(Model form for prior notice of introduction of Fails Charges)

[Month] [Date], [Year]

[Counterparty name]

[Company name]

Notice of Significant Change concerning Transactions in Japanese Government Securities

We (the “Company”) would like to announce a significant change concerning transactions with you (the “Trade Counterparty”) in Japanese government securities.

Recently, Japan Securities Dealers Association (“JSDA”) has publicly announced that “The Japanese Government Securities Guidelines for Real Time Gross Settlement” will be partially amended and that the “Practical Guidelines for Handling of Fails Charges” will be newly established (the latest edition of these guidelines and other detailed information are published on JSDA’s website(<https://www.jsda.or.jp/en/activities/meetings/html/failwg_final_e.html>)). The reviewed market practice for settlement failures is scheduled to begin on November 1, 2010.(Note [[1]](#footnote-1))

Under the reviewed market practice, if a fail occurs in any transaction in Japanese government securities based on delivery-versus-payment (DVP) settlements, the party receiving the securities will be entitled to demand the party failing to deliver the securities to pay a Fails Charge (a monetary burden imposed on the failing party pursuant to the procedures specified in the “Practical Guidelines for Handling of Fails Charges”). This new market practice is hereinafter referred to as the “Fails Charge Handling Practice.”

As the Company has decided to adopt the Fails Charge Handling Practice to transactions with the Counterparty, the Company hereby informs the Counterparty that any DVP transactions in Japanese government securities between the Counterparty and the Company will be subject to the following conditions, unless explicitly agreed otherwise with respect to a specific transaction.

Between the Trade Counterparty and the Company, with respect to any DVP settlements of Japanese government securities transactions between the parties (including settlement by the delivery of government securities against the payment of funds on the same date in the case where an agreement to that effect is made between the parties to the transaction under which their mutual claims and debts are preserved explicitly), the Trade Counterparty is requested to notify the Company not later than [Month] [Date], [Year] (the “Confirmation Date”) if the Trade Counterparty is unable to agree on the application of the Fails Charge Handling Practice. In this connection, the term “any DVP settlements of Japanese government securities transactions” referred to in the foregoing sentence includes purchase and sale transactions and repurchase transactions which mean starting and closing legs of transactions in conditional purchase and sale transactions and lending and returning in lending transactions.

In the absence of the Trade Counterparty’s notification as aforesaid by the Confirmation Date, the Trade Counterparty will be deemed to have agreed that the Fails Charge Handling Practice shall apply to all settlements made on or after [Month] [Date], [Year](Note [[2]](#endnote-1)) (the “Effective Date”) in relation to new transactions executed between the parties after the Confirmation Date (the date for executing any such new transaction being hereinafter referred to as the “Reference Date”), unless otherwise explicitly agreed upon in connection with any specific transaction. Likewise, the Company will be deemed to have agreed that the Fails Charge Handling Practice shall apply to all settlements made on or after the Effective Date, unless otherwise explicitly agreed upon in connection with any specific transaction. Notwithstanding the foregoing, if the Reference Date falls on the Effective Date or later, the Fails Charge Handling Practice shall apply to settlements made on or after the Reference Date.

Even in the case where either party fails to claim Fails Charges with respect to one or more transactions to which the Fails Charge Handling Practice applies, the party shall not be deemed to waive its right to claim Fails Charges in relation to any other applicable transactions. In addition, either party’s claim of a Fails Charge shall not preclude the party from exercising any other right available under the agreement for the transaction in question or any applicable law, and none of the Trade Counterparty, the Company, or any third party shall in any way be deemed to have waived any such right.

We would highly appreciate your kind understanding and cooperation for smooth operations under the Fails Charge Handling Practice. If you have any questions about the change explained in this notice, please contact [each market participant to insert].

1. （Note ）With the aim of preventing frequent occurrence of settlement failures and further establishing the Fails Practice, JSDA has reviewed and improved the market practice for settlement failures and partially amended JSDA’s regulations (the “Regulations Concerning Handling of Short Sale and Lending Transaction of Bonds” and the “Regulations Concerning Handling of Conditional Sale and Purchase of Bonds, etc”). As part of such efforts, JSDA has established the market practice for Fails Charges for the purpose of preventing frequent occurrence of settlement failures under conditions where interest rates are low. In “The Japanese Government Securities Guidelines for Real Time Gross Settlement” to be amended this time, the provisions for how to handle Fails Charges are newly stipulated in Part III “Guidelines concerning Fails.” In addition, the “Practical Guidelines for Handling of Fails Charges” will be newly established to stipulate how to introduce Fails Charges and the standard procedures for calculating, claiming, and paying/receiving Fails Charges. In the said new guidelines, the procedures relating to Fails Charges are specified, and it is recommended, with respect to bond lending transactions with cash collateral, to execute a “Memorandum concerning Fails” to clearly specify the handling of a settlement failure if it has not yet been executed by the parties to the transaction. [↑](#footnote-ref-1)
2. (Note ) JSDA reviewed the Fails Practice and is planning to introduce the Fails Charge Trading Practice on November 1, 2010, as a new market practice. [↑](#endnote-ref-1)