35

MEMORANDUM OF UNDERSTANDING

BETWEEN THE

UNITED STATES
COMMODITY FUTURES
TRADING COMMISSION

SECURITIES AND EXCHANGE
BOARD OF INDIA

JGN

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES COMMODITY FUTURES TRADING COMMISSION
AND
THE SECURITIES AND EXCHANGE BOARD OF INDIA
REGARDING FUTURES REGULATORY COOPERATION, CONSULTATION AND THE PROVISION OF TECHNICAL ASSISTANCE

The United States Commodity Futures Trading Commission ("CFTC") and the Securities and Exchange Board of India ("SEBI") (collectively, "the Authorities"),

Sharing the goal of building and maintaining open, fair, efficient and sound futures markets,

Recognizing that the development of effective domestic legal and regulatory structures is essential to market integrity and investor protection,

Believing that international cooperation can facilitate the development and effective operation of futures markets, and

Desiring to establish a mutually acceptable basis for cooperation and consultation,

Have reached the following understanding:

CLAUSE I OPERATION AND CONSULTATION

Section 1. General Principles

1. The United States Congress created the CFTC as an independent agency in 1974. The mission of the CFTC is to protect market users and the public from fraud, manipulation, and abusive practices related to the sale of commodity futures and options and to foster open, competitive, and financially sound commodity futures and options markets in the United States.

2. The SEBI was established under SEBI Act, 1992 to regulate the securities market in India. The objectives of the SEBI are to protect the interest of investors, and to promote development of and to regulate the development of the securities markets and related derivatives markets in India.

3. This Memorandum of Understanding Regarding Futures Regulatory Cooperation, Consultation and the Provision of Technical Assistance (MOU) in respect of futures and options markets within the Authorities' regulatory jurisdiction describes the intent of the Authorities and does not create legally binding obligations or supersede domestic law of either Authority.

4. The Authorities recognize the need and desirability of providing assistance, as set forth in Clauses II and III, to each other pursuant to this MOU. The provision of any such assistance should be consistent with the domestic laws of the Authorities and the availability of resources. Where the provision of assistance would be contrary to the public interest of an Authority, such assistance may be denied.

Section 2. Consultation

The Authorities intend to consult periodically about matters of mutual interest in order to promote cooperation and market integrity, and to further the protection of futures and options market participants. Such consultation may cover, among other things, the development of prudential standards and conduct of business standards for the operation of futures businesses (brokers, dealers and markets), the development of clearance and settlement and other market systems, market oversight, and the administration of the Authorities' futures and options laws, rules, and regulations. The purpose of such consultation is to assist in the development of effective approaches to strengthening domestic and international futures and options markets.

Section 3. Information Sharing

The Authorities intend to share information on each other's laws, rules and regulations pertaining to futures and options markets, if applicable, and how those laws, rules and regulations are implemented and interpreted.

CLAUSE II PROVISION OF TECHNICAL ASSISTANCE FOR THE DEVELOPMENT OF THE SECURITIES AND EXCHANGE BOARD OF INDIA

Section 1. Technical Assistance

In furtherance of the objective of promoting the development of sound futures and options regulatory mechanisms, the CFTC may, upon a request by SEBI, consult with and provide advice to SEBI with a view to establishing and implementing an ongoing technical assistance program. In this regard, the Authorities intend to work together to identify and address, subject to the availability of personnel and other resources, training and technical assistance needs to facilitate the development of a regulatory framework for the development, administration, and operation of the futures and options markets in India as well as the cross-border trading of futures and options products, including:

a. Systems to improve and/or promote the risk management, price discovery and hedging functions of markets;

b. Futures and options products and the basics of designing contracts not readily susceptible to manipulation;

c. Order handling systems;

d. Transaction recording and comparison systems;

e. Quotation and transaction data transmission systems;

f. Clearance and settlement mechanisms;

g. Regulatory requirements and best practices relating to market professionals, products and markets;

h. Systems and related regulatory mechanisms relating to financial surveillance;

i. Systems for effective market surveillance and enforcement programs;

j. Disclosure and other procedures and practices to inform and protect futures and options customers and market participants; and

k. Information on transparency.

Section 2. Specific Technical Assistance

Specific technical assistance may be provided in the following manner:

a. Comment by CFTC staff on draft laws and regulations;

b. Availability of CFTC staff and other relevant experts to provide consultation, on or offsite, regarding futures and options markets;

c. General training sessions concerning futures and options regulation; and

d. Internship programs of short duration for SEBI personnel at the CFTC, conditioned upon the availability of staff, requisite legal authority to do so and the entering into of any necessary confidentiality agreements.

CLAUSE III COOPERATION

Each Authority may, subject to Clause IV, Section 2, give assistance as to:

a. The granting of licenses, waivers, or exemptions for the conduct of futures business;

b. The laws and regulations applicable to futures business;

c. The laws and regulations applicable to futures exchanges and other types of markets;

d. The oversight of futures exchanges by regulatory and market authorities;

e. The prevention and detection of futures and options fraud and other irregularities or unlawful activities in connection with the offer, purchase or sale of any futures or options contract; and

f. The prevention and detection of market manipulation.

CLAUSE IV OPERATIONS

Section 1. Laws, Rules and Requirements

The Authorities have exchanged general information on the laws, rules and requirements applicable to the confidentiality and use of information and intend to abide by same.

Section 2. Requests

Requests for assistance under Clause III, procedures for making and executing such requests, permissible uses of information, confidentiality requirements, costs and other matters not explicitly included in this MOU should be addressed on a case-by-case basis.

Section 3. Official Contacts

To further ensure the effective operation of this MOU, and to facilitate communication between the Authorities, the Authorities hereby designate the contact officials set forth in Attachment A.

CLAUSE V FUTURE UNDERSTANDINGS

1. The Authorities plan to regularly review their efforts pursuant to this MOU with a view toward improving communication between them. In this regard, when material additions or amendments to new United States and/or India futures and options laws take effect, the Authorities intend to consider whether this MOU should be supplemented or superseded.

2. The Authorities intend to move toward more formal information sharing arrangements after they have some experience with the operation of this MOU.

3. This MOU is not intended to supersede the IOSCO Multilateral MOU or any other arrangement to which the Authorities are a party.

CLAUSE VI EFFECTIVE DATE AND TERMINATION

Section 1. Effective Date

This MOU is effective from the date of its signing by the Authorities.

Section 2. Termination

Either Authority may terminate this MOU at any time by giving thirty days' written notice to the other Authority. If such notice is given, this MOU should continue to have effect with respect to all requests for assistance that are made before the effective date of notification until the requesting Authority terminates the matter for which assistance was requested.

This MOU is executed in duplicate in Washington, DC on April 28, 2004

FOR THE UNITED STATES COMMODITY FUTURES TRADING COMMISSION:

JAMES E. NEWSOME
CHAIRMAN

FOR THE SECURITIES AND EXCHANGE BOARD OF INDIA:

G. N. BAJPAI
CHAIRMAN

ATTACHMENT A

The United States Commodity Futures Trading Commission designates as its contact official:

Director
Office of International Affairs
Commodity Futures Trading Commission
3 Lafayette Centre
1155 21st Street, NW
Washington, DC 20581-0001
USA

Tel: 1 202 418 5645
Fax: 1 202 418 5548
e-mail: international@cftc.gov

The Securities and Exchange Board of India designates as its contact official:

The General Manager
Office of International Affairs
Securities and Exchange Board of India
Mittal Court, B Wing, 1st Floor
224 Nariman Point
Mumbai 400 021
INDIA

Tel: 91 22 22829474
Fax: 91 22 22835692
e-mail: oia@sebi.gov.in