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TEL: 202 418 5525

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EXPLANATORY NOTE TO THIS DRAFT:

The following is a proposed text for a Memorandum between the U.S. Commodity Futures Trading Commission and the New Zealand Securities Commission. This draft has been provided for discussion purposes and has not been reviewed or approved by the Commissioners of the CFTC.

MEMORANDUM OF UNDERSTANDING BETWEEN
THE UNITED STATES COMMODITY FUTURES TRADING COMMISSION
AND THE
NEW ZEALAND SECURITIES COMMISSION
ON CONSULTATION AND
MUTUAL ASSISTANCE FOR THE EXCHANGE OF INFORMATION

FINAL MOU DRAFT - Aug. 20, 1996

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The United States Commodity Futures Trading Commission and the New Zealand Securities Commission (collectively "the Authorities"), recognizing the increasing international activity in the futures and options markets and the corresponding need for mutual cooperation as a means for improving their effectiveness in administering and enforcing the futures and options laws and regulations of their respective countries, have reached the following understanding. The following understanding does not create any binding legal obligations.

1: DEFINITIONS

For the purposes of this Memorandum of Understanding (Memorandum):

- 1.1 "Authority" means:
 - 1.1.1 the United States Commodity Futures Trading Commission ("CFTC");
 - or
 - 1.1.2 the New Zealand Securities Commission ("NZSC").
- 1.2 "Requested Authority" means an Authority to whom a request under this Memorandum is made.
- 1.3 "Requesting Authority" means an Authority making a request under this Memorandum.
- 1.4 "person" means: a natural person, unincorporated association, partnership or body corporate; or a government, government subdivision, agency, instrumentality of a government, or any equivalent authority.
- 1.5 "futures business" means any business undertaken by any person who is involved, in whole or in part, in: effecting transactions in futures and options for the accounts of others or soliciting such transactions; buying and selling futures and options for one's own account; advising others for compensation -- either directly or through publications, writings, or electronic media -- as to the desirability of trading in, purchasing or selling futures and options; the managing, promoting, offering or selling of any collective investment scheme involving futures or options; or equivalent activities conducted by persons or entities; and includes persons acting in the capacity of commodity trading advisors, commodity pool operators, futures commission merchants, introducing brokers, associated persons or floor brokers, and floor traders.



- 1.6 "futures processing business" means a clearing organization.
- 1.7 "futures transaction" means a transaction in futures or options that is regulated or subject to regulation by the Authorities whether transacted on or subject to the rules of an exchange or market or over-the-counter.
- 1.8 "laws or regulations" means the laws of the United States and New Zealand and regulations promulgated thereunder concerning, by way of example:
 - 1.8.1 insider trading, misrepresentation or the use of fraudulent, deceptive or manipulative practices in connection with the offer, purchase or sale of any futures or options contract or the conduct of futures businesses or futures transactions;
 - 1.8.2 the duties of persons to comply with reporting requirements;
 - 1.8.3 the making of a false or misleading statement or any material omission in any application or report made to the Authorities;
 - 1.8.4 the duties of persons or futures businesses to make full and fair disclosure of information to futures market participants in connection with futures transactions;
 - 1.8.5 the duties of futures businesses and futures processing businesses pertaining to financial, operational or other requirements and duties of fair dealing in the offer and sale of futures and options, the execution of transactions and the conduct of their businesses;
 - 1.8.6 the financial and other qualifications of those engaged in, or in control of, futures businesses or futures processing businesses; and
 - 1.8.7 any other futures or options matters or manipulative acts or practices that fall under the jurisdiction of the Authorities.

2: MUTUAL ASSISTANCE FOR THE EXCHANGE OF INFORMATION

2.1 General Principles

2.1.1 This Memorandum sets forth a statement of intent of the Authorities regarding the exchange of information between the Authorities for the purpose of enhancing the Authorities' ability to enforce or administer

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the laws or regulations of their respective jurisdictions.

2.1.2. Nothing in this Memorandum is intended to limit or enhance the powers of the CFTC under the laws of the United States or the powers of the NZSC under the laws of New Zealand:

(a) to investigate or gather information otherwise than as provided in this Memorandum, whether or not in connection with a request under this Memorandum;

(b) to disclose information, except that an Authority will follow the steps in 2.5 and 2.6 when it is going to disclose information received under this Memorandum.

2.1.3 The provisions of this Memorandum do not give rise to a right, directly or indirectly, on the part of any person, other than the Authorities, to obtain, suppress or exclude any evidence or to challenge the execution of a request for assistance under this Memorandum.

2.2 Scope of Assistance

2.2.1 The Requested Authority will provide to the Requesting Authority the fullest assistance possible, within the framework of this Memorandum and to the extent permissible under the laws of the Requested Authority, in response to any request concerning matters within the jurisdiction of the Requesting Authority.

2.2.2 Assistance available pursuant to this Memorandum includes, but is not limited to:

- (a) providing access to information in the files of the Requested Authority;
- (b) taking testimony and statements of persons;
- (c) obtaining information and documents from persons; and
- (d) conducting compliance inspections or examinations of futures transactions and futures businesses.

2.2.3 Assistance under this Memorandum may be denied by the Requested Authority:

- (a) where the request would require the Requested Authority to act in a manner that would violate the laws of the State of the Requested Authority;
- (b) where the request is not in accordance with the provisions set forth in this Memorandum; or
- (c) on the grounds of national security or essential public interest.

2.3 Requests for Assistance

2.3.1 Requests for assistance are to be made in writing and addressed to the Requested Authority's contact officer(s) listed in Appendix A.

2.3.2 A request for assistance will include the following:

- (a) a general description of both the matter which is the subject of the request and the purpose for which the information is sought;
- (b) a general description of the assistance, documents, information, testimony, and statements of persons sought by the Requesting Authority;
- (c) information in the possession of the Requesting Authority that might assist the Requested Authority in identifying the persons or entities believed by the Requesting Authority to possess the information sought, or the places where such information may be obtained;
- (d) the laws or regulations pertaining to the matter that is the subject of the request; and
- (e) the desired time period for the reply and, where appropriate, the urgency thereof.

2.3.3 In the event of urgency, a request for assistance and reply thereto will be expedited to the extent possible and may be effected initially by means of communication other than the exchange of letters, provided that it is confirmed as prescribed in 2.3.1 and 2.3.2.

2.4 Execution of Requests

- 2.4.1 Access to information held in the files of the Requested Authority will be provided upon request of the Requesting Authority pursuant to 2.3.
- 2.4.2 When requested by the Requesting Authority, the Requested Authority will take the testimony or statements of persons who, directly or indirectly, are involved in the activities that are the subject of the request or are holding information that may assist in carrying out the request. The Requesting Authority may, in its discretion, request that testimony or statements be taken from specific persons. The Requesting Authority may also seek to have the Requested Authority require production of other evidence.
- 2.4.3 Execution of a request under this Memorandum, including obtaining testimony or statements or gathering documents, will be conducted in accordance with the procedures and laws of the Requested Authority and by persons designated by the Requested Authority, unless otherwise agreed by the Authorities.
- 2.4.4 A person whose statement is taken pursuant to a request will have the right to have counsel present during the taking of the statement.
- 2.4.5 Notwithstanding any other provision of this Memorandum, any person providing testimony, statements, information or documents as a result of a request made under this Memorandum will be entitled to all the rights and privileges applicable under the laws of the State of the Requested Authority. Assertions regarding rights and privileges arising exclusively pursuant to the laws of the State of the Requesting Authority will be preserved for consideration by the courts in the State of the Requesting Authority.
- 2.4.6 Notwithstanding 2.4.3, when requested by the Requesting Authority, testimony or statements will be taken under oath and a transcript will be made. In addition, subject to approval by the Requested Authority, representatives of the Requesting Authority may be present at the taking of testimony or statements and may specify particular questions to be asked of any witness. To the extent permitted by law, a representative of the Requesting Authority may also pose specific questions to any witness.
- 2.4.7 When requested by the Requesting Authority, an inspection or examination will be conducted of the books and records concerning



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futures transactions and futures businesses. In addition, to the extent permitted by the law of the Requested Authority, a representative of the Requesting Authority may be present at the inspection or examination and, subject to approval by the Requested Authority, may participate in the inspection or examination.

- 2.4.8 If it appears that responding to a request for assistance under this Memorandum will involve substantial costs to the Requested Authority, the Authorities will together establish a cost sharing arrangement before the Requested Authority continues to respond to such request for assistance.

2.5 Permissible Uses of Information

- 2.5.1 The Requesting Authority may use the information furnished solely:

- (a) for purposes stated in the request, including ensuring compliance with or enforcement of the laws or regulations specified in the request and related provisions; and
- (b) for purposes within the general framework of the use stated in the request, including conducting a civil or administrative enforcement proceeding, market oversight and market surveillance, assisting in a criminal prosecution, or conducting any investigation related thereto for any general charge applicable to the violation of the law or regulation specified in the request.

- 2.5.2 To use the information furnished for any purpose other than those stated in 2.5.1, the Requesting Authority will first inform the Requested Authority of its intention and provide the Requested Authority an opportunity to oppose the utilization. If the Requested Authority opposes the utilization, the information may be used only under the conditions imposed by the Requested Authority. If use of the information is opposed by the Requested Authority, the Authorities will consult pursuant to 2.7 concerning the reasons for the refusal and the circumstances under which use of the information might otherwise be allowed.

- 2.5.3 Notwithstanding 2.5.1, the Authorities understand that laws of the United States and New Zealand may place limitations on disclosure of

non-public information obtained pursuant to this Memorandum.

2.6 Confidentiality

- 2.6.1 Each Authority will keep confidential, to the extent permitted by law, requests made under this Memorandum, the contents of such requests and any other matters arising during the operation of this Memorandum, including consultations between the Authorities. However, disclosures that are absolutely necessary to carry out the requests are permitted, and confidentiality may be waived by mutual agreement of the Authorities.
- 2.6.2 The Requesting Authority will keep confidential to the extent permitted by its law any information received pursuant to this Memorandum, unless it is disclosed in accordance with 2.5.
- 2.6.3 Except as contemplated by 2.5 and 2.6.1, the Requesting Authority will not disclose the information to any other person and will use its best efforts to ensure that the information is not obtained by any other person. However, unless otherwise agreed, if such information is obtained by a public authority, the Requesting Authority will use its best efforts to ensure that such information is not used by that public authority in any way that involves disclosure to any other person.
- 2.6.4 The Requesting Authority will notify the Requested Authority of any legally enforceable demand for information it receives pursuant to this Memorandum prior to complying with the demand, and will assert such appropriate legal exemptions or privileges with respect to such information as may be available.

2.7 Consultations

- 2.7.1 The Authorities will keep the operation of this Memorandum under continuous review and will consult with a view to improving its operation and resolving any matters that may arise. In particular, the Authorities will consult upon request in the event of:
- (a) a decision by one Authority to decline a request for information or, pursuant to 2.5.2, to decline to consent to a proposed use of information that has been obtained under this Memorandum;
 - (b) a change in market or business conditions or in the legislation governing matters within the jurisdiction of either Authority, or any difficulty



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which may make it necessary to amend or extend this Memorandum in order to achieve its purposes; or

(c) a misunderstanding regarding the meaning of any terms used in this Memorandum.

2.7.2 The Authorities may implement such practical measures as may be necessary to facilitate the purposes of this Memorandum.

2.8 Unsolicited Assistance

To the extent permitted by the laws and regulations of its jurisdiction, each Authority will use reasonable efforts to provide to the other Authority any information it discovers which gives rise to a suspicion of a breach, or anticipated breach, of the laws or regulations of the other Authority.

3: FINAL PROVISIONS

3.1 Effective Date

Cooperation under this Memorandum will begin immediately upon signature.

3.2: TERMINATION

The Authorities intend for cooperation under this Memorandum to continue until the expiration of 30 days after either Authority gives written notice to the other Authority of its intention to discontinue the cooperation. If such notice is given, cooperation in accordance with this Memorandum will continue with respect to all requests for assistance that were made before the effective date of notification until the Requesting Authority terminates the matter for which assistance was requested.

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28-AUG-1996 16:28

SECURITIES COMMISSION N Z

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TEL: 202 418 5515

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Signed at _____, this ____ day of _____, 1996.

FOR THE:

UNITED STATES COMMODITY
FUTURES TRADING COMMISSION

NEW ZEALAND
SECURITIES COMMISSION

CHAIRPERSON

CHAIRMAN

FINAL MOU DRAFT - Aug. 20, 1996

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APPENDIX A

United States Commodity Futures Trading Commission
 Three Lafayette Centre
 1155 21st Street, N.W.
 Washington, DC 20581
 (or postal code 20036 for overnight deliveries)
 UNITED STATES OF AMERICA

For enforcement matters:

Division of Enforcement:
 Attention: Director
 Tel: (202) 418-5320
 Fax: (202) 418-5523

For regulatory matters:

Division of Trading & Markets:
 Attention: Director
 Tel: (202) 418-5430
 Fax: (202) 418-5536

For market surveillance matters:

Division of Economic Analysis
 Attention: Director
 Tel: (202) 418-5260
 Fax: (202) 418-5527

Securities Commission
 12th Floor, Reserve Bank Building
 2 The Terrace
 Wellington, NEW ZEALAND

Attention: Senior Executive (Compliance)
 Tel: (64) (4) 472-9830
 Fax: (64) (4) 472-8076