

# M

COMPANIES FORM No. 395

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# 395

COMPANIES HOUSE

CHWP000

Please do not  
write in  
this marginPlease complete  
legibly, preferably  
in black type, or  
bold block lettering

## Particulars of a mortgage or charge

A fee of £10 is payable to Companies House in respect of each register entry for a mortgage or charge.

Pursuant to section 395 of the Companies Act 1985

To the Registrar of Companies  
(Address overleaf - Note 6)

For official use

Company number

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3766757

Name of company

\* BNY Clearing Services International Limited

\* insert full name  
of Company

Date of creation of the charge

22<sup>nd</sup> February 2001

Description of the instrument (if any) creating or evidencing the charge (note 2)

Security Deed dated 22<sup>nd</sup> Feb 2001 (the "Security Deed") between the company and Citibank, N.A (the "Bank")

Amount secured by the mortgage or charge

As set out in Part 2 of the attached Schedule.

Names and addresses of the mortgagees or persons entitled to the charge

Citibank NA

336 The Strand, London

Postcode WC2R 1HB

Presentor's name address and  
reference (if any) :Citibank NA  
336 The Strand  
London  
WC2R 1HBFor official Use  
Mortgage Section  
M

Post room

LD4  
COMPANIES HOUSE0465  
02/03/01

Time critical reference

As set out in Part 3 of the attached Schedule.

The attached schedule also contains provisions which further define the charges contained in the Security Deed which must be read as part of the charges created.

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Please complete legibly, preferably in black type, or bold block lettering

Particulars as to commission allowance or discount (note 3)

N/A

Signed

Date

1<sup>st</sup> March 2001

On behalf of [company] [mortgagee/chargee]†

**Manuel M. Martinez**  
**Vice President**

A fee of £10 is payable to Companies House in respect of each register entry for a mortgage or charge. (See Note 5)

† delete as appropriate

### Notes

- 1 The original instrument (if any) creating or evidencing the charge, together with these prescribed particulars correctly completed must be delivered to the Registrar of Companies within 21 days after the date of creation of the charge (section 395). If the property is situated and the charge was created outside the United Kingdom delivery to the Registrar must be effected within 21 days after the date on which the instrument could in due course of post, and if dispatched with due diligence, have been received in the United Kingdom (section 398). A copy of the instrument creating the charge will be accepted where the property charged is situated and the charge was created outside the United Kingdom (section 398) and in such cases the copy must be verified to be a correct copy either by the company or by the person who has delivered or sent the copy to the registrar. The verification must be signed by or on behalf of the person giving the verification and where this is given by a body corporate it must be signed by an officer of that body. A verified copy will also be accepted where section 398(4) applies (property situate in Scotland or Northern Ireland) and Form No. 398 is submitted.
- 2 A description of the instrument, eg "Trust Deed", "Debenture", "Mortgage", or "Legal charge", etc, as the case may be, should be given.
- 3 In this section there should be inserted the amount or rate per cent. of the commission, allowance or discount (if any) paid or made either directly or indirectly by the company to any person in consideration of his:
  - (a) subscribing or agreeing to subscribe, whether absolutely or conditionally, or
  - (b) procuring or agreeing to procure subscriptions, whether absolute or conditional,for any of the debentures included in this return. The rate of interest payable under the terms of the debentures should not be entered.
- 4 If any of the spaces in this form provide insufficient space the particulars must be entered on the prescribed continuation sheet.
- 5 Cheques and Postal Orders are to be made payable to **Companies House**.
- 6 The address of the Registrar of Companies is:-

## SCHEDULE TO FORM 395 FOR SECURITY DEED

### PART 1

#### DEFINITIONS

In this Form M395 and Schedule, the following expressions have the following meanings:

- "Assured Payment Obligation"** means an obligation of a Settlement Bank arising pursuant to the relevant Assured Payment Agreement or the relevant Settlement Bank Agreement and "Assured Payment" shall be construed accordingly;
- "Assured Payment Agreement"** means any agreement for the time being in force between CRESTCo and each relevant Settlement Bank, which contains the terms and conditions governing the relationship between such Settlement Banks as a result of their admission to settlement bank status in respect of the Designated Currency specified therein;
- "Authorised CREST Sponsor"** means the Bank in its capacity as CREST Sponsor of the Company, or any person appointed by the Bank as CREST Sponsor of the Company, pursuant to clause 15.2 (Power of attorney);
- "Bank"** includes any transferee or successor (whether immediate or derivative) of the Bank and any company with which it may amalgamate;
- "CGO Service"** means the computer based system and associated clerical procedures originally established by the Bank of England and subsequently transferred to CRESTCo to facilitate the transfer of UK government securities by means of exempt transfer (within the meaning of the Stock Transfer Act 1982) and related matters, as operated by CRESTCo;
- "Charged Property"** means the property, assets, rights, receivables and benefits of the Company which are for the time being comprised in or subject to the Security Interests constituted by this Deed, and references to the Charged Property include references to any part of it;
- "CM Services"** means the computer system and related procedures relating to the central counterparty service operated by CRESTCo;
- "Controlled Accounts"** Means [the accounts maintained by the Company with the Bank for the time being designated for use in connection with the Facility Agreement or

any one or more of them] [the accounts specified in Schedule 1 maintained by the Company with the Bank or any one or more of them] and includes (unless the context otherwise requires) any additional or substitute account maintained by the Company with the Bank from time to time specified as being a **"Controlled Account"** for the purposes of this Deed or any other account which is not so designated but is referable to Debts and/or Assured Payments received by the Bank for the account of the Company (in each case as re-numbered or redesignated from time to time);

**"CREST"**

means the computer-based system and procedures established by CRESTCo to enable title to units of stock to be evidenced and transferred without a written instrument and to facilitate supplementary and incidental matters;

**"CRESTCo"**

means CRESTCo Limited incorporated in England and Wales under number 2878738 acting as Operator of CREST as a relevant system under the Regulations, whose registered office is at 33 Cannon Street, London EC4M 5SB;

**"CREST Manual"**

means the document entitled "CREST Reference Manual" relating to the operation of CREST issued by CRESTCo;

**"CREST Member"**

means a person who has been admitted by CRESTCo as a system-member of CREST and (unless the context otherwise requires) includes a CREST sponsored member;

**"CREST Registrar"**

means a person who has been admitted by CRESTCo as a system-participant to carry out the functions of a registrar and/or receiving agent;

**"CREST relevant system"**

means the relevant system of which CRESTCo has been approved under the Regulations as Operator;

**"CREST Rules"**

means rules within the meaning of the Regulations and/or the Financial Services Act 1986 made by CRESTCo in relation to CREST;

**"Debts"**

means all sums and payments referred to in clause 3.1(a), (b) and (c) (Creation of security);

**"Default Notice"**

means a notice served by the Bank under clause 7 (Default) declaring all or any part of the Secured

	Amounts to be immediately due and payable;
<b>"Designated Currency"</b>	means a currency for the time being specified as such in the Facility Agreement;
<b>"Effective Date"</b>	means 3 July 2000 or, if later, the date on which UK government securities were first admitted to the CREST relevant system;
<b>"Escrow Account"</b>	means an escrow account in CREST in the Company's name or otherwise referable to the Company (the operating procedures for which permit only the Bank or its escrow agent to give instructions to CRESTCo in respect of Charged Property held in such escrow account);
<b>"Escrow Agent"</b>	means the Bank (or any person appointed by the Bank to act) as escrow agent within CREST in relation to an Escrow Account;
<b>"Existing Security Deeds"</b>	means all security deeds (and, if applicable, supplemental security deeds) created by the Company in favour of the Bank prior to the date of this Deed in order to secure the liabilities of the Company as a member or sponsored member of CREST and/or the CGO Service to the Bank as a settlement bank;
<b>"Facility Agreement"</b>	means the Settlement Bank Facility Agreement(s) for the time being in force between the Bank and the Company under which the Bank agrees to act as Settlement Bank for the Company for the purposes contemplated in the recitals to this Deed, as the same may be amended, varied, renewed, replaced or extended in accordance with its terms;
<b>"GCM"</b>	means a general clearing member in relation to the CM services;
<b>"investments"</b>	has the meaning from time to time ascribed to it by Schedule 1 to the Financial Services Act 1986;
<b>"Membership Agreement"</b>	means the agreement(s) for the time being in force between the Company and CRESTCo under which the Company has been admitted as a system-member of CREST;
<b>"Receiver"</b>	means any Receiver appointed by the Bank under this Deed or the Bank's statutory powers, and includes more than one such Receiver and any successor or replacement Receiver;
<b>"Regulations"</b>	means the Uncertificated Securities Regulations

1995 (SI 1995 No.3272) and such other regulations made under Section 207 of the Companies Act 1989 as are applicable to CRESTCo and/or the CREST relevant system and are for the time being in force;

**“Relevant Persons”**

means the Authorised CREST Sponsor, the Escrow Agent, the Receiver, any accountant or other person appointed under clause 10.1 (Preferential Claims) and any person appointed to act as substitute attorney or delegate under clause 15.2 (Power of attorney) and (unless the context otherwise requires) includes each or any of them and “Relevant Person” shall be construed accordingly;

**“Secured Amounts”**

means the obligations, money and liabilities which the Company covenants in clause 2 (Covenant to pay Secured Amounts) to pay or discharge to the Bank (whether or not appearing on the Controlled Accounts), and references to the Secured Amounts include references to any of them;

**“Security Interest”**

means:

- (a) any mortgage, charge, pledge, assignment (whether or not expressed to be by way of security), hypothecation, lien, encumbrance or other priority or security interest whatsoever, howsoever created or arising;
- (b) any deferred purchase, title retention, trust, sale-and-repurchase, sale-and-leaseback, hold back or “flawed asset” arrangement or right of set-off;
- (c) any other agreement or arrangement whatsoever having the same or a similar commercial or economic effect as security; and
- (d) any agreement for any of the foregoing;

**“Settlement Bank”**

means, in respect of any Designated Currency, a bank which has contracted with CRESTCo and the other Settlement Banks to make and receive Assured Payments for the account of CREST members and CREST Registrars and continues so to act

**“Settlement Bank Agreement”**

means the agreement(s) for the time being in force between a Settlement Bank and CRESTCo

which contains the terms and conditions governing the relationship between CRESTCo and such Settlement Bank as a result of its admission to settlement bank status in respect of one or more Designated Currencies;

**“stock”**

means shares, stocks, debentures, debenture stock, UK government securities and (without limitation) any other securities and investments of any description or any of them (including, without limitation, all and any uncertificated units of any securities (as defined in the Regulations)) and shall include units (whether in uncertificated or certificated form) of, and interests in, any of them but, for the purpose of clause 3.2 (Creation of security), the expression “stock” shall not include any excluded stock; and

**“stock account”**

means a stock account maintained within the CREST relevant system in relation to each class of security held by a CREST member as described in the CREST Manual.

## **PART 2**

### **Amount Secured by the Security Deed**

By clause 2.1 of the Security Deed, the Company covenanted with the Bank that it will duly and punctually pay or discharge to the Bank all debts, obligations and liabilities whatsoever at the date of the Security Deed and from time to time thereafter (whether before or after the service of a Default Notice) due, owing or incurred by the Company to the Bank or any group company (whether solely or jointly, or jointly and severally, with another or others, and whether as principal or surety, and whether actual or contingent, present or future) including (whether before or after any judgment) all interest, costs and other charges whatsoever and including, without limitation, any such debt, obligations and liabilities which arise in connection with the Facility Agreement and/or the Security Deed, or the making of any Assured Payment by the Bank for the account of the Company, or any transfer of stock to the Company by means of CREST, or any transfer of stock to the Company by means of CREST (whether the Company is acting for itself or on behalf of a system-beneficiary), or any transfer by a system-beneficiary to the Company as system-beneficiary by means of CREST of the first system-beneficiary's interest in stock held by a relevant nominee where the relevant nominee will continue to hold the stock on behalf of the Company, or any agreement to make such a transfer, or any issue of stock to the Company by means of CREST (whether the Company is acting for itself or on behalf of a system-beneficiary) or any liabilities incurred by the Bank or any group company as GCM or otherwise in providing CM services for the benefit of the Company activity for itself or on behalf of a system beneficiary whether such debts, obligations or liabilities are incurred by the Company on its own account or on behalf of a system-beneficiary.

### **PART 3**

#### **Property Charged**

1. By clause 3.1 of the Security Deed, the Company with full title guarantee charged to the Bank, as continuing security for the payment or discharge of the Secured Amounts, by way of fixed charge:
  - (a) all sums and payments at the date of the Security Deed and from time to time thereafter receivable by or for the account of the Company by reason or in respect of any transfer or debit of, or agreement to transfer or debit, stock from any [eligible] stock account of or in the name of or otherwise referable to the Company in CREST or of any transfer by the Company of any of its right, title or interest to or in stock represented or to be represented by any credit balance for the time being on any such stock account in CREST, together with all rights and interests in such sums and payments;
  - (b) all sums and payments from time to time after the date of the Security Deed receivable by or for the account of the Company by reason of or in respect of the closing out or liquidation of any unsettled contract relating to any stocks in CREST;
  - (c) all right, title and interest of the Company to or in all money at the date of the Security Deed or at any time thereafter standing to the credit of the Controlled Accounts, together with all rights relating or attaching thereto, including interest accruing thereon; and
  - (d) [all right, title and interest of the Company to or in all securities at the date of the Security Deed or at any time thereafter held in each Escrow Account, together with all rights relating or attached thereto.]
2. By clause 3.2 of the Security Deed, the Company with full title guarantee charged to the Bank, as continuing security for the payment or discharge of the Secured Amounts, by way of first floating charge:
  - (a) all [eligible] stock held by, or on behalf of or for the account of, the Company in CREST;
  - (b) all and any property, property rights or interest of the Company in, or rights of the Company to [eligible] stock in CREST, including (without limitation) interests of the kinds specified in Regulations 25(1)(a) and 25(2)(a) of the Regulations;
  - (c) all and any sums or other benefits due or becoming due to the Company or its nominee by reason of its holding of or entitlement to stock in CREST [which at the time of the sums or benefits becoming due was eligible in CREST], including, without limitation, sums or benefits due or becoming due by way of repayment, bonus, allotment, dividend, interest, preference, redemption or conversion or accruing or offered in respect of [eligible] stock in CREST in which the Company has an interest;
  - (d) all and any stock or rights (including property rights), title or interest of the Company in, or any sum or benefit deriving from, stock which is no longer in an uncertificated form, whether by reason of the Company (or any person holding stock for or on behalf of the Company) having become a former system-member of CREST, or such

stock being converted into certificated form at the request of the Company, the Bank or any Relevant Person or otherwise, [save to the extent that such stock derives from an excluded stock account;] and

- (e) all and any right, title and interest of the Company in any of the assets or property described in clause 3.1 of the Security Deed;

except in each case to the extent that such assets, property, stock, sums or benefits are effectively charged to the Bank by way of fixed charge under the Security Deed.

#### **Part 4**

##### **Covenants**

1. By clause 5.1 of the Security Deed, the Company covenanted, inter alia, with the Bank that, except as otherwise expressly agreed in writing by the Bank:
  - (a) not to create or permit to subsist any Security Interest (except those contained in the Existing Security Deeds and in the Security Deed) affecting any of the Charged Property;
  - (b) to pay or permit the Bank to pay into the Controlled Accounts any and all sums becoming due to the Company in respect of the Debts or pursuant to any Assured Payment received by the Bank for the account of the Company and not to transfer, factor, discount, sell, release, compound, subordinate, defer, or vary the terms of any Debts nor otherwise to deal with the same except by getting in the same in the usual course of trading, and to pay into the Controlled Accounts all money which the Company may receive in respect of debts (it being agreed that the Company shall not be entitled to withdraw any such money from any such account unless otherwise expressly agreed in writing by the Bank) and, if and whenever the Bank so requires, promptly to execute, at the Company's own cost, a legal assignment to the Bank in terms specified by the Bank of all or any Debts and any Security Interests or documents relating to them or to negotiate the same to the Bank;
  - (c) not to withdraw, or attempt to withdraw, any stock from an Escrow Account unless otherwise expressly agreed in writing by the Bank;
  - (d) not to part with, sell, transfer or otherwise dispose of any part of the Charged Property for the time being the subject of any of the fixed charges created by the Security Deed or any of its right, title or interest therein;
  - (e) not to part with, sell, transfer or otherwise dispose of any part of the Charged Property for the time being the subject of any of the floating charges created by the Security Deed or any of its right, title or interest therein except in the ordinary course of and for the purposes of the Company's trading activities;
  - (f) if the Company parts with, sells, transfers or otherwise disposes of any of its right, title and interest in the Charged Property, to collect in the usual course of trading any sum receivable of the Company in respect of such sale, transfer or other disposal and to pay the same to the credit of the Controlled Accounts.

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## CERTIFICATE OF THE REGISTRATION OF A MORTGAGE OR CHARGE

Pursuant to section 401(2) of the Companies Act 1985

COMPANY No. 03766757

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES HEREBY CERTIFIES THAT A SECURITY DEED DATED THE 22nd FEBRUARY 2001 AND CREATED BY BNY CLEARING SERVICES INTERNATIONAL LIMITED FOR SECURING ALL MONIES DUE OR TO BECOME DUE FROM THE COMPANY OR ANY GROUP COMPANY TO CITIBANK N.A. UNDER THE FACILITY AGREEMENT AND/OR THE SECURITY DEED OR THE MAKING OF ANY ASSURED PAYMENT BY THE BANK FOR THE ACCOUNT OF THE COMPANY; OR ANY TRANSFER OF STOCK TO THE COMPANY BY MEANS OF CREST; OR ANY TRANSFER OF STOCK TO THE COMPANY BY MEANS OF CREST, WHETHER THE COMPANY IS ACTING FOR ITSELF OR ON BEHALF OF A SYSTEM-BENEFICIARY (ALL TERMS AS DEFINED) WAS REGISTERED PURSUANT TO CHAPTER 1 PART XII OF THE COMPANIES ACT 1985 ON THE 2nd MARCH 2001.

GIVEN AT COMPANIES HOUSE, CARDIFF THE 6th MARCH 2001.



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES



*Companies House*

— for the record —