**Section 130.APPENDIX D Subordinated Loan Agreement for Equity Capital**

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| SUBORDINATED LOAN AGREEMENT |
| SL-1 |
| AGREEMENT BETWEEN: |
| Lender |  |
| (Name) |
|  |  |
| (Street Address |
|  |  |  |  |  |  |
|  | (City) |  | (State) |  | (Zip) |
|  | AND |  |
| Broker-Dealer |  |
| (Name) |
|  |  |
| (Street Address) |
|  |  |  |  |  |  |
|  | (City) |  | (State) |  | (Zip) |
| NASD ID NO.: |  |
| DATE FILED: |  |
|  | NASD |
| SUBORDINATED LOAN AGREEMENT |
|  | AGREEMENT dated  |  | to be effective |  |
| between |  |  (the "Lender") and |  |
| (the "Broker-Dealer). |
| In consideration of the sum of $ |  | and subject to the terms and  |
| conditions hereinafter set forth, the Broker-Dealer promises to pay to the Lender or |
| assigns on |  | (the "Scheduled Maturity Date") (the last day of the month  |
| at least one year from the effective date of this Agreement) at the principal office of the Broker-Dealer the aforedescribed sum and interest thereon payable at the rate of |
|  | percent per annum from the effective date of this Agreement, which date |

shall be the date so agreed upon by the Lender and the Broker-Dealer unless otherwise determined by the National Association of Securities Dealers, Inc. ("NASD"). This Agreement shall not be considered a satisfactory subordinated agreement pursuant to the provisions of 17 CFR 240.15c3-1d unless and until the NASD has found the Agreement acceptable and such Agreement has become effective in the form found acceptable.

The cash proceeds covered by this Agreement shall be used and dealt with by the Broker-Dealer as part of its capital and shall be subject to the risks of the business. The Broker-Dealer shall have the right to deposit any cash proceeds of the Subordinated Loan Agreement in an account or accounts in its own name in any bank or trust company.

The Lender irrevocably agrees that the obligations of the Broker-Dealer under this Agreement with respect to the payment of principal and interest shall be and are subordinate in right of payment and subject to the prior payment or provision for payment in full of all claims of all other present and future creditors of the Broker-Dealer arising out of any matter occurring prior to the date on which the related Payment Obligation (as defined herein) matures consistent with the provisions of 17 CFR 240.15c3-1 and 240.15c3-1d, except for claims which are the subject of subordinated agreements which rank on the same priority as or are junior to the claim of the Lender under such subordination agreements.

I. PERMISSIVE PREPAYMENTS (OPTIONAL)

At the option of the Broker-Dealer, but not at the option of the Lender, payment of all or any part of the "Payment Obligation" amount hereof prior to the Scheduled Maturity Date may be made by the Broker-Dealer only upon receipt of the prior written approval of the NASD, but in no event may any prepayment be made before the expiration of one year from the date this Agreement became effective. No prepayment shall be made if, after given effect thereto (and all payments of Payment Obligations under any other subordinated agreements then outstanding, the maturity or accelerated maturity of which are scheduled to fall due either within six months after the date such prepayment is to occur or on or prior to the date on which the Payment Obligation hereof is scheduled to mature, whichever date is earlier), without reference to any projected profit or loss of the Broker-Dealer, either aggregate indebtedness of the Broker-Dealer would exceed 1000 percent of its net capital or such lesser percent as may be made applicable to the Broker-Dealer form time to time by the NASD, or a governmental agency or self-regulatory body having appropriate authority, or if the Broker-Dealer is operating pursuant to paragraph (f) of 17 CFR 240.15c3-1, its net capital would be less than 5 percent of aggregate debit items computed in accordance with 17 CFR 240.15c3-3a, or, if registered as a futures commission merchant, 7 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder, (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, provided, however, the deduction for each option customer shall be limited to the amount of customer funds in such option customer's account,) if greater, or its net capital would be less than 120 percent of the minimum dollar amount required by 17 CFR 240.15c3-1 including paragraph (f), if applicable, or such greater dollar amount as may be made applicable to the Broker-Dealer by the NASD, or a governmental agency or self-regulatory body having appropriate authority.

II. SUSPENDED REPAYMENTS

(a) The Payment Obligation of the Broker-Dealer shall be suspended and shall not mature, if after giving effect to such payment (together with the payment of any Payment Obligation of the Broker-Dealer under any other subordination agreement scheduled to mature on or before such Payment Obligation) the aggregate indebtedness of the Broker-Dealer would exceed 1200 percent of its net capital or such lesser percent as may be made applicable to the Broker-Dealer from time to time by the NASD, or a governmental agency or self-regulatory body having appropriate authority, or if the Broker-Dealer is operating pursuant to paragraph (f) of 17 CFR 240.15c3-1, its net capital would be less than 5 percent of aggregate debit items computed in accordance with 17 CFR 240.15c3-3a, or, if registered as a futures commission merchant, 6 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder, (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, provided, however, the deduction for each option customer shall be limited to the amount of customer funds in such option customer's account,) if greater, or its net capital would be less than 120 percent of the minimum dollar amount required by 17 CFR 240.15c3-1 including paragraph (f), if applicable, or such greater dollar amount as may be made applicable to the Broker-Dealer by the NASD, or a governmental agency or self-regulatory body having appropriate authority.

(b) (OPTIONAL) The Broker-Dealer agrees that if its obligation to pay the principal amount hereof is suspended for a period of six months, the Broker-Dealer will thereupon commence a rapid and orderly complete liquidation of its business. The date on which the liquidation commences shall be the maturity date for each subordination agreement of the Broker-Dealer then outstanding.

III. LENDER'S RIGHT TO ACCELERATE THE MATURITY OF THE PAYMENT OBLIGATION (OPTIONAL)

By written notice to the Broker-Dealer at its principal office and to the NASD, no sooner than six months after the effective date of this Agreement, the Lender may accelerate such Payment Obligation together with accrued interest or compensation, to a date not earlier than six months after giving of such accrued interest or compensation shall remain subordinate as required by the provisions of 17 CFR 240.15c3-1 and 240.15c3-1d.

IV. ACCELERATED MATURITY OF THE SUBORDINTION AGREEMENT UPON THE OCCURRENCE OF AN EVENT OF ACCELERATION (OPTIONAL)

By prior written notice delivered to the Broker-Dealer at its principal office and to the NASD upon the occurrence of any Event of Acceleration (as defined herein), given no sooner than six months from the effective date of this Agreement, the Lender may accelerate such Payment Obligation to the last business day of a calendar month not less than six months after the receipt of such notice by both the Broker-Dealer and the NASD. If, upon such accelerated maturity, the Payment Obligation of the Broker-Dealer is suspended pursuant to paragraph II of this Agreement, and liquidation of the Broker-Dealer has not commenced on or prior to such accelerated maturity date, such Agreement shall mature on the day immediately following such accelerated maturity date and, in any event, the Payment Obligations of the Broker-Dealer with respect to all other subordination agreements then outstanding shall also mature at the same time. Events of Acceleration which may be included shall be limited to:

(a) Failure to pay interest or any installment of principal on this Agreement as scheduled;

(b) Failure to pay when due other money obligations of a specified material amount;

(c) Discovery that any material, specified representation or warrant of the broker-dealer which is included in this Agreement and on which this Agreement was based or continued was inaccurate in a material respect at the time made; or

(d) The following specified and clearly measurable event(s), which the Lender and Broker-Dealer agree (i) is a significant indication that the financial position of the Broker-Dealer has changed materially and adversely from agreed upon specified norms; or (ii) could materially and adversely affect the ability of the Broker-Dealer to conduct its business as conducted on the effective date of the subordination agreements; or (iii) is a significant change in the senior management or in the general business conducted by the Broker-Dealer form the date this Agreement became effective; or (iv) constitute continued failure to perform agreed-upon covenants included in this Agreement relating to the maintenance and reporting by the Broker-Dealer of its financial position or relating to the conduct of its business.

The events of Acceleration as discussed in paragraph (a) through (d) with respect to this Agreement are enumerated below:

V. ACCELERATED MATURITY OF THE SUBORDINATION AGREEMENT UPON THE OCCURRENCE OF AN EVENT OF DEFAULT (OPTIONAL)

(a) If the liquidation of the business of the Broker-Dealer has not already commenced, the Payment Obligation shall mature, together with accrued interest or compensation, upon the occurrence of an Event of Default, as hereinafter defined.

(b) Further, if liquidation of the business of the Broker-Dealer has not already commenced, the rapid and orderly liquidation of the business of the Broker-Dealer shall then commence upon the happening of an Event of Default, and the date of said Event of Default shall be the date on which the Payment Obligations of the Broker-Dealer with respect to all other subordination agreements then outstanding shall mature.

Events of Default which may be included shall be limited to:

(i) The filing of an application by the Securities Investor Protection Corporation for a decree adjudicating that customers of the Broker-Dealer are in need of protection under the Securities Investor Protection Act of 1970 and the failure of the Broker-Dealer to obtain the dismissal of such application within 30 days;

(ii) The aggregate indebtedness of the Broker-Dealer exceeding 1500 percent of its net capital or, in the case of a Broker-Dealer which has elected to operate under paragraph (f) of 17 CFR 240.15c-1, its net capital computed in accordance therewith is less than 2 percent of its aggregate debit items computed in accordance with 17 CFR 240.15c3-3a, or, if registered as a futures commission merchant, 4 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder, (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, provided, however, the deduction for each option customer shall be limited to the amount of customer funds in such option customer's account,) if greater, throughout a period of 15 consecutive business days, commencing on the day the Broker-Dealer first determines and notifies the Lender and the NASD, or the NASD or the Commission first determines and notifies the Broker-Dealer of such fact;

(iii) Revocation by the Commission of the registration of the Broker-Dealer;

(iv) Suspension by the NASD (without reinstatement within 10 days) or revocation of the Broker-Dealer's status as a member thereof; and,

(v) Receivership, insolvency, liquidation pursuant to the Securities Investor Protection Act of 1970 or otherwise, bankruptcy, assignment for the benefit of creditors, reorganization whether or not pursuant to bankruptcy laws, or any other marshalling of the assets and liabilities of the Broker Dealer.

VI. NOTICE OF MATURITY OR ACCELERATED MATURITY

The Broker-Dealer shall immediately notify the NASD if, after giving effect to all payments of Payment Obligations under subordination agreements then outstanding which are then due or mature within six months without reference to any projected profit or loss of the Broker-Dealer, wither the aggregate indebtedness of the Broker-Dealer would exceed 1200 percent of its net capital, or in the case of a Broker-Dealer operating pursuant to paragraph (f) of 17 CFR 240.15c3-1, its net capital would be less than 5 percent of aggregate debit items computed in accordance with 17 CFR 240.15c3-3a, or, if registered as a futures commission merchant, 6 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder, (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, provided, however, the deduction for each option customer shall be limited to the amount of customer funds in such option customer's account,) if greater, and in either case, if its net capital would be less than 120 percent of the minimum dollar amount required by 17 CFR 240.15c3-1 including paragraph (f), if applicable, or such greater dollar amount as may be made applicable to the Broker-Dealer by the NASD, or a governmental agency or self-regulatory body having appropriate authority.

VII. BROKER-DEALERS CARRYING THE ACCOUNTS OF SPECIALISTS AND MARKET MAKERS IN LISTED OPTIONS

A Broker-Dealer who guarantees, endorses, carries or clears specialist or market-maker transactions in options listed on a national securities exchange or facility of a national securities association shall not permit a reduction, prepayment or repayment of the unpaid principal amount if the effect would cause the equity required in such specialist or market-maker accounts to exceed 1000 percent of the Broker-Dealer's net capital or such percent as may be made applicable to the Broker-Dealer from time to time by the NASD or a governmental agency or self-regulatory body having appropriate authority.

VIII. BROKER-DEALERS REGISTERED WITH CFTC

If the Broker-Dealer is a futures commission merchant or introductory broker as that term is defined in the Commodity Exchange Act, the Organization agrees, consistent with the requirements of 1.17(h) of the regulations of the CFTC (17 CFR 1.17(h)), that:

(a) Whenever prior written notice by the Broker-Dealer to the NASD is required pursuant to the provisions of this Agreement, the same prior written notice shall be given by the Broker-Dealer to (i) the CFTC at its principal office in Washington, D.C., attention Chief Accountant of Division of Trading and Markets, and/or (ii) the commodity exchange of which the Organization is a member and which is then designated by the CFTC as the Organization's designated self-regulatory organization the "DSRO");

(b) Whenever prior written consent, permission or approval of the NASD is required pursuant to the provisions of this Agreement, the Broker-Dealer shall also obtain the prior written consent, permission or approval of the CFTC (and/or of the DSRO); and,

(c) Whenever the Broker-Dealer receives written notice of acceleration of maturity pursuant to the provisions of this Agreement, the Broker-Dealer shall promptly give written notice thereof to the CFTC at the address above stated and/or to the DSRO.

IX. SUBORDINATION OR ACCRUED INTEREST PAYABLE (OPTIONAL)

The Lender and the Borrower hereby elect to have all eligible accrued interest payable on this loan considered as additional subordinated capital for purposes of computing net capital, subject to the terms and conditions set forth in the instructions. The amount of accrued interest payable per month is $ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and the aggregate total of all eligible monthly amounts will be $\_\_\_\_\_\_\_\_\_\_\_\_.

|  |  |  |
| --- | --- | --- |
|  |  |  |
| (Borrower's Initials) | (Date) |  | (Lender's Initials) | (Date) |

X. GENERAL

This Agreement shall not be subject to cancellation by either the Lender or the Broker-Dealer, and no payment shall be made, nor the Agreement terminated, rescinded, or modified by mutual consent or otherwise if the effect thereof would be inconsistent with the requirements of 17 CFR 240.15c3-1 and 240.15c3-1d.

The Agreement may not be transferred, sold, assigned, pledged, or otherwise encumbered or otherwise disposed of, and no lien, charge or other encumbrance may be created thereon without the prior written consent of the NASD.

In the event of the appointment of a receiver or trustee of the Broker-Dealer or in the event of its insolvency, liquidation pursuant to the Securities Investor Protection Act of 1970 or otherwise, bankruptcy, assignment for the benefit of creditors, reorganization whether or not pursuant to bankruptcy laws, or any other marshaling of the assets and liabilities of the Broker-Dealer, the Payment Obligation of the Broker-Dealer shall mature, and the holder hereof shall not be entitled to participate or share, ratably or otherwise, in the distribution of the assets of the Broker-Dealer until all claims of all other present and future creditors of the Broker-Dealer, whose claims are senior hereto, have been fully satisfied.

The Lender irrevocably agrees that the loan evidenced hereby is not being made in reliance upon the standing of the Broker-Dealer as a member organization of the NASD or upon the NASD surveillance of the Broker-Dealer's financial position or its compliance with the By-Laws, rules and practices of the NASD. The Lender has made such investigation of the Broker-Dealer and its partners, officers, directors and stockholders as the Lender deems necessary and appropriate under the circumstances. The Lender is not relying upon the NASD to provide any information concerning or relating to the Broker-Dealer and agrees that the NASD has no responsibility to disclose to the Lender any information concerning or relating to the Broker-Dealer which it may now, or at any future time, have.

The term "Broker-Dealer" as used in this Agreement shall include the broker-dealer, its heirs, executors, administrators, successors, and assigns.

The term "Payment Obligation" shall mean the obligation of the Broker-Dealer to repay cash loaned to it pursuant to this Subordinated Loan Agreement.

The provisions of this Agreement shall be binding upon the Broker-Dealer and the Lender and their respective heirs, executors, administrators, successors and assigns.

Any controversy arising out of or relating to this Agreement may be submitted to and settled by arbitration pursuant to the By-Laws and rules of the NASD. The Broker-Dealer and the Lender shall be conclusively bound by such arbitration.

This instrument embodies the entire agreement between the Broker-Dealer and Lender and no other evidence of such agreement has been or will be executed without the prior written consent to the NASD.

This Agreement shall be deemed to have been made under, and shall be governed by, the laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in all respects.

IN WITNESS WHEREOF the parties have set their hands and seal this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 19 \_\_\_\_.

|  |  |
| --- | --- |
|  |  |
|  | (Name of Broker-Dealer) |
|  | By |  | L.S. |
|  | (Authorized Person) |
|  |  | L.S. |
|  | (Lender) |
|  |  |
|  | FOR NASD USE ONLY |
|  |  |
|  | ACCEPTED BY |  |
|  |  | (Name) |
|  |  |  |
|  |  | (Title) |
|  | \*EFFECTIVE DATE: |  |
|  | LOAN NUMBER: |  |

SUBORDINATED LOAN AGREEMENT

LENDER'S ATTESTATION

It is recommended that you discuss the merits of this investment with an attorney, accountant or some other person who has knowledge and experience in financial and business matters prior to executing this Agreement.

1. I have received and reviewed NASD Form SLD, which is a reprint of Appendix D of 17 CFR 240.15c3-1, and am familiar with its provisions.

2. I am aware that the funds or securities subject to this Agreement are not covered by the Securities Investor Protection Act of 1970.

3. I understand that I will be furnished financial statements pursuant to SEC Rule 17a-5(c).

4. On the date this Agreement was entered into, the broker-dealer carried funds or securities for my account. (State Yes or No) \_\_\_\_\_\_\_\_\_\_\_\_

5. Lender's business relationship to the broker-dealer is: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

6. If not a partner or stockholder actively engaged in the business of the broker-dealer, acknowledge receipt of the following:

a. Certified audit and accountant's certificate dated \_\_\_\_\_\_\_\_\_\_\_\_.

b. Disclosure of financial and/or operational problems since the last certified audit which required reporting pursuant to SEC Rule 17a-11. (If no such reporting was required, state "none")

c. Balance sheet and statement of ownership equity dated \_\_\_\_\_\_\_\_\_\_\_.

d. Most recent computation of net capital and aggregate indebtedness or aggregate debit items dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, reflecting a net capital of $\_\_\_\_\_\_\_\_\_\_\_\_ and a ratio of \_\_\_\_\_\_\_\_\_\_\_\_.

e. Debt/equity ratio as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_.

f. Other disclosures: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Dated: |  |  |  | L.S. |
|  | (Lender) |  |

(Source: Added at 14 Ill. Reg. 884, effective December 30, 1989)