

U.S. Department of Justice

BAB:bsj
F-473/2

*United States Attorney
Southern District of New York*

January 24, 1989

Thomas F. Curnin, Esq.
Cahill Gordon & Reindel
80 Pine Street
New York, New York 10005

Peter E. Fleming, Jr., Esq.
Curtis Mallet-Prevost Colt & Mosle
101 Park Avenue
New York, New York 10178-0061

Re: Drexel Burnham Lambert Incorporated and
The Drexel Burnham Lambert Group Inc.

Dear Messrs. Curnin and Fleming:

1. On the understandings specified below, the Office of the United States Attorney for the Southern District of New York (the "Office") will accept pleas of guilty from Drexel Burnham Lambert Incorporated and The Drexel Burnham Lambert Group Inc. ("Drexel") to a six count Information to be filed by this Office charging Drexel with mail fraud and securities fraud in violation of Title 15, United States Code, Sections 78j(b) (and Rule 10b-5, thereunder), and 78ff; and Title 18, United States Code, Sections 1341 and 3571.

2. It is understood that Drexel shall pay the sum of \$650 million as follows: \$500 million on the date that the pleas are accepted pursuant to this Agreement (the "payment date"), \$50 million on or before the first anniversary of the payment date and \$100 million on or before the third anniversary of the payment date, unless the escrow fund (as defined below) requires additional monies before that time. Drexel will also pay a \$2400 special assessment. Of the \$650 million payment, the first \$300,000,000 will be the total criminal and civil penalty and shall be paid to the United States as a criminal penalty and as a civil penalty under the Insider Trading Sanctions Act, 15 U.S.C. § 78u(d) (2)(A) ("ITSA"). Any portion of this \$300,000,000 payment not imposed as a criminal fine by the sentencing judge or determined by the Court in Securities and Exchange Commission v. Drexel Burnham Lambert, Inc. et al, 88 Civ. 6209 (MP) (hereinafter "SEC v. Drexel") as civil penalties pursuant to ITSA shall revert to the United States as a criminal penalty. The remainder, a total of \$350,000,000 (which includes any disgorgement sought by the Securities and Exchange Commission ("SEC") from Drexel in SEC v. Drexel), will be paid into an escrow account established by court order in the aforementioned civil action upon terms designated by, and with an escrow agent or receiver designated by, the Securities and Exchange Commission and approved by the Court. This escrow fund will be used to compensate

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civil claimants pursuant to a plan or plans of distribution to be submitted by the Securities and Exchange Commission and approved by the Court in SEC v. Drexel. When all claims against the escrow account have been satisfied in accordance with the plan or plans of distribution, the account shall be closed out by paying the balance to the United States.

3. It is further understood that Drexel shall pay interest on the \$500 million to be paid on the payment date as follows: (i) from the date this Agreement is signed by this Office and Drexel until the payment date, Drexel shall pay interest on the \$300 million criminal and civil penalty at the rate of 8.55 percent per annum, which amount shall be added to the \$300 million as a criminal and civil penalty; and (ii) from the date Drexel and the SEC enter into the agreement referred to in paragraph 7 herein until the payment date, Drexel shall pay interest on the \$200 million to be paid into the escrow account at the rate of 8.55 percent per annum, which amount shall be added to the escrow fund to be distributed as set forth in paragraph 2.

4. It is further understood that under no circumstances shall Drexel be entitled to a refund of any monies paid pursuant to this Agreement.

5. It is further understood that Michael R. Milken will no longer be employed by Drexel or compensated by Drexel, directly or indirectly, and that no further compensation will be paid to him voluntarily, including any distribution for work done in 1988. It is further understood that Drexel shall not voluntarily pay Lowell J. Milken for work done in 1988 in excess of half the compensation to which he would otherwise be entitled as agreed upon with the Government, and, if he is indicted, Drexel will place him on an unpaid leave of absence. In addition, it is understood that Drexel will place on leave of absence any employee who is indicted in connection with this Office's investigation and if they are convicted will terminate them at that time.

6. It is further understood that Drexel will make a public statement agreed upon with the Government in connection with this Agreement and the guilty pleas. All statements made by Drexel in connection with these matters shall be consistent in all material respects with such agreed-upon statement.

7. It is further understood that Drexel will be consenting to the entry of a judgment terminating as against it SEC v. Drexel and entering into an agreement with the SEC in connection with that consent judgment. Certain terms of that agreement shall be made a part of this Agreement. Those terms shall be agreed upon in writing by the parties hereto subsequent to the negotiation of the SEC agreement and shall be appended hereto as Annex B.

8. It is further understood that, with respect only to activities described in Annex A hereto, unless Drexel has violated this Agreement pursuant to paragraph 11 or it has been determined in accordance with the procedures set forth in paragraphs 12 or 13 that Drexel has violated this Agreement and is subject to sanctions therefor, except as permitted by paragraph 9 the Department of Justice:

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- (i) will not further prosecute Drexel for any criminal conduct;
- (ii) will not seek to assert that Drexel is jointly and severally liable with any person made a defendant under 18 U.S.C. §§ 981, 982, 1956(b), 1963(d), 1963(e), or 1964; and
- (iii) will not seek pursuant to 18 U.S.C. §§ 981, 982, 1956(b), 1963(d), 1963(e), or 1964 to (a) enjoin Drexel, (b) restrain or recover assets of Drexel either civilly or criminally, or (c) assert against Drexel any other civil claims for monetary or other relief.

This Agreement does not constitute a waiver or settlement of, or provide any protection to Drexel for, any other criminal prosecution or civil claims (including but not limited to civil tax claims) by the United States or any agency thereof. Moreover, this Agreement does not provide any protection whatsoever from criminal prosecution or civil liability to any individual or to any entity other than Drexel.

9. It is further understood that, with respect only to activities described in Annex A hereto, unless Drexel has violated this Agreement pursuant to paragraph 11 or it has been determined in accordance with the procedures set forth in paragraphs 12 or 13 that Drexel has violated this Agreement and is subject to sanctions therefor, the Department of Justice will not seek from Drexel recovery or forfeiture of any assets once held by persons other than Drexel, forfeitable to the United States pursuant to 18 U.S.C. §§ 982 or 1963(a), and transferred to and held in the name of Drexel, title to which is asserted to have vested in the Government pursuant to 18 U.S.C. §§ 982 or 1963(c). As to any assets ever held by such persons, Drexel is hereby deemed to be a "bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture" within the meaning of 18 U.S.C. §1963(c); provided, however, that (i) the Government may seek the forfeiture of any assets transferred to Drexel for the purpose of avoiding forfeiture to the Government, (ii) the Government may seek forfeiture of any property and interest in the name of any individual or institution other than Drexel, including but not limited to, securities of Drexel (*i.e.*, as to which Drexel is the issuer) registered in the names of persons indicted under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961 *et seq.* ("RICO") or 18 U.S.C. §§ 1956 or 1957 and (iii) the Government may also seek forfeiture of assets held by Drexel in brokerage accounts in the names of such persons, and Drexel agrees that this Agreement will not prohibit the Government from seeking pursuant to 18 U.S.C. §§ 982 or 1963(d) to place stop transfer orders against any such securities of Drexel and/or to prohibit execution of transactions in, or payment or delivery of funds or securities from, any such brokerage accounts. Drexel agrees that, upon request by the Government, it will itself place such stop transfer orders and/or prohibit such execution, payment, or delivery for a period of five business days in order to permit the Government to seek relief pursuant to 18 U.S.C. §§ 982 or 1963(d). Any order pursuant to 18 U.S.C. §§ 982 or 1963(d) shall provide that to the extent that any securities in any of the brokerage accounts described in the foregoing provision are pledged

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to Drexel as collateral for margin loans, Drexel may from time to time take such action vis-a-vis said securities and accounts as it deems necessary to protect its security interest, but the order may provide that Drexel shall not under any circumstances permit the payment or transfer of funds or securities to or for the benefit of any such person without either (a) written permission from the office or (b) a court order.

10. It is further understood that Drexel shall cooperate fully in all reasonable respects with this Office, the Department of Justice, and any other federal law enforcement agency working with or under the direction of this Office or the Department of Justice, in connection with the investigation of any criminal conduct arising out of the activities described in Annex A. Such cooperation shall include paying for the services of one or more certified public accounting firms and/or consulting firms retained by this Office and acceptable to the SEC to conduct a review of Drexel's records, reasonable in scope, concerning areas to be specified by this Office within five business days after Drexel has signed this Agreement but no less than five business days before the Agreement becomes effective, and to report the results of their work to this Office and to the SEC. Such review shall be completed within a reasonable period of time as agreed by the parties. This Office will at all times take all appropriate and reasonable steps to treat the work of the accounting and/or consulting firms as confidential investigative material.

11. It is further understood that if Drexel fails to pay for the services of such accounting and/or consulting firms pursuant to the terms of the retention agreement or agreements with this Office, Drexel shall thereafter be subject to prosecution for any federal criminal violation, and shall be subject to the assertion of any civil claim, of which the Department of Justice has knowledge, including but not limited to those arising from activities described in Annex A hereto.

12. It is further understood that if the Office believes that Drexel has violated this Agreement by (i) failing to exercise its best efforts to make a Drexel employee available or to produce documents, (ii) failing to permit the accounting and/or consulting firms to do their work, or (iii) tampering with or retaliating against witnesses, the matter shall be submitted to the sentencing Court for determination. If there is a final judicial determination that such conduct was in violation of this Agreement, and if the violation is one which can be cured, Drexel shall be given a reasonable opportunity to cure such violation. If Drexel fails within such time to cure such violation, or if the violation is one which cannot be cured, Drexel may be prosecuted for any federal criminal violation, and shall be subject to the assertion of any civil claim, of which the Department of Justice has knowledge, including but not limited to those arising from activities described in Annex A hereto.

13. It is further understood that if the Office believes that Drexel has violated this Agreement in any other respect, including failing to comply with the terms of the SEC agreement to be specified in Annex B as referred to in paragraph 7 above, the matter may be submitted to the sentencing Court for determination. If there is a final judicial determination that

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such conduct was in violation of this Agreement, and if the violation is one which can be cured, Drexel shall be given a reasonable opportunity to cure such violation. If Drexel fails within such time to cure such violation, or if the violation is one which cannot be cured, the Court may impose such sanction as the Court deems appropriate, which may include (i) permitting the Department of Justice to prosecute Drexel for any criminal violation, or to assert against Drexel any civil claim, of which the Department of Justice has knowledge, including but not limited to those arising from activities described in Annex A hereto, (ii) monetary fines, or (iii) injunctive relief.

14. It is further understood that any prosecutions or civil actions initiated by the Department of Justice or this Office arising from activities described in Annex A which are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against Drexel, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of any such prosecutions or civil actions. It is the intent of this Agreement to waive any and all defenses based on the statute of limitations only with respect to any prosecutions for any criminal conduct, or any civil actions, arising out of activities described in Annex A which are not time-barred on the date this Agreement is signed.

15. It is further understood that any prosecutions or civil actions initiated by the Department of Justice against Drexel may be premised upon any information provided by Drexel or obtained by this Office pursuant to the review of Drexel's records referred to in paragraph 10 herein. In any such prosecution or civil action, (i) all statements made by Drexel employees to this Office or other designated law enforcement agents, or any testimony given by Drexel employees before a grand jury or other tribunal, whether prior to or subsequent to this Agreement, or any leads from such statements or testimony, shall be admissible in evidence and (ii) Drexel shall assert no claim under the United States Constitution, any statute, Rule 11(e) (6) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that such statements or testimony by Drexel employees, or information provided by Drexel or obtained by this Office pursuant to the review of Drexel's records referred to in paragraph 10 herein, whether prior to or subsequent to this Agreement, or any leads therefrom, should be suppressed. It is the intent of this Agreement to waive any and all rights in the foregoing respects.

16. It is further understood that the Office and Drexel agree that the payment of \$650,000,000 plus interest under the terms set forth in paragraphs 2 and 3 herein is the appropriate disposition of this case. It is understood that the sentencing Court (1) will impose a total criminal fine of \$300,000,000, less any ITSA civil penalty, plus interest as set forth in paragraph 3 herein, pursuant to Fed. R. Crim. P. 11(e) (1) (C), and (2) will retain jurisdiction to enforce the terms and conditions of this Agreement. It is contemplated that the sentencing judge will accept this Agreement prior to any guilty pleas by Drexel. Should the Court fail to do so, this Agreement shall be void and this Office and Drexel shall not be bound by its terms, except that the provisions of paragraph 15 hereof shall remain in full force and effect.

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17. It is further understood that the Department of Justice and this Office shall not as a condition of cooperation require waiver by Drexel or its counsel of the attorney-client or work-product privileges, and that Drexel shall, on or before the effective date of this Agreement, withdraw from any joint defense agreements currently in force relating to the matters which are the subject of Annex A, and shall not in the future enter into or continue any such joint defense agreements with defendants in criminal cases or with targets of criminal investigations without the prior written approval of this Office.

18. It is further understood that it consideration of this Agreement, this Office and Drexel have entered into a stipulation dated January 24, 1989 in In re Four Grand Jury Subpoenas dated October 3, 1988. This Office shall not reassert that the attorney/client or work/product privileges are not available to Drexel or its counsel on the factual bases advanced by the Government in that proceeding, unless Drexel violates this Agreement pursuant to paragraph 11 or it has been determined in accordance with the procedures set forth in paragraphs 12 or 13 that Drexel has violated this Agreement and is subject to sanctions therefor.

19. It is further understood that this Agreement shall not bind the SEC or any state or local prosecuting authorities, although this Office will bring Drexel's cooperation to the attention of other prosecuting authorities or federal, state or other agencies if requested to do so.

20. It is further understood that the terms of this Agreement shall become effective as follows:

- (i) within one business day after the execution of this Agreement by Drexel and this Office, Drexel shall waive the filing of an indictment, the Information shall be filed with the Court, and Drexel shall plead not guilty;
- (ii) within two business days after the entry of a consent judgment between Drexel and the SEC in SEC v. Drexel, or on such later date as determined by the sentencing Court, Drexel shall enter the guilty pleas referred to in paragraph 1 hereof;
- (iii) all other terms of this Agreement shall become effective on January 30, 1989 (which date may be extended by agreement of the parties for five business days) provided that within that time (a) the agreement with the SEC referred to in paragraph 7 hereof has been executed by Drexel and the SEC, and (b) the Department of Justice has executed this Agreement. If the conditions set forth in this subparagraph (iii) are not satisfied, this Agreement shall be null and void and shall have no force or effect, except that the provisions of paragraph 15 hereof shall remain in full force and effect.

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Drexel shall use its best efforts, with the cooperation of this Office, to seek the prompt entry of a consent judgment between Drexel and the SEC in SEC v. Drexel. If such a consent judgment is not entered within 30 days of the execution of this Agreement by Drexel and this Office (which period may be extended by agreement of Drexel and this Office), this Agreement shall be null and void and shall have no force or effect, except that the provisions of paragraph 15 hereof shall remain in full force and effect.

21. It is further understood that the term "Drexel" as used herein shall include all subsidiaries that are more than fifty percent owned by, and are controlled by, Drexel Burnham Lambert Incorporated and/or The Drexel Burnham Lambert Group Inc.

22. No additional promises, agreements, and/or conditions have been entered into other than those set forth in this Agreement and none will be entered into unless in writing and signed by this Office and Drexel.

Very truly yours,

RUDOLPH W. GIULIANI
United States Attorney

APPROVED:

Department of Justice

Date

AGREED AND CONSENTED TO:

DREXEL BURNHAM LAMBERT INCORPORATED

By: FREDERICK H. JOSEPH
Chief Executive Officer
Drexel Burnham Lambert Incorporated

DATE

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THE DREXEL BURNHAM LAMBERT GROUP INC.

By: FREDERICK H. JOSEPH
President
The Drexel Burnham Lambert Group Inc.

DATE

THOMAS F. CURNIN, ESQ.
Attorney for Drexel

DATE

PETER E. FLEMING JR., ESQ.
Attorney for Drexel

DATE

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ANNEX A

1. For the period January 1, 1978 to the date of Drexel's signing of this Agreement, any matters relating to Ivan Boesky and related entities and any of the activities or claims set forth in, arising out of or relating to matters at issue in the SEC's action for injunctive and other equitable relief against Drexel and others, SEC v. Drexel Burnham Lambert Inc., et al. 88 Civ. 6209(MP) dated September 7, 1988, filed in the United States District Court for the Southern District of New York.

2. For the period January 1, 1978 to the date of Drexel's signing of this Agreement, any matters relating to Princeton-Newport and related entities and any of the activities or claims set forth in, arising out of or relating to matters at issue in the indictment by the United States of America against James Sutton Regan and others, United States v. Regan, 88 Crim. 517 (RLC) dated August 4, 1988, filed in the United States District Court for the Southern District of New York and any superseding indictment.

3. For the period November 1, 1986 to the date of Drexel's signing of this Agreement, any statements or representations made by Drexel, its employees or its representatives to its auditors, federally insured lenders, rating agencies, contraparties, and/or regulators relating in any way to (i) the investigations conducted during the past several years of Drexel and its present and former employees by the Office and by the Securities and Exchange Commission, the civil action commenced against Drexel by the SEC arising therefrom, and any related civil litigation, or (ii) any investigation by Drexel or its counsel relating thereto.

4. For the period November 1, 1986 to the date of Drexel's signing of this Agreement, any conduct by any Drexel employee or representative in connection with any investigation of the matters described in this Annex.

5. For the period January 1, 1978 to the date of Drexel's signing of this Agreement, any conduct involving Drexel's High Yield and Convertible Bond Department and the employees thereof involving securities trading or transactions including, but not limited to, fraud in the purchase or sale of securities; parking of securities for Drexel's benefit or for the benefit of a client or agent or employee of the client or others; market manipulation, directly or through others; misleading disclosures and failure to disclose agreements or understandings with others; insider trading by Drexel, directly or through others for Drexel's benefit; disclosing material non-public information to clients or employees or agents of clients or others; providing securities on favorable terms to employees or representatives of Drexel or to clients or employees or agents of a client or others; threatening persons or entities to encourage them to do business with Drexel or to discourage them from doing business with others; margin violations; record-keeping violations; sale of unregistered securities; violations of Section 10(b) and Rule 10b-6 in connection with offerings of securities; violations of the hot issue rules; violations involving Chinese Wall and Monitor and Restricted List procedures; net capital rule violations;

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failure to file and false filing violations in connection with any of the foregoing categories or otherwise.

6. For the period January 1, 1978 to the date of Drexel's signing of this Agreement, any matters relating to any of the activities or claims set forth in, arising out of or relating to matters at issue in the indictment by the United States against Marcus Schloss & Company, Inc. and others, United States v. Marcus Schloss & Company, Inc., 88 Crim. 796(CSH), dated November 2, 1988 filed in the United States District Court for the Southern District of New York, and any superseding indictment.

7. For the period January 1, 1978 to the date of Drexel's signing of this Agreement, any matters arising from information provided by Drexel or obtained by the Office pursuant to the review of Drexel's records by the accounting and/or consulting firms referred to in paragraph 10 of this Agreement.

8. Drexel shall not be prosecuted, or proceeded against civilly under 18 U.S.C. §§ 981, 1956(b), or 1964, for any of the matters set forth in paragraphs one, two, or five of this Annex even if, in addition to Drexel's High Yield and Convertible Bond Department, other departments and personnel were also involved.

9. Drexel shall not be prosecuted, or proceeded against civilly under 18 U.S.C. §§ 981, 1956(b) or 1964, for any of the matters set forth in paragraphs three, four, six or seven of this Annex even if Drexel's High Yield and Convertible Bond Department was not involved.