

SAMPLE MARKET OUT LANGUAGE

**Sample Market Out from underwriter's High Yield
Commitment Letter (revised November, 1999):**

"there shall not have occurred after the date of the Letter (a) any general suspension of trading in, or limitation on prices for, securities on any national securities exchange or in the over-the-counter market in any Applicable Jurisdiction, (b) the declaration of a banking moratorium or any suspension of payments in respect of banks in any Applicable Jurisdiction, (c) the commencement of a war, armed hostilities or other international or national calamity or emergency, directly or indirectly involving any Applicable Jurisdiction, (d) any limitations (whether or not mandatory) imposed by any governmental authority on the nature or extension of credit or further extension of credit by banks or other lending institutions, (e) in the case of the foregoing clauses (c) and (d), a material escalation or worsening thereof, or (f) any other material adverse change in banking or capital market conditions that has had or reasonably could have a material adverse effect on, or has materially impaired, the syndication of leveraged bank credit facilities or the consummation of high-yield offerings, generally or deals similar to this transaction, that [underwriter] shall reasonably determine makes it impracticable to consummate (1) the Note Offering or the syndication of the Bridge Loans, as the case may be, (2) the syndication of the Senior Bank Facilities or (3) the Discount Debenture Offering, in each case prior to the termination of the marketing period with respect thereto [in each case prior to the termination date provided for in the Letter](it being understood that a period of 21 business days is required for the marketing of the Notes or the syndication of the Bridge Loans, the syndication of the Senior Bank Facilities and the marketing of the Discount Debentures)"

Sample Market Out from Bank Commitment Letter (May 2000):

[Lender's] commitment hereunder is subject to . . . there not having occurred [and being continuing] a material disruption of or material adverse change in financial, banking or capital market conditions that, in [lender's] sole judgment, could materially impair the syndication of the [facilities].

Sample Market Out provision from Underwriting Agreement relating to issuance of common stock (revised March, 2000)

"Termination. This Agreement shall be subject to termination in the absolute discretion of the Representatives, by notice given to the Company prior to delivery of and payment for the Securities, if at any time prior to such time (i) trading in the Company's Common Stock shall have been suspended by the Commission or the Nasdaq National Market or trading in securities generally on the New York Stock Exchange or the Nasdaq National Market shall have been suspended or limited or minimum prices shall have been established on such Exchange or the Nasdaq National Market, (ii) a banking moratorium shall have been declared either by Federal or New York State authorities or (iii) there shall have occurred any outbreak or escalation of hostilities, declaration by the United States of a national emergency or war, or other calamity or crisis the effect of which on financial markets is such as to make it, in the sole judgment of the Representatives, impractical or inadvisable to proceed with the offering or delivery of the Securities as contemplated by the Prospectus (exclusive of any supplement thereto)."

Sample Market Out provision from Underwriting Agreement relating to issuance of common stock (revised April, 2000)

"any material suspension or material limitation of trading in securities generally on the New York Stock Exchange, or any setting of minimum prices for trading on such exchange, or any suspension of trading of any securities of the Company on any exchange or in the over-the-counter market; (iv) any banking moratorium declared by U.S. Federal or New York authorities; or (v) any outbreak or escalation of major hostilities in which the United States is involved, any declaration of war by Congress or any other substantial national or international calamity or emergency if, in the judgment of a majority in interest of the Underwriters including the Representatives, the effect of any such outbreak, escalation, declaration, calamity or emergency makes it impractical or inadvisable to proceed with completion of the public offering or the sale of and payment for the Offered Securities."