

In the Matter of the Rehabilitation of:

Case No. 10 CV 1576

Segregated Account of Ambac Assurance Corporation

AFFIDAVIT OF JOSEPHINE K. BENKERS

STATE OF WISCONSIN)
) SS
COUNTY OF DANE)

Josephine K. Benkers, being duly sworn on oath, deposes and says:

1. I am an attorney licensed to practice in Wisconsin. I am one of the attorneys representing Assured Guaranty Re Ltd. (“AG Re”) and Assured Guaranty Corp. (“Assured Guaranty” and, together with AG Re, the “Assured Reinsurers”).

2. I make this affidavit based on my personal knowledge and in support of the Assured Reinsurers’ Motion for a Partial Stay Pending Appeal.

3. Shortly after the Court entered its June 14, 2011 Order Granting Rehabilitator’s Motion to Enforce Injunction Against Assured Guaranty Corp. and Assured Guaranty Re Ltd. (the “Order”), the Assured Reinsurers and the Rehabilitator began discussing terms for relief pending appeal. These discussions concerned a stay of the Order until the Assured Reinsurers’ dispute is resolved, provided the Assured Reinsurers pay into escrow whatever amounts come due under the Order in the meantime.

4. On July 15, 2011, I provided the Rehabilitator's counsel with a draft escrow agreement to further these discussions. A true and correct copy of that draft agreement is attached here as Exhibit A.

5. The Rehabilitator responded with a demand that any escrowed funds be guaranteed by the Assured Reinsurers to yield 5.1% APR, regardless of what the escrow account actually earns. The Rehabilitator referred to this demand in a voicemail he left for me on July 27, 2011. A true and correct transcript of that voicemail is attached here as Exhibit B.

6. The Rehabilitator's counsel also emailed a standard template of escrow terms from the Bank of New York Mellon. A true and correct copy of the email from the Rehabilitator's counsel is attached here as Exhibit C. A true and correct copy of the attachment to his email is attached here as Exhibit D.

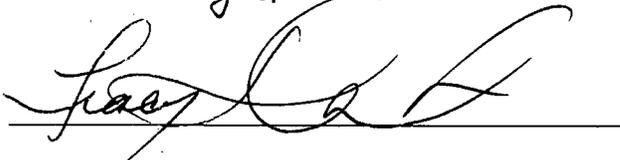
7. I have researched the market rate of return currently paid by conservative money market funds. I learned that in the current market, returns fall well below the 5.1% range. Potential escrow agents, including the Bank of New York Mellon, quoted rates ranging from 0.01% to 0.1% APY for money market investments under an escrow agreement.

[SIGNATURE ON NEXT PAGE]

Dated this 3rd day of August, 2011.


Josephine K. Benkers

Subscribed and sworn to before me on this
3rd day of August, 2011.



Notary Public, State of Wisconsin.

My commission [is permanent] expires 3/24/2013

Exhibit A

ESCROW AGREEMENT¹

This Escrow Agreement (the "Agreement") is made and entered into as of the ___ day of July 2011 (the "Effective Date"), by and among the Wisconsin Commissioner of Insurance, as Rehabilitator of the Segregated Account of Ambac Assurance Corporation (the "Rehabilitator"), Ambac Assurance Corporation ("Ambac"), Assured Guaranty Corp. ("Assured Guaranty"), and [_____], (the "Escrow Agent") (collectively "the Parties").

WHEREAS, Assured Guaranty and Ambac are parties to a Second Amended and Restated Surplus Share Reinsurance Agreement, dated as of April 1, 2003 (as amended, modified or supplemented, the "Surplus Share Agreement") under which Assured Guaranty agreed to reinsure a portion of certain insurance policies issued by Ambac;

WHEREAS, in March, 2010, Ambac allocated certain insurance policies, including some that are reinsured under the Surplus Share Agreement, to a segregated account (the "Segregated Account");

WHEREAS, the Rehabilitator commenced a rehabilitation proceeding in the Circuit Court, Dane County, Wisconsin (the "Rehabilitation Court"), Case No. 10-CV-1576 (the "Rehabilitation Proceeding") with respect to the Segregated Account;

WHEREAS, the Plan of Rehabilitation filed by the Rehabilitator in October 2010 calls for the satisfaction of certain obligations of the Segregated Account by the payment of cash and the delivery of surplus notes of the Segregated Account ("Surplus Notes");

WHEREAS, the Rehabilitator has also settled or commuted certain obligations of the Segregated Account by paying cash and delivering Surplus Notes;

WHEREAS, Ambac and the Rehabilitator have demanded that Assured Guaranty pay its reinsurance obligations in cash for those portions of obligations reinsured by Assured Guaranty under the Surplus Share Agreement that the Segregated Account has discharged by delivering Surplus Notes;

WHEREAS, Assured Guaranty disputes that it is obligated to pay cash in respect of Surplus Notes delivered by the Segregated Account (hereinafter, "the Dispute");

WHEREAS, the Rehabilitator sought and on June 14, 2011, the Rehabilitation Court entered an Order Granting Rehabilitator's Motion to Enforce Injunction Against Assured Guaranty (the "Order"), which (i) prohibits Assured Guaranty from pursuing arbitration of the Dispute and (ii) requires Assured Guaranty to pay Ambac, in cash, its proportionate share of Surplus Notes delivered to holders of policies allocated to the Segregated Account and reinsured by Assured Guaranty under the Surplus Share Agreement;

¹ **Note:** We would expect to also add to this agreement additional provisions regarding the duties, liability, removal of and communication with the escrow agent. We would expect the final escrow agreement to be based on the escrow agent's standard form and incorporate the substance of the provisions set forth herein.

WHEREAS, Assured Guaranty has appealed from the Order (Appeal No. 11-AP-1486-LV, hereinafter "the Appeal");

WHEREAS, Assured Guaranty, the Rehabilitator, and Ambac have stipulated to a stay pending appeal of that the portion of Order that requires Assured Guaranty to pay Ambac, in cash, its proportionate share of Surplus Notes delivered by the Segregated Account to holders of policies allocated to the Segregated Account and reinsured by Assured Guranty under the Surplus Share Agreement;

WHEREAS, Assured Guaranty, the Rehabilitator, and Ambac expect there to be additional deliveries of Surplus Notes that will be subject to the Dispute; and

WHEREAS, the Parties hereby enter into this Agreement pending a final resolution of the Dispute by the Parties, whether through the courts, through arbitration, or otherwise.

NOW, THEREFORE, the Parties agree as follows:

1. Establishment of Escrow Account. Within seven (7) days of the execution and delivery if this Agreement, the Escrow Agent will open and establish a non-interest bearing escrow account (the "Escrow Account") in the name of Assured Guaranty.

2. Deposit of Funds. Concurrently with the opening of the Escrow Account, Assured Guaranty will deposit cash in the amount of \$200,000 into the Escrow Account, which represents that portion of the settlement reached by the Rehabilitator and Ambac with the holder and beneficiaries of Segregated Account Policy number AB0632BE on March 14, 2011 reinsured by Assured Guaranty under the Surplus Share Agreement which was satisfied by the delivery of Surplus Notes by the Segregated Account. If further obligations under policies allocated to the Segregated Account and reinsured by Assured Guaranty under the Surplus Share Agreement are resolved, settled or satisfied in whole or in part by the delivery of Surplus Notes by the Segregated Account, Assured Guaranty, Ambac and the Rehabilitator agree that Assured Guaranty may stay any obligation it may have to pay such amounts by depositing cash in the amount of Assured Guaranty's proportionate share of such obligations into the Escrow Account. The Escrow Account/Agent information is as follows:

(insert Agent/account information).

3. Non-withholding from Premiums to Assured Guaranty. Ambac and the Rehabilitator agree, to the extent of the amounts deposited by Assured Guaranty into the Escrow Account, that neither Ambac nor the Rehabilitator shall withhold or offset any amounts that they claim are payable by Assured Guaranty under the Surplus Share Agreement from or against any premiums or other amounts payable by Ambac or the Segregated Account to Assured Guaranty.

4. Release of Funds by Escrow Agent. Any amounts in the Escrow Account may only be released by the Escrow Agent upon the written direction of both Ambac and Assured Guaranty. Ambac and Assured Guaranty agree to direct the Escrow Agent to release all funds in the Escrow Account (including any accrued interest or other gains) to the prevailing party/parties when the Dispute is finally resolved, whether by the Wisconsin Court of Appeals, by a completed arbitration proceeding, or by agreement of the Parties.

5. Investments of Funds. Any funds held in the Escrow Account shall be invested by the Escrow Agent at the written direction of Ambac in accordance with the investment guidelines attached hereto as Exhibit A.²

6. Notice. All notices, consents, waivers and other communications required or permitted by this Agreement shall be in writing and shall be deemed given to a party when (a) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid); (b) sent by facsimile or e-mail with confirmation of transmission by the transmitting equipment; or (c) received or rejected by the addressee, if sent by certified mail, return receipt requested, in each case to the following addresses, facsimile numbers or e-mail addresses and marked to the attention of the person (by name or title) designated below (or to such other address, facsimile number, e-mail address or person as a party may designate by notice to the other parties):

Rehabilitator:

Address:

Attention:

Fax no.:

E-mail address:

Ambac:

Address:

Attention:

Fax no.:

E-mail address:

Assured Guaranty:

Address:

Attention:

Fax no.:

E-mail address:

7. Reservation of Rights. Nothing about this Agreement constitutes an admission or waiver by any of the Rehabilitator, Ambac or Assured Guaranty as to any of the issues raised in the Dispute and/or before the Rehabilitation Court or the Wisconsin Court of Appeals.

8. Continuance of Agreement. Neither this Agreement nor any right, benefit or interest hereunder may be assigned by any party without the prior written consent of the others. This Agreement shall be binding upon the parties hereto and their respective successors and permitted assignees.

² **Note:** Investment guidelines are to be discussed. Assured would expect that all investments would be in money market accounts and short term treasuries, but is willing to discuss other investments that would allow Ambac to meet its targeted rate of return.

Additional procedures regarding investments are to be discussed with the escrow agent.

9. Governing Law. This Agreement will be governed by, and construed in accordance with, the laws of the State of New York, without regard to any principles of conflicts of law thereof that are not mandatorily applicable by law and would permit or require the application of the laws of another jurisdiction.³

10. Counterparts. This Agreement may be exercised in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. Each of the parties to this Agreement agrees that a signature affixed to a counterpart of this Agreement and delivered by facsimile or other electronic transmission by any person is intended to be its, his or her signature and shall be valid, binding and enforceable.

³ **Note to Assured:** We would also typically expect to include either an arbitration or submission to jurisdiction provision. We have not added such a provision to this draft on the assumption that the rehabilitator would just demand that all disputes be resolved by the receivership court.

IN WITNESS WHEREOF, the Parties hereto have executed this Escrow Agreement on the day and year first written above.

Assured Guaranty Corp.

By:_____

The Rehabilitator of the Segregated
Account of Ambac Assurance
Corporation

By:_____

Ambac Assurance Corporation

By:_____

[Escrow Agent]

By:_____

Exhibit B

Good morning, Josie. Mike Van Sicklen, Wednesday, late morning. Just calling – I've been out of town for a few days – to see where you are on getting back to us with a written kind of proposal that incorporated the provisions you and I talked about before I left town last Thursday morning on the relief pending appeal, you know, using Bank of New York as the escrow bank, two accounts, 5.1% crediting whatever interest toward the 5.1 that the trustee bank, BONY, might pay on the accounts, etc. Please let me know. I don't want to get to another, you know, renewal of the stipulation. It just shouldn't be that complicated. And then secondly, let me know, Assured's filed a motion to supplement the record, putting in the, you know, proposed form of order that we submitted. I see the record also doesn't include the proposed form of order you submitted. We'd like to make it reciprocal. I want to stipulate that both would go in, but I don't think it's appropriate that only one goes in. So, let me know please if that's o.k. and we can work up a stipulation. Thanks.

Exhibit C

From: Van Sicklen, Michael B. [<mailto:MVanSicklen@foley.com>]
Sent: Thursday, July 28, 2011 10:53 AM
To: Benkers, Josephine K.
Cc: Lynch, Matthew R.; Ricardo, Henry
Subject: FW: Assured - Escrow

Josie---Thanks for your response vm regarding the agreement on relief pending appeal. Attached is a copy of the standard BONY escrow form that it evidently has used in other AAC matters. It needs to be tailored to this situation and completed in conjunction with the relief-pending-appeal agreement you are editing as we discussed last week.

We look forward to your proposed form of stip for enlarging the record on appeal to include the cover letter and enclosed form of order Assured filed with judge Johnston.

Michael B. Van Sicklen
Foley & Lardner LLP - Madison
150 East Gilman Street
Post Office Box 1497
Madison, Wisconsin 53701
Telephone: (608) 258-4206
Facsimile: (608) 258-4258
email: mvansicklen@foleylaw.com

The preceding email message may be confidential or protected by the attorney-client privilege. It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this message in error, please (i) do not read it, (ii) reply to the sender that you received the message in error, and (iii) erase or destroy the message. Legal advice contained in the preceding message is solely for the benefit of the Foley & Lardner LLP client(s) represented by the Firm in the particular matter that is the subject of this message, and may not be relied upon by any other party.

Internal Revenue Service regulations require that certain types of written advice include a

disclaimer. To the extent the preceding message contains advice relating to a Federal tax issue, unless expressly stated otherwise the advice is not intended or written to be used, and it cannot be used by the recipient or any other taxpayer, for the purpose of avoiding Federal tax penalties, and was not written to support the promotion or marketing of any transaction or matter discussed herein.

Exhibit D



THE BANK OF NEW YORK MELLON

ESCROW AGREEMENT

between

and

THE BANK OF NEW YORK MELLON

Dated as of _____, 20__

ACCOUNT NUMBER(S) _____

SHORT TITLE OF ACCOUNT _____

ESCROW AGREEMENT made this _____ day of _____
_ by and between THE BANK OF NEW YORK MELLON ("Escrow Agent") and

the undersigned (collectively the "Depositors" and individually the "Depositor").

Depositors and Escrow Agent hereby agree that, in consideration of the mutual promises and covenants contained herein, Escrow Agent shall hold in escrow and shall distribute Escrow Property (as defined herein) in accordance with and subject to the following Instructions and Terms and Conditions:

I. INSTRUCTIONS:

1. **Escrow Property**

The property and/or funds deposited or to be deposited with Escrow Agent by Depositors shall be as follows:

The foregoing property and/or funds, plus all interest, dividends and other distributions and payments thereon (collectively the "Distributions") received by Escrow Agent, less any property and/or funds distributed or paid in accordance with this Escrow Agreement, are collectively referred to herein as "Escrow Property."

2. **Investment of Escrow Property** Depositors are to select one of the following options:

_____ (a) Escrow Agent shall have no obligation to pay interest on or to invest or reinvest any Escrow Property deposited or received hereunder.

_____ (b) Upon written directions from _____ the Escrow Agent shall invest or reinvest Escrow Property without distinction between principal and income, in the following:

One or more short-term market instruments including but not limited to marketable obligations issued or guaranteed by the U.S. Government, its agencies or instrumentalities, bank instruments, corporate debt securities issued by U.S. or foreign companies, commercial paper, demand instruments, adjustable rate obligations, asset-backed securities, restricted securities, fully collateralized

repurchase agreements or money market funds subject to the requirements of the Investment Company Act of 1940, as amended, invested in any one or more of the aforementioned types of instruments.

Escrow Agent shall have no liability for any loss arising from or related to any such investment other than in accordance with paragraph 4 of the Terms and Conditions.

3. **Distribution of Escrow Property**

Escrow Agent is directed to hold and distribute the Escrow Property in the following manner:

4. **Addresses**

Notices, instructions and other communications shall be sent to Escrow Agent, Corporate Trust Administration, 101 Barclay Street-Floor 8W, New York, New York 10286, Attn.: Insurance Trust and Escrow Group and to Depositors as follows:

_____	_____
_____	_____
_____	_____
_____	_____

5. **Distribution of Escrow Property Upon Termination**

Upon termination of this Escrow Agreement, Escrow Property then held hereunder shall be distributed as follows:

6. **Compensation**

- (a) At the time of execution of this Escrow Agreement, Depositors shall pay Escrow Agent an acceptance fee of \$. In addition, Depositors shall pay Escrow Agent an annual fee of \$, payable upon execution of this Agreement and thereafter on each anniversary date of this Agreement. The annual fee shall not be pro-rated for any portion of a year.
- (b) Depositors shall pay all activity charges as per Escrow Agent's current fee schedule.
- (c) Depositors shall be responsible for and shall reimburse Escrow Agent upon demand for all expenses, disbursements and advances incurred or made by Escrow Agent in connection with this Agreement.

II. TERMS AND CONDITIONS:

1. The duties, responsibilities and obligations of Escrow Agent shall be limited to those expressly set forth herein and no duties, responsibilities or obligations shall be inferred or implied. Escrow Agent shall not be subject to, nor required to comply with, any other agreement between or among any or all of the Depositors or to which any Depositor is a party, even though reference thereto may be made herein, or to comply with any direction or instruction (other than those contained herein or delivered in accordance with this Escrow Agreement) from any Depositor or any entity acting on its behalf. Escrow Agent shall not be required to, and shall not, expend or risk any of its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.
2. This Agreement is for the exclusive benefit of the parties hereto and their respective successors hereunder, and shall not be deemed to give, either express or implied, any legal or equitable right, remedy, or claim to any other entity or person whatsoever.
3. If at any time Escrow Agent is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects Escrow Property (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of Escrow Property), Escrow Agent is authorized to comply therewith in any manner as it or its legal counsel of its own choosing deems appropriate; and if Escrow Agent complies with any such judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process, Escrow Agent shall not be liable to any of the parties hereto or to any other person or entity even though such order, judgment, decree, writ or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect.
4. (a) Escrow Agent shall not be liable for any action taken or omitted or for any loss or injury resulting from its actions or its performance or lack of performance of its duties hereunder in the absence of gross negligence or willful misconduct on its part. In no event shall Escrow Agent be liable (i) for acting in accordance with or relying upon any instruction, notice, demand, certificate or document from any Depositor or any entity acting on behalf of any Depositor, (ii) for any consequential, punitive or special damages, (iii) for the acts or omissions of its nominees, correspondents, designees, subagents or subcustodians, or (iv) for an amount in excess of the value of the Escrow Property, valued as of the date of deposit.

(b) If any fees, expenses or costs incurred by, or any obligations owed to, Escrow Agent hereunder are not promptly paid when due, Escrow Agent may reimburse itself therefor from the Escrow Property and may sell, convey or otherwise dispose of any Escrow Property for such purpose.

(c) As security for the due and punctual performance of any and all of Depositors' obligations to Escrow Agent hereunder, now or hereafter arising, Depositors, individually and collectively, hereby pledge, assign and grant to Escrow Agent a continuing security interest in, and a lien on, the Escrow Property and all Distributions thereon or additions thereto (whether such additions are the result of deposits by Depositors or the investment of Escrow Property). The security interest of Escrow Agent shall at all times be valid, perfected and enforceable by Escrow Agent against Depositors and all third parties in accordance with the terms of this Escrow Agreement.

(d) Escrow Agent may consult with legal counsel at the expense of the Depositors as to any matter relating to this Escrow Agreement, and Escrow Agent shall not incur any liability in acting in good faith in accordance with any advice from such counsel.

(e) Escrow Agent shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of Escrow Agent (including but not limited to any act or provision of any present or future law or regulation or governmental authority, any act of God or war, or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility).

5. Unless otherwise specifically set forth herein, Escrow Agent shall proceed as soon as practicable to collect any checks or other collection items at any time deposited hereunder. All such collections shall be subject to Escrow Agent's usual collection practices or terms regarding items received by Escrow Agent for deposit or collection. Escrow Agent shall not be required, or have any duty, to notify anyone of any payment or maturity under the terms of any instrument deposited hereunder, nor to take any legal action to enforce payment of any check, note or security deposited hereunder or to exercise any right or privilege which may be afforded to the holder of any such security.
6. Escrow Agent shall provide to Depositors monthly statements identifying transactions, transfers or holdings of Escrow Property and each such statement shall be deemed to be correct and final upon receipt thereof by the Depositors unless Escrow Agent is notified in writing to the contrary

within thirty (30) business days of the date of such statement.

7. Escrow Agent shall not be responsible in any respect for the form, execution, validity, value or genuineness of documents or securities deposited hereunder, or for any description therein, or for the identity, authority or rights of persons executing or delivering or purporting to execute or deliver any such document, security or endorsement.
8. Notices, instructions or other communications shall be in writing and shall be given to the address set forth in the "Addresses" provision herein (or to such other address as may be substituted therefor by written notification to Escrow Agent or Depositors). Notices to Escrow Agent shall be deemed to be given when actually received by Escrow Agent's Insurance Trust and Escrow Unit of the Corporate Trust Division. Escrow Agent is authorized to comply with and rely upon any notices, instructions or other communications believed by it to have been sent or given by Depositors or by a person or persons authorized by Depositors. Whenever under the terms hereof the time for giving a notice or performing an act falls upon a Saturday, Sunday, or banking holiday, such time shall be extended to the next day on which Escrow Agent is open for business.
9. Depositors, jointly and severally, shall be liable for and shall reimburse and indemnify Escrow Agent and hold Escrow Agent harmless from and against any and all claims, losses, liabilities, costs, damages or expenses (including reasonable attorneys' fees and expenses) (collectively, "Losses") arising from or in connection with or related to this Escrow Agreement or being Escrow Agent hereunder (including but not limited to Losses incurred by Escrow Agent in connection with its successful defense, in whole or in part, of any claim of gross negligence or willful misconduct on its part), provided, however, that nothing contained herein shall require Escrow Agent to be indemnified for Losses caused by its gross negligence or willful misconduct.
10. (a) Depositors may remove Escrow Agent at any time by giving to Escrow Agent thirty (30) calendar days' prior notice in writing signed by all Depositors. Escrow Agent may resign at any time by giving to calendar days' prior written notice thereof.

(b) Within ten (10) calendar days after giving the foregoing notice of removal to Escrow Agent or receiving the foregoing notice of resignation from Escrow Agent, all Depositors shall jointly agree on and appoint a successor Escrow Agent. If a successor Escrow Agent has not accepted such appointment by the end of such 10-day period, Escrow Agent may, in its sole discretion, deliver the Escrow Property to

any of the Depositors at the address provided herein or may apply to a court of competent jurisdiction for the appointment of a successor Escrow Agent or for other appropriate relief. The costs and expenses (including reasonable attorneys' fees and expenses) incurred by Escrow Agent in connection with such proceeding shall be paid by, and be deemed a joint and several obligation of, the Depositors.

(c) Upon receipt of the identity of the successor Escrow Agent, Escrow Agent shall either deliver the Escrow Property then held hereunder to the successor Escrow Agent, less Escrow Agent's fees, costs and expenses or other obligations owed to Escrow Agent, or hold such Escrow Property (or any portion thereof), pending distribution, until all such fees, costs and expenses or other obligations are paid.

(d) Upon delivery of the Escrow Property to successor Escrow Agent, Escrow Agent shall have no further duties, responsibilities or obligations hereunder.

11. (a) In the event of any ambiguity or uncertainty hereunder or in any notice, instruction or other communication received by Escrow Agent hereunder, Escrow Agent may, in its sole discretion, refrain from taking any action other than retain possession of the Escrow Property, unless Escrow Agent receives written instructions, signed by all Depositors, which eliminates such ambiguity or uncertainty.

(b) In the event of any dispute between or conflicting claims by or among the Depositors and/or any other person or entity with respect to any Escrow Property, Escrow Agent shall be entitled, in its sole discretion, to refuse to comply with any and all claims, demands or instructions with respect to such Escrow Property so long as such dispute or conflict shall continue, and Escrow Agent shall not be or become liable in any way to the Depositors for failure or refusal to comply with such conflicting claims, demands or instructions. Escrow Agent shall be entitled to refuse to act until, in its sole discretion, either (i) such conflicting or adverse claims or demands shall have been determined by a final order, judgment or decree of a court of competent jurisdiction, which order, judgment or decree is not subject to appeal, or settled by agreement between the conflicting parties as evidenced in a writing satisfactory to Escrow Agent or (ii) Escrow Agent shall have received security or an indemnity satisfactory to it sufficient to hold it harmless from and against any and all Losses which it may incur by reason of so acting. Escrow Agent may, in addition, elect, in its sole discretion, to commence an interpleader action or seek other judicial relief or orders as it may deem, in its sole discretion, necessary. The costs and expenses (including reasonable attorneys' fees and expenses) incurred in connection with

such proceeding shall be paid by, and shall be deemed a joint and several obligation of, the Depositors.

12. This Agreement shall be interpreted, construed, enforced and administered in accordance with the internal substantive laws (and not the choice of law rules) of the State of New York. Each of the Depositors hereby submits to the personal jurisdiction of and each agrees that all proceedings relating hereto shall be brought in courts located within the City and State of New York or elsewhere as Escrow Agent may select. Each of the Depositors hereby waives the right to trial by jury and to assert counterclaims in any such proceedings. To the extent that in any jurisdiction any Depositor may be entitled to claim, for itself or its assets, immunity from suit, execution, attachment (whether before or after judgment) or other legal process, each hereby irrevocably agrees not to claim, and hereby waives, such immunity. Each Depositor waives personal service of process and consents to service of process by certified or registered mail, return receipt requested, directed to it at the address last specified for notices hereunder, and such service shall be deemed completed ten (10) calendar days after the same is so mailed.
13. Except as otherwise permitted herein, this Escrow Agreement may be modified only by a written amendment signed by all the parties hereto, and no waiver of any provision hereof shall be effective unless expressed in a writing signed by the party to be charged.
14. The rights and remedies conferred upon the parties hereto shall be cumulative, and the exercise or waiver of any such right or remedy shall not preclude or inhibit the exercise of any additional rights or remedies. The waiver of any right or remedy hereunder shall not preclude the subsequent exercise of such right or remedy.
15. Each Depositor hereby represents and warrants (a) that this Escrow Agreement has been duly authorized, executed and delivered on its behalf and constitutes its legal, valid and binding obligation and (b) that the execution, delivery and performance of this Escrow Agreement by Depositor do not and will not violate any applicable law or regulation.
16. The invalidity, illegality or unenforceability of any provision of this Agreement shall in no way affect the validity, legality or enforceability of any other provision; and if any provision is held to be enforceable as a matter of law, the other provisions shall not be affected thereby and shall remain in full force and effect.
17. This Agreement shall constitute the entire agreement of the parties with respect to the subject matter and supersedes all prior oral or written agreements in regard thereto.

18. This Agreement shall terminate upon the distribution of all Escrow Property from the Account. The provisions of these Terms and Conditions shall survive termination of this Escrow Agreement and/or the resignation or removal of the Escrow Agent.
19. No printed or other material in any language, including prospectuses, notices, reports, and promotional material which mentions "The Bank of New York" by name or the rights, powers, or duties of the Escrow Agent under this Agreement shall be issued by any other parties hereto, or on such party's behalf, without the prior written consent of Escrow Agent.
20. The headings contained in this Agreement are for convenience of reference only and shall have no effect on the interpretation or operation hereof.
21. This Escrow Agreement may be executed by each of the parties hereto in any number of counterparts, each of which counterpart, when so executed and delivered, shall be deemed to be an original and all such counterparts shall together constitute one and the same agreement.
22. The Escrow Agent does not have any interest in the Escrowed Property deposited hereunder but is serving as escrow holder only and having only possession thereof. _____ shall pay or reimburse the Escrow Agent upon request for any transfer taxes or other taxes relating to the Escrowed Property incurred in connection herewith and shall indemnify and hold harmless the Escrow Agent any amounts that it is obligated to pay in the way of such taxes. Any payments of income from this Escrow Account shall be subject to withholding regulations then in force with respect to United States taxes. The parties hereto will provide the Escrow Agent with appropriate W-9 forms for tax I.D., number certifications, or W-8 forms for non-resident alien certifications. It is understood that the Escrow Agent shall be responsible for income reporting only with respect to income earned on investment of funds which are a part of the Escrowed Property and is not responsible for any other reporting. This paragraph and paragraph (9) shall survive notwithstanding any termination of this Escrow Agreement or the resignation of the Escrow Agent.

IN WITNESS WHEREOF, each of the parties has caused this Escrow Agreement to be executed by a duly authorized officer as of the day and year first written above.

[Name of Depositor]

[Name of Depositor]

By: _____
Name:
Title:

Name:
Title:

THE BANK OF NEW YORK MELLON, as Escrow Agent

By: _____
Name:
Title: