

**LUBIN SCHOOLS OF BUSINESS**  
Center for International Business Studies

**INTERNATIONAL BUSINESS  
AND THE  
MANAGEMENT OF COMPANIES  
IN THE UNITED STATES**

**Wednesday, April 1  
Through  
Wednesday, April 8, 1992**

## CENTER FOR INTERNATIONAL BUSINESS STUDIES

To all Participants:

Welcome to the Seminar on "International Business and the Management of Companies in the United States" designed for British Executive MBA candidates and professors of business administration interested in charting long term strategies for the corporate sector.

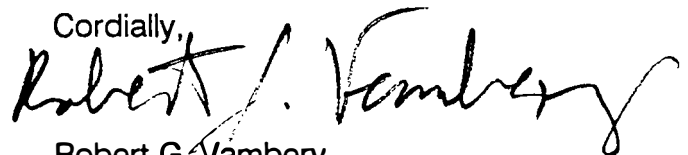
1992 is evolving as a year for decisions and actions on both sides of the Atlantic. The legislative and regulatory measures to make Europe 1992's single market concept a near reality requires many more approvals by the members of the European Community. Eastern Europe and the countries of the former U.S.S.R. are opening their arms ready to host some investments and all the loans foreign lenders are willing to loose.

In the U.S. the economy seems to have bottomed out but the magnitude of the new growth rate is unclear. 1991's King George Bush might even graduate to Goodbye George Bush by the end of 1992. The obvious question we all wonder about is whether the Honorable John Major will still be the "Main Man" at the end of our seminar. Presently, both leaders are optimistic. What is the Middlesex forecast?

This year's Middlesex Polytechnic-Pace University seminar seeks to examine the competitive environment and competitive tools with which British and American based companies need to work in quest of global market shares and revenues.

As always, we continue to hope that the program will enhance your international business interests and that you will find your stay at Pace University and in New York a constructive and pleasant experience.

Cordially,



Robert G. Vambery  
Director and Professor of  
International Business

# PROGRAM

**Thursday, April 2**

**9:00 a.m.-  
9:30 a.m.**

**INTRODUCTION TO INTERNATIONAL  
BUSINESS AND THE MANAGEMENT  
OF COMPANIES IN THE  
UNITED STATES**

Dr. Robert G. Vambery,  
Director  
Center for International  
Business Studies  
Lecture Hall South  
2nd Floor

**9:30 a.m.-  
11:15 a.m.**

**STRATEGIC ALLIANCES**

Dr. R. Grant Tate  
Adjunct Professor of  
Management  
Lecture Hall South

**11:30 a.m.-  
2:00 p.m.**

**Luncheon and Cruise on the  
Spirit of New York Ship  
Pier 9**

**2:30 p.m.-  
4:45 p.m.**

**THE MANAGEMENT OF CHANGE  
AND THE ENTREPRENEURIAL  
EXECUTIVE**

Dr. John Flaherty  
Emeritus Dean of the School  
of Business Administration

# PACE UNIVERSITY

## Friday, April 3

9:00 a.m.-  
10:30 a.m.

### **CRUCIAL ISSUES IN FINANCIAL CENTERS**

Dr. Verne Atwater, Director  
Center for the Study of  
Financial Institutions  
Lecture Hall South

10:30 a.m.

### **Coffee Break**

10:45 a.m.-

### **Tours of the New York Financial District**

12:00 noon-  
1:00 p.m.

### **Luncheon Schimmel Lobby Level C**

1:00 p.m.-  
2:45 p.m.

### **STRATEGIC WEAPONS FOR GLOBAL COMPETITIVENESS**

Dr. William Trotter  
President  
Strategic Management  
Consulting, Inc.  
Lecture Hall South

2:45 p.m.

### **Coffee Break**

3:00 p.m.-

### **ORGANIZATION DEVELOPMENT IN A GLOBAL ENVIRONMENT**

Mr. James Clemence  
Worldwide Director of Training  
COLGATE-PALMOLIVE

## Monday, April 6

9:00 a.m.-

### **COMPLETING THE MARKETING STRATEGY: AFTERMARKETING**

Dr. Terry Vavra, Professor  
President, Marketing Metrics, Inc.  
Lecture Hall South

# PACE UNIVERSITY

10:30 a.m.

**Coffee Break**

10:45 a.m.  
12:00 noon

**THE ROLE OF MANUFACTURING IN  
THE U.S. ECONOMY**

Dr. Michael Szenberg  
Professor and Editor  
The American Economist

12:00 noon-  
1:00 p.m.

**Lunch  
Lecture Hall South**

1:15 p.m.-  
2:00 p.m.

**INTERNATIONALIZATION OF  
MARKETING: THE USE OF  
TRADE FAIRS FOR RAPID  
FOREIGN MARKET  
ENTRY**

Mr. Lawrence M. Bellman  
Manager  
Graphnet, Inc.

2:00 p.m.

**Tour of Jacob K. Javits  
Convention Center  
International Trade Fair  
655 West 34th St.**

**Tuesday, April 7**

9:00 a.m.-  
10:30 a.m.

**BUILDING COMPETITIVENESS  
THROUGH COLLECTIVE LEARNING  
AND APPRENTICESHIP**

Dr. Robert Isaak  
Professor of Management  
Lecture Hall South

10:30 a.m.

**Coffee Break**

10:45 a.m.-  
12:00 noon

**PRIVATIZATION: ARRANGING A  
MEGA-DOLLAR LOAN FOR  
ACQUIRING FOREIGN ASSETS**

Bruce Claugus, Esq.  
Attorney-at-Law

# PACE UNIVERSITY

12:00 p.m.

**Lunch**  
**Yankee Clipper**  
**170 John Street**

2:00 p.m.-  
3:30 p.m.

**THE GLOBALIZATION OF  
CORPORATIONS**  
Dr. Warren Keegan  
Professor and Director  
Institute for Global  
Business Strategy

3:30 p.m.

**Coffee Break**

3:45 p.m.

**ETHICS AND LEGALITY IN  
INTERNATIONAL BUSINESS**  
Mr. Bertrand de Frondeville  
Vice President  
Worldwide Project Finance Group  
Deutsche Bank

**Wednesday, April 8**

9:00 a.m.-  
10:15 a.m.

**EXPANDING THE U.S. BUSINESS  
OF A SWISS PHARMACEUTICAL  
COMPANY**  
Dr. Peter Mayer  
President  
CIBA-GEIGY  
Consumer Pharmaceuticals, Inc.

10:15 a.m.

**Coffee Break**

10:30 a.m.

**QUESTIONS OF ANGLO-AMERICAN  
COMPETITIVENESS IN THE 1990's**  
Dr. Robert G. Vambery  
Professor and Director  
Center for International  
Business Studies

12:00 noon

**Luncheon and Presentation  
of Certificates**  
**Windows on the World**  
**106th Floor**  
**World Trade Center**

# PACE UNIVERSITY

## Middlesex Business School Executive MBA Candidates

Ian Abley  
Business Development Manager  
Lovell Construction Ltd.

Graham Allen  
Planning Manager  
Kodak Ltd.

Hyacinth Anglin  
Information Technology  
Projects Officer  
London Borough of Enfield

Robin Bardolia  
Operations Manager  
Nutri System UK Ltd.

John Barrett  
Manager  
Commercial Gas Centre  
British Gas Plc

Patricia Beagle  
Head of School of Nursing  
Faculty of Healthcare  
Luton College of Higher Education

Ketan Bhimani  
Senior Applications Engineer  
Hewlett Packard Ltd

Ali Boloorsaz-Mashadi  
Director  
ABM Grouper Ltd

Russell Brown  
Project Manager  
Reuters Ltd

Jennifer Carley  
Head of Business Services  
Bedfordshire Trading & Enterprise Council  
(TEC)

Stephen Carroll  
Deputy Clerk to the Justices  
Haringey Magistrates' Court

John Collier  
Senior Business Manager  
Hertfordshire Training & Enterprise Council

Dermond Corrigan  
Contracts Manager  
Regency Building Services

Alan Cousins

Anita Davies  
Assistant Manager, Membership Services  
Consumers Association

Dianne Desmulie  
Business Manager  
East Hertfordshire Health Service  
Queen Elizabeth II Hospital

Stephanie Diamond  
Senior Lecturer  
Hendon College of Further Education

Thomas Dowdall  
Senior Design Engineer  
British Telecom

Duleep Fernando

Paul Fisher  
Principal Engineer  
Colquhoun Geotechnical Services

Robert Fraser  
Director  
Meldrum Consultancy Services

Nigel Garrett  
Accounting Manager - Worklink  
GPT Communications Systems Ltd

John Golding  
Project Manager  
Goldstar Production Engineering Ltd.

Colin Gray  
Partner, Consultancy  
Cavendish Scott

# PACE UNIVERSITY

Keith Gray  
Senior Estimating Manager  
Dynamics Div. -  
British Aerospace Defence Ltd

Simon Gray  
Constructive Site Manager  
Beazer Construction (London) Ltd

Wai Fu Ha  
Software Engineer  
Philip Drake Electronics Ltd

Desmond Hall  
Supervisor  
SSI Medical Services Ltd

Richard Holland  
Finance Director  
M. J. Hillson Ltd

Sankarasivam Jeyaranjan  
Foreign Exchange Cashier  
American Express (Europe) Ltd

Sashant Karkhanis  
Senior Systems Developer  
British Gas Plc

Jonathan Karmi  
Financial Planning Manager (Consumer)  
JA/Mont (UK) Ltd

Hurrell King  
Project Manager  
British Telecom

David Lawlor  
Commercial Director  
Dickins Ltd

Kah Joo Lim  
Senior Audit Accountant  
Maliney Wilkins & Co

John McGrath  
Product & Services Trainer  
Cellnet

Alan Markey  
Account Manager  
Fruit of the Loom Ltd.

Peter Marsh  
Director  
Trewax Manufacturing Ltd.

Rosalind Masterson  
Director  
In Other Words

James Mathews  
Statistical Officer  
Commonwealth Secretariat

Joseph Matthai  
Technical Administrative Officer  
London Borough of Barnet

Nirmal Meetook

Nailesh Mehta

James Meredith  
Operations Director  
Shanks & McEwan (Southern) Ltd

Mark Merryweather  
Market Development Manager  
Lucas Aerospace Ltd

Sheila Morgan  
Catalogue Buyer  
RSPB

Stephen Mortimer

William Nelson  
Commercial Projects Manager  
Luton College of Higher Education

Maeve O'Connor  
Clinic Administration Manager  
Bourn Hall Clinic

Brian O'Hara

Danny O'Sullivan  
Catering Officer  
Queen Mary & Westfield College

Andrew Ogunbayo  
Executive Officer  
City of London Valuation Office

# PACE UNIVERSITY

Olayemi Oluleye  
Finance Officer  
Commission for Racial Equality

Carla Ortega  
Personnel Officer  
St. Albans City Hospital

George Panayi  
Managing Director  
Data Cleaning Services Ltd

Kanti Pankhania  
Section Leader - Engineering  
Advance Power Supplies Ltd

Kamlesh Patel  
Managing Director  
Prime Health Group of Pharmacies

Kirit Patel  
Product Manager  
Pasta Foods Ltd

Sarath Perera  
Customs & Excise Officer  
HM Customs & Excise

Godwin Poi  
Audit Manager  
Coopers & Lybrand Deloitte

Stuart Price  
Managing Director  
ATC Chart (Eastern) Ltd

Richard Pullen  
Senior Lecturer, BSc Course Head  
Middlesex Polytechnic

Anthony Ramgobin  
Marketing Development Controller  
Sutcliffe Services Group Ltd

Max Salvadori  
Office Manager  
James R. Knowles

Arvind Sareen  
PC Analyst  
St. Albans City Hospital

Matilda Semakula  
Manager - Client Services  
London Borough of Hackney

Michael Sharkey  
Senior Lecturer  
Course Manager for HND Estate Mgt.  
Luton College of Higher Education

Philip Skinner  
Head of Engineering  
London Borough of Barnet

David Sparks

Terry Specter  
Director  
Foundation Foods

Paul Stump  
Project Specialist  
Granada Computer Services

Stella Syms  
Finance Manager  
Social Services  
Westminster City Council

Paul Thorpe  
Senior Productivity Consultant  
Abbey National Plc

Graham Walsh

Kenneth Walsh  
Controller of Works  
Watford Borough Council

David Waring  
Production Planning Executive  
Roussel Uclaf

Sean White  
Administration Officer  
British Waterways

Kathryn Whymark  
Senior Lecturer in Management Studies  
Hertford Regional College

Caroline Wilkinson  
Head of Information Technology &  
Computing  
Hertfordshire County Council

## FINANCING INVESTMENTS IN THE EMERGING ECONOMIES

### I. Historical Context of Current Investment Opportunities

- A. Today the world is at the threshold of an era of unparalleled expansion and integration.
- B. We have returned to the basic state of political and economic affairs interrupted by World War I.
  - 1. Beginning in the early 1800's and continuing until World War I there existed a pattern of increasingly free trade and capital flows which was encouraged by government policy.
  - 2. Emerging economies like the U.S., Argentina, Canada and others grew steadily and rapidly.
  - 3. International trade grew twenty-five fold.
  - 4. Forty million people migrated to the emerging economies.
- C. World War I broke the trend.
  - 1. The Bolshevik Revolution moved communism into rivalry with capitalism and democracy.
  - 2. The stage was set for World War II.
  - 3. The Great Depression locked the world in the grip of protectionism.
  - 4. World War II then destroyed the European industrial base and intensified the rivalry between capitalism and communism, dividing the world ideologically and economically.
  - 5. In the 1950's and 1960's the concept of a centralized, command economy, originated and practiced in its most extreme form by the communists, gained political favor.
- D. The division of the world economy into centralized systems, like the communist and state capitalist forms, and the decentralized and pluralistic systems, like the U.S. and Western Europe, precipitated a very stark economic confrontation driven by the energy of enormous ideological differences.

- E. That confrontation has been very decisively won by the U.S., the U.K. and the other democratic and decentralized economies in a struggle that is the historical equivalent of World War III.
- F. Politically, we have returned to the libertarian ideology which prevailed before World War I; industrially, we have returned to circumstances which resemble those which existed after World War II.
1. No one argues seriously that a centralized economy is viable.
  2. Vast sections of the world industrial base have been taken out of production by the economic war which has just ended.
  3. All of the communist economies of Europe and Asia and all of the state capitalist economies of Latin America must be restructured as market economies and reindustrialized.
  4. The necessary restructuring and reindustrialization is occurring in three, distinct phases.
    - a. Essentially all centralized economies are undergoing privatization as the means of decentralization.
    - b. To pluralize, diversify and democratize newly decentralized economies, free trade agreements are being put in place.
    - c. On the strength of decentralization and pluralization, new industrial ventures are being undertaken.
  5. All three phases present strategic opportunities for investors from the developed economies.
    - a. Privatizations create opportunities to buy.
    - b. Free trade agreements open markets for new competitors and stimulate strategic combinations.
    - c. Confidence resulting from decentralization and pluralization permits new investments from domestic and international sources.

- G. The immediate questions are where to invest and how to fund the investment.
1. Where to invest is largely a function of the applicable corporate strategy; there are many and diverse opportunities.
  2. In Mexico, an aggressive program of privatization is well underway and the North American Free Trade Agreement is imminent.
  3. In Argentina, the government is privatizing everything from the telephone company to the zoo and Mercosur will create free trade opportunities throughout most of the Americas when it is merged by accession with the North America Free Trade Agreement.
  4. With differences of degree, the same program is underway in the balance of Latin America.
  5. In Mexico, certain factors are already undertaking strategic transactions which anticipate the Free Trade Agreement and, like Argentina, new investment is pouring into the country.
  6. In Eastern Europe, the circumstances are more formative, but the opportunities are vast.
  7. In Southeast Asia, the circumstances range from the well advanced to the formative, but the opportunities are likewise vast.
  8. How to fund the investment is also a question of corporate strategy; there are many and diverse possibilities.

## II. Funding Techniques In General

- A. There are as many funding techniques as there are transactions.
- B. Possibilities range from cash to debt for equity conversions to ADR offerings to bank debt to combinations of these, hybrids and other forms.
- C. In many cases the quickest and easiest is bank debt - at least in the earliest stages of the transaction.

D. In using bank debt, a number of threshold problems must be overcome.

1. Loans into many emerging economies may precipitate reserve requirements on the part of the banks, especially U.S. banks.
2. Banks also are inclined to want to be paid back and recent experience has made them nervous.
3. If the proper filter is developed to select opportunities and the transaction is structured properly; however, these problems can be overcome.

### III. A Specific Filter

A. The fundamental issue affecting reserve and repayment problems is country risk.

1. Country risk generates reserve problems because of the associated repayment risk.
2. Eliminate country risk and reserve problems disappear.
3. Transfer the repayment risk to a worthy obligor and repayment problems become acceptable.
4. Elimination of country risk and reduction of repayment risk dictate the applicable filter.

B. Assume that for strategic reasons the transaction is to be structured so that the acquisition or investment target is to be the primary source of repayment. What filter should be used?

1. The target should have a demonstrable production and exportation record.
2. Exportation should be conducted pursuant to intermediate to long term contracts.
3. The export contracts should be denominated in a hard currency.
4. The contract price should be fixed or susceptible of hedging.
5. The contract counterparties should be credit-worthy entities in the developed economies.
6. The target should hypothecate the export contracts.

7. The contract counterparties should agree to effect payment through lockboxes in an established money center.

- C. An established and demonstrable production and exportation record reduces country risk to its minimum and, in terms of appropriately interpreted regulations, eliminates the need for reserves.
- D. Exportation pursuant to contracts with credit-worthy buyers transfers the repayment risk to acceptable obligors.
- E. Intermediate to long term contracts afford a present value of sufficient size to be interesting.
- F. Denomination of the contracts in a hard currency eliminates exchange risk.
- G. Fixed or hedgeable contract prices eliminate market risk.
- H. Hypothecation and payment by contract counterparties through lockboxes regulates funds flows and minimizes functional repayment risk.
- I. If the target survives the elements of the foregoing filter, the transaction should be bankable in the most basic sense. Other factors will make themselves felt and may even defeat the transaction, but, a sound basis will exist for proceeding to the next step.

IV. A Specific Example - Refer to the Terms Sheet

### III. Term Sheet

**Borrower:** [REDACTED]

**Principal Amount:** U.S. \$165,000,000.

**Co-Arrangers:** [REDACTED]  
[REDACTED]

**Lenders:** [REDACTED] and a syndicate of banks.

**Purpose:** Proceeds shall be used to refinance the bridge loans (the "Bridge Loans") made by the Co-Arrangers in connection with the acquisition of the assets of [REDACTED]  
[REDACTED]  
[REDACTED]

**Facility:** Loan (the "Loan") secured by a perfected security interest in the Export Contract, the Domestic Contract, all other contracts and receivables and proceeds arising therefrom, the proceeds of the Hedging Program and all cash and investments held in the Export, Other and Domestic Collateral Accounts.

**Borrowing Date:** On or before February 15, 1991.

**Maturity:** December 31, 1995.

**Grace Period:** The Grace Period for principal only will commence on the Borrowing Date and extend through September 30, 1992.

**Amortization Period:** Principal amortization will commence September 30, 1992, and continue quarterly through Maturity.

**Buyer:** [REDACTED]

**Export Contract:** Contracts entered into between Borrower and Buyer which provide for a fixed delivery schedule of (i) [REDACTED] metric tonnes of anode copper per month during the Grace Period and (ii) [REDACTED] metric tonnes of anode copper per month during the Amortization Period. The Buyer will pay a market determined price for such copper. The term of the Export Contract will extend at least one year beyond the term of this Facility.

**Security:** The Borrower shall pledge to the Lenders as security for the Loan, all of its right, title and interest in: (i) the Export Contract and receivables and proceeds arising therefrom, (ii) the Domestic Contract, as defined in the [REDACTED] Facility (provided, however, that cash proceeds of the Domestic Contract and of any other domestic contracts will be paid into and held in the Domestic Collateral Account only upon the occurrence of an Event of Default), (iii) all other contracts and receivables and proceeds arising therefrom (other than the [REDACTED] Export Contract, as defined in the [REDACTED] Facility), (iv) proceeds of the Hedging Program and (v) all cash and investments held in the Export, Other and Domestic Collateral Accounts.

All payments with respect to the Export Contract and proceeds of the Hedging Program shall be made directly into a designated account (the "Export Collateral Account") and all payments with respect to the contracts for exports identified in (iii) above shall be made directly into a second designated account (the "Other Collateral Account"), such accounts in each case to be in New York.

For as long as the existing pre-export financing facility arranged by [REDACTED] (the "[REDACTED] Facility") and related Forward Agreement between [REDACTED] and the Borrower (the "[REDACTED] Swap") are in effect, the security interest of the Lenders in the Export Contract, the Domestic Contract, the proceeds of the Hedging Program and all other contracts and receivables and proceeds therefrom will be subject to a prior right of claim and payment of the [REDACTED] Lenders (defined as the lenders under the [REDACTED] Facility and [REDACTED], as Swap Counterparty under the [REDACTED] Swap) to the proceeds of the first 4,000 metric tonnes per month of Borrower sales. Except for cash and investments in the Export Collateral Account representing an amount equal to the sum of the Required Quarterly Payment and the Required Retention Amount, with respect to which the Lenders will have a right of claim and payment ranking prior to that of the Hedging Agent, and except as provided in the immediately preceding sentence, the Lenders will share equally and ratably their security interest in the Export Contract, the Domestic Contract, the Hedging Program proceeds and the other contracts and receivables and proceeds therefrom with the [REDACTED] Lenders and the Hedging Agent.

After the [REDACTED] Facility and [REDACTED] Swap are terminated and all amounts due thereunder are paid and provided that no Event of Default under this Facility has occurred and is continuing, the Lenders will immediately release the pledge on all security other than that identified in (i) and (iv) of the first paragraph of "Security" above and other than the pledge of the Export Collateral Account and all cash and investments held therein pursuant to the provisions hereof.

Subject to the prior right of claim and payment of the Lenders to the cash and investments in the Export Collateral Account representing an amount equal to the sum of the Required Quarterly Payment and the Required Retention Amount, the Hedging Agent will be secured (the "Secured Hedging Agent") by a security interest ranking pari passu with that of the Lenders in all of the security identified in clauses (i) through (v) of the first paragraph of "Security" above.

**Interest:**

Interest shall be equal to the product of (i) the remaining outstanding Principal Amount multiplied by (ii) the Financing Rate. Interest shall be fixed at or prior to the Borrowing Date and shall be payable quarterly in arrears and shall be computed on the basis of a year of 360 days and paid for the actual number of days elapsed.

**Financing Rate:**

The Financing Rate will be a fixed rate to be established on or prior to the Borrowing Date. The Financing Rate will be reduced by 0.25% during 1993 and by a further 0.25% during 1994 and 1995 *provided that* no Event of Default has occurred and is continuing and the ratio of CFADS to Debt Service, as defined below, exceeds and continues to exceed 1.0 times, measured quarterly based on the prior 12 month period. The Co-Arrangers may, at their sole discretion, enter into an interest rate

swap with certain Lenders in order to provide Lenders with a floating-rate return of 3 month LIBOR plus 3.25%. The floating-rate spread will be increased by 0.25% during 1993 and a further 0.25% during 1994 through 1995 if the ratios outlined above are not met and no Event of Default has occurred and is continuing.

**Required Quarterly Payment:**

The schedule of Required Quarterly Payments will be fixed for the term of this Facility. During the Grace Period, the Lenders shall receive quarterly payments of Interest only. During the Amortization Period, the Lenders shall receive quarterly payments representing repayment of Principal and Interest. Required Quarterly Payments will be made on the last day of March, June, September and December of each year.

**Required Retention Amount:**

Quarterly Payment Date After Borrowing Date	Cumulative Required Retention Amount
1st	US\$1.0MM
2nd	2.0MM
3rd	3.0MM
4th	4.0MM
5th	5.0MM
6th	6.0MM
7th and thereafter	The greater of \$6.5MM and an amount equal to the next quarter's interest payment under the Facility.

**Collateral Accounts:**

Payments made by the Buyer under the Export Contract and proceeds of the Hedging Program will be paid into the Export Collateral Account and will be retained each quarter in an amount equal to the sum of the Required Quarterly Payment and the Required Retention Amount. Amounts held hereunder may be invested in Collateral Account Investments as defined below. All collections in excess of the sum of the Required Quarterly Payment and the Required Retention Amount will be remitted (i) to the Secured Hedging Agent to the extent amounts are due to it under the Hedging Program and (ii) provided that no event of default has occurred and is continuing, immediately thereafter to the Borrower. The Required Quarterly Payment will be remitted to the Lenders at the end of each quarter.

All amounts paid into the Other Collateral Account will be remitted immediately to the Borrower provided that no Event of Default has occurred and is continuing. After the Facility and Swap are terminated and all amounts due thereunder are paid, provided that no Event of Default has occurred and is continuing, the Other Collateral Account will be eliminated in conjunction with the release of the pledge on the contracts described in the fourth paragraph of "Security" above.

Upon the occurrence of an Event of Default, payments made by parties under the Domestic Contract and any other domestic contracts will be made directly into a domestic collateral account (the "Domestic Collateral Account"), and only will be remitted to the Borrower provided that no Event of Default has occurred and is continuing. After the [REDACTED] Facility and [REDACTED] Swap are terminated and all amounts due thereunder are paid, provided that no Event of Default under this Facility has occurred and is continuing, the Domestic Collateral Account will be eliminated in conjunction with the release of the pledge on the Domestic Contract and any other domestic contracts as described in the fourth paragraph of "Security" above.

**Prepayment:** The Borrower may prepay this Facility in whole or in part subject to compensating the Lenders for break funding costs.

**Hedging Agent:** [REDACTED]

**Hedging Program:** To mitigate the effect of copper price volatility on debt service capacity, the Borrower has entered into or has agreed to enter into a swap agreement to exchange in certain years the product of the future spot price for copper and an amount of copper production for the product of a fixed copper price and the same amount of copper production, as follows:

	1992	1993
Amount (metric tonnes)	50,000	50,000
Average Fixed Price (\$/lb)	\$1.01	\$0.95

**Administrative and Documentation Agent:** [REDACTED]

**Representations and Warranties:** Customary in credit facilities of this nature including, without limitation, absence of material adverse change.

**Covenants:** To include, but not be limited to, the following, applicable to Borrower and its subsidiaries (other than [REDACTED]):

- (i) Restrictions on liens except as provided for in Section 5.11 of the Credit Agreement dated September 20, 1990 between the Borrower and the Co-Arrangers (the "Credit Agreement" or the "Bridge Loan Agreement");
- (ii) No capital expenditures other than:
  - (a) "Permitted Capital Expenditures" as defined in Schedule 1; any unused allowance for Permitted Capital Expenditures may be rolled forward for up to one year, and

- (b) Capital expenditures in excess of capital expenditures permitted in (a) above ("Additional Capital Expenditures") made from Excess Cash Flow provided that:
- (1) After giving effect to such Additional Capital Expenditures, any Dividends and any investments in [REDACTED] under (iv) below, Borrower has cash equivalent to at least the Minimum Cash Balance;
  - (2) No Event of Default has occurred and is continuing at [REDACTED];
  - (3) The combined amount of Additional Capital Expenditures and Dividends (defined below) and investments in [REDACTED] under (iv) below that may be made or paid in any fiscal year shall not exceed the sum of supplier financing indebtedness and Available Excess Cash Flow;
- (iii) Dividends ("Dividends") may be paid from Available Excess Cash Flow provided that:
- (a) After giving effect to such Dividends, any investments in [REDACTED] under (iv) below and any Additional Capital Expenditures, Borrower has cash equal to at least the Minimum Cash Balance;
  - (b) No Event of Default has occurred and is continuing at Borrower;
  - (c) The combined amount of Additional Capital Expenditures and Dividends (defined below) and investments in [REDACTED] under (iv) below that may be made in any fiscal year shall not exceed the sum of supplier financing indebtedness and Available Excess Cash Flow; and
  - (d) Dividends declared and paid with respect to a fiscal year shall not exceed the net after tax income of that fiscal year;
- (iv) Restrictions on investments (including in [REDACTED], except to the extent investments in [REDACTED] are made with funds that otherwise might have been paid as Dividends under (iii) above), on mergers and on sales of assets outside the ordinary course of business;
- (v) No additional debt except:
- (a) Working capital debt (including existing Fomex debt) up to the greater of \$35,000,000 and 10% of Borrower's net sales for 12 rolling calendar months (increasing to 20% of net sales upon termination and repayment of the [REDACTED] Facility);

- (b) Up to \$21,500,000 (increasing to \$50,000,000 upon termination and repayment of the ██████████ Facility) of supplier financing for equipment and spare parts;
- (c) After 1992, other debt on terms no more favorable to lenders than this Facility with amortizations beginning no earlier than three months after the Maturity, provided that (i) the cumulative amount of such debt may not exceed the cumulative amount repaid under this Facility and (ii) the ratio of CFADS to Debt Service (as defined below) measured quarterly on the preceding 12 month period, shall exceed 1.0 times;
- (vi) A coverage ratio of CFADS to Debt Service (as defined below), measured quarterly for each preceding 6 month period, to be no less than 1.0 times;
- (vii) All transactions with affiliates (including ██████████) will be on an arm's-length basis (as in the Bridge Loan Agreement);
- (viii) Limitations on sales and discounts of receivables (as in the Bridge Loan Agreement);
- (ix) Restrictions on the ability to amend, modify, or waive provisions of the Export Contract or Domestic Contract;
- (x) If required under Mexican law, the credit agreement and the notes will be registered with the Ministry of Finance of Mexico;
- (xi) After the ██████████ Facility and the ██████████ Swap have been terminated and all amounts due thereunder are paid, the first 5000 metric tonnes of copper produced each month or released from inventory shall be used by the Borrower to fulfill its obligations under the Export Contract;
- (xii) Other customary or appropriate covenants relating to financial reporting (including withholding tax certificates), notice of litigation, payment of obligations, maintenance of property, insurance, compliance with laws, governmental approvals, inspection of property, books and records, lines of business, maintenance of existence, maintenance of hedging contracts and use of proceeds to the extent appropriate; and
- (xiii) Undertaking by Borrower to issue irrevocable instructions in connection with all sales contracts and the Hedging Program that payment is to be made to one or more designated accounts pursuant to the security documentation in form and substance satisfactory to the Lenders and their counsel provided, however, that payments with respect to the Domestic Contract and other domestic contracts will be required to be made to the designated account only upon the occurrence of an Event of Default.

**Conditions Precedent:** To include, but not be limited to the following:

- (i) Execution of the Hedging Program as described herein.

- (ii) Relevant consents from and registrations by or with the Mexican authorities including Banco de Mexico approval to keep export contract proceeds in the relevant Collateral Accounts and apply such proceeds in the manner detailed herein;
- (iii) The Borrower will simultaneously repay the Bridge Loans in full with the proceeds of the Facility;
- (iv) Such legal opinions as the Lenders' counsel may deem necessary, to include but not be limited to, confirmation that the Facility is not subject to the Mexican public sector debt restructuring and is excluded from the new money base.
- (v) [REDACTED] will hold a controlling interest in the Borrower and [REDACTED] will own at least 60% of the Borrower;
- (vi) Absence of default and any material adverse change;
- (vii) Accuracy of representations and warranties in the credit agreement;
- (viii) No other debt will exist on the Borrowing Date except for the credit agreement among the Borrower, [REDACTED] and [REDACTED] dated July 25, 1989 (the [REDACTED] Facility), working capital debt (including FOMEX) of \$35,000,000 the Bridge Loans and capitalized lease obligations of \$2,208,040;
- (ix) Delivery by the Borrower of effective waivers or amendments that are required to be obtained by the Borrower with respect to its execution, delivery and performance of the credit agreement and related security documentation relating this Facility in order to ensure that such execution, delivery and performance do not result in the violation of, or conflict with, any contractual restriction binding or affecting the Borrower or any of its assets; and
- (x) The execution of a credit agreement and related security documentation and customary closing documentation for the Facility, all in form and substance satisfactory to the Lenders and their counsel.

- Events of Default:** To include, but not be limited to, the following:
- (i) Failure to pay any interest, principal, or other amount due under the credit agreement;
  - (ii) Violation of any covenant or agreement in the credit agreement, security documents, Export Contract or, as long as pledged hereunder, the Domestic Contract;
  - (iii) Inaccurate or false representations or warranties in the credit agreement, the security documents or any other relevant documents;
  - (iv) Cross default to other debt of the Borrower and, for so long as such cross-defaults exist in other debt of the Borrower, [REDACTED] and other affiliates, cross-default to all debt of [REDACTED] and [REDACTED] which is triggered by an event which with the giving of notice or lapse of time, or both, allows the holder the right to accelerate its debt provided that such debt shall be for amount greater than \$3,000,000;
  - (v) [REDACTED] ceases to own, directly or indirectly, at least 51% of the voting shares of [REDACTED], or [REDACTED] ceases to own, directly or indirectly, at least 60% of the voting shares of the Borrower;
  - (vi) [REDACTED] incurs any additional indebtedness (including any guarantees, keepwells or other forms of credit support) or [REDACTED] fulfills its obligations under the [REDACTED] keepwell through [REDACTED], [REDACTED] or Borrower;
  - (vii) Material adverse change, in the opinion of the Lenders holding notes under the Facility evidencing more than 50% in aggregate principal amount of the Facility, including, but not to be limited to, expropriation, nationalization or other materially adverse government action including any material change in or suspension of the mining concessions held by Borrower;
  - (viii) The Borrower or any of its subsidiaries other than [REDACTED] and its subsidiaries shall effect any merger, acquisition, consolidation or ( other than in the ordinary course of business) sale of assets;
  - (ix) Any material provisions of the loan or security agreements become unenforceable or invalid; and
  - (x) Other usual defaults, including but not limited to, insolvency, bankruptcy, and judgment defaults.
- Indemnification:** Borrower will indemnify the Lenders against all losses, liabilities, claims, damages or expenses relating to their commitments, the credit agreement and Borrower's use of the proceeds, including but not limited to attorneys' fees and settlement costs.
- Governing Law:** New York law. Borrower will submit to jurisdiction of New York courts.

**Counsel to the  
Co-Arrangers:**

[REDACTED]  
[REDACTED]

**Taxation:**

All amounts payable in connection with this Facility will be payable in U.S. dollars outside of Mexico, free and clear of all Mexican withholding taxes or, if withholding taxes apply, subject to gross-up provisions. Borrower will deliver certified photocopy of tax receipts to the Administrative Agent within 30 days.

**Assignments and  
Participations:**

Lenders will have the right, without the Borrower's consent but with notice to Borrower and the Agent, to sell participations, without voting rights (except as to principal, interest, maturity, size of commitments and release of security) and to assign their loans with full voting rights in minimum amounts of \$5,000,000 (or in whole, if total loans for a lender are less than \$5,000,000). Borrower will grant the lenders the right to disclose information received from Borrower and its affiliates to potential assignees, subject to appropriate confidentiality documentation.

**Definitions:**

**Cash Flow Available for  
Debt Service:  
("CFADS"):**

The sum of net income (per Mexican B-10 accounting)

- (i) *Plus*
  - (a) Depreciation, depletion and amortization;
  - (b) Interest expense (other than interest expense payable on the ██████████ Facility);
  - (c) Monetary gains (losses) and unrealized foreign exchange gains (losses);
  - (d) Cost of goods sold adjustment, and
  - (e) Extraordinary loss on sales of assets.
- (ii) *Less*
  - (a) Permitted Capital Expenditures;
  - (b) Required principal amortizations of the ██████████ Facility;
  - (c) Change in Net Working Investment (defined below);
  - (d) Interest income, and
  - (e) Extraordinary gain on sales of assets.

**Net Working  
Investment:**

Total current assets (exclusive of cash, short-term investments and any ending inventory replacement value adjustment) less total current liabilities (exclusive of short-term debt and current maturities of long-term debt).

**Debt Service:**

The sum of (a) cash interest expense (other than interest expense in respect of the ██████████ Facility); and (b) amortization of this Facility, equipment financing, and other debt except the ██████████ Facility.

**Excess Cash Flow: CFADS****(i) Plus**

(a) Proceeds of debt issuance (excluding working capital) and equity issuance;

(b) Interest income.

**(ii) Less**

(a) Interest expense on all debt (other than with respect to [REDACTED] Facility debt), and

(b) Payments of principal amortizations (other than [REDACTED] Facility).

**Available Excess Cash Flow:**

Excess Cash Flow less (x) additional indebtedness under covenant (v)(c) above and (y) 100% of supplier financing indebtedness.

**Collateral Account Investments:**

Direct and indirect obligations of the United States government and U.S. dollar-denominated certificates of deposit and other deposits of banks in the United States rated at least AA each with limited maturities.

**Minimum Cash Balance:** Cash and cash equivalents minus 100% of working capital indebtedness. Minimum Cash Balance during a given period shall be equal to the amount set forth opposite such period below:

Period	Minimum Cash Balance
The date hereof to December 31, 1991	\$10,000,000
January 1, 1992 to December 31, 1992	\$15,000,000
January 1, 1993 to December 31, 1993	\$20,000,000
January 1, 1994 to December 31, 1994	\$25,000,000
January 1, 1995 and thereafter	\$20,000,000

Credit will be given for Export Collateral Account retentions in excess of the Required Quarterly Payment, but not for any collateral held for the benefit of the [REDACTED] Lenders.

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**Schedule 1:**  
**Permitted Capital Expenditures**  
(US\$ million)

1991	1992	1993	1994	1995
\$13.3	\$25.9	\$23.2	\$12.7	\$8.1

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