the Parties; and

(c) it has at the time when the Loan is entered into actual authority to enter into the Loan and to perform on behalf of that Principal all of that Principal's obligations under the agreement referred to in paragraph 1.5(b) below.

Agent agrees that it will not effect any Loan with Borrower on behalf of any Principal unless Borrower has notified Agent of Borrower's approval of such Principal, and has not notified Agent that it has withdrawn such approval (such Principal, an ***Approved Principal***), with both such notifications in the Agreed Format.

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* Delete as appropriate.

Borrower acknowledges that Agent shall not have any obligation to provide it with confidential information regarding the financial status of its Principals; Agent agrees, however, that it will assist Borrower in obtaining from Agent's Principals such information regarding the financial status of such Principals as Borrower may reasonably request.

1.4 **Notification by Agent of certain events affecting any Principal**

Agent undertakes that, if it enters as agent into an Agency Loan, forthwith upon becoming aware:

(a) of any event which constitutes an Act of Insolvency with respect to the relevant Principal; or

(b) of any breach of any of the warranties given in paragraph 1.6 below or of any event or circumstance which results in any such warranty being untrue if repeated by reference to the then current facts,

(c) it will inform Borrower of that fact and will, if so required by Borrower, furnish it with such additional information as it may reasonably request to the extent that such information is readily obtainable by Agent.

1.5 **Status of Agency Loan**

(a) Each Agency Loan shall be a transaction between the relevant Principal and Borrower and no person other than the relevant Principal and Borrower shall be a party to or have any rights or obligations under an Agency Loan. Without limiting the foregoing, Agent shall not be liable as principal for the performance of an Agency Loan, but this is without prejudice to any liability of Agent under any other provision of this Annex; and

(b) all the provisions of the Agreement shall apply separately as between Borrower and each Principal for whom the Agent has entered into an Agency Loan or Agency Loans as if each such Principal were a party to a separate agreement with Borrower in all respects identical with this Agreement other than this Annex and as if the Principal were Lender in respect of that agreement; provided that

(i) if there occurs in relation to the Agent an Event of Default or an event which would constitute an Event of Default if Borrower served written notice under any sub-clause of paragraph 10 of the Agreement, Borrower shall be entitled by giving written notice to the Principal (which notice shall be validly given if given in accordance with paragraph 20 of the Agreement) to declare that by reason of that event an Event of Default is to be treated as occurring in relation to the Principal. If Borrower gives such a notice then an Event of Default shall be treated as occurring in relation to the Principal at the time when the notice is deemed to be given; and

(ii) if the Principal is neither incorporated in nor has established a place of business in Great Britain, the Principal shall for the purposes of the agreement referred to in paragraph 1.5(b) above be deemed to have appointed as its agent to receive on its behalf service of process in the courts of England the Agent, or if the Agent is neither incorporated nor has established a place of business in Great Britain, the person appointed by the Agent for the

purposes of this Agreement, or such other person as the Principal may from time to time specify in a written notice given to the other Party.

If Lender has indicated in paragraph 6 of the Schedule that it may enter into Loans as agent, the foregoing provisions of this paragraph do not affect the operation of the Agreement as between Borrower and Lender in respect of any Loans into which Lender may enter on its own account as principal.

1.6 **Warranty of authority by Lender acting as Agent**

Agent warrants to Borrower that it will, on every occasion on which it enters or purports to enter into a Loan as an Agency Loan, have been duly authorised to enter into that Loan and perform the obligations arising under such Loan on behalf of the Principal in respect of that Loan and to perform on behalf of the Principal all the obligations of that person under the agreement referred to in paragraph 1.5(b) above.

ADDENDUM FOR POOLED PRINCIPAL AGENCY LOANS

1. SCOPE

This addendum applies where the Agent wishes to enter into an Agency Loan on behalf of more than one Principal. The Agency Annex shall apply to such a Loan subject to the modifications and additional terms and conditions contained in paragraph 2 to 7 below.

2. INTERPRETATION

2.1 In this addendum:

(a) ***Collateral Transfer*** has the meaning given in paragraph 5.1 below;

(b) if at any time on any Business Day the aggregate Market Value of Posted Collateral in respect of all Agency Loans outstanding with a Principal under the Agreement exceeds the aggregate of the Required Collateral Value in respect of such Agency Loans, Borrower has a ***Net Loan Exposure*** to that Principal equal to that excess; if at any time on any Business Day the aggregate Market Value of Posted Collateral in respect of all Agency Loans outstanding under the Agreement with a Principal falls below the aggregate of the Required Collateral Value in respect of such Agency Loans, that Principal has a ***Net Loan Exposure*** to Borrower for such Agency Loans equal to that deficiency;

(c) ***Pooled Principal*** has the meaning given in paragraph 6(a) below; and

(d) ***Pooled Loan*** has the meaning given in paragraph 6(a) below.

3. MODIFICATIONS TO THE AGENCY ANNEX

3.1 Paragraph 1.3(b) of the Agency Annex is deleted and replaced by the following:

"it enters into that Loan on behalf of one or more Principals and at or before the time when it enters into the Loan it discloses to Borrower the identity and the jurisdiction of incorporation, organisation or establishment of each such Principal (and such disclosure may be made either directly or by reference to a code or identifier which the Parties have agreed will be used to refer to a specified Principal);".

3.2 Paragraph 1.3(c) of the Agency Annex is deleted and replaced by the following:

"it has at the time when the Loan is entered into actual authority to enter into the Loan on behalf of each Principal and to perform on behalf of each Principal all of that Principal's obligations under the Agreement".

4. ALLOCATION OF AGENCY LOANS

4.1 The Agent undertakes that if, at the time of entering into an Agency Loan, the Agent has not allocated the Loan to a Principal, it will allocate the Loan before the Settlement Date for that Agency Loan either to a single Principal or to several Principals, each of whom shall be responsible for only that part of the Agency Loan which has been allocated to it. Promptly following such allocation, the Agent shall notify Borrower of the Principal or Principals (whether by name or reference to a code or identifier which the Parties have agreed will be used to refer to a specified Principal) to which that Loan or part of that Loan has been allocated.

4.2 Upon allocation of a Loan in accordance with paragraph 4.1 above or otherwise, with effect from the date on which the Loan was entered into:

(a) where the allocation is to a single Principal, the Loan shall be deemed to have been entered into between Borrower and that Principal; and

(b) where the allocation is to two or more Principals, a separate Loan shall be deemed to have been entered into between Borrower and each such Principal with respect to the appropriate proportion of the Loan.

4.3 If the Agent shall fail to perform its obligations under paragraph 4.2 above then for the purposes of assessing any damage suffered by Borrower (but for no other purpose) it shall be assumed that, if the Loan concerned (to the extent not allocated) had been allocated in accordance with that paragraph, all the terms of the Loan would have been duly performed.

5. ALLOCATION OF COLLATERAL

5.1 Unless the Agent expressly allocates (a) a deposit or delivery of Posted Collateral or (b) a repayment of Cash Collateral or a redelivery of Equivalent Collateral (each a ***Collateral Transfer***) before such time, the Agent shall, at the time of making or receiving that Collateral Transfer, be deemed to have allocated any Collateral Transfer in accordance with paragraph 6.3 below.

5.2 (a) If the Agent has made a Collateral Transfer on behalf of more than one Pooled Principal, that Collateral Transfer shall be allocated in proportion to Borrower's Net Loan Exposure in respect of each Pooled Principal at the Agent's close of business on the Business Day before the Collateral Transfer is made; and

(b) if the Agent has received a Collateral Transfer on behalf of more than one Pooled Principal, that Collateral Transfer shall be allocated in proportion to each Pooled Principal's Net Loan Exposure in respect of Borrower at the Agent's close of business on the Business Day before the Collateral Transfer is made.

(c) Sub-paragraphs (a) and (b) shall not apply in respect of any Collateral Transfer which is effected or deemed to have been effected under paragraph 6.3 below.

6. POOLED PRINCIPALS: REBALANCING OF MARGIN

6.1 Where the Agent acts on behalf of more than one Principal, the Parties may agree that, as regards all (but not some only) outstanding Agency Loans with those Principals, or with such of those Principals as they may agree (***Pooled Principals***, such Agency Loans being ***Pooled Loans***), any Collateral Transfers are to be made on an aggregate net basis.

6.2 Paragraphs 6.3 to 6.5 below shall have effect for the purpose of ensuring that Posted Collateral is, so far as is practicable, transferred and held uniformly, as between the respective Pooled Principals, in respect of all Pooled Loans for the time being outstanding under the Agreement.

6.3 At or as soon as practicable after the Agent's close of business on each Business Day on which Pooled Loans are outstanding (or at such other times as the Parties may from time to time agree) there shall be effected such Collateral Transfers as shall ensure that immediately thereafter:

(a) in respect of all Pooled Principals which have a Net Loan Exposure to Borrower, the amount of Collateral then deliverable or Cash Collateral then payable by Borrower to each such Pooled Principal is equal to such proportion of the aggregate amount of Collateral then deliverable or Cash Collateral then payable, to all such Pooled Principals as corresponds to the proportion which the Net Loan Exposure of the relevant Pooled Principal bears to the aggregate of the Net Loan Exposures of all Pooled Principals to Borrower; and

(b) in respect of all Pooled Principals to which Borrower has a Net Loan Exposure, the aggregate amount of Equivalent Collateral then deliverable or repayable by each such Pooled Principal to Borrower is equal to such proportion of the aggregate amount of Equivalent Collateral then deliverable or repayable by all such Pooled Principals as corresponds to the proportion which the Net Loan Exposure of Borrower to the relevant Pooled Principal bears to the aggregate of the Net Loan Exposures of Borrower to all Pooled Principals.

6.4 Collateral Transfers effected under paragraph 6.3 shall be effected (and if not so effected shall be deemed to have been so effected) by appropriations made by the Agent and shall be reflected by entries in accounting and other records maintained by the Agent. Accordingly, it shall not be necessary for payments of cash or deliveries of Securities to be made through any settlement system for the purpose of such Collateral Transfers. Without limiting the generality of the foregoing, the Agent is hereby authorised and instructed by Borrower to do all such things on behalf of Borrower as may be necessary or expedient to effect and record the receipt on behalf of Borrower of cash and Securities from, and the delivery on behalf of Borrower of cash and Securities to, Pooled Principals in the course or for the purposes of any Collateral Transfer effected under that paragraph.

6.5 Promptly following the Collateral Transfers effected under paragraph 6.3 above at the close of business on any Business Day, the Agent shall prepare a statement showing in respect of each Pooled Principal the amount of cash Collateral which has been paid, and the amount of non-cash Collateral of each description which have been transferred, by or to that Pooled Principal immediately after those Collateral Transfers. If Borrower so requests, the Agent shall deliver to Borrower a copy of the statement so prepared in a format and to a timetable generally used in the market.

7. WARRANTIES

7.1 The Agent warrants to Borrower that:

(a) all notifications provided to Borrower under paragraph 4.1 above and all statements provided to the other party under paragraph 6.5 above shall be complete and accurate in all material respects;

(b) at the time of allocating an Agency Loan in accordance with paragraph 4.1 above, each Principal or Principals to whom the Agent has allocated that Agency Loan or any part of that Agency Loan is duly authorised to enter into the Agency Loans contemplated by this Agreement and to perform its obligations thereunder; and

(c) at the time of allocating an Agency Loan in accordance with paragraph 4.1 above, no Event of Default or event which would constitute an Event of Default with the service of a Default Notice or other written notice under paragraph 14 of the Agreement has occurred in relation to any Principal or Principals to whom the Agent has allocated that Agency Loan or any part of that Agency Loan.

附錄四、Overseas Securities Lender’s Agreement

VERSION: DECEMBER 1995

OVERSEAS SECURITIES LENDER'S AGREEMENT

CONTENTS

THIS AGREEMENT is made the day of , 2000

BETWEEN:

(1) [ ] a company incorporated under the laws of England and Wales whose registered office is at [ ]; and

(2) [ ] a company incorporated under the laws of England and Wales whose registered office is at [ ].

WHEREAS:

1. The Parties hereto are desirous of agreeing a procedure whereby either one of them (the "**Lender**") will make available to the other of them (the "**Borrower**") from time to time Securities (as hereinafter defined) in order to enable the Borrower, subject to any Inland Revenue provisions then in force, to fulfil a contract to sell such Securities or to on lend such Securities to a third party to enable such party to fulfil a contract to sell such Securities, whether or not as part of a chain of arrangements to enable the final party in such chain to fulfil a contract to sell such Securities or to replace an existing loan of Securities to such third party, or for other purposes.

2. All transactions carried out under this Agreement will be effected in accordance with the Rules (as hereinafter defined) TOGETHER WITH current market practices, customs and conventions.

NOW THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED AS FOLLOWS:

1. **INTERPRETATION**

1.1 In this Agreement:

"**Act of Insolvency**" means in relation to either Party:

(a) its making a general assignment for the benefit of, or entering into a reorganisation, arrangement, or composition with creditors; or

(b) its admitting in writing that it is unable to pay its debts as they become due; or

(c) its seeking, consenting to or acquiescing in the appointment of any trustee, administrator, receiver or liquidator or analogous officer of it or any material part of its property or

(d) the presentation or filing of a petition in respect of it (other than by the other Party to this Agreement in respect of any obligation under this Agreement) in any court or before any agency alleging or for the bankruptcy, winding-up or insolvency of such Party (or any analogous proceeding) or seeking any reorganisation, arrangement, composition, re-adjustment, administration, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such petition (except in the case of a petition for winding-up or

any analogous proceeding in respect of which no such 30 day period shall apply) not having been stayed or dismissed within 30 days of its filing;

(e) the appointment of a receiver, administrator, liquidator or trustee or analogous officer of such Party over all or any material part of such Party's property; or

(f) the convening of any meeting of its creditors for the purpose of considering a voluntary arrangement as referred to in Section 3 of the Insolvency Act 1986 (or any analogous proceeding).

"Agent" shall have the same meaning given in Clause (*Transactions Entered into as Agent*).

"Alternative Collateral" means Collateral of a Value equal to the Collateral delivered pursuant to Clause (*Collateral*) and provided by way of substitution for Collateral originally delivered or previously substituted in accordance with the provisions of Clauses or .

"Appropriate Tax Vouchers" means:

(a) either such tax vouchers and/or certificates as shall enable the recipient to claim and receive from any relevant tax authority, in respect of interest, dividends, distributions and/or other amounts (including for the avoidance of doubt any manufactured payment) relating to particular Securities, all and any repayment of tax or benefit of tax credit to which the Lender would have been entitled but for the loan of Securities in accordance with this Agreement and/or to which the Lender is entitled in respect of tax withheld and accounted for in respect of any manufactured payment; or such tax vouchers and/or certificates as are provided by the Borrower which evidence an amount of overseas tax deducted which shall enable the recipient to claim and receive from any relevant tax authority all and any repayment of tax from the UK Inland Revenue or benefits of tax credit in the jurisdiction of the recipient's residence; and

(b) such vouchers and/or certificates in respect of interest, dividends, distributions and/or other amounts relating to particular Collateral.

"Approved UK Collecting Agent" means a person who is approved as such for the purposes of the Rules of the UK Inland Revenue relating to stocklending and manufactured interest and dividends.

"Approved Intermediary" means a person who is approved as such for the purposes of the Rules of the UK Inland Revenue relating to stocklending and manufactured interest and dividends.

"Assured Payment" means a payment obligation of a Settlement Bank arising (under the *Assured Payment Agreement*) as a result of a transfer of stock or other securities to a CGO stock account of a member of the CGO for whom that Settlement Bank is acting.

"Assured Payment Agreement" means an agreement dated 24 October 1986 between the Bank of England and all the other banks which are for the time being acting as

Settlement Banks in relation to the CGO regulating the obligations of such banks to make payments in respect of transfers of securities through the CGO as supplemented and amended from time to time.

"Base Currency" has the meaning given in the Schedule hereto.

"Bid Price" in relation to Equivalent Securities or Equivalent Collateral means the best available bid price thereof on the most appropriate market in a standard size.

"Bid Value" subject to Clause means:

(a) in relation to Equivalent Collateral at a particular time:

(i) in relation to Collateral Types B(x) and C (more specifically referred to in the Schedule) the Value thereof as calculated in accordance with such Schedule;

(ii) in relation to all other types of Collateral (more specifically referred to in the Schedule) the amount which would be received on a sale of such Collateral at the Bid Price thereof at such time less all costs, fees and expenses that would be incurred in connection with selling or otherwise realising such Equivalent Collateral, calculated on the assumption that the aggregate thereof is the least that could reasonably be expected to be paid in order to carry out such sale or realisation and adding thereto the amount of any interest, dividends, distributions or other amounts paid to the Lender and in respect of which equivalent amounts have not been paid to the Borrower in accordance with Clause 6(G) prior to such time in respect of such Equivalent Collateral or the original Collateral held gross of all and any tax deducted or paid in respect thereof; and

(b) in relation to Equivalent Securities at a particular time the amount which would be received on a sale of such Equivalent Securities at the Bid Price thereof at such time less all costs, fees and expenses that would be incurred in connection therewith, calculated on the assumption that the aggregate thereof is the least that could reasonably be expected to be paid in order to carry out the transaction.

"Borrower" with respect to a particular loan of Securities means the Borrower as referred to in Recital 1 of this Agreement.

"Borrowing Request" means a request made (by telephone or otherwise) by the Borrower to the Lender pursuant to Clause specifying the description, title and amount of the Securities required by the Borrower, the proposed Settlement Date and duration of such loan and the date, time, mode and place of delivery which shall, where relevant, include the bank agent clearing or settlement system and account to which delivery of the Securities is to be made.

"Business Day" means a day on which banks and securities markets are open for business generally in London and, in relation to the delivery or redelivery of any of the following in relation to any loan, in the place(s) where the relevant Securities, Equivalent

Securities, Collateral (including Cash Collateral) or Equivalent Collateral are to be delivered.

"Cash Collateral" means Collateral that takes the form of a deposit of currency.

"Central Gilts Office" means the computer based system managed by the Bank of or **"CGO"** England to facilitate the book-entry transfer of gilt-edged securities.

"CGO Collateral" shall have the meaning specified in paragraph of the Schedule.

"CGO Rules" means the requirements of the CGO for the time being in force as defined in the membership agreement regulating membership of the CGO.

"Close of Business" means the time at which banks close in the business centre in which payment is to be made or Collateral is to be delivered.

"Collateral" means such securities or financial instruments or deposits of currency as are referred to in the Schedule hereto or any combination thereof which are delivered by the Borrower to the Lender in accordance with this Agreement and shall include the certificates and other documents of or evidencing title and transfer in respect of the foregoing (as appropriate), and shall include Alternative Collateral.

"Defaulting Party" shall have the meaning given in Clause (*Events of Default*).

"Equivalent Collateral" or **"Collateral equivalent to"** in relation to any Collateral provided under this Agreement means securities, cash or other property, as the case may be,of an identical type, nominal value, description and amount to particular Collateral so provided and shall include the certificates and other documents of or evidencing title and transfer in respect of the foregoing (as appropriate). If and to the extent that such Collateral consists of securities that are partly paid or have been converted, subdivided, consolidated, redeemed, made the subject of a takeover, capitalisation issue, rights issue or event similar to any of the foregoing, the expression shall have the following meaning:

(a) in the case of conversion, subdivision or consolidation the securities into which the relevant Collateral has been converted, subdivided or consolidated **provided that**, if appropriate, notice has been given in accordance with sub-clause of Clause ;

(b) in the case of redemption, a sum of money equivalent to the proceeds of the redemption;

(c) in the case of a takeover, a sum of money or securities, being the consideration or alternative consideration of which the Borrower has given notice to the Lender in accordance with sub-clause of Clause ;

(d) in the case of a call on partly paid securities, the paid-up securities **provided that** the Borrower shall have paid to the Lender an amount of money equal to the sum due in respect of the call;

(e) in the case of a capitalisation issue, the relevant Collateral TOGETHER WITH the securities allotted by way of a bonus thereon;

(f) in the case of a rights issue, the relevant Collateral TOGETHER WITH the securities allotted thereon, **provided that** the Borrower has given notice to the Lender in accordance with sub-clause of Clause , and has paid to the Lender all and any sums due in respect thereof;

(g) in the event that a payment or delivery of Income is made in respect of the relevant Collateral in the form of securities or a certificate which may at a future date be exchanged for securities or in the event of an option to take Income in the form of securities or a certificate which may at a future date be exchanged for securities, notice has been given to the Borrower in accordance with sub-clause of Clause the relevant Collateral TOGETHER WITH securities or a certificate equivalent to those allotted;

(h) in the case of any event similar to any of the foregoing, the relevant Collateral TOGETHER WITH or replaced by a sum of money or securities equivalent to that received in respect of such Collateral resulting from such event.

For the avoidance of doubt, in the case of Bankers' Acceptances (Collateral type B(v)), Equivalent Collateral must bear dates, acceptances and endorsements (if any) by the same entities as the bill to which it is intended to be equivalent and for the purposes of this definition, securities are equivalent to other securities where they are of an identical type, nominal value, description and amount and such term shall include the certificate and other documents of or evidencing title and transfer in respect of the foregoing (as appropriate).

"**Equivalent Securities**" means securities of an identical type, nominal value, description and amount to particular Securities borrowed and such term shall include the certificates and other documents of or evidencing title and transfer in respect of the foregoing (as appropriate). If and to the extent that such Securities are partly paid or have been converted, subdivided, consolidated, redeemed, made the subject of a takeover, capitalisation issue, rights issue or event similar to any of the foregoing, the expression shall have the following meaning:

(a) in the case of conversion, subdivision or consolidation the securities into which the borrowed Securities have been converted, subdivided or consolidated **provided that** if appropriate, notice has been given in accordance with sub-clause of Clause ;

(b) in the case of redemption, a sum of money equivalent to the proceeds of the redemption;

(c) in the case of takeover, a sum of money or securities, being the consideration or alternative consideration of which the Lender has given notice to the Borrower in accordance with sub-clause of Clause ;

(d) in the case of a call on partly paid securities, the paid-up securities **provided that** the Lender shall have paid to the Borrower an amount of money equal to the sum due in respect of the call;

(e) in the case of a capitalisation issue, the borrowed Securities TOGETHER WITH the securities allotted by way of a bonus thereon;

(f) in the case of a rights issue, the borrowed Securities TOGETHER WITH the securities allotted thereon, **provided that** the Lender has given notice to the Borrower in accordance with sub-clause of Clause , and has paid to the Borrower all and any sums due in respect thereof;

(g) in the event that a payment or delivery of Income is made in respect of the borrowed Securities in the form of securities or a certificate which may at a future date be exchanged for securities or in the event of an option to take Income in the form of securities or a certificate which may at a future date be exchanged for securities, notice has been given to the Borrower in accordance with sub-clause of Clause the borrowed Securities TOGETHER WITH securities or a certificate equivalent to those allotted; and

(h) in the case of any event similar to any of the foregoing, the borrowed Securities TOGETHER WITH or replaced by a sum of money or securities equivalent to that received in respect of such borrowed Securities resulting from such event.

For the purposes of this definition, securities are equivalent to other securities where they are of an identical type, nominal value, description and amount and such term shall include the certificate and other documents of or evidencing title and transfer in respect of the foregoing (as appropriate).

"Event of Default" has the meaning given in Clause (*Event of Default*).

"Income" any interest, dividends or other distributions of any kind whatsoever with respect to any Securities or Collateral.

"Income Payment Date" with respect to any Securities or Collateral means the date on which Income is paid in respect of such Securities or Collateral, or, in the case of registered Securities or Collateral, the date by reference to which particular registered holders are identified as being entitled to payment of Income.

"Lender" with respect to a particular loan of Securities means the Lender as referred to in Recital **1** of this Agreement.

"Manufactured Dividend" shall have the meaning given in sub-clause of Clause .

"Margin" shall have the meaning specified in the Schedule hereto.

"Nominee" means an agent or a nominee appointed by either Party and approved (if appropriate) as such by the Inland Revenue to accept delivery of, hold or deliver Securities, Equivalent Securities, Collateral and/or Equivalent Collateral on its behalf whose appointment has been notified to the other Party.

"Non-Defaulting Party" shall have the meaning given in Clause (*Event of Default*).

"Offer Price" in relation to Equivalent Securities or Equivalent Collateral means the best available offer price thereof on the most appropriate market in a standard size.

"Offer Value" Subject to Clause means:

(a) in relation to Collateral equivalent to Collateral types B (ix) and C (more specifically referred to in the Schedule hereto) the Value thereof as calculated in accordance with such Schedule; and

(b) in relation to Equivalent Securities or Collateral equivalent to all other types of Collateral (more specifically referred to in the Schedule hereto) the amount it would cost to buy such Equivalent Securities or Equivalent Collateral at the Offer Price thereof at such time together with all costs, fees and expenses that would be incurred in connection therewith, calculated on the assumption that the aggregate thereof is the least that could reasonably be expected to be paid in order to carry out the transaction.

"Parties" means the Lender and the Borrower and "Party" shall be construed accordingly.

"Performance Date" shall have the meaning given in Clause (*Set-Off Etc.*).

"Principal" shall have the meaning given in Clause (*Transactions Entered into as Agent*).

"Reference Price" means:

(a) in relation to the valuation of Securities, Equivalent Securities, Collateral and/or Collateral equivalent to types B (ii), (viii), (xi) and (xii) (more specifically referred to in the Schedule hereto) such price as is equal to the mid market quotation of such Securities, Equivalent Securities, Collateral and/or Equivalent Collateral as derived from a reputable pricing information service (such as the services provided by Reuters, Extel Statistical Services and Telerate) reasonably chosen in good faith by the Lender or if unavailable the market value thereof as derived from the prices or rates bid by a reputable dealer for the relevant instrument reasonably chosen in good faith by the Lender, in each case at Close of Business on the previous Business Day;

(b) in relation to the valuation of Collateral and/or Collateral equivalent to Collateral types A and B(i) (more specifically referred to in the Schedule hereto), the CGO Reference Price of such Securities, Equivalent Securities, Collateral and/or Equivalent Collateral then current as determined in accordance with the CGO Rules from time to time in force; and

(c) in relation to the valuation of Collateral and/or Collateral equivalent to Collateral types B(iii), (iv), (v), (vi) (vii) and (ix), (more specifically referred to in the Schedule hereto), the market value thereof as derived from the rates bid by Barclays Bank PLC for such instruments or, in the absence of such a bid, the average of the rates bid by two leading market makers for such instruments at Close of Business on the previous Business Day.

"Relevant Payment Date" shall have the meaning given in sub-clause of Clause .

"Rules" means the rules for the time being of the Stock Exchange (where either Party is a member of the Stock Exchange) and/or any other regulatory authority whose rules and regulations shall from time to time affect the activities of the Parties pursuant to this Agreement including but not limited to the stocklending regulations and guidance notes relating to both stocklending and manufactured interest and dividends for the time being in force of the Commissioners of the Inland Revenue and any associated procedures required pursuant thereto **(provided that** in an Event of Default, where either Party is a member of the Stock Exchange, the Rules and Regulations of the Stock Exchange shall prevail).

"Securities" means Overseas Securities as defined in the Income Tax (Stock Lending) Regulations 1989 (S.I. 1989 No. 1299) (as amended by the Income Tax (Stock Lending) (Amendment) Regulations 1990 (S.I. 1990 No. 2552)and 1993 (S.I. 1993 No. 2003)) or any statutory modification or re-enactment thereof for the time being in force which the Borrower is entitled to borrow from the Lender in accordance with the Rules and which are the subject of a loan pursuant to this Agreement and such term shall include the certificates and other documents of title in respect of the foregoing.

"Settlement Bank" means a settlement member of the CHAPS and Town Clearing systems who has entered into contractual arrangements with the CGO to provide Assured Payment facilities for members of the CGO.

"Settlement Date" means the date upon which Securities are or are to be transferred to the Borrower in accordance with this Agreement.

"Stock Exchange" means the London Stock Exchange Limited.

"Value" at any particular time means in respect of Securities and Equivalent Securities, the Reference Price thereof then current and in respect of Collateral and/or Equivalent Collateral such worth as determined in accordance with the Schedule hereto.

1.2 All headings appear for convenience only and shall not affect the interpretation hereof.

1.3 Notwithstanding the use of expressions such as "borrow", "lend", "Collateral", "Margin", "redeliver" etc. which are used to reflect terminology used in the market for transactions of the kind provided for in this Agreement, title to Securities "borrowed" or "lent" and "Collateral" provided in accordance with this Agreement shall pass from one Party to another as provided for in this Agreement, the Party obtaining such title being obliged to redeliver Equivalent Securities or Equivalent Collateral as the case may be.

1.4 For the purposes of Clauses to and to of this Agreement or otherwise where a conversion into the Base Currency is required, all prices, sums or values (including any Value, Offer Value and Bid Value) of Securities, Equivalent Securities, Collateral or Equivalent Collateral (including Cash Collateral) stated in currencies other than the Base Currency shall be converted into the Base Currency at the spot rate of exchange at the relevant time in the London interbank market for the purchase of the Base Currency with the currency concerned.

1.5 Where at any time there is in existence any other agreement between the Parties the terms of which make provision for the lending of Securities (as defined in this

Agreement) as well as other securities the terms of this Agreement shall apply to the lending of such Securities to the exclusion of any other such agreement.

2. LOANS OF SECURITIES

2.1 The Lender will lend Securities to the Borrower, and the Borrower will borrow Securities from the Lender in accordance with the terms and conditions of this Agreement and with the Rules **provided always that** the Lender shall have received from the Borrower and accepted (by whatever means) a Borrowing Request.

2.2 The Borrower has the right to reduce the amount of Securities referred to in a Borrowing Request **provided that** the Borrower has notified the Lender of such reduction no later than midday London time on the day which is two Business Days prior to the Settlement Date unless otherwise agreed between the Parties and the Lender shall have accepted such reduction (by whatever means).

3. DELIVERY OF SECURITIES

The Lender shall procure the delivery of Securities to the Borrower or deliver such Securities in accordance with the relevant Borrowing Request TOGETHER WITH appropriate instruments of transfer duly stamped where necessary and such other instruments as may be requisite to vest title thereto in the Borrower. Such Securities shall be deemed to have been delivered by the Lender to the Borrower on delivery to the Borrower or as it shall direct of the relevant instruments of transfer, or in the case of Securities held by an agent or a clearing or settlement system on the effective instructions to such agent or the operator of such system to hold the Securities absolutely for the Borrower, or by such other means as may be agreed.

4. RIGHTS AND TITLE

4.1 The Parties shall execute and deliver all necessary documents and give all necessary instructions to procure that all right, title and interest in:

4.1.1 any Securities borrowed pursuant to Clause (*Loans of Securities*);

4.1.2 any Equivalent Securities redelivered pursuant to Clause (*Redelivery of Equivalent Securities*);

4.1.3 any Collateral delivered pursuant to Clause (*Collateral*);

4.1.4 any Equivalent Collateral redelivered pursuant to Clauses (*Collateral*) or (*Redelivery of Equivalent Securities*);

shall pass from one Party to the other subject to the terms and conditions mentioned herein and in accordance with the Rules, on delivery or redelivery of the same in accordance with this Agreement, free from all liens, charges and encumbrances. In the case of Securities, Collateral, Equivalent Securities or Equivalent Collateral title to which is registered in a computer based system which provides for the recording and transfer of title to the same by way of book entries, delivery and transfer of title shall take place in accordance with the rules and procedures of such system as in force from time to time. The Party acquiring such right, title and interest shall have no obligation to

return or redeliver any of the assets so acquired but, in so far as any Securities are borrowed or any Collateral is delivered to such Party, such Party shall be obliged, subject to the terms of this Agreement, to redeliver Equivalent Securities or Equivalent Collateral as appropriate.

4.2

4.2.1 Where Income is paid in relation to any Securities on or by reference to an Income Payment Date on which such Securities are the subject of a loan hereunder, the Borrower shall, on the date of the payment of such Income, or on such other date as the Parties may from time to time agree, (the **"Relevant Payment Date"**) pay and deliver a sum of money or property equivalent to the same (with any such endorsements or assignments as shall be customary and appropriate to effect the delivery) to the Lender or its Nominee, irrespective of whether the Borrower received the same. The provisions of sub-clauses to of this Clause below shall apply in relation thereto.

4.2.2 subject to sub-clause of this Clause below, in the case of any Income comprising a payment, the amount (the **"Manufactured Dividend"**) payable by the Borrower shall be equal to the amount of the relevant Income together with an amount equivalent to any deduction, withholding or payment for or on account of tax made by the relevant issuer (or on its behalf) in respect of such Income together with an amount equal to any other tax credit associated with such Income unless a lesser amount is agreed between the Parties or an Appropriate Tax Voucher (together with any further amount which may be agreed between the Parties to be paid) is provided in lieu of such deduction, withholding tax credit or payment.

4.2.3 Where either the Borrower, or any person to whom the Borrower has on-lent the Securities, is unable to make payment of the Manufactured Dividend to the Lender without accounting to the Inland Revenue for any amount of relevant tax (as required by Schedule 23A to the Income and Corporation Taxes Act 1988) the Borrower shall pay to the Lender or its Nominee, in cash, the Manufactured Dividend less amounts equal to such tax. The Borrower shall at the same time if requested supply Appropriate Tax Vouchers to the Lender.

4.2.4 If at any time any Manufactured Dividend falls to be paid and neither of the Parties is an Approved UK Intermediary or an Approved UK Collecting Agent, the Borrower shall procure that the payment is paid through an Approved UK Intermediary or an Approved UK Collecting Agent agreed by the Parties for this purpose, unless the rate of relevant withholding tax in respect of any Income that would have been payable to the Lender but for the loan of the Securities would have been zero and no income tax liability under Section 123 of the Income and Corporation Taxes Act 1988 would have arisen in respect thereof.

4.2.5 In the event of the Borrower failing to remit either directly or by its Nominee any sum payable pursuant to this Clause , the Borrower hereby undertakes to pay a rate to the Lender (upon demand) on the amount due and outstanding at the rate provided for in Clause (*Outstanding Payments*). Interest on such sum

shall accrue daily commencing on and inclusive of the third Business Day after the Relevant Payment Date, unless otherwise agreed between the Parties.

4.2.6 Each Party undertakes that where it holds securities of the same description as any securities borrowed by it or transferred to it by way of collateral at a time when a right to vote arises in respect of such securities, it will use its best endeavours to arrange for the voting rights attached to such securities to be exercised in accordance with the instructions of the Lender or Borrower (as the case may be) **provided always that** each Party shall use its best endeavours to notify the other of its instructions in writing no later than seven Business Days prior to the date upon which such votes are exercisable or as otherwise agreed between the Parties and that the Party concerned shall not be obliged so to exercise the votes in respect of a number of Securities greater than the number so lent or transferred to it. For the avoidance of doubt the Parties agree that subject as hereinbefore provided any voting rights attaching to the relevant Securities, Equivalent Securities, Collateral and/or Equivalent Collateral shall be exercisable by the persons in whose name they are registered or in the case of Securities, Equivalent Securities, Collateral and/or Equivalent Collateral in bearer form, the persons by or on behalf of whom they are held, and not necessarily by the Borrower or the Lender (as the case may be).

4.2.7 Where, in respect of any borrowed Securities or any Collateral, any rights relating to conversion, sub-division, consolidation, pre-emption, rights arising under a takeover offer or other rights, including those requiring election by the holder for the time being of such Securities or Collateral, become exercisable prior to the redelivery of Equivalent Securities or Equivalent Collateral, then the Lender or Borrower, as the case may be, may, within a reasonable time before the latest time for the exercise of the right or option give written notice to the other Party that on redelivery of Equivalent Securities or Equivalent Collateral, as the case may be, it wishes to receive Equivalent Securities or Equivalent Collateral in such form as will arise if the right is exercised or, in the case of a right which may be exercised in more than one manner, is exercised as is specified in such written notice.

4.2.8 Any payment to be made by the Borrower under this Clause shall be made in a manner to be agreed between the Parties.

5. RATES

5.1 In respect of each loan of Securities, the Borrower shall pay to the Lender, in the manner prescribed in Clause , sums calculated by applying such rate as shall be agreed between the Parties from time to time to the daily Value of the relevant Securities.

5.2 Where Cash Collateral is deposited with the Lender in respect of any loan of Securities in circumstances where:

5.2.1 interest is earned by the Lender in respect of such Cash Collateral and that interest is paid to the Lender without deduction of tax, the Lender shall pay to the Borrower, in the manner prescribed in Clause , an amount equal to the gross

amount of such interest earned. Any such payment due to the Borrower may be set-off against any payment due to the Lender pursuant to Clause hereof if either the Borrower has warranted to the Lender in this Agreement that it is subject to tax in the United Kingdom under Case I of Schedule D in respect of any income arising pursuant to or in connection with the borrowing of Securities hereunder or the Lender has notified the Borrower of the gross amount of such interest or income; and

5.2.2 sub-clause of this Clause above does not apply, the Lender shall pay to the Borrower, in the manner presented in Clause , sums calculated by applying such rates as shall be agreed between the Parties from time to time to the amount of such Cash Collateral. Any such payment due to the Borrower may be set-off against any payment due to the Lender pursuant to Clause .

5.3 In respect of each loan of Securities, the payments referred to in Clauses and shall accrue daily in respect of the period commencing on and inclusive of the Settlement Day and terminating on and exclusive of the Business Day upon which Equivalent Securities are redelivered or Cash Collateral is repaid. Unless otherwise agreed, the sums so accruing in respect of each calendar month shall be paid in arrears by the Borrower to the Lender or to the Borrower by the Lender (as the case may be) not later than the Business Day which is one week after the last Business Day of the calendar month to which such payments relate or such other date as the Parties shall from time to time agree. Any payment made pursuant to Clauses and shall be in such currency and shall be paid in such manner and at such place as shall be agreed between the Parties.

6. COLLATERAL

6.1

6.1.1 Subject to Clauses , and the Borrower undertakes to deliver Collateral to the Lender (or in accordance with the Lender's instructions) TOGETHER WITH appropriate instruments of transfer duly stamped where necessary and such other instruments as may be requisite to vest title thereto in the Lender simultaneously with delivery of the borrowed Securities and in any event no later than Close of Business on the Settlement Date. Collateral may be provided in any of the forms specified in the Schedule hereto (as agreed between the Parties);

6.1.2 where Collateral is delivered to the Lender's Nominee any obligation under this Agreement to redeliver or otherwise account for Equivalent Collateral shall be an obligation of the Lender notwithstanding that any such redelivery may be effected in any particular case by the Nominee.

6.2 Where CGO Collateral is provided to the Lender or its Nominee by member-to-member delivery or delivery-by-value in accordance with the provisions of the CGO Rules from time to time in force, the obligation of the Lender shall be to redeliver Equivalent Collateral through the CGO to the Borrower in accordance with this Agreement. Any references, (howsoever expressed) in this Agreement, the Rules, and/or any other agreement or communication between the Parties to an obligation to redeliver such

Equivalent Collateral shall be construed accordingly. If the loan of Securities in respect of which such Collateral was provided has not been discharged when the Collateral is redelivered, the Assured Payment obligation generated on such redelivery shall be deemed to constitute a payment of money which shall be treated as Cash Collateral until the loan is discharged, or further Equivalent Collateral is provided later during that Business Day. This procedure shall continue daily where CGO Collateral is delivered-by-value for as long as the relevant loan remains outstanding.

6.3 Where CGO Collateral or other collateral is provided by delivery-by-value to a Lender or its Nominee the Borrower may consolidate such Collateral with other Collateral provided by the same delivery to a third party for whom the Lender or its Nominee is acting.

6.4 Where Collateral is provided by delivery-by-value through an alternative book entry transfer system, not being the CGO, the obligation of the Lender shall be to redeliver Equivalent Collateral through such book entry transfer system in accordance with this Agreement. If the loan of Securities in respect of which such Collateral was provided has not been discharged when the Collateral is redelivered, any payment obligation generated within the book entry transfer system on such redelivery shall be deemed to constitute a payment of money which shall be treated as Cash Collateral until the loan is discharged, or further Equivalent Collateral is provided later during that Business Day. This procedure shall continue when Collateral is delivered-by-value for as long as the relevant loan remains outstanding;

6.5 Where Cash Collateral is provided the sum of money so deposited may be adjusted in accordance with Clause . Subject to sub-clause of Clause , the Cash Collateral shall be repaid at the same time as Equivalent Securities in respect of the Securities borrowed are redelivered, and the Borrower shall not assign, charge, dispose of or otherwise deal with its rights in respect of the Cash Collateral. If the Borrower fails to comply with its obligations for such redelivery of Equivalent Securities the Lender shall have the right to apply the Cash Collateral by way of set-off in accordance with Clause (*Set-Off Etc.*).

6.6 The Borrower may from time to time call for the repayment of Cash Collateral or the redelivery of Collateral equivalent to any Collateral delivered to the Lender prior to the date on which the same would otherwise have been repayable or redeliverable provided that at the time of such repayment or redelivery the Borrower shall have delivered or delivers Alternative Collateral acceptable to the Lender.

6.7

6.7.1 Where Collateral (other than Cash Collateral) is delivered in respect of which any Income may become payable, the Borrower shall call for the redelivery of Collateral equivalent to such Collateral in good time to ensure that such Equivalent Collateral may be delivered prior to any such Income becoming payable to the Lender, unless in relation to such Collateral the Parties are satisfied before the relevant Collateral is transferred that no tax will be payable to the UK Inland Revenue under Schedule 23A of the Income and Corporation Taxes Act 1988. At the time of such redelivery the Borrower shall deliver Alternative Collateral acceptable to the Lender.

6.7.2 Where the Lender receives any Income in circumstances where the Parties are satisfied as set out in sub-clause of this Clause , then the Lender shall on the date on which the Lender receives such Income or on such date as the Parties may from time to time agree, pay and deliver a sum of money or property equivalent to such Income (with any such endorsements or assignments as shall be customary and appropriate to effect the delivery) to the Borrower and shall supply Appropriate Tax Vouchers (if any) to the Borrower.

6.8 Unless the Schedule to this Agreement indicates that Clause shall apply in lieu of this Clause , or unless otherwise agreed between the Parties, the Value of the Collateral delivered to or deposited with the Lender or its nominated bank or depositary (excluding any Collateral repaid or redelivered under sub-clauses or below (as the case may be) (**"Posted Collateral"**)) in respect of any loan of Securities shall bear from day to day and at any time the same proportion to the Value of the Securities borrowed under such loan as the Posted Collateral bore at the commencement of such loan. Accordingly:

6.8.1 the Value of the Posted Collateral to be delivered or deposited while the loan of Securities continues shall be equal to the Value of the borrowed Securities and the Margin applicable thereto (the **"Required Collateral Value"**);

6.8.2 if on any Business Day the Value of the Posted Collateral in respect of any loan of Securities exceeds the Required Collateral Value in respect of such loan, the Lender shall (on demand) repay such Cash Collateral and/or redeliver to the Borrower such Equivalent Collateral as will eliminate the excess; and

6.8.3 if on any Business Day the Value of the Posted Collateral falls below the Required Collateral Value, the Borrower shall (on demand) provide such further Collateral to the Lender as will eliminate the deficiency.

6.9 Subject to Clause , unless the Schedule to this Agreement indicates that Clause shall apply in lieu of this Clause , or unless otherwise agreed between the Parties:

6.9.1 the aggregate Value of the Posted Collateral in respect of all loans of Securities outstanding under this Agreement shall equal the aggregate of the Required Collateral Values in respect of such loans;

6.9.2 if at any time the aggregate Value of the Posted Collateral in respect of all loans of Securities outstanding under this Agreement exceeds the aggregate of the Required Collateral Values in respect of such loans, the Lender shall (on demand) repay such Cash Collateral and/or redeliver to the Borrower such Equivalent Collateral as will eliminate the excess; and

6.9.3 if at any time the aggregate Value of the Posted Collateral in respect of all loans of Securities outstanding under this Agreement falls below the aggregate of Required Collateral Values in respect of all such loans, the Borrower shall (on demand) provide such further Collateral to the Lender as will eliminate the deficiency.

6.10 Where Clause applies, unless the Schedule to this Agreement indicates that this Clause does not apply, if a Party (the **"first Party"**) would, but for this Clause , be required

under Clause to repay Cash Collateral, redeliver Equivalent Securities or provide further Collateral in circumstances where the other Party (the "**second Party**") would, but for this Clause , also be required to repay Cash Collateral or provide or redeliver Equivalent Collateral under Clause , then the Value of the Cash Collateral or Equivalent Collateral deliverable by the first Party ("**X**") shall be set-off against the Value of the Cash Collateral, or Equivalent Collateral or further Collateral deliverable by the second Party ("**Y**") and the only obligation of the Parties under Clause shall be, where X exceeds Y, an obligation of the first Party, or where Y exceeds X, an obligation of the second Party, to repay Cash Collateral, redeliver Equivalent Collateral or to deliver further Collateral having a Value equal to the difference between X and Y.

6.11 Where Cash Collateral is repaid, Equivalent Collateral is redelivered or further Collateral is provided by a Party under Clause , the Parties shall agree to which loan or loans of Securities such repayment, redelivery or further provision is to be attributed and failing agreement it shall be attributed, as determined by the Party making such repayment, redelivery or further provision to the earliest outstanding loan and, in the case of a repayment or redelivery up to the point at which the Value of Collateral in respect of such loan is reduced to zero and, in the case of a further provision up to the point at which the Value of the Collateral in respect of such loan equals the Required Collateral Value in respect of such loan, and then to the next earliest outstanding loan up to the similar point and so on.

6.12 Where any Cash Collateral falls to be repaid or Equivalent Collateral to be redelivered or further Collateral to be provided under this Clause (*Collateral*), it shall be delivered within the minimum period after demand specified in the Schedule or if no appropriate period is there specified within the standard settlement time for delivery of the relevant type of Cash Collateral, Equivalent Collateral or Collateral, as the case may be.

7. REDELIVERY OF EQUIVALENT SECURITIES

7.1 The Borrower undertakes to redeliver Equivalent Securities in accordance with this Agreement and the terms of the relevant Borrowing Request. For the avoidance of doubt any reference herein or in any other agreement or communication between the Parties (howsoever expressed) to an obligation to redeliver or account for or act in relation to borrowed Securities shall accordingly be construed as a reference to an obligation to redeliver or account for or act in relation to Equivalent Securities.

7.2 Subject to Clause (*Set-Off Etc.*) hereof and the terms of the relevant Borrowing Request the Lender may call for the redelivery of all or any Equivalent Securities at any time by giving notice on any Business Day of not less than the standard settlement time for such Equivalent Securities on the exchange or in the clearing organisation through which the relevant borrowed Securities were originally delivered. The Borrower shall as hereinafter provided redeliver such Equivalent Securities not later than the expiry of such notice in accordance with the Lender's instructions. Simultaneously with the redelivery of the Equivalent Securities in accordance with such call, the Lender shall (subject to

agreement or communication between the Parties (however expressed) to an obligation to redeliver or account for or act in relation to Collateral shall accordingly be construed as a reference to an obligation to redeliver or account for or act in relation to Equivalent Collateral.

7.3 If the Borrower does not redeliver Equivalent Securities in accordance with such call, the Lender may elect to continue the loan of Securities provided that if the Lender does not elect to continue the loan the Lender may by written notice to the Borrower elect to terminate the relevant loan. Upon the expiry of such notice the provisions of Clauses to shall apply as if upon the expiry of such notice an Event of Default had occurred in relation to the Borrower (who shall thus be the Defaulting Party for the purposes of this Agreement) and as if the relevant loan were the only loan outstanding.

7.4 In the event that as a result of the failure of the Borrower to redeliver Equivalent Securities to the Lender in accordance with this Agreement a "buy-in" is exercised against the Lender then provided that reasonable notice has been given to the Borrower of the likelihood of such a "buy-in", the Borrower shall account to the Lender for the total costs and expenses reasonably incurred by the Lender as a result of such "buy-in".

7.5 Subject to the terms of the relevant Borrowing Request, the Borrower shall be entitled at any time to terminate a particular loan of Securities and to redeliver all and any Equivalent Securities due and outstanding to the Lender in accordance with the Lender's instructions. The Lender shall accept such redelivery and simultaneously therewith (subject to Clause if applicable) shall repay to the Borrower any Cash Collateral or, as the case may be, redeliver Collateral equivalent to the Collateral provided by the Borrower pursuant to Clause (*Collateral*) in respect thereof.

7.6 Where a TALISMAN short term certificate (as described in paragraph of the Schedule) is provided by way of Collateral, the obligation to redeliver Equivalent Collateral is satisfied by the redelivery of the certificate to the Borrower or its expiry as provided for in the Rules applying to such certificate.

7.7 Where a Letter of Credit is provided by way of Collateral, the obligation to redeliver Equivalent Collateral is satisfied by the Lender redelivering for cancellation the Letter of Credit so provided, or where the Letter of Credit is provided in respect of more than one loan, by the Lender consenting to a reduction in the value of the Letter of Credit.

8. **SET-OFF ETC.**

8.1 On the date and time (the **"Performance Date"**) that Equivalent Securities are required to be redelivered by the Borrower in accordance with the provisions of this Agreement the Lender shall simultaneously redeliver the Equivalent Collateral and repay any Cash Collateral held (in respect of the Equivalent Securities to be redelivered) to the Borrower. Neither Party shall be obliged to make delivery (or make a payment as the case may be) to the other unless it is satisfied that the other Party will make such delivery (or make an appropriate payment as the case may be) to it simultaneously. If it is not so satisfied (whether because an Event of Default has occurred in respect of the other Party or otherwise) it shall notify the other party and unless that other Party has made arrangements which are sufficient to assure full delivery (or the appropriate payment as

the case may be) to the notifying Party, the notifying Party shall (provided it is itself in a position, and willing, to perform its own obligations) be entitled to withhold delivery (or payment, as the case may be) to the other Party.

8.2 If an Event of Default occurs in relation to either Party, the Parties' delivery and payment obligations (and any other obligations they have under this Agreement) shall be accelerated so as to require performance thereof at the time such Event of Default occurs (the date of which shall be the **"Performance Date"** for the purposes of this Clause) and in such event:

8.2.1 the Relevant Value of the Securities to be delivered (or payment to be made, as the case may be) by each Party shall be established in accordance with Clause); and

8.2.2 on the basis of the Relevant Values so established, an account shall be taken (as at the Performance Date) of what is due from each Party to the other and (on the basis that each Party's claim against the other in respect of delivery of Equivalent Securities or Equivalent Collateral or any cash payment equals the Relevant Value thereof) the sums due from one Party shall be set-off against the sums due from the other and only the balance of the account shall be payable (by the Party having the claim valued at the lower amount pursuant to the foregoing) and such balance shall be payable on the Performance Date.

8.3 For the purposes of Clause the Relevant Value:

8.3.1 of any cash payment obligation shall equal its par value (disregarding any amount taken into account under sub-clauses or of this Clause);

8.3.2 of any securities to be delivered by the Defaulting Party shall, subject to Clause below, equal the Offer Value thereof; and

8.3.3 of any securities to be delivered to the Defaulting Party shall, subject to Clause below, equal the Bid Value thereof.

8.4 For the purposes of Clause , but subject to Clause , the Bid Value and Offer Value of any securities shall be calculated as at the Close of Business in the most appropriate market for securities of the relevant description (as determined by the Non-Defaulting Party) on the first Business Day following the Performance Date, or if the relevant Event of Default occurs outside the normal business hours of such market, on the second Business Day following the Performance Date (the **"Default Valuation Time"**).

8.5

8.5.1 Where the Non-Defaulting Party has following the occurrence of an Event of Default but prior to the Default Valuation Time purchased securities forming part of the same issue and being of an identical type and description to those to be delivered by the Defaulting Party and in substantially the same amount as those securities or sold securities forming part of the same issue and being of an identical type and description to those to be delivered by him to the Defaulting Party and in substantially the same amount as those securities, the cost of such

purchase or the proceeds of such sale, as the case may be, (taking into account all reasonable costs, fees and expenses that would be incurred in connection therewith) shall be treated as the Offer Value or Bid Value, as the case may be, of the relevant securities for the purposes of this Clause (*Set-Off Etc.*).

8.5.2 Where the amount of any securities sold or purchased as mentioned in sub-clause of this Clause is not in substantially the same amount as those securities to be valued for the purposes Clause the Offer Value or the Bid Value (as the case may be) of those securities shall be ascertained by dividing the net proceeds of sale or cost of purchase by the amount of the securities sold or purchased so as to obtain a net unit price and multiplying that net unit price by the amount of the securities to be valued.

8.6 Any reference in this Clause 8 to securities shall include any asset other than cash provided by way of Collateral.

8.7 If the Borrower or the Lender for any reason fail to comply with their respective obligations under Clauses or in respect of redelivery of Equivalent Collateral or repayment of Cash Collateral such failure shall be an Event of Default for the purposes of this Clause 8, and the person failing to comply shall thus be the Defaulting Party.

8.8 Subject to and without prejudice to its rights under Clause either Party may from time to time in accordance with market practice and in recognition of the practical difficulties in arranging simultaneous delivery of Securities, Collateral and cash transfers waive its right under this Agreement in respect of simultaneous delivery and/or payment **provided that** no such waiver in respect of one transaction shall bind it in respect of any other transaction.

9. TAXATION

9.1 The Borrower hereby undertakes promptly to pay and account for any transfer or similar duties or taxes chargeable in connection with any transaction effected pursuant to or contemplated by this Agreement, and shall indemnify and keep indemnified the Lender against any liability arising in respect thereof as a result of the Borrower's failure to do so.

9.2 The Borrower shall only make a Borrowing Request where the purpose of the loan meets the requirements of the Rules regarding the conditions that must be fulfilled for Section 129 of the Income and Corporation Taxes Act 1988 (or any statutory modification or re-enactment thereof for the time being in force) to apply to the arrangement concerning the loan, unless the Lender is aware that the transaction is unapproved for the purposes of the Rules of the UK Inland Revenue or such purpose is not met.

9.3 A Party undertakes to notify the other Party if it becomes or ceases to be an Approved UK Intermediary or an Approved UK Collecting Agent.

10. **LENDER'S WARRANTIES**

10.1 Each Party hereby warrants and undertakes to the other on a continuing basis to the intent that such warranties shall survive the completion of any transaction contemplated herein that, where acting as a Lender:

10.1.1 it is duly authorised and empowered to perform its duties and obligations under this Agreement;

10.1.2 it is not restricted under the terms of its constitution or in any other manner from lending Securities in accordance with this Agreement or from otherwise performing its obligations hereunder;

10.1.3 it is absolutely entitled to pass full legal and beneficial ownership of all Securities provided by it hereunder to the Borrower free from all liens, charges and encumbrances; and

10.1.4 where the Schedule to this Agreement specifies that this sub-clause applies, it is not resident in the United Kingdom for tax purposes and either is not carrying on a trade in the United Kingdom through a branch or agency or if it is carrying on such a trade the loan is not entered into in the course of the business of such branch or agency, and it has (i) delivered or caused to be delivered to the Borrower a duly completed and certified Certificate (MOD2) or a photocopy thereof bearing an Inland Revenue acknowledgement and unique number and such Certificate or photocopy remains valid or (ii) has taken all necessary steps to enable a specific authorisation to make gross payment of the Manufactured Dividend to be issued by the Inland Revenue.

11. **BORROWER'S WARRANTIES**

11.1 Each Party hereby warrants and undertakes to the other on a continuing basis to the intent that such warranties shall survive the completion of any transaction contemplated herein that, where acting as a Borrower:

11.1.1 it has all necessary licenses and approvals, and is duly authorised and empowered, to perform its duties and obligations under this Agreement and will do nothing prejudicial to the continuation of such authorisation, licences or approvals;

11.1.2 it is not restricted under the terms of its constitution or in any other manner from borrowing Securities in accordance with this Agreement or from otherwise performing its obligations hereunder;

11.1.3 it is absolutely entitled to pass full legal and beneficial ownership of all Collateral provided by it hereunder to the Lender free from all liens, charges and encumbrances;

11.1.4 it is acting as principal in respect of this Agreement; and

11.1.5 where the Schedule to this Agreement specifies this sub-clause applies, it is subject to tax in the United Kingdom under Case I of Schedule D in respect of

any income arising pursuant to or in connection with the borrowing of Securities hereunder.

12. EVENTS OF DEFAULT

12.1 Each of the following events occurring in relation to either Party (the **"Defaulting Party"**, the other Party being the **"Non-Defaulting Party"**) shall be an Event of Default for the purpose of Clause (*Set-Off Etc.*):

12.1.1 the Borrower or Lender failing to pay or repay Cash Collateral or deliver or redeliver Collateral or Equivalent Collateral upon the due date, and the Non-Defaulting Party serves written notice on the Defaulting Party;

12.1.2 the Lender or Borrower failing to comply with its obligations under Clause (*Collateral*), and the Non-Defaulting Party serves written notice on the Defaulting Party;

12.1.3 the Borrower failing to comply with sub-clauses , or of Clause , and the Non-Defaulting Party serves written notice on the Defaulting Party;

12.1.4 an Act of Insolvency occurring with respect to the Lender or the Borrower and (except in the case of an Act of Insolvency which is the presentation of a petition for winding up or any analogous proceeding or the appointment of a liquidator or analogous officer of the Defaulting Party in which case no such notice shall be required) the Non-Defaulting Party serves written notice on the Defaulting Party;

12.1.5 any representations or warranties made by the Lender or the Borrower being incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated, and the Non-Defaulting Party serves written notice on the Defaulting Party;

12.1.6 the Lender or the Borrower admitting to the other that it is unable to, or it intends not to, perform any of its obligations hereunder and/or in respect of any loan hereunder, and the Non-Defaulting Party serves written notice on the Defaulting Party;

12.1.7 the Lender (if appropriate) or the Borrower being declared in default by the appropriate authority under the Rules or being suspended or expelled from membership of or participation in any securities exchange or association or other self-regulatory organisation, or suspended from dealing in securities by any government agency, and the Non-Defaulting Party serves written notice on the Defaulting Party;

12.1.8 any of the assets of the Lender or the Borrower or the assets of investors held by or to the order of the Lender or the Borrower being transferred or ordered to be transferred to a trustee by a regulatory authority pursuant to any securities regulating legislation and the Non-Defaulting Party serves written notice on the Defaulting Party; or

12.1.9 the Lender or the Borrower failing to perform any other of its obligations hereunder and not remedying such failure within 30 days after the Non-Defaulting Party serves written notice requiring it to remedy such failure, and the Non-Defaulting Party serves a further written notice on the Defaulting Party.

12.2 Each Party shall notify the other if an Event of Default occurs in relation to it.

13. **OUTSTANDING PAYMENTS**

In the event of either Party failing to remit either directly or by its Nominee sums in accordance with this Agreement such Party hereby undertakes to pay a rate to the other Party upon demand on the net balance due and outstanding of 1% above the Barclays Bank PLC base rate from time to time in force.

14. **TRANSACTIONS ENTERED INTO AS AGENT**

14.1 Subject to the following provisions of this Clause , the Lender may enter into loans as agent (in such capacity, the **"Agent"**) for a third person (a **"Principal"**), whether as custodian or investment manager or otherwise (a loan so entered into being referred to in this Clause as an **"Agency Transaction"**).

14.2 A Lender may enter into an Agency Transaction if, but only if:-

14.2.1 if specifies that loan as an Agency Transaction at the time when it enters into it;

14.2.2 it enters into that loan on behalf of a single Principal whose identity is disclosed to the Borrower (whether by name or by reference to a code or identifier which the Parties have agreed will be used to refer to a specified Principal) at the time when it enters into the loan; and

14.2.3 it has at the time when the loan is entered into actual authority to enter into the loan and to perform on behalf of that Principal all of that Principal's obligations under the agreement referred to in sub-clause of Clause .

14.3 The Lender undertakes that, if it enters as agent into an Agency Transaction, forthwith upon becoming aware:

14.3.1 of any event which constitutes an Act of Insolvency with respect to the relevant Principal; or

14.3.2 of any breach of any of the warranties given in Clause below or of any event or circumstance which has the result that any such warranty would be untrue if repeated by reference to the current facts,

it will inform the Borrower of that fact and will, if so required by the Borrower, furnish it with such additional information as it may reasonably request.

14.4

Transaction. Without limiting the foregoing, the Lender shall not be liable as principal for the performance of an Agency Transaction or for breach of any warranty contained in Clause or of this Agreement, but this is without prejudice to any liability of the Lender under any other provision of this Clause .

14.4.2 All the provisions of the Agreement shall apply separately as between the Borrower and each Principal for whom the Agent has entered into an Agency transaction or Agency Transactions as if each such Principal were a party to a separate agreement with the Borrower in all respects identical with this Agreement other than this sub-clause and as if the Principal were Lender in respect of that agreement.

PROVIDED THAT

if there occurs in relation to the Agent an Event of Default or an event which would constitute an Event of Default if the Borrower served written notice under any sub-clause of Clause (*Events of Default*), the Borrower shall be entitled by giving written notice to the Principal (which notice shall be validly given if given to the Lender in accordance with Clause (*Notices*)) to declare that by reason of that event an Event of Default is to be treated as occurring in relation to the Principal. If the Borrower gives such a notice then an Event of Default shall be treated as occurring in relation to the Principal at the time when the notice is deemed to be given; and

if the Principal is neither incorporated nor has established a place of business in Great Britain, the Principal shall for the purposes of the agreement referred to in of this Clause be deemed to have appointed as its agent to receive on its behalf service of process in the courts of England the Agent, or if the Agent is neither incorporated nor has established a place of business in the United Kingdom, the person appointed by the Agent for the purposes of this Agreement, or such other person as the Principal may from time to time specify in a written notice given to the other party.

14.4.3 The foregoing provisions of this Clause do not affect the operation of the Agreement as between the Borrower and the Lender in respect of any transactions into which the Lender may enter on its own account as principal.

14.5 The Lender warrants to the Borrower that it will, on every occasion on which it enters or purports to enter into a transaction as an Agency Transaction, have been duly authorised to enter into that loan and perform the obligations arising thereunder on behalf of the person whom it specifies as the Principal in respect of that transaction and to perform on behalf of that person all the obligations of that person under the agreement referred to in sub-clause of Clause .

15. TERMINATION OF COURSE OF DEALINGS BY NOTICE

Each Party shall have the right to bring the course of dealing contemplated under this Agreement to an end by giving not less than 15 Business Days' notice in writing to the

other Party (which notice shall specify the date of termination) subject to an obligation to ensure that all loans and which have been entered into but not discharged at the time such notice is given are duly discharged in accordance with this Agreement and with the Rules.

16. **GOVERNING PRACTICES**

The Borrower shall use its best endeavours to notify the Lender (in writing) of any changes in legislation or practices governing or affecting the Lender's rights or obligations under this Agreement or the treatment of transactions effected pursuant to or contemplated by this Agreement.

17. **OBSERVANCE OF PROCEDURES**

Each of the Parties hereto agrees that in taking any action that may be required in accordance with this Agreement it shall observe strictly the procedures and timetable applied by the Rules and, further, shall observe strictly any agreement (oral or otherwise) as to the time for delivery or redelivery of any money, Securities, Equivalent Securities, Collateral or Equivalent Collateral entered into pursuant to this Agreement.

18. **SEVERANCE**

If any provision of this Agreement is declared by any judicial or other competent authority to be void or otherwise unenforceable, that provision shall be severed from the Agreement and the remaining provisions of this Agreement shall remain in full force and effect. The Agreement shall, however, thereafter be amended by the Parties in such reasonable manner so as to achieve, without illegality, the intention of the Parties with respect to that severed provision.

19. **SPECIFIC PERFORMANCE**

Each Party agrees that in relation to legal proceedings it will not seek specific performance of the other Party's obligation to deliver or redeliver Securities, Equivalent Securities, Collateral or Equivalent Collateral but without prejudice to any other rights it may have.

20. **NOTICES**

All notices issued under this Agreement shall be in writing (which shall include telex or facsimile messages) and shall be deemed validly delivered if sent by prepaid first class post to or left at the addresses or sent to the telex or facsimile number of the Parties respectively or such other addresses or telex or facsimile numbers as each Party may notify in writing to the other.

21. **ASSIGNMENT**

Neither Party may charge assign or transfer all or any of its rights or obligations hereunder without the prior consent of the other Party.

22. **NON-WAIVER**

No failure or delay by either Party to exercise any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege as herein provided.

23. **ARBITRATION AND JURISDICTION**

23.1 All claims, disputes and matters of conflict between the Parties arising hereunder shall be referred to or submitted for arbitration in London in accordance with English Law before a sole arbitrator to be agreed between the Parties or in default of agreement by an arbitrator to be nominated by the Chairman of The Stock Exchange on the application of either Party, and this Agreement shall be deemed for this purpose to be a submission to arbitration within the Arbitration Acts 1950 and 1979, or any statutory modification or re-enactment thereof for the time being in force.

23.2 This Clause shall take effect notwithstanding the frustration or other termination of this Agreement.

23.3 No action shall be brought upon any issue between the Parties under or in connection with this Agreement until the same has been submitted to arbitration pursuant hereto and an award made.

24. **TIME**

Time shall be of the essence of the Agreement.

25. **RECORDING**

The Parties agree that each may electronically record all telephonic conversations between them.

26. **GOVERNING LAW**

This Agreement is governed by, and shall be construed in accordance with, English Law.

IN WITNESS WHEREOF this Agreement has been executed on behalf of the Parties hereto the day and year first before written.

SIGNED BY)
)
)
ON BEHALF OF)
)
)
IN THE PRESENCE OF:)

SIGNED BY)

)
)
ON BEHALF OF)
)
)
IN THE PRESENCE OF:)

SCHEDULE 1

COLLATERAL

Types

Collateral acceptable under this Agreement may include the following or otherwise, as agreed between the Parties from time to time whether transferable by hand or within a depositary:

1. British Government Stock and other stock registered at the Bank of England which is transferable through the CGO to the Lender or its Nominee against an Assured Payment, hereinbefore referred to as CGO Collateral.

2.

   (a) British Government Stock and Sterling Issues by foreign governments (transferable through the CGO), in the form of an enfaced transfer deed or a long term collateral certificate or overnight collateral chit issued by the CGO accompanied (in each case) by an executed unenfaced transfer deed;

   (b) Corporation and Commonwealth Stock in the form of registered stock or allotment letters duly renounced;

   (c) UK Government Treasury Bills;

   (d) U.S. Government Treasury Bills;

   (e) Bankers' Acceptances;

   (f) Sterling Certificates of Deposit;

   (g) Foreign Currency Certificates of Deposit;

   (h) Local Authority Bonds;

   (i) Local Authority Bills;

   (j) Letters of Credit;

   (k) Bonds or Equities in registrable form or allotment letters duly renounced;

   (l) Bonds or Equities in bearer form.

3. Unexpired TALISMAN short-term certificates issued by The Stock Exchange; and

4. Cash Collateral.

Valuation of Collateral

Collateral provided in accordance with this Agreement shall be evaluated by reference to the following, or by such means as the Parties may from time to time agree:

(A) in respect of Collateral types A(i) and B(i), the current CGO value calculated by reference to the middle market price of each stock as determined daily by the Bank of

England, adjusted to include the accumulated interest thereon (the CGO Reference Price);

(B) in respect of Collateral types B(ii) to (ix), (xi) and (xii) the Reference Price thereof;

(C) in respect of Collateral types B(x) and C the value specified therein.

Margin

The Value of the Collateral delivered pursuant to Clause (*Collateral*) by the Borrower to the Lender under the terms and conditions of this Agreement shall on each Business Day represent not less than the Value of the borrowed Securities TOGETHER WITH the following additional percentages hereinbefore referred to as ("the **Margin**") unless otherwise agreed between the Parties:-

(i) in the case of Collateral types B(i) to (x) and D: %, (for Certificates of Deposit the Margin shall be the accumulated interest thereon); or

(ii) in the case of Collateral types B(xi), (xii) and C : %

If the Value of the borrowed Securities includes any margin over the mid market price of the borrowed Securities this shall be taken into account in determining the Margin applicable.

Basis of Margin Maintenance

Clause (transaction by transaction margining)*/Clause (global margining)* shall apply.

Clause (netting of margin where one party both a Borrower and Lender) shall/shall not* apply.

Minimum period after demand for transferring Cash Collateral or Equivalent Collateral:

BASE CURRENCY

The Base Currency applicable to this Agreement is

LENDER'S WARRANTIES

Clause shall/shall not* apply.

BORROWER'S WARRANTIES

Clause shall/shall not* apply.

[NB* Delete as appropriate.]