

# LEHMAN BROTHERS

To: Lehman Brothers Holdings Inc. (the "Borrower")

Attention: Paolo Tonucci  
Director  
Head of European Asset & Liability Management

26th May, 2000

Dear Sirs

Lehman Brothers Treasury Co. B.V. (the "Lender"), is pleased to confirm its agreement with the Borrower to make available to the Borrower a loan (the "Loan") on an uncommitted basis on the following terms and conditions:

## 1. Definitions and Interpretation

"Business Day" means a day on which the relevant Amsterdam and London financial markets are open for the transaction of business contemplated hereby and, in relation to a day on which a payment is required hereunder, a day on which banks are open for business in the place of payment;

"Facility Documents" means this letter and any other deed, document or agreement from time to time entered into pursuant hereto or thereto;

"Indebtedness" shall be construed so as to include any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;

"Loan" means the aggregate principal amount outstanding in respect of the Advances and otherwise hereunder; and

"Maturity" in relation to an Advance means the last day of the agreed term of such Advance.

Headings when used herein shall be ignored for the purposes of construction.

2. The Loan

- (i) This facility is intended for general corporate purposes for the trade of the Borrower (including the funding, whether directly or indirectly, of the businesses of the affiliates of the Borrower)
- (ii) The Loan may be drawn down in any number of advances (each an "Advance") in an agreed amount denominated in an agreed currency for an agreed term.

3. Availability

- (i) Not later than 10.00 a. m. (London time) on the day one Business Day before the proposed day of such borrowing a request may be made for an Advance by the Borrower in the form of the Request to Borrow (the "Request") attached hereto or an offer to make an Advance may be made by the Lender in the form of the Offer to Lend (the "Offer") attached hereto.

The Request or the Offer, whichever applicable, will state the proposed borrowing date (being a Business Day) and the proposed amount, currency, interest period, term and interest rate to apply to the proposed Advance. The Lender may agree to the terms of the Request (or, as the case may be, the Borrower may agree to the terms of the Offer) by returning a signed copy of the relevant document indicating its agreement.

- (ii) Each Advance may be made on the agreed borrowing date referred to in the Request or the Offer if no event has occurred which is or may become an Event of Default (as referred to in Clause 11 below) and representations set out in Clause 9 are true on and as of the proposed date for the making of such Advance.

4. Interest

- (i) Interest is payable on each Advance at the agreed intervals and at the agreed rate per annum for such Advance.
- (ii) If the Borrower fails to pay any amount payable hereunder on the due date therefor (whether at stated maturity, by acceleration or otherwise), the Borrower shall on demand from time to time pay interest on such overdue amount from the due date up to the date of actual payment (as well after as before judgment) at a rate determined by the Lender from time to time to be equal to the higher of 1 % per cent. above:
  - (a) the interest rate for the Advance to which the failure to pay relates as provided in Clause 4(i); and
  - (b) the cost to the Lender of funding such principal or other amount.

Such interest shall be compounded every three months.

- (iii) Interest shall be calculated on the basis of a 360 or 365 day year, as specified in the Request or Offer, whichever appropriate, and for the actual number of days elapsed in the period in question.

**5. Repayment**

Each Advance shall be repaid in full on its maturity and in the currency in which it is denominated together with accrued interest.

**6. Payments**

- (i) All payments to be made hereunder shall be made to the Lender on the due date to the Lenders account as specified in the relevant Request or Offer without set-off or counter-claim.
- (ii) In the event that the Borrower makes any payment of the principal of an Advance other than on the due date therefor or fails to borrow in accordance with a Request given pursuant to Clause 3(i) above, the Borrower shall forthwith on demand from the Lender pay to the Lender such additional amounts as the Lender may certify, as necessary to compensate it for any loss or expense sustained or incurred as a result of such payment or such failure to borrow, as the case may be.

**7. Taxes**

- (i) All payments to be made by the Borrower hereunder shall be made free and clear of and without deduction for or on account of tax unless the Borrower is required to make such a payment subject to the deduction or withholding of tax, in which case the sum payable by the Borrower in respect of which such deduction or withholding is required to be made shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Lender receives and retains (free from any liability in respect of any such deduction or withholding) a net sum equal to the sum which it would have received and so retained had no such deduction or withholding been made or required to be made.
- (ii) Without prejudice to the provisions of Clause 7(i), if the Lender is required to make any payment on account of tax or otherwise (not being tax imposed on its net income by the jurisdiction in which it is incorporated or in relation to any sum received or receivable by the Lender hereunder (including, without limitation, any sum received or receivable under this sub-clause) or any liability in respect of any such payment is asserted, imposed, levied or assessed against the Lender, the Borrower will upon demand of the Lender promptly indemnify the Lender against such payment or liability, together with any interest, penalties and expenses payable or incurred in connection therewith.

**8. Additional Costs**

If the result of any present or future law, regulation, treaty or official directive (whether or not having the force of law) or any change therein or in the interpretation or application thereof or compliance by the Lender with any request of any relevant authority is directly or indirectly to increase the cost to the Lender of the transactions contemplated hereby, or is to reduce any amount receivable by the Lender or the effective return to the Lender hereunder whether by way of change in the manner in which the Lender allocates capital to its obligations hereunder or otherwise, the Borrower will, forthwith on demand, pay to the Lender such amounts as it shall certify as necessary to compensate it for such additional cost or reduction.

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**Representations**

The Borrower represents that:

- (i) it has power to enter into the Facility Documents and to exercise its rights and perform its obligations thereunder and all action required to authorise its execution of the Facility Documents and its performance of its obligations thereunder has been duly taken;
- (ii) in any proceedings taken in England in relation to any of the Facility Documents, it will not be entitled to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process;
- (iii) in any proceedings taken in relation to any of the Facility Documents, the choice of English law as the governing law of the Facility Documents and any judgment obtained in England will be recognised and enforced;
- (iv) all acts, conditions and things required to be done, fulfilled and performed in order (a) to enable the Borrower lawfully to enter into, exercise its rights under and perform and comply with the obligations expressed to be assumed by the Borrower in the Facility Documents (b) to ensure that the obligations expressed to be assumed by the Borrower in the Facility Documents are legal, valid and binding and (c) to make the Facility Documents admissible in evidence in England have been done, fulfilled and performed and the obligations referred to above are so legal, valid and binding; and
- (v) the execution of the Facility Documents and the exercise of the Borrower's rights and performance of its obligations thereunder do not and will not:
  - (a) conflict with any agreement, mortgage, bond or other instrument or treaty to which the Borrower is a party or which is binding upon the Borrower or any of the Borrower's assets; or
  - (b) conflict with any applicable law, regulation or official or judicial order.

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**Covenants**

The Borrower shall:

- (i) obtain, comply with the terms of and do all that is necessary to maintain in full force and effect all authorisations, approvals, licences and consents required in or by the laws and regulations of England to enable the Borrower lawfully to enter into and perform its obligations under the Facility Documents or to ensure the legality, validity, enforceability or admissibility in evidence in the place of payment of the Facility Documents;
- (ii) after the delivery of the request for an Advance to be made hereunder and before the proposed making of the Advance, notify the Lender of the occurrence of any event which results in or may reasonably be expected to result in any of the representations contained in Clause 9 being untrue at or before the time of the proposed making of the Advance;
- (iii) promptly inform the Lender of the occurrence of any Event of Default or any event which might become an Event of Default and, upon receipt of a written request to that effect from the Lender, confirm to the Lender that, save as previously notified to the Lender or as notified in such confirmation, no such event has occurred;

- (iv) ensure that at all times the Lender's claims against you under the Facility Documents rank at least pari passu with the claims of all its unsecured creditors; and
- (v) on request by the Lender, furnish the Lender with such information about itself as the Lender may reasonably require.

#### Events of Default

If:

- (i) the Borrower fails to pay any sum due from the Borrower under any of the Facility Documents at the time, in the currency and in the manner specified herein and such failure in respect of any amount other than the principal amount of one or more of the Advances is continued for a period of thirty days; or
- (ii) any representation or statement made by the Borrower in any of the Facility Documents or in any notice or other document, certificate or statement delivered by the Borrower pursuant thereto or in connection therewith is or proves to have been incorrect or misleading when made; or
- (iii) the Borrower fails duly to perform or comply with any of the obligations expressed to be assumed by it in any of the Facility Documents and such failure (other than a failure in respect of an obligation which is specifically dealt with elsewhere in this Clause 11) is continued for a period of ninety days after there has been given to the Borrower by the Lender a written notice specifying such failure and requiring it to be remedied and stating that such notice is a notice of default; or
- (iv) any of the Borrower's indebtedness is not paid when due, any of the Borrower's indebtedness is declared to be or otherwise becomes due and payable prior to its specified maturity or any of the Borrower's creditors become entitled to declare any of the Borrower's indebtedness due and payable prior to its specified maturity; or
- (v) the Borrower, voluntarily or otherwise, takes any corporate action or other steps are taken or legal proceedings are started for its winding-up, dissolution, administration or reorganisation or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of the Borrower or of any or all of its assets; or
- (vi) at any time it is or becomes unlawful for the Borrower to perform or comply with any or all of its obligations under any of the Facility Documents or any of the Borrower's obligations thereunder are not or cease to be legal, valid and binding; or
- (vii) the Borrower is unable to pay any of its debts within the meaning of Section 123(1)(e) of the Insolvency Act 1986 or makes a general assignment for the benefit of its creditors,

then the Lender shall be under no obligation to advance monies pursuant to this letter and may by notice to the Borrower require repayment (forthwith or otherwise as the Lender may require) of the Loan with accrued interest thereon together with any other sums then owed by the Borrower under the Facility Documents.

The Borrower also undertakes to indemnify the Lender in demand against any loss or expense, including legal fees, sustained or incurred as a consequence of the occurrence of any Event of Default referred to above.

## 12. Conditions Precedent

The Lender's agreement to make the Loan available is subject to its having received the following in form and substance satisfactory to it:

- (i) a copy certified by a duly authorised officer of the Borrower of the constitutive documents of the Borrower;
- (ii) a copy, certified by a duly authorised officer of the Borrower of a Board Resolution of the Borrower approving the execution, delivery and performance of each of the Facility Documents and the terms and conditions of this letter and authorising a -named person or persons to sign this letter and any documents to be delivered by the Borrower pursuant hereto;
- (iii) a certificate of a duly authorised officer of the Borrower setting out the names and signatures of the persons authorised to sign on behalf of the Borrower, this letter and the other Facility Documents and any documents to be delivered hereto or thereto.

## 13. Assignment

This letter shall bind and ensure to the benefit of both parties hereto and their respective successors and assigns. Neither party shall be capable of assigning all or any of its rights or obligations under the Facility Documents without the prior written consent of the other party.

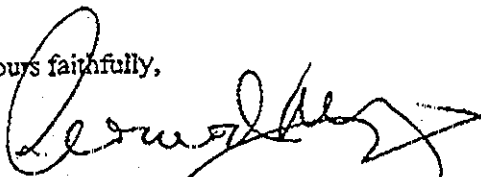
## 14. Miscellaneous

- (i) The Borrower shall pay all costs and expenses (including all legal fees) incurred by the Lender in connection with the negotiation, preparation and execution of the Facility Documents, the enforcement of the Facility Documents and the preservation of the Lender's rights thereunder and will also pay or indemnify the Lender against all present and future stamp duties or other similar taxes payable (including any interest and penalties) in respect thereof.
- (ii) No failure by the Lender in exercising any right, power or privilege under any of the Facility Documents shall operate as a waiver thereof or prejudice any other or further exercise by the Lender of any of our rights or remedies thereunder. The rights and remedies therein are cumulative and not
- (iii) ~~notice to either party may be given by law,~~ receipt but, if not in writing then, without prejudice to such effectiveness, confirmed forthwith thereafter in writing) to it at its address first stated above, marked for the attention of the person first stated above, or to such other address as it may specify to the other

## 15. Governing Law

This Letter shall be governed by and construed in accordance with the laws of England and the parties hereto submit to the jurisdiction of the English courts in respect of any dispute hereunder

Yours faithfully,



For and on behalf of  
**LEHMAN BROTHERS TREASURY CO. B.V.**

We agree to the above



Dated 26<sup>th</sup> May 2000

For and on behalf of  
**LEHMAN BROTHERS HOLDINGS Inc.**

Schedule 1

Form of [Request to Borrow/Offer to Lend] 1

To: [Lehman Brothers Treasury Co. BN./Lehman Brothers Holdings Inc.

Pursuant to the terms of the Facility Letter made between us dated [ ] I we hereby deliver to you a [Request To Borrow/Offer To Lend] 1 on the following terms:

Proposed borrowing date:

Amount:

Currency:

Term:

Interest rate:

Interest period:

Interest is to be calculated on the basis of a 360/365 day year and the actual number of days elapsed in the period in question

Account Details of Borrower:

Account Details of Lender:

I indicate your agreement to lend/borrowed on these terms by returning a signed copy of this letter within days of the date hereof

To: Lehman Brothers Holdings Inc /Lehman Brothers Treasury Co. B.V 1

We agree to lend/borrowed on the terms set out in the Request To Borrow/Offer To Lend 1 issued by [ ] on [ ], of which this is a copy.

Delete as appropriate.