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Navigating Potential Risks When Lending Against Goods on the Water Covered by Sea Waybills, Rather Than Bills of Lading – Part II
Peter J. Lahny, IV

On Preemption: OCC Confirms Crypto Trust Bank Needs No State Money Transmitter License
Thomas J. Delaney, Tim Byrne and Gage Raju-Salicki

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Victoria Prussen Spears 467

The "Evergreen" Assumption: Rethinking Automatic Renewals in Letters of Credit
George H. Singer 470

Navigating Potential Risks When Lending Against Goods on the Water Covered by Sea Waybills, Rather Than Bills of Lading – Part II
Peter J. Lahny, IV 484

On Preemption: OCC Confirms Crypto Trust Bank Needs No State Money Transmitter License
Thomas J. Delaney, Tim Byrne and Gage Raju-Salicki 504

Tenth Circuit Adopts the "Objectively and Readily Verifiable" Standard for FCRA Furnisher Claims—and Makes It the Court's Call
Alisa A. Givental and Genevieve Walser-Jolly 508

Public Welfare Investment Cap Increased to 20%: What It Means for Banks, Syndicators and the LIHTC Equity Market
Andrew H. Tripp and John M. Marti 512

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Navigating Potential Risks When Lending Against Goods on the Water Covered by Sea Waybills, Rather Than Bills of Lading – Part II

By Peter J. Lahny, IV*

In this two-part article, the author addresses how secured creditors might try to mitigate the risks associated with lending against goods in transit located in international waters covered by a sea waybill rather than by a bill of lading. In the first part, published in the October 2026 issue of The Banking Law Journal*, the author briefly addressed the differences between bills of lading and sea waybills and then discussed in detail the issues created for secured creditors in lending against such goods covered by sea waybills. In this conclusion, the author makes specific suggestions to try to mitigate certain risks created by the use of sea waybills.*

III. POTENTIAL MITIGATION AND THE PROPOSED MASTER SEA WAYBILL AGREEMENT

The first part of this article, published in the October 2026 issue of *The Banking Law Journal*, discussed the differences between bills of lading and sea waybills and the issues created for secured creditors in lending against such goods covered by sea waybills. This conclusion explains how making some specific changes to the secured creditor's loan facility documentation and entering into a tri-partite agreement among the secured creditor, the shipper / supplier and the borrower (a form of which is attached hereto as Exhibit A, the "Master Sea Waybill Agreement") can help mitigate many of the risks associated with the use of the sea waybill, rather than a bill of lading. In an attempt to address those additional risks presented by lending against goods covered by sea waybills, this article suggests the following:

A. Loan Facility Documentation Modifications

In connection with the growing need for secured creditors to lend against goods covered by sea waybills, I have been seeing syndicated loan documentation that seeks to address this issue by simply adding a reference to sea waybills in the subsection setting forth the requirements for the borrower's in transit inventory to be considered "Eligible Inventory." As briefly discussed earlier, this accommodation ignores all of the additional risks discussed in Section II., published in the first part of this article.

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This Section III.A. discusses certain proposed changes to the typical loan facility documentation that should be required in connection with lending against goods located in international waters that are covered by sea waybills as follows:

1. *Definition of "Eligible Inventory" in the Typical Credit Agreement*

The typical provision (within the broader definition of Eligible Inventory) in a syndicated credit agreement, when solely addressing in transit inventory covered by bills of lading or trust receipts, usually reads as follows:

> (_) is either (i) in transit under the control and ownership of a borrower to or from a designated jurisdiction acceptable to the Administrative Agent, including on a water borne vessel chartered, rented, owned or leased by a borrower, or (ii) stored at (x) a storage location as set out on Schedule 1 or (y) such other storage location approved by the Administrative Agent as an approved storage location; provided that with respect to any such inventory located in transit in international waters, unless otherwise agreed by the Administrative Agent, the applicable borrower shall have instructed the applicable supplier, vessel or agent to issue or endorse to the Administrative Agent the 3/3 bills of lading; provided further, that on or after the 20th day following the date such borrower first acquired title to any such in transit inventory, unless otherwise agreed by the Administrative Agent, such inventory shall not be "Eligible Inventory" unless (1) the applicable 3/3 bills of lading have been issued or endorsed to the Administrative Agent, or (2) the Administrative Agent shall have received trust receipts related to such 3/3 bills of lading that have been issued or endorsed to such borrower as may be agreed upon from time to time by the Administrative Agent (so long as the Administrative Agent's security interest in such trust receipts and the inventory covered thereby shall be perfected in accordance with the New York Uniform Commercial Code during the time period in which such trust receipts have been issued to the Administrative Agent)....[76]

While it is correct that the definition of "Eligible Inventory" needs to be revised to address the eligibility of the in transit inventory covered by sea waybills, the changes must address several specific issues including, certain terms of the applicable sea waybill, the final destination of such in transit inventory, the use of a Master Sea Waybill Agreement, and the setting of a time limit during which such in transit inventory will continue to be eligible. To

[76] This is a provision that I have seen used in my own practice.

accomplish this, I would recommend adding something to the effect of the following additional proviso at the end of the subsection set forth above:

> ; and provided, further, that, with respect to any such inventory that is located in transit in international waters and covered by a sea waybill, (A) such sea waybill shall be issued in the name of such borrower, as consignee, (B) such inventory is in transit to the United States of America or to a designated jurisdiction acceptable to the Administrative Agent, in which the Administrative Agent maintains a perfected, first priority security interest in such borrower's inventory, (C) the shipper / supplier named in the applicable sea waybill shall have entered into a tri-partite agreement with the Administrative Agent and the borrower, in form and substance satisfactory to the Administrative Agent, and (D) the underlying inventory described in the applicable sea waybill shall be received by the borrower within 20 days following the issuance of the applicable sea waybill, in a jurisdiction where the Administrative Agent maintains a perfected, first priority security interest in such inventory.[77]

The proposed changes to the definition of "Eligible Inventory" will require implementation across the applicable loan facility documentation. Each proposed clause in the new proviso set forth above will be addressed in turn in the following paragraphs of this Section III.A.

Clause (A), "such sea waybill shall be issued in the name of such borrower, as consignee," is very important for two reasons. First, as discussed above, only the consignee named in the sea waybill is able to acquire the underlying goods at the final port of destination. To the extent that any other party is named as consignee, those goods cannot be included in the borrower's "Eligible Inventory." Second, the Master Sea Waybill Agreement is an agreement among the secured creditor, the borrower and the shipper / supplier. Accordingly, the consignee and the shipper listed in the applicable sea waybill must be parties to a Master Sea Waybill Agreement with the secured creditor, or such secured creditor cannot agree that the underlying inventory will be "Eligible Inventory" under its loan facility.

Clause (B), "such inventory is in transit to the United States of America or to a designated jurisdiction acceptable to the Administrative Agent, in which the Administrative Agent maintains a perfected, first priority security interest in such borrower's inventory," attempts to ensure that the perfection risk is limited to the time that the applicable goods are located on the water. Since sea waybills

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[77] This is a provision that I have used in my own practice.

are not documents of title, while the goods are on the water the secured creditor will not be properly perfected in those goods. However, immediately upon the borrower offloading those goods at a port within a jurisdiction in which the secured creditor has perfected its security interest in the borrower's inventory, the secured creditor will have a perfected security interest in such goods. Accordingly, adding this clause (B) reduces this risk to a timing issue since the secured creditor will only be "naked" in respect of the applicable goods while such goods are actually on the water.

If this clause (B) is not included, it creates a scenario where certain inventory covered by sea waybills will be considered "Eligible Inventory" while that inventory is in transit to jurisdictions where the secured creditor has not perfected its security interest in such inventory. In that case, the secured creditor is not only unsecured while the goods are on the water, but also after the goods reach their final destination. This is completely unacceptable for the typical secured creditor. As such, it is clear that the proposed changes must require that the applicable goods be on route to the U.S. or another jurisdiction where the secured creditor maintains a first priority, perfected security interest in all of the borrower's goods/inventory in order for such inventory to be Eligible Inventory.

Clause (C), "the shipper / supplier named in the applicable sea waybill shall have entered into a tri-partite agreement with the Administrative Agent and the borrower, in form and substance satisfactory to the Administrative Agent," is essential to providing the secured creditor with the comfort necessary to lend into this situation. We will discuss the Master Sea Waybill Agreement in detail in Section III.B. below.

Clause (D), "the underlying inventory described in the applicable sea waybill shall be received by the borrower within 20 days following the issuance of the applicable sea waybill, in a jurisdiction where the Administrative Agent maintains a perfected, first priority security interest in such inventory," expressly limits the amount of time that the secured creditor will be unperfected in respect of the applicable "Eligible Inventory." Secured creditors never want to be "naked" in respect of any inventory in respect of which they have advanced funds. This provision attempts to limit the amount of time that the secured creditor will be unsecured to a specific number of days.

By its nature, lending against goods covered by sea waybills requires the secured creditor to accept the fact that it will be unsecured while the goods covered by the sea waybill are located in international waters. However, it is never acceptable for a secured creditor to be unsecured without having certain express limits in place. The 20-day period suggested above matches the 20-day

temporary perfection period granted under Section 9-312(f) of the U.C.C.[78] However, since these are not documents of title that would be covered by Section 9-312(f) of the U.C.C., the period actually included in a secured creditor's credit agreement can be extended or shortened at the secured creditor's discretion. Also, the provision requiring that the goods be on route "to the United States of America or to a designated jurisdiction acceptable to the Administrative Agent, in which the Administrative Agent maintains a perfected, first priority security interest in such borrower's inventory" ensures that the secured creditor will have a perfected security interest immediately upon the offloading of such inventory in such jurisdiction. Again, mitigating risks to the secured creditor.

Lastly, the final loan documentation should always include a specific dollar amount "cap" on the aggregate maximum amount of all in transit inventory covered by sea waybills to be included in the applicable lending formula. Since the secured creditors will be unsecured with respect to such inventory, the cap will serve two very important purposes: first, it provides a clear dollar limit on the secured creditors' potential exposure, and second, it allows the lender group to obtain appropriate internal credit approvals with respect to such unsecured exposure. The specific dollar amount of the "cap" would typically be included in the definition of "borrowing base" or "advance rates," as applicable to the specific loan facility documentation.

2. *Conditions Precedent to Each Advance Section in the Typical Credit Agreement*

While the above covers the necessary changes to the "Eligible Inventory" and other lending formula definitions, additional changes to the typical credit agreement are also required. The credit agreement must also expressly require that the funding of any loan to purchase goods that will be shipped pursuant to a sea waybill will be made directly to the supplier shipping the applicable goods to pay for the purchase prior to the shipping of the goods. This requires certain changes to the "conditions precedent" section of a typical credit agreement.

The applicable secured creditor's credit agreement should require, as a condition precedent to the making of each extension of credit, receipt by the secured creditor of each of the following additional documents:

(i) a borrowing request, in the form required by the secured creditor in its sole discretion, listing (A) the requested amount as the purchase price set forth in the invoice from the applicable supplier, and (B) the

[78] See U.C.C. § 9-312(f) supra note 38.

wire transfer instructions set forth in the invoice from the supplier;

(ii) a copy of the invoice from the applicable supplier (within a specified time frame from the invoice date) setting forth the purchase price and wire instructions to remit payment;

(iii) copies of the sea waybills, acceptable to the secured creditor in its sole discretion, and issued in the name of the borrower and listing as the shipper, a supplier that has entered into a Master Sea Waybill Agreement with the secured creditor and the borrower, in form and substance satisfactory to the secured creditor;

(iv) a copy of a valid and binding sales contract or purchase order between the borrower and a customer, acceptable to the secured creditor in its sole discretion, containing specific prices and delivery dates; and

(v) a copy of an invoice issued by the borrower to a customer, satisfactory to the secured creditor in its sole discretion, upon which the borrower's right to receive payment is absolute and not conditional, and requiring the remittance of payment to the applicable secured creditor's collection account. [79]

Each of the required documents serves a specific purpose.[80] The invoice from the applicable supplier provides the secured creditor with the purchase price and the appropriate wire transfer instructions for the supplier to allow the secured creditor to confirm that they are correctly set forth in the applicable borrowing request.[81] Copies of the sea waybills allow the secured creditor to confirm that the appropriate supplier has entered into a Master Sea Waybill Agreement with the secured creditor and the borrower.[82] As further discussed in Section III.B. below, the receipt of payment in full by the supplier triggers the enforceability of the various agreements by the supplier under the Master Sea Waybill Agreement.[83] Lastly, the sales contract and invoice issued by debtor to a customer allow the secured creditor to confirm that the payment in respect of the goods, the purchase of which it has financed, will be made to a collection account designated by such secured creditor.[84]

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[79] This is an example of requirements that I've seen in my own practice.

[80] See Lahny, supra note 6, at 394.

[81] See Lahny, supra note 6, at 394.

[82] See infra Section III.B.

[83] See infra Section III.B.

[84] See Lahny, supra note 6, at 394.

Also, and just as important, in making the advance directly to the applicable supplier, the paper trail created thereby would allow the secured creditor to use Paragraph (b) of the definition of "Specific Security Interest" to establish its senior Specific Security Interest under the standard form of transactional commodities finance intercreditor agreement.[85] As more specifically set forth in Section II.C. above, this can be absolutely essential in the bi-lateral commodities and trade finance arenas.[86]

3. *Security Documentation*

To assist the secured creditor in getting comfortable with lending against goods in international waters that are covered by sea waybills, the secured creditor's security interest in those underlying goods must be perfected in the ultimate jurisdiction where such goods are to be delivered. This requires the secured creditor to take additional steps in certain foreign jurisdictions when initially documenting the transaction. In most cases, it will be prudent for the secured creditor to perfect in the foreign jurisdictions where the borrower does significant business.

This will require engaging local counsel to document the secured creditor's security interest and to take the necessary steps to perfect such security interest. To the extent that the secured creditor is not properly perfected in the jurisdiction of the port of final destination, as discussed above, the secured creditor should not be lending against goods on route to such location.

B. Proposed Master Sea Waybill Agreement

In an attempt to mitigate certain risks set forth in Section II. above, I have suggested that secured creditors enter into a Master Sea Waybill Agreement (in the form attached hereto as Exhibit A) with the borrower and the supplier / shipper. The form of Master Sea Waybill Agreement was created to specifically address some of the issues referred to in Section II. above. The following will address certain specific provisions of the Master Sea Waybill Agreement.

1. *Agreements by the Supplier*

In an attempt to mitigate the risk that the shipper / supplier might divert the applicable goods to a different port during shipping, Paragraph 5 of the Master Sea Waybill Agreement requires the supplier to expressly agree that, following receipt of payment, it shall have no right to vary any terms of the applicable sea waybill. Paragraph 5 reads as follows:

The Supplier hereby agrees that, with respect to any Specific Collateral,

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[85] See supra Section II.C.; see also supra notes 58-60.

[86] See supra Section II.C.; see also supra notes 58-60.

> immediately following receipt by the Supplier of payment in full in respect of the applicable Goods from the Purchaser (whether by documentary collections processed by the Secured Party, or otherwise) and delivery by the Supplier of the applicable Goods to the applicable shipping carrier, (a) the Supplier shall have no right, title or interest in any of the Specific Collateral related to such Goods, (b) the Supplier hereby irrevocably renounces any right it may have to vary any terms of the applicable Sea WayBills, including, without limitation, the identity of the consignee of such Goods or the port of destination of such Goods, and (c) the Supplier shall not, and shall have no right to provide, at any time, any instruction or direction to the applicable shipping carrier with respect to such Goods. The Supplier hereby further agrees that, immediately following receipt by the Supplier of payment in full for the Goods and from and after delivery of such Goods to the applicable shipping carrier, all right, title or interest in such Goods and any of the Specific Collateral related to such Goods shall vest solely in the Purchaser and the Purchaser shall have the sole right to provide any instruction or direction to the applicable shipping carrier with respect to such Goods.[87]

Pursuant to this contractual agreement by the supplier, the supplier expressly renounces all right, title and interest in the underlying goods, and any right it may have to alter the sea waybills or divert the shipment. It would also be advisable for the secured creditor to share a copy of this agreement with the applicable carrier, so that they are aware that the parties have agreed that the shipper / supplier has no right to provide any instruction to such carrier.

While this solution does not completely remove the risk of the supplier acting inappropriately, the contractual agreement does give the secured creditor comfort that it will have a rock solid cause of action against the supplier should it choose to violate any of those provisions. Also, it is reasonable to believe that a supplier will be less likely to engage in actions that are expressly prohibited by an agreement that it recently signed, rather than hoping for the best and remaining silent on the issue. Due to its ability to actually affect the behavior of the supplier, this is arguably the most important provision in the Master Sea Waybill Agreement.

2. *Express Grant of Security Interest Over Sea Waybill and Underlying Goods*

In an attempt to mitigate the risk that the secured creditor will not have a first priority, perfected security interest in the underlying goods while they are

[87] Exhibit A, at 2 ¶ 5.

in transit in international waters, the first two paragraphs of the Master Sea Waybill Agreement expressly grant the secured creditor a security interest in the sea waybills, the underlying goods and the proceeds thereof. Paragraphs 1 and 2 read as follows:

> 1. The Purchaser has requested that as a matter of convenience the Secured Party in its discretion and from time to time allow to the Purchaser to maintain possession of certain sea waybills, including, without limitation, electronic sea waybills (collectively, the "Sea WayBills") covering the goods specifically represented by such Sea WayBills, including, but not limited to, all inventory of any type, all _____ products and other goods purchased by the Purchaser with extensions of credit by the Secured Party (collectively, the "Goods"), which Sea WayBills, Goods and the cash and non-cash proceeds thereof are, and shall at all times remain, subject to the security interest of the Secured Party (collectively, the "Specific Collateral").
>
> 2. All of the Obligations (as defined in the Security Agreement dated as of the date hereof (as amended, supplemented or otherwise modified from time to time, the "Security Agreement") by the Purchaser in favor of the Secured Party) shall be secured by, among other things, all of the Specific Collateral and which shall constitute "Collateral" as defined in the Security Agreement. Upon the occurrence of any Event of Default under and as defined in any of the Loan Documents (as defined in the Security Agreement), the Secured Party shall have all of the rights and remedies with respect to the Specific Collateral as provided in the Security Agreement, under any applicable law and at equity, which rights and remedies shall be cumulative and not exclusive of each other.[88]

The language expressly makes the sea waybills, the underlying goods and any proceeds thereof, "Collateral" as defined in the other security agreements entered into with the secured creditor. Pursuant to this agreement, the borrower contractually agrees that the sea waybills, the underlying goods and any proceeds thereof, shall at all times remain subject to the security interest of the secured creditor.

The other paragraphs of the Master Sea Waybill Agreement also include certain typical security agreement provisions, including, without limitation:

(i) requirements for the borrower to maintain insurance covering the goods naming the secured creditor as loss payee and additional

[88] Exhibit A, at 1 ¶ 1 and 2.

insured;

(ii) the granting of certain rights to the secured creditor following the occurrence of an event of default; and

(iii) certain inspection and document production rights.

It is clear that this contractual agreement does not create, in favor of the secured creditor, a first priority, perfected security interest in the applicable goods while they are located in international waters. However, it is important to note that this situation is not dissimilar to the situation where a secured creditor is lending against goods covered by a copy of a bill of lading or by a trust receipt, outside the 20-day temporary perfection period granted under Section 9-312(f) of the U.C.C.[89] Once again, this agreement is not a perfect solution to the perfection issue. However, it may provide some comfort to the secured creditor when contemplating lending against goods covered by sea waybills.

3. *Express Limitations on Use of Sea Waybill*

In a further attempt to provide comfort to the secured creditor in connection with its lack of a first priority, perfected security interest in the applicable goods, paragraphs 3 and 4 of the Master Sea Waybill Agreement expressly limit the manner in which the borrower may deal with the goods once released.[90] Paragraphs 3 and 4 read as follows:

> 3. As an accommodation to the Purchaser, the Secured Party shall permit Sea WayBills to be held by the Purchaser. The Purchaser shall hold any Specific Collateral so released in trust for the Secured Party and subject to its security interest. The Purchaser shall not, in any manner, encumber any of the Specific Collateral so released to it, and except as hereinafter expressly provided, the Purchaser shall not sell any of the same. Any Specific Collateral so released to the Purchaser shall be used promptly by the Purchaser without any expense to the Secured Party, and shall be used solely for any of the following purposes:
>
> (a) To transfer to an independent third-party carrier for transportation, provided that copies of any applicable documents of title, in form and substance satisfactory to the Secured Party, are delivered to the Secured Party immediately upon receipt thereof by the Purchaser;
>
> (b) To arrange for inspection by appropriate customs officials from governmental agencies and after passage of inspection, for such other

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[89] See U.C.C. § 9-312(f) supra note 38.

[90] Exhibit A, at 1 ¶ 3 and 4.

purpose(s) as may hereafter be consented to in writing by the Secured Party in its sole discretion;

(c) To arrange for the storage of the Goods represented by the Sea WayBills in a public warehouse acceptable to the Secured Party, provided that proper negotiable warehouse receipts, or non-negotiable warehouse receipts in the name of the Secured Party, in each case issued by such warehouse, are either delivered to the Secured Party or held by the Purchaser on behalf of the Secured Party immediately upon receipt thereof by the Purchaser;

(d) To arrange for the sale of the Goods represented by the Sea WayBills in the Purchaser's ordinary course of business, on terms and conditions and to purchaser(s) acceptable to the Secured Party, provided, that the accounts receivable and the proceeds of such sale are specifically assigned to the Secured Party; and

(e) For such other purpose(s) as to which the Secured Party shall from time to time agree in writing (in its sole discretion).

4. The Purchaser hereby represents and warrants that each release of Specific Collateral as set forth above shall be for the purpose of (a) ultimate sale or exchange of the applicable Goods or (b) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with the applicable Goods in a manner preliminary to their sale or exchange.[91]

Those purposes, as set forth above, are generally limited to the sale or exchange of the applicable goods, or otherwise preparing the applicable goods for a sale or exchange, and generally match the permitted purposes as set forth in Section 9-312(f) of the U.C.C. in connection with the release of documents of title. Those paragraphs also make clear that, following the release of such goods to the borrower, any documents of title issued in respect of such goods (e.g. warehouse receipts, etc.) shall be held by the secured creditor. Also, assuming that the goods have been delivered to the borrower in a port in the U.S. or another jurisdiction where the secured creditor has properly perfected its security interest in such goods, upon the borrower's receipt, the secured creditor will have a properly perfected security interest in such goods.

As discussed above, the Master Sea Waybill Agreement is not capable of providing the secured creditor with a first priority, perfected security interest in the applicable goods while they are located in international waters. However, by

[91] Exhibit A, at 1 ¶ 3 and 4.

expressly limiting the potential uses of the applicable goods as set forth above, hopefully, this too will provide the secured creditor with some comfort.

4. *Express Agreement Regarding "Specific Security Interest"*

In an attempt to mitigate the risk that the secured creditor will not maintain a "Specific Security Interest" under the standard form of transactional commodities finance intercreditor agreement, pursuant to paragraph 8 of the Master Sea Waybill Agreement, the borrower agrees that, despite the use of sea waybills, the secured creditor will maintain a "Specific Security Interest" in respect of the underlying goods. Paragraph 8 reads as follows:

> 8. THE PURCHASER HEREBY ACKNOWLEDGES AND AGREES THAT, NOTWITHSTANDING THE RELEASE OF SEA WAYBILLS BY THE SECURED PARTY, THE SPECIFIC COLLATERAL AT ALL TIMES REMAINS SUBJECT TO THE SECURITY INTEREST OF THE SECURED PARTY AND SHALL CONSTITUTE A "SPECIFIC SECURITY INTEREST" AS THAT TERM IS USED IN ANY INTERCREDITOR AGREEMENT AMONG THE SECURED PARTY AND ANY OTHER SECURED CREDITOR OF THE PURCHASER.

It is important to note that this express statement by the borrower that the secured creditor maintains a "Specific Security Interest" in respect of the underlying goods is not effective to modify any of the terms of the applicable intercreditor agreement. As such, in order to be sure that the secured creditor actually maintains a "Specific Security Interest," the applicable secured creditor must comply with the suggestions set forth in Section II.C. above. Again, this section has been included to try to provide some comfort to the secured creditor attempting to lend into this situation in the commodities and trade finance space.

It is clear that the use of the Master Sea Waybill Agreement cannot completely redress the risks created by lending against goods covered by a sea waybill, rather than a bill of lading, while such goods are in transit in international waters. However, as set forth above, the use of the Master Sea Waybill Agreement can provide some comfort to secured creditors that may help them get past their reservations regarding making advances in respect of such goods.

An additional question remains as to whether the secured creditor should also seek to enter into a separate agreement with the applicable carrier. Since these proposed solutions are not typical, and most carriers will be reluctant to enter into any agreement with the third party secured creditor, this is not a viable solution at this time.

IV. CONCLUSION

This article is in no way trying to convince secured creditors that the use of sea waybills is an acceptable replacement for the use of bills of lading in international asset-based lending transactions. This article is merely trying to address the additional risks to secured creditors that have been created by the increased popularity of the use of sea waybills in international shipping. To the extent that a secured creditor deems it reasonable, necessary and prudent to advance funds against goods located in international waters and covered by a sea waybill, this article attempts to help mitigate the additional risks created by providing this type of accommodation to a particularly valued borrower.

Exhibit A

MASTER SEA WAYBILL AGREEMENT

This MASTER SEA WAYBILL AGREEMENT (this "Master Agreement") dated as of _____ __, 202_ among _____ (the "Secured Party"), _____, a _____ organized under the laws of the State of _____ (the "Purchaser"), and _____, a _____ (the "Supplier").

1. The Purchaser has requested that as a matter of convenience the Secured Party in its discretion and from time to time allow to the Purchaser to maintain possession of certain sea waybills, including, without limitation, electronic sea waybills (collectively, the "Sea WayBills") covering the goods specifically represented by such Sea WayBills, including, but not limited to, all inventory of any type, all _____ products and other goods purchased by the Purchaser with extensions of credit by the Secured Party (collectively, the "Goods"), which Sea WayBills, Goods and the cash and non-cash proceeds thereof are, and shall at all times remain, subject to the security interest of the Secured Party (collectively, the "Specific Collateral").

2. All of the Obligations (as defined in the Security Agreement dated as of the date hereof (as amended, supplemented or otherwise modified from time to time, the "Security Agreement") by the Purchaser in favor of the Secured Party) shall be secured by, among other things, all of the Specific Collateral and which shall constitute "Collateral" as defined in the Security Agreement. Upon the occurrence of any Event of Default under and as defined in any of the Loan Documents (as defined in the Security Agreement), the Secured Party shall have all of the rights and remedies with respect to the Specific Collateral as provided in the Security Agreement, under any applicable law and at equity, which rights and remedies shall be cumulative and not exclusive of each other.

3. As an accommodation to the Purchaser, the Secured Party shall permit Sea WayBills to be held by the Purchaser. The Purchaser shall hold any Specific Collateral so released in trust for the Secured Party and subject to its security interest. The Purchaser shall not, in any manner, encumber any of the Specific Collateral so released to it, and except as hereinafter expressly provided, the Purchaser shall not sell any of the same. Any Specific Collateral so released to the Purchaser shall be used promptly by the Purchaser without any expense to the Secured Party, and shall be used solely for any of the following purposes:

(a) To transfer to an independent third-party carrier for transportation, provided that copies of any applicable documents of title, in form and substance satisfactory to the Secured Party, are delivered to the Secured Party immediately upon receipt thereof by the Purchaser;

(b) To arrange for inspection by appropriate customs officials from governmental agencies and after passage of inspection, for such other purpose(s) as may hereafter be consented to in writing by the Secured Party in its sole discretion;

(c) To arrange for the storage of the Goods represented by the Sea WayBills in a public warehouse acceptable to the Secured Party, provided that proper negotiable warehouse receipts, or non-negotiable warehouse receipts in the name of the Secured Party, in each case issued by such warehouse, are either delivered to the Secured Party or held by the Purchaser on behalf of the Secured Party immediately upon receipt thereof by the Purchaser;

(d) To arrange for the sale of the Goods represented by the Sea WayBills in the Purchaser's ordinary course of business, on terms and conditions and to purchaser(s) acceptable to the Secured Party, provided, that the accounts receivable and the proceeds of such sale are specifically assigned to the Secured Party; and

(e) For such other purpose(s) as to which the Secured Party shall from time to time agree in writing (in its sole discretion).

4. The Purchaser hereby represents and warrants that each release of Specific Collateral as set forth above shall be for the purpose of (a) ultimate sale or exchange of the applicable Goods or (b) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with the applicable Goods in a manner preliminary to their sale or exchange.

5. The Supplier hereby agrees that, with respect to any Specific Collateral, immediately following receipt by the Supplier of payment in full in respect of the applicable Goods from the Purchaser (whether by documentary collections processed by the Secured Party, or otherwise) and delivery by the Supplier of the applicable Goods to the applicable shipping carrier, (a) the Supplier shall have no right, title or interest in any of the Specific Collateral related to such Goods, (b) the Supplier hereby irrevocably renounces any right it may have to vary any terms of the applicable Sea WayBills, including, without limitation, the identity of the consignee of such Goods or the port of destination of such Goods, and (c) the Supplier shall not, and shall have no right to provide, at any time, any instruction or direction to the applicable shipping carrier with respect to such Goods. The Supplier hereby further agrees that, immediately following receipt by the Supplier of payment in full for the Goods and from and after delivery of such Goods to the applicable shipping carrier, all right, title or interest in such Goods and any of the Specific Collateral related to such Goods shall vest

solely in the Purchaser and the Purchaser shall have the sole right to provide any instruction or direction to the applicable shipping carrier with respect to such Goods.

6. To the extent that the applicable shipping carrier is not paid in full in respect of any fees or expenses with respect to the shipment of the applicable Goods, the Secured Party may, in its sole and absolute discretion, pay any such fees to facilitate the release by the applicable shipping carrier of such Goods. The payment of any such fees (in the Secured Party's sole discretion) shall be deemed to be advances under the loan facility between the Purchaser and the Secured Party, and the Purchaser hereby agrees to reimburse the Secured Party for any such payments made in the Secured Party's sole discretion.

7. At the expense of the Purchaser, the Secured Party is hereby irrevocably authorized to file one or more financing statements under the Uniform Commercial Code naming the Purchaser as debtor and the Secured Party as secured party, and covering the Specific Collateral and proceeds thereof. A carbon, photographic or other reproduction of this Master Agreement shall be sufficient as a financing statement for such filing purposes as the Secured Party may deem necessary.

8. THE PURCHASER HEREBY ACKNOWLEDGES AND AGREES THAT, NOTWITHSTANDING THE RELEASE OF SEA WAYBILLS BY THE SECURED PARTY, THE SPECIFIC COLLATERAL AT ALL TIMES REMAINS SUBJECT TO THE SECURITY INTEREST OF THE SECURED PARTY AND SHALL CONSTITUTE A "SPECIFIC SECURITY INTEREST" AS THAT TERM IS USED IN ANY INTERCREDITOR AGREEMENT AMONG THE SECURED PARTY AND ANY OTHER SECURED CREDITOR OF THE PURCHASER.

9. The Purchaser shall pay all expenses and charges in connection with the Specific Collateral and the transactions herein contemplated. The Purchaser shall, at all times, hold the Specific Collateral separate and distinct from any property of the Purchaser and shall mark its records to reflect the security interest of the Secured Party in such Specific Collateral. The Purchaser shall, at all times, keep the Goods fully insured at the Purchaser's sole cost and expense with insurance companies or underwriters acceptable to the Secured Party in its sole discretion, against any loss or damage by fire, theft and any other risks to which the same may be subject. The Secured Party shall be named as loss payee and additional insured under such policy, and the proceeds of insurance received for any loss or damage shall be subject to the security interest and the trust created herein in the same manner as the Specific Collateral itself. The Purchaser shall deliver such policies and/or certificates of insurance to the Secured Party upon its request. If the Purchaser shall at any time receive

proceeds of such insurance policies, it shall hold such proceeds in trust for the Secured Party and immediately upon receipt pay over to the Secured Party such proceeds.

10. Upon the occurrence of any Event of Default under and as defined in any of the Loan Documents, the Secured Party shall have, in any jurisdiction where enforcement hereof is sought, in addition to all other rights and remedies under the Security Agreement, the rights and remedies of a secured party under the Uniform Commercial Code of the State of New York as in effect from time to time ("Code"). The Secured Party's rights shall include, without limitation, the right to take possession of all or any part of the Specific Collateral and any proceeds and/or products thereof, wherever and in whatever form they may be. The Secured Party may, so far as the Purchaser can give authority therefor, enter upon any premises on which the Specific Collateral or any proceeds thereof may be situated and remove the same therefrom. The Secured Party may require the Purchaser to make the Specific Collateral available to the Secured Party at a place and time to be designated by the Secured Party. Unless the Specific Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, the Secured Party shall, in accordance with the Security Agreements, give the Purchaser prior written notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is to be made. The Purchaser agrees to pay all of the Secured Party's expenses in connection with the retaking, holding, preparing for sale and/or selling of the Specific Collateral, including the Secured Party's reasonable attorneys' fees and expenses, all of which shall constitute part of the Secured Obligations.

11. At any time and from time to time, upon demand by the Secured Party, the Purchaser shall: (a) keep and stamp or otherwise mark any and all documents and chattel paper and its individual books and records relating to all inventory, accounts and contract rights in such manner as the Secured Party may require; (b) permit representatives of the Secured Party at any time to inspect its inventory and to inspect and make abstracts from and copies of the Purchaser's books and records pertaining to inventory, accounts, contract rights, chattel paper, instruments, documents and any Specific Collateral; (c) deliver to the Secured Party on demand accurate records and copies of all accounts and contracts of sale with respect to the Specific Collateral or proceeds thereof; and (d) give, execute, deliver, file and/or record any notice, statement, instrument, document, agreement, assignment, financing statement, or other documents and papers that may be necessary or desirable, or that the Secured Party may request, in order to create, preserve, perfect or validate any security interest granted herein or pursuant hereto or any Security Agreement or to enable the

Secured Party to exercise and enforce its rights hereunder or with respect to such security interest or otherwise. The Purchaser hereby covenants that there shall be no offsets or credits against any claims or accounts constituting proceeds of the Specific Collateral.

12. The Secured Party shall not be responsible for the correctness, validity or genuineness of any Sea WayBill, or for the existence, character, quantity, quality, condition, value or delivery of any Goods purported to be represented thereby. No waiver of any rights or powers of the Secured Party and no consent by the Secured Party shall be valid unless in writing signed by the Secured Party. The rights and powers herein given the Secured Party are in addition to and not in limitation of the Secured Party's rights under the Code, the Security Agreements or any other applicable law or at equity. This Master Agreement shall be binding upon the Supplier and the Purchaser, and their respective successors and assigns, and shall inure to the benefit of, and be enforceable by, the Secured Party and its successors and assigns.

13. Any notice to the Secured Party shall be deemed effective only if sent to and received at the office or department of the Secured Party conducting the transaction or transactions hereunder, currently _____, Attention: _____, with a copy of any notices of default or litigation to _____, Attention: _____. Any notice to the Purchaser or the Supplier shall be deemed sufficient if sent to the Purchaser or the Supplier to the last known address of the Purchaser or the Supplier appearing on the records of the Secured Party.

14. EACH OF THE PARTIES HERETO HEREBY WAIVES TRIAL BY JURY AND THE PURCHASER, IN ADDITION, WAIVES THE RIGHT TO INTERPOSE ANY DEFENSE BASED UPON ANY STATUTE OF LIMITATIONS OR ANY CLAIMS OF LACHES AND ANY SET-OFF OR COUNTERCLAIM OF ANY NATURE OR DESCRIPTION. EACH OF THE PARTIES HERETO HEREBY CONSENTS TO THE *IN PERSONAM* JURISDICTION OF THE COURTS OF NEW YORK STATE AND THE UNITED STATES DISTRICT COURT, THE SOUTHERN DISTRICT OF NEW YORK IN CONNECTION WITH ANY CLAIM ARISING HEREUNDER. IN THE EVENT ANY ACTION IS COMMENCED HEREUNDER IN ANY SUCH COURT, SERVICE OF PROCESS MAY BE MADE ON THE SUPPLIER OR THE PURCHASER BY MAILING A COPY THEREOF TO THE SUPPLIER OR THE PURCHASER AT THE LAST KNOWN ADDRESS OF THE SUPPLIER OR THE PURCHASER APPEARING ON THE RECORDS OF THE SECURED PARTY.

15. This Master Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to New York conflicts of laws principles.

16. All of the Specific Collateral shall be subject to and governed by the terms of this Master Agreement, as amended from time to time. The Purchaser acknowledges that each Sea WayBill is released by the Secured Party in reliance upon such fact and that the Secured Party would not otherwise enter into this Master Agreement.

17. This Master Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original but all of which together shall constitute one and the same agreement. Delivery of a signature page to, or an executed counterpart of, this Master Agreement by facsimile, email transmission of a scanned image, or other electronic means, shall be effective as delivery of an originally executed counterpart. The parties hereto agree that "execution," "signed," "signature," and words of like import in this Master Agreement shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, Electronic Signatures in Global and National Commerce Act, the Uniform Electronic Transactions Act or the Uniform Commercial Code, and the parties hereto hereby waive any objection to the contrary. It shall not be necessary in making proof of this Master Agreement to produce or account for more than one counterpart signed by the party to be charged.

The parties hereto have executed and delivered this Master Agreement the date and the year above written.

[_____], as Purchaser

By: _____

Name:

Title:

[_____], as Supplier

By: _____

Name:

Title:

[_____], as Secured Party

By: _____

Name:

Title: