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FMC Corporation c/o United Defense, LP

When Recorded, Mail To:

FMC Corporation
c/o United Defense, LP
Ground Systems Division
1125 Coleman Avenue, Box 367
San Jose, CA 95103
Attn: Zahra M. Zahiraleslamzadeh

BRENDA DAVIS
SANTA CLARA COUNTY RECORDER
Recorded at the request of
Declarant

RDE # 009
10/01/1996
10:13 AM

CALIFORNIA REGIONAL WATER

AUG 01 2001

QUALITY CONTROL BOARD

**COVENANT
TO RESTRICT USE OF PROPERTY:
ENVIRONMENTAL RESTRICTION**

This Covenant to Restrict Use of Property: Environmental Restriction ("Covenant") is made on the 1st day of August, 1996 by FMC Corporation ("Covenantor"), which is the owner of record of certain real property situated ~~in the City of Santa Clara, County of Santa Clara, State of California,~~ described more specifically in Exhibit "A", which is attached to and incorporated in this Covenant by this reference ("Property"), and by the State of California Regional Water Quality Control Board, San Francisco Bay Region ("Board") with reference to the following facts:

- A. Portions of the Property's soil and groundwater contain trichloroethylene and other volatile organic compounds ("VOCs"), metals and petroleum hydrocarbons as described in the following technical reports prepared by Covenantor and filed with the Board:
 1. Interim Remedial Alternatives Report dated June 1992
 2. Remedial Investigation Report dated May 1993
 3. Final Remedial Alternatives Report dated February 1994
 4. Background Metal Concentrations in Groundwater, United Defense, LP dated September 1994

In addition, the State of California Environmental Protection Agency, Department of Toxic Substances Control ("DTSC") issued a Resource

Conservation and Recovery Act ("RCRA") Facility Assessment ("RFA") for FMC Corporation - Ground Systems Division, San Jose, California dated June 1992. DTSC issued a Supplement to the RFA dated December 1994.

- B. The nature and extent of the VOCs, metals and petroleum hydrocarbons in the soil and groundwater at the Property have been defined and a remedial plan acceptable to the Board has been developed by Covenantor and was and is currently being implemented at the Property under Board Site Cleanup Requirements Order Number 96-024.
- C. DTSC, United Defense, LP and Covenantor entered into a Corrective Action Consent Agreement, effective January 2, 1996, which acknowledged that the investigation, monitoring and corrective action at the Property have been proceeding under Board direction and oversight, that DTSC commits to coordinate with the Board to avoid duplication of efforts and imposition of conflicting standards of work, and that DTSC undertakes to facilitate the Board's continuing oversight of the remedial investigation and corrective measures development and implementation at the Property.
- D. The Board adopted Waste Discharge Requirements Order Number 93-145 on November 19, 1993 imposing NPDES Permit Number CA0029963. This Order was superseded by the General NPDES Permit Number CAG912003 imposed by Waste Discharge Requirements Order Number 94-087 adopted August 22, 1995 and was rescinded by Board Order Number 96-022 adopted February 21, 1996.
- E. Covenantor desires to provide notice of certain matters respecting the Property and to impose certain covenants, conditions and environmental restrictions on the Property.

ARTICLE I.

GENERAL PROVISIONS

1.01 Provisions to Run With the Land. Pursuant to California Civil Code Section 1471, this Covenant sets forth protective covenants, conditions and environmental restrictions (collectively, "Restrictions"), upon and subject to which the Property and every portion of the Property shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, or conveyed. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Property and shall apply to and bind the respective successors in interest of Covenantor. Each and all of the Restrictions are imposed upon the entire Property unless expressly stated as applicable to a specific portion of the Property. Each and all of the Restrictions shall be enforceable by the Board.

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1.02 Concurrence of Owners Presumed. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, leasing, or possession of such Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions established in this Covenant must be adhered to for the benefit of future Owners and Occupants and that their interest in the Property shall be subject to the Restrictions contained in this Covenant.

1.03 Incorporation Into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out in this Covenant shall be incorporated by reference in each and all deeds and leases of any portion of the Property.

ARTICLE II.

DEFINITIONS

2.01 Improvements. "Improvements" shall mean all buildings, roads, driveways, regradings, and paved parking areas, constructed or placed upon any portion of the Property.

2.02 Occupant. "Occupant" shall mean any person entitled by ownership, leasehold interest, or other legal relationship to the exclusive right to occupy any portion of the Property.

2.03 Owner. "Owner" shall mean the Covenantor and any successors in interest, including heirs and assigns, who hold title to all or any portion of the Property. Owner shall include the mortgagee, trustee, or beneficiary of a mortgage or deed of trust upon the Property or any part thereof while but only while he or she, in such capacity, is in possession of the Property. Owner shall exclude any person holding only a security interest in the Property.

2.04 A-Level Aquifer. "A-Level Aquifer" shall mean the first water-bearing unit at the Property which underlies the surficial clay to a depth of approximately fifty-five (55) feet below the ground surface.

ARTICLE III.

DEVELOPMENT, USE AND CONVEYANCE OF THE PROPERTY

3.01 Restrictions on Use. Covenantor promises to restrict the use of the Property as follows:

- (1) Until the Board, or its successor agency, determines in accordance with the provisions of Site Cleanup Requirements Order Number 96-024 adopted by the Board

on February 21, 1996 ("the Order"), and any amendments to the Order, that the withdrawal of water for drinking water purposes from the A-Level Aquifer at the Property does not pose a significant existing or potential hazard to present or future public health or safety or to the environment, no Owner or Occupant of the Property or any portion of the Property shall drill, bore, excavate, or otherwise construct a well in the A-Level Aquifer for purposes of extracting water for use as drinking water. Notwithstanding the foregoing, it shall be permissible to construct wells in the A-Level Aquifer pursuant to a plan for remediation or monitoring of groundwater on the Property and to use water extracted from such wells for any use, if used appropriately for the intended use, except as drinking water. Nothing contained in this Covenant shall restrict any other use of the Property. The foregoing restriction shall run with the land and shall be binding upon the Covenantor and each other person who becomes an Owner or Occupant of the Property until the foregoing restriction is removed in accordance with the terms of this Covenant.

(2) Unless and until the Board determines in accordance with the provisions of the Order and any amendments to the Order that the drilling of wells or exploration borings deeper than fifty-five feet below the ground surface poses no hazard or threat to current or future public health or safety, no Owner or Occupant of the Property or any portion of the Property shall drill, bore, excavate, or otherwise construct such wells or holes for the purpose of providing a source of drinking water.

(3) The excavation of soil or extraction of groundwater at any depth for any purpose shall not commence unless and until the Owner or Occupant desiring to make the excavation has proposed a plan for protecting public health and safety and the health and safety of workers, which plan is acceptable to the Board, and implements that plan as proposed and accepted by the Board.

The use restrictions set out above shall not restrict any use of the Property except as expressly provided in this paragraph 3.01.

3.02 Conveyance of Property. The Owner shall provide thirty (30) days advance notice to the Board of the closing of any sale, lease, or other conveyance of the Property or a possessory interest in the Property to a third person. The Board shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the Property except as otherwise provided by law, by administrative order, or by reason of this Covenant.

3.03 Enforcement. Failure of the Owner to comply with any of the requirements set forth in paragraph 3.01 shall be grounds for the Board, by reason of this Covenant, to require that the Owner modify or remove any wells installed in violation of that paragraph. Violation of the Covenant shall be grounds for the Board to file an action against the Owner as provided by law.

3.04 Notice in Agreements. All Owners and Occupants shall execute a written instrument that shall accompany all purchase, lease, sublease, or rental agreements relating to the Property and executed after the date of recording of this Covenant. The instrument shall contain the following statement:

"The land described herein contains hazardous substances, as defined in Section 25316 of the California Health and Safety Code, and petroleum hydrocarbons, and is subject to the requirements of the Water Code a Covenant to Restrict Use of Property: Environmental Restriction dated AUG. 1, 1996, 1996, and recorded on OCT. 1, 1996, in the official records of Santa Clara County, California, as Document Number 13466452, which Covenant imposes certain covenants, conditions, and environmental restrictions pursuant to California Civil Code Section 1471 on use of the property described herein. The provisions of the Covenant and Agreement are incorporated herein and made a part hereof as if set forth in full. This statement is not a declaration that any hazard exists."

ARTICLE IV.

VARIANCE AND TERMINATION

4.01 Variance. Any Owner or, with the Owner's consent, any Occupant of the Property or any portion of the Property may apply to the Board for a written variance from the provisions of this Covenant. Such application shall contain (1) a statement of who is applying for the variance; (2) the proposed variance; and (3) a statement of reasons in support of granting the variance. In addition, the applicant shall demonstrate to the satisfaction of the Board that the proposed variance will not cause or allow any of the following effects associated with hazardous chemicals:

- A. The creation or increase of significant current or future hazards to public health.
- B. Any significant diminution of the ability to mitigate any significant potential or actual hazard to public health.
- C. Any long-term increase in the number of humans or animals exposed to significant hazards that affect the health, well-being, or safety of the public.
- D. Degradation of beneficial uses of waters as specified in Order 96-024 and any amendments thereto.

Upon making a decision to approve or deny the proposed variance, the Board shall state its decision in writing and serve its decision on the Owner, the legislative body of the city or county in which the Property is located, and on any other interested person made known to the Board. If the Board agrees to the proposed variance, the Board and all of the Owners of the land shall execute an instrument reflecting that agreement, shall particularly describe the real property affected by the variance, and the Owner shall record the instrument in Santa Clara County within fifteen (15) days of the date of complete execution of the instrument reflecting the variance.

4.02 Termination. The Restrictions imposed by this Covenant shall terminate when the Board makes a written determination that the cleanup standards established in the Order, and any amendments to the Order, have been met. In addition, any Owner or, with the Owner's consent, any Occupant of the Property or a portion thereof may apply to the Board for a termination of the Restrictions established by this Covenant as they apply to all or any portion of the Property on the ground that the residual chemicals in the soil or groundwater no longer create a significant existing or potential hazard to present or future public health or safety. Any application shall contain sufficient evidence for the Board to make a determination on any or all of the following grounds:

- A. The hazardous substances in the soil and groundwater have since been removed or altered in a manner that precludes any significant existing or potential hazard to present or future public health.
- B. New scientific evidence is available concerning either of the following, which shows that any significant existing or potential hazard to present or future public health has been precluded or eliminated:
 - 1. The nature of the hazardous substances, or
 - 2. The geology or other physical environmental characteristics of the Property.
- C. That compliance with Order 96-024 has been achieved for the appropriate portion in question.

Upon making a decision to approve or deny the proposed termination, the Board shall state its decision in writing and serve its decision on the Owner, the legislative body of the city or county in which the Property is located, and on any other interested person made known to the Board. If the Board approves, in writing, the proposed termination of the restrictions, the Board and all of the Owners of the Property shall record or cause to be recorded a termination of the restrictions, which shall (i) particularly describe the real property subject to the restrictions, and (ii) be indexed by the recorder in the grantor index in the name of the record title owner of the real property subject to the restrictions, and in the grantee index in

the name of the Board. Any applicant seeking termination of the restrictions shall pay the Board all reasonable costs incurred by the Board in processing the application.

4.03 Term. This Covenant shall continue in effect until terminated in accordance with paragraph 4.02 above.

ARTICLE V.

MISCELLANEOUS

5.01 No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or an offer of a gift or dedication, of the Property or any portion of the Property to the general public or for any purpose whatsoever.

5.02 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective 1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served or official of a government agency being served, or 2) three (3) business days after deposit in the mail if mailed by United States certified mail, postage pre-paid, return receipt requested:

To: FMC Corporation
c/o United Defense, LP
Ground Systems Division
1125 Coleman Avenue
Box 367
San Jose, CA 95703
Attn: Srinivasan Rajagopal
San Jose Site Manager
Director of Engineering
United Defense, LP
Ground System Division

To: California Regional Water Quality Control Board
San Francisco Bay Region
2101 Webster Street, Suite 500
Oakland, CA 94612
Attention: Mr. Steve Morse

5.03 Partial Invalidity. If any portion or term of the Restrictions set forth in this Covenant is determined to be invalid for any reason, the remaining portions and terms shall remain in full force and effect as if such invalid portion had not been included in this Covenant.

5.04 Article Headings. Headings at the beginning of each numbered paragraph of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

5.05 Recordation. This instrument shall be executed by the Covenantor and by the Board. This instrument shall be recorded by the Covenantor in the County of Santa Clara within fifteen (15) days of the date of its complete execution.

5.06 Mortgagee Protection. No violation of, or failure to comply with, the Restrictions contained in this Covenant by any Owner or Occupant shall impair, defeat or render invalid the lien of any mortgage or deed of trust given in good faith and for value and encumbering all or any portion of the Property, but the Restrictions contained in this Covenant shall be binding upon and enforceable against any Owner whose title is acquired by judicial or non-judicial foreclosure, deed-in-lieu of foreclosure or otherwise.

5.07 References. All references to Code sections include successor provisions.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

FMC Corporation

By: Robert F. Fies

Title: VICE PRESIDENT

Date: AUGUST 1, 1996

Regional Water Quality Control Board

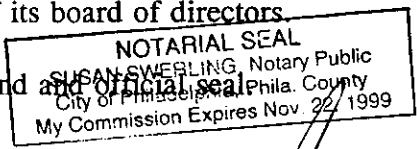
By: Smith/Burson

Title: Executive Officer

Date: August 26, 1996

STATE OF PENNSYLVANIA)
)
COUNTY OF PHILADELPHIA)

On August 1, 1996 before me, the undersigned, a Notary Public in and for said state, personally appeared Robert J. Fields personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as Vice-President/Officer of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same pursuant to its bylaws or a resolution of its board of directors.



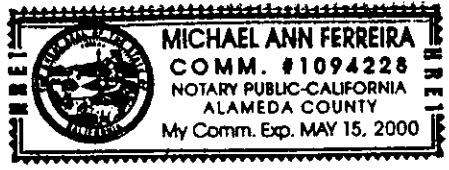
WITNESS my hand and official seal.

Susan Swerling
Notary Public in and for said County and State

STATE OF CALIFORNIA)
)
COUNTY OF Alameda)

On August 26, 1996, 1996 before me, the undersigned, a Notary Public in and for said state, personally appeared Loretta Braschini personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as Agent, of the California Regional Water Quality Control Board, San Francisco Bay Region, the agency that executed the within instrument, and acknowledged to me that such agency executed the same.

WITNESS my hand and official seal.



Michael Ferreira
Notary Public in and for said County and State

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

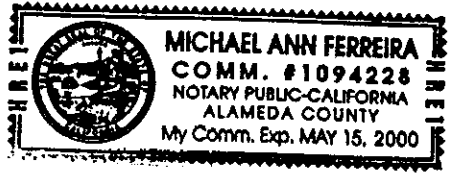
State of California

County of Alameda

On Aug 26, 1996 before me, Michael Ann Ferreira
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Louella Kahn Bassamian
NAME(S) OF SIGNER(S)

personally known to me - OR proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Michael Ann Ferreira
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- INDIVIDUAL
- CORPORATE OFFICER
- _____ TITLE(S)
- PARTNER(S) LIMITED
- GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: Regional
Water Quality
Control Board

_____ TITLE OR TYPE OF DOCUMENT

_____ NUMBER OF PAGES

_____ DATE OF DOCUMENT

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

FMC Corporation
SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT A

Legal Description of Property

Exhibit A

LEGAL DESCRIPTION

All that real property situate in the City of San Jose, County of Santa Clara, State of California, described as follows:

Beginning at the intersection of the Southeasterly line of Brokaw Road with the Northeasterly line of that certain 36.481 acre tract of land described in the deed from Mary Ives Crocker to Southern Pacific Company, dated November 5, 1925 and recorded November 9, 1925 in Volume 192 of Official Records, page 370; thence along the Northeasterly line of said 36.481 acre tract S. 57 deg. 34' E. 660 feet; thence leaving said Northeasterly line and running S. 77 deg. 22' 15" E. 295.14 feet to a point on a line parallel with and distant Northeasterly at right angles 100 feet from said Northeasterly line of said 36.481 tract; thence along said parallel line S. 57 deg. 34' E. 534.59 feet to a point on the boundary line common to the cities of Santa Clara and San Jose; thence along said boundary line N. 0 deg. 05' W. 757.38 feet to a point on the Southwesterly line of Coleman Avenue as established by deed from City of San Jose to City of Santa Clara, dated June 24, 1947 and recorded March 3, 1948 in Book 1575 of Official Records, page 78; thence along said Southwesterly line of Coleman Avenue N. 57 deg. 34' W. 1007.92 feet to the intersection of said line of Coleman Avenue with the Southeasterly line of Brokaw Road; thence along said line of Brokaw Road S. 36 deg. 49' W. 740.85 feet to the point of beginning and being a portion of the Stockton Rancho.

Lands located partly in the City of Santa Clara and partly in the City of San Jose, County of Santa Clara, State of California, described as follows:

All that certain tract of land situate in Santa Clara County, California, and being a portion of that certain Parcel 1 and Parcel 2 conveyed by the City of San Jose, a municipal corporation, to the City of Santa Clara, a municipal corporation, by deed recorded on October 19, 1956 in Book 3636 of Official Records, page 632 and 633 therein. Records of Santa Clara County, California, and being more particularly described as follows:

Beginning at the point of intersection of the Northeasterly line of Coleman Avenue 100 feet wide, as established by a deed from the City of San Jose, a municipal corporation, to the City of Santa Clara, a municipal corporation, dated June 24, 1947, and recorded March 3, 1948 in book 1575 of Official Records,

(LEGAL DESCRIPTION CONTINUED NEXT PAGE)

page 78, Santa Clara County Records, with the Southeasterly line of Brokaw Road 60 feet wide; thence running along said Northeasterly line of Coleman Avenue S. 57 deg. 39' 16" W. 12647.41 feet to the most Southerly corner of said Parcel 2; thence leaving said Northeasterly line and running along the Easterly line of said Parcel 2, N. 0 deg. 46' 02" W. 530.58 feet to a point; thence N. 57 deg. 39' 16" W. and parallel with said Northeasterly line of Coleman Avenue 279.42 feet to beginning of a circular curve; thence along said circular curve to the left, tangent to preceding course with a radius of 900 feet, through a central angle of 30 deg. an arc distance of 471.24 feet to end of curve; thence N. 87 deg. 39' 16" W. 269.78 feet to a point on the said Southeasterly line of Brokaw Road; thence S. 36 deg. 44' 20" W. along the last said Southeasterly line of 189.51 feet to the place of beginning.

Except therefrom that portion of land quitclaimed to the City of Santa Clara by deed recorded May 9, 1968 in Book 8117, page 389, Official Records, and described as follows:

Beginning a point where the Southeasterly line of Brokaw Road 60 feet in width, intersects the Southerly line of that street designated as proposed Coleman Avenue 100 feet in width, on that certain Record of Survey recorded in Book 116 Maps, at page 18 therein, in the office of the County Recorder, Santa Clara County, California; thence from said point of beginning S. 87 deg. 34' E. 17.59 feet along the aforesaid Southerly line of proposed Coleman Avenue to a point; said point being the beginning of a 33.37 foot radius curve to the left from a tangent bearing N. 87 deg. 34' W.; thence from said point following said curve through a central angle of 55 deg. 36' 08" an arc distance of 32.28 feet to a point on the aforesaid Southeasterly line of Brokaw Road; thence N. 36 deg. 49' 52" E. 17.59 feet, more or less, along said Southeasterly line of Brokaw Road to the point of beginning.

All that real property situate in the City of Santa Clara, County of Santa Clara, State of California, described as follows:

Beginning at the intersection of the Southwesterly line of Coleman Avenue, as established by a deed from City of San Jose, to City of Santa Clara, dated June 24, 1947, and recorded March 3, 1948 in book 1575 of Official Records, page 78, with the Southeasterly line of Brokaw Road; thence along said Southeasterly line of Brokaw Road N. 36 deg. 44' 20" E. 100.28 feet to a point on the Northeasterly line of Coleman Avenue as described above; thence S. 57 deg. 34' E. 936.62 feet to a point; thence S. 0 deg. 05' E. 118.59 feet to a point on the Southwesterly line of Coleman Avenue as described above; thence N. 57 deg. 34' W. 1007.90 feet to the point of beginning.

328 West Brokaw Road, Santa Clara, CA
Institutional Constraints

The following institutional constraints are adopted in connection with Site Cleanup Requirements Order Number 96-024 (the "Order") of the California Regional Water Quality Control Board, San Francisco Bay Region, relating to the property located at 328 West Brokaw Road, Santa Clara, Santa Clara County, California (the "Site") adopted February 21, 1996. Compliance with these institutional constraints is the responsibility of FMC Corporation and United Defense, LP (the "Responsible Parties").

1. Posting of warning signs in the groundwater treatment system area of the Site stating that the water being circulated through the system is not potable. The Responsible Parties shall cause such warning signs to be posted at the Site within thirty (30) days after Regional Board approves these institutional constraints.
2. Continued quarterly inspections of extraction well heads to check that the locks on the wells are in good operating condition. The Responsible Parties shall cause such inspections to be made as part of scheduled water level measurements by a technical environmental consultant engaged by the Responsible Parties from time to time (hereinafter, the "Consultant"). The current year's schedule calls for inspections in February, May, July and November, 1996; comparable schedules shall be implemented in future years unless less frequent water level measurement schedules are approved by the Regional Board.
3. Continued compliance with the Covenant to Restrict Use of Property: Environmental Restriction prohibiting the use of the A-Level Aquifer at the site as a source of drinking water.
4. Continued maintenance of the fence surrounding the groundwater treatment system area to prohibit unauthorized access to the Site. The Responsible Parties shall cause the Consultant to make a visual inspection of the fencing on at least a quarterly basis, consistent with the schedule under Paragraph 2 above, and to repair with reasonable diligence any damage that materially impairs the effectiveness of the fence as a barrier to unauthorized access.
5. If the Responsible Parties contact, or are contacted by, any utility company for purposes of performance by such utility company of any work on the Site that involves a risk of exposure to groundwater or soil (if any), the Responsible Party making or receiving such contact shall give the utility company a written notice concerning the groundwater and soil conditions at the Site (including at least a general disclosure of the known groundwater depth(s), the primary

known chemicals in the groundwater and the circumstances under which a risk of exposure might arise), so that the utility company can make a determination regarding the appropriate management of any such exposure risks.