

MEMORANDUM OF UNDERSTANDING BETWEEN  
THE UNITED STATES COMMODITY FUTURES TRADING COMMISSION  
AND THE COMISION NACIONAL DE VALORES OF THE REPUBLIC OF ARGENTINA  
ON CONSULTATION, TECHNICAL ASSISTANCE, AND  
MUTUAL ASSISTANCE FOR THE EXCHANGE OF INFORMATION

## MEMORANDUM OF UNDERSTANDING

The United States Commodity Futures Trading Commission and the Comisión Nacional de Valores of the Republic of Argentina acknowledge the importance of ensuring compliance with and enforcement of the futures and options laws, rules and regulations of the United States and the Republic of Argentina. In light of the increasing international activity in transactions in futures and options, and the need for mutual cooperation in order to facilitate the performance of their respective duties, the Commodity Futures Trading Commission and the Comisión Nacional de Valores have reached the following understanding with respect to consultations, technical assistance, and mutual assistance for the exchange of information. The following understandings do not create legally binding obligations on the authorities or supersede domestic law.

### CLAUSE I            DEFINITIONS

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

- (a) "Authority" means:
  - (i) the Commodity Futures Trading Commission of the United States (CFTC); and
  - (ii) the Comisión Nacional de Valores of the Republic of Argentina (CNV).
- (b) "requested Authority" means an Authority to whom a request under this Memorandum is made.
- (c) "requesting Authority" means an Authority making a request under this Memorandum.
- (d) "person" means a natural person, unincorporated association, partnership, body corporate, government or political subdivision, agency or instrumentality of a government.
- (e) "futures business" means any person who is involved, in whole or in part, in effecting transactions in futures and options for the accounts of others; buying and selling futures and options for one's own account; advising others for compensation, either directly or through publications, as to the desirability of investing in, purchasing or selling futures and options, the management, promotion, offer or sale of any collective investment scheme; or equivalent activities conducted by persons or

entities; and includes persons acting in the capacity of trading advisors, pool operators, futures commission merchants, introducing brokers, associated persons and floor brokers, floor traders, and futures and options broker and dealers.

- (f) "futures processing business" means a futures clearing organization.
- (g) "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; and
- (h) "laws or regulations" means:
  - (i) the provisions of the laws, or regulations promulgated thereunder, of the United States; and
  - (ii) the provisions of the laws, or regulations promulgated thereunder, of the Republic of Argentina;

concerning:

- (a) 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 business or futures transactions;
- (b) the duties of persons to comply with reporting requirements;
- (c) the making of a false or misleading statement or any material omission in any application or report made to the Authorities;
- (d) the duties of persons or futures businesses to make full and fair disclosure of information to futures market participants in connection with futures transactions;
- (e) the duties of futures businesses and futures processing businesses pertaining to their financial, operational or other requirements and their duties of fair dealing in the offer and sale of futures and options, the execution of transactions and the conduct of their businesses;

- (f) the financial and other qualifications of persons engaged in, or in control of, futures businesses or futures processing businesses; and
- (g) any other futures or options matters under the jurisdiction of the Authorities.

**CLAUSE II            MUTUAL ASSISTANCE FOR THE EXCHANGE OF INFORMATION**

**Section 1.    General Principles for Mutual Assistance for the Exchange of Information**

1.    This Clause sets forth a statement of intent of the Authorities regarding the exchange of information between the Authorities.
2.    Nothing in this Clause is intended to limit the powers of the CFTC under the laws of the United States or the powers of the CNV under the laws of the Republic of Argentina to investigate or gather information or to take measures otherwise than as provided in this Clause to obtain information, whether or not in connection with a request under this Clause.
3.    The provisions of this Clause do not give rise to the right on the part of any person other than the Authorities, directly or indirectly, to obtain, suppress or exclude any evidence or to challenge the execution of a request for assistance under this Clause.
4.    Assistance under this Clause 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 Clause;
  - (c)    on the grounds of essential public interest;
  - (d)    on grounds of national security.

## Section 2. Scope of Assistance

1. The requested Authority will provide to the requesting Authority the fullest mutual assistance, within the framework of this Clause 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. In order to comply with any request for assistance under this Clause, the requested Authority will use all the means provided under the law of its jurisdiction to investigate a violation of any law, rule or regulation within the jurisdiction of the requesting Authority, or to obtain information from any person likely to have information in connection with the facts contemplated by the request.

3. Assistance available pursuant to this Clause 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.

4. The Authorities recognize that they may not in all circumstances possess the legal authority to provide the assistance contemplated in this Clause. Subject to such limitations of legal authority, the Authorities will use all reasonable efforts to obtain the necessary authorization to provide the assistance contemplated in this Clause.

## Section 3. Requests for Assistance

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. The requests for assistance will specify the following:

- (a) the information sought by the requesting Authority;
- (b) a general description of both the matter which is the subject of the request and the purpose for which the information is sought;
- (c) a general description of the assistance, documents, information, testimony, and statements of persons sought by the requesting Authority;

- (d) any 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;
- (e) the laws, rules or regulations pertaining to the matter which is the subject of the request; and
- (f) the desired time period for the reply and, where appropriate, the urgency thereof.

3. In the event of urgency, requests for assistance and replies to such requests shall be expedited to the extent possible or effected by means of communication other than the exchange of letters, provided that they are confirmed in the manners prescribed in paragraphs 1 and 2 of this Section.

4. Requests for assistance may be denied where the request does not comply with the provisions set forth in this Clause.

#### Section 4. Execution of Requests

1. Access to information held in the files of the requested Authority will be provided upon request of the requesting Authority pursuant to Section 3 of this Clause.

2. When requested by the requesting Authority, the requested Authority will take the testimony or statements of persons involved, directly or indirectly, in the activities that are the subject of the request or holding information that may assist in carrying out the request. The requesting Authority may, in its discretion, request the taking of the testimony or statements of specific persons. The requested Authority also will require the production of other evidence from any other party or parties designated by the requesting Authority.

3. The obtaining of testimony or statements, the gathering of documents, and the response to a request under this Clause 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.

4. Notwithstanding any other provision of this Memorandum of Understanding, any person providing testimony, statements, information, or documents as a result of a request made under this Clause will be entitled to all the rights and privileges of the laws of the state of the requested Authority that may otherwise be applicable. Assertions regarding other 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.

5. Notwithstanding paragraph 3 of this Section, 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, a representative of the requesting Authority may be present at the taking of testimony or statements and may prescribe specific questions to be asked of any witness.

6. When requested by the requesting Authority, an inspection or examination will be conducted of the books and records of futures transactions and futures businesses. In addition, 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 that inspection or examination.

7. In addition to participating in the taking of testimony or statements pursuant to paragraph 5 of this Section, or an inspection or examination pursuant to paragraph 6 of this Section, the requesting Authority may submit to the requested Authority a request, with reasons, that a person or persons designated by the requesting Authority be permitted to conduct the testimony or take a statement of any person, or conduct an inspection or examination.

- (a) The request may be granted, modified, or denied by the requested Authority in its discretion.
- (b) Section 7 of this Clause applies to the denial of a request referred to in this Section.

8. If it appears that responding to a request for assistance under this Clause will involve substantial costs being incurred by the requested Authority, the requested Authority and requesting Authority will establish a cost sharing arrangement before continuing to respond to such request for assistance.

#### Section 5. Permissible Uses of Information

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, assisting in a self-regulatory compliance proceeding, assisting in a criminal prosecution, or conducting any investigation related thereto for any general charge applicable to the violation of the law, rule or regulation specified in the request.

2. To use the information furnished for any purpose other than those stated in paragraph 1 of this Clause, 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 Section 7 concerning the reasons for the refusal and the circumstances under which use of the information might otherwise be allowed.

#### Section 6. Confidentiality

1. Each Authority will keep requests made under this Clause, the contents of such requests and any other matters arising during the operation of this Clause, including consultations between the Authorities, confidential to the extent permitted by law. However, disclosures that are absolutely necessary to carry out the requests are permitted. Confidentiality may be waived by mutual agreement of the Authorities.

2. The requesting Authority will keep confidential to the extent permitted by its law any information received pursuant to this Clause, unless it is disclosed in accordance with Section 5.

3. Except as contemplated by Section 5 and paragraph 1 of this Section, the requesting Authority will not disclose the information to any other person and will use its best efforts to ensure that it is not obtained by any other person. However, unless otherwise agreed, if such information is obtained by a public authority, the requesting Authority shall 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.

4. The requesting Authority will notify the requested Authority of any legally enforceable demand for information prior to complying with the demand and will assert such appropriate legal exemptions or privileges with respect to such information as may be available.



5. As soon as the requesting Authority has terminated the matter for which assistance has been requested under this Clause, it will return to the requested Authority, to the extent permitted by the law of the jurisdiction of the requesting Authority, all documents and copies thereof not already disclosed in proceedings referred to in Section 5 of this clause. Other material disclosing the contents of such documents also shall be provided, other than material that is generated as part of the deliberative or internal analytical process of the requesting Authority, which may be retained.

#### Section 7. Disputes and Consultations

1. The Authorities will keep the operation of this Clause 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 refusal by one Authority to comply with a request for information on the public interest grounds set forth in paragraph 4 of Section 1 of this clause;
- (b) a change in market or business conditions or in the legislation governing matters within the jurisdiction of either Authority, or any difficulty which may make it necessary to amend or extend this Clause in order to achieve its purposes; or
- (c) a dispute regarding the meaning of any terms used in this Memorandum.

2. The Authorities may agree on such practical measures as may be necessary to facilitate the implementation of this Clause, including the waiver of any of its requirements.

#### Section 8. Unsolicited Assistance

To the extent permitted by the laws and regulations of its jurisdiction, each Authority will use reasonable efforts to provide the other Authority with 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.

**CLAUSE III CONSULTATIONS REGARDING MATTERS OF MUTUAL INTEREST  
AND THE PROVISION OF TECHNICAL ASSISTANCE FOR FUTURES  
AND OPTIONS MARKET DEVELOPMENT**

**Section 1. General Principles for Consultations and Technical Assistance**

1. The Authorities consider it essential to establish a framework to enhance cooperation about all matters relating to the operation of their futures and options markets and the protection of futures and options market participants. To that end, the Authorities wish to arrange for the provision of technical assistance on a continuing basis to enhance communication and to further mutual understanding.

2. This Clause sets forth a statement of the intent of the Authorities regarding such a framework for consultations and technical assistance. The Authorities intend to engage in a regular dialogue on both domestic and international aspects of futures and options regulation and enforcement, and on the development and operation of their futures and options markets.

**Section 2. Consultations on the Stability, Efficiency, and Integrity of the Futures and Options Markets**

The Authorities intend to consult periodically about matters of mutual interest in order to enhance cooperation and to protect futures and options market participants by ensuring the stability, efficiency, and integrity of the futures and options markets of the United States and the Republic of Argentina. Such consultations may cover, among other things, the development of capital and other standards for the operation of futures businesses, business practices, the evolution of clearance and settlement and other market systems, the coordination of market oversight, and the administration of the United States and Argentine futures and options laws and regulations. The purpose of such consultations is to assist in the development of mutually agreeable approaches for strengthening the futures and options markets of the United States and the Republic of Argentina, while avoiding, wherever possible, conflicts that may arise from the application of differing regulatory practices.

**Section 3. Provision of Technical Assistance for the Development of the Argentine Futures and Options Markets**

1. The CFTC intends to consult with and provide advice to the CNV with a view toward establishing and implementing an ongoing technical assistance program for the development, administration, and operation of the Argentine futures and options markets. Such consultations will identify specific types of technical assistance that the Authorities believe are desirable and reasonable. The technical assistance may include the training of personnel as well as the provision of information and advice relating to the development of:

- (a) systems to promote the risk management, price discovery and hedging functions of markets;
- (b) types of futures and options products to fill particular needs;
- (c) order handling systems;
- (d) trade recording and comparison systems;
- (e) quotation and transaction data transmission systems;
- (f) clearance and settlement mechanisms;
- (g) regulatory requirements relating to market professionals and capital adequacy;
- (h) systems and related regulatory mechanisms relating to accounting and disclosure;
- (i) systems necessary for effective market surveillance and enforcement programs; and
- (j) procedures and practices to protect futures and options market participants.

2. The Authorities recognize that specific technical assistance will be subject to the availability of resources as well as domestic authorizing legislation.

Section 4. Provision of Technical Assistance to Emerging Futures and Options Markets

The Authorities share a common commitment to supporting the development of open, safe, sound and efficient futures and options markets throughout the world. The Authorities believe that combining their unique experiences and perspectives will provide a valuable resource for countries with emerging futures and options markets. Therefore, the Authorities intend to work together to respond to requests from countries with emerging futures and options markets for technical assistance on a wide variety of related issues.

CLAUSE IV FINAL PROVISIONSSection 1. Effective Date

1. All provisions of this Memorandum not requiring adoption of domestic implementing legislation will become effective immediately upon signing by both Authorities.
2. All provisions of this Memorandum requiring adoption of domestic implementing legislation will become effective upon notification that such implementing legislation and any necessary rules and regulations have been adopted.

Section 2. Termination

1. This Memorandum will continue to have effect unless terminated by either Authority by giving 30 days advance written notice to the other Authority that this Memorandum is no longer to have effect. If such notice is given, this Memorandum will continue to have effect with respect to all requests for assistance which are made before the effective date of notification until the requesting Authority terminates the matter for which assistance was requested.

Signed this 30<sup>th</sup> day of May, 1995.

United States Commodity Futures  
Trading Commission

by Mary L. Schapiro  
Mary L. Schapiro  
Chairman

Comisión Nacional de Valores  
of the Republic of Argentina

by Guillermo Harteneck  
Guillermo Harteneck  
Chairman