STATE OF NEW YORK

DEPARTMENT OF TAXATION AND FINANCE

COMMISSIONER OF TAXATION AND FINANCE

ALBANY, NEW YORK

Pursuant to the authority contained in subdivision First of section 171 and subdivision (a) of section 1096 of the Tax Law, the First Deputy Commissioner of Taxation and Finance, being duly authorized to act due to the vacancy in the office of the Commissioner of Taxation and Finance, hereby makes and adopts the following amendments to the Business Corporation Franchise Tax Regulations, as published in Subchapter A of Chapter I of Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York, such amendments to read as follows:

Section 1. Paragraph (2) of subdivision (a) of section 3-3.2 of such regulations is amended by amending subparagraphs (vi) and (vii) and adding a new subparagraph (viii) to read as follows:

(vi) futures contracts and forward contracts; [and]

(vii) stocks, bonds and other securities held by the taxpayer for sale to customers in the regular course of its business and, in the case of a taxpayer that is a partner in a partnership using the aggregate method pursuant to section 3-13.3 of this Part or that is a foreign corporate limited partner that has made an election with respect to such partnership pursuant to the provisions of section 3-13.5 of this Part, its proportionate part (see section 3-13.3(a)(2) of this Part) of such items which are held by such partnership for sale to customers in the regular course of the partnership's business[.]; and

(viii) repurchase agreements and securities lending agreements described in subdivision (g) of this section, including, in the case of a taxpayer that is a partner in a partnership that uses the aggregate method pursuant to section 3-13.3 of this Part or is a foreign corporate limited partner that has made an election with respect to such partnership pursuant to the provisions of section 3-13.5 of this Part, where such partnership is a

registered securities broker or dealer as described in section 210.3(a)(9)(B) of the Tax Law, its proportionate part (see section 3-13.3 (a)(2) of this Part) of such items which are held by such partnership.

Section 2. Paragraph (1) of subdivision (f) of section 3-3.2 of such regulations is amended to read as follows:

(1) Repurchase agreement is a term used to describe a transaction in which one party (the seller/borrower) in formal terms sells securities to a second party (the purchaser/lender) and simultaneously contracts to repurchase the same or substantially identical securities at a later time. Depending upon the nature of the agreement, in some instances the purchaser/lender will have in fact purchased the securities, whereas in other instances the transfer of funds to the seller/borrower will in fact constitute a loan [which is collateralized by the securities]. Where the purchaser/lender is a taxpayer it is necessary to determine whether the result of such a transaction is the holding by the purchaser/lender of investment capital. If the purchaser/lender, as a result of the repurchase agreement, owns the securities, and the securities are encompassed within the definition of investment capital contained in subdivision (a) of this section, such securities will constitute investment capital in the hands of the purchaser/lender. If the purchaser/lender has not acquired ownership of the securities, then it is a lender of funds and has acquired a debt instrument issued by the seller/borrower [collateralized by the securities]. Unless such debt instrument constitutes cash pursuant to paragraph (1) of subdivision (a) of this section, where such debt instrument is encompassed within the definition of investment capital contained in subdivisions (a) and (c) of this section, such instrument will constitute investment capital in the hands of the purchaser/lender. Otherwise, it will constitute either business capital or subsidiary capital. Provided, however, a repurchase agreement described in subdivision (g) of this section does not constitute investment capital, or cash on hand or cash on deposit pursuant to paragraph (1) of subdivision (a) of this section.

Section 3. Section 3-3.2 of such regulations is amended by re-lettering subdivision (g) to (h) and adding a new subdivision (g) to read as follows:

(g) Repurchase agreements and securities lending agreements held by registered securities brokers or dealers. (1) Repurchase agreements. A repurchase agreement, as described in subdivision (f) of this section, that is held by a registered securities broker or dealer, as described in section 210.3(a)(9)(B) of the Tax Law, does not constitute cash on hand or cash on deposit pursuant to paragraph (1) of subdivision (a) of this section and is not investment capital.

(2) Securities lending agreements. (i) A securities lending agreement held by a registered securities broker or dealer, as described in section 210.3(a)(9)(B) of the Tax Law, does not constitute cash on hand or cash on deposit pursuant to paragraph (1) of subdivision (a) of this section and is not investment capital.

(ii) "Securities lending agreement" is a term used to describe a transaction in which, by its terms, one party (the securities lender) transfers stock or other securities in exchange for a promise by a second party (the securities borrower) to return substantially identical or equivalent securities at a later time. The securities borrower provides the securities lender with collateral, which may be cash or noncash collateral, such as a letter of credit or government securities. Securities lending agreements are generally characterized by the following:

(A) the securities borrower has the right to transfer the securities to a third party;

(B) the securities borrower is required to pay the securities lender an amount equal to dividends and interest paid on the securities over the term of the transaction and a fee, which may be quoted as an annualized percentage of the value of the securities, commonly known as the "borrow fee";

(C) where the agreed form of collateral in the securities lending agreement is cash, the securities lender retains any earnings from the use of the cash collateral during the term of the agreement;

(D) upon termination of the agreement, the securities borrower receives compensation for the use of the collateral commonly known as the "rebate fee" or "cash collateral fee";

(E) the net of the rebate fee and the borrow fee ("the net rebate fee") is ordinarily exchanged between the securities borrower and the securities lender; and

(F) the rebate fee generally exceeds the borrow fee and the net amount is reported as interest income by the securities borrower and interest expense by the securities lender.

Section 4. Subdivisions (c), (d) and (e) of section 4-4.3 of such regulations are repealed; subdivisions (f) and (g) are relettered to be subdivisions (d) and (e) and a new subdivision (c) is added to read as follows:

(c) For rules for allocating receipts of registered securities or commodities brokers or dealers, see section 210.3(a)(9) of the Tax Law and section 4-4.7 of this Subpart.

Section 5. Section 4-4.7 of such regulations is renumbered to be section 4-4.8 and a new section 4-4.7 is added to read as follows:

Section 4-4.7. Receipts of registered securities brokers or dealers (a) General. Section 210.3(a)(9) of the Tax Law provides rules for allocating receipts of registered securities or commodities brokers or dealers. Subdivision (b) of this section explains the application of the special rules to receipts of registered securities brokers or dealers from repurchase agreements and securities lending agreements.

(b) Repurchase agreements and securities lending agreements. (1) Income to a registered securities broker or dealer from repurchase agreements or securities lending agreements, as described in subdivision (g) of section 3-3.2 of Part 3 of this Subchapter, is included in determining gross income from principal transactions for the purchase or sale of stocks, bonds, and other securities and is allocated to New York State pursuant to the provisions of section 210.3(a)(9)(A)(iii) of the Tax Law.

(2) Under Section 210.3(a)(9)(A)(iii) of the Tax Law, gross income from principal transactions is determined after the deduction of any cost of the taxpayer to acquire securities or commodities. Interest expense from repurchase agreements in which the taxpayer is the seller/borrower and from securities lending agreements in which the taxpayer is the securities lender is a cost to acquire the securities in those repurchase agreements where the taxpayer is the purchaser/lender and securities lending agreements where the taxpayer is the securities borrower. The amount of such interest expense is the interest expense associated with the sum of the value of

the taxpayer's repurchase agreements where it is the seller/borrower plus the value of the taxpayer's securities lending agreements where it is the securities lender, provided such sum is limited to the sum of the value of the taxpayer's repurchase agreements where it is the purchaser/lender plus the value of the taxpayer's securities lending agreements where it is the securities borrower. Such interest expense must not exceed the sum of the interest income from the taxpayer's repurchase agreements where it is the purchaser/lender plus the interest income from the taxpayer's securities lending agreements where it is the securities borrower. For purposes of item (II) of section 210.3(a)(9)(A)(iii) of the Tax Law, gross income from repurchase agreements and securities lending agreements is considered to be from the same type of security and the taxpayer shall not separately calculate such gross income from such agreements.

(c) Corporate partners. In the case of a taxpayer that is a partner in a partnership using the aggregate method pursuant to in section 3-13.3 of this Title or is a foreign corporate limited partner that has made an election with respect to such partnership pursuant to the provisions of section 3-13.5 of this Title, where such partnership is a registered securities or commodities broker or dealer, the allocation rules of section 210.3(a)(9) of the Tax Law shall apply with respect to the taxpayer's distributive share (see section 3-13(a)(1) of this Title) of such receipts from such partnership for purposes of computing the taxpayer's receipts factor pursuant to section 4-6.5 of this Part.

Section 6. Subdivision (k) of section 6-2.7 of such regulations is amended to read as follows:

(k) Receipts factor on combined reports, see section [4-4.7] 4-4.8 of this Title.

Section 7. The amendments will take effect when the Notice of Adoption is published in the State Register and shall apply to reports required to be filed, without regard to extensions of time to file, on or after January 15, 2008.

Dated: Albany, New York
December 11, 2007

Barbara G. Billet
Acting Commissioner and Executive Deputy
Commissioner of Taxation and Finance