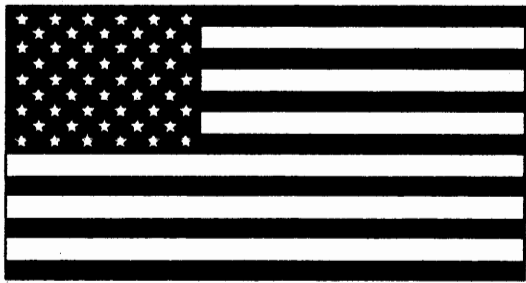
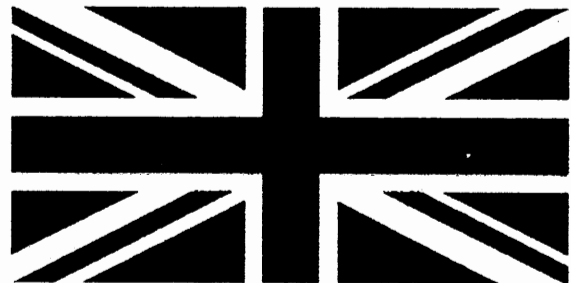


# **MEMORANDUM of UNDERSTANDING**



***The United States  
Commodity Futures Trading  
Commission***



***United Kingdom  
Financial Services Authority***

***Concerning Consultation, Cooperation  
and the Exchange of Information  
Related to Market Oversight***

**MEMORANDUM OF UNDERSTANDING CONCERNING CONSULATION,  
COOPERATION AND THE EXCHANGE OF INFORMATION RELATED TO  
MARKET OVERSIGHT**

In view of the globalization of the world's financial markets and the increase in the cross-border operations of derivatives exchanges, the United States Commodity Futures Trading Commission ("CFTC") and the United Kingdom Financial Services Authority ("FSA") (collectively, "the Authorities"), have entered into this Memorandum of Understanding ("MOU") on the exchange of information related to cross-border oversight of US and UK derivatives exchanges. The Authorities have developed this MOU in order to enhance their respective capabilities to address potential abusive or manipulative trading practices that may involve trading on UK and US derivatives exchanges.

**ARTICLE ONE: DEFINITIONS**

For purposes of this MOU:

1. "Authority" means the CFTC or FSA:
  - a) "Requested Authority" means the Authority to whom a request is made under this MOU; and
  - b) "Requesting Authority" means the Authority making a request under this MOU.

2. "Exchange" means:
  - a) a US Exchange that is designated as a contract market by the CFTC and that has been recognized by the FSA as an overseas investment exchange (ROIE"); and
  - b) a UK Exchange that has been recognized as an investment exchange by the FSA and that operates in the United States pursuant to a CFTC procedure that does not require designation as a US contract market.
3. "Emergency Situation" means an on-going or threatened situation such as one that may impair the price discovery function or market integrity of an Exchange.
4. "Person" means a natural person, unincorporated association, partnership, trust, investment company or corporation.

## **ARTICLE TWO: GENERAL PROVISIONS**

5. This MOU is a statement of intent to consult, cooperate and exchange information in connection with the routine surveillance of Exchanges, in a manner consistent with, and as permitted by, the laws and requirements that govern the Authorities. ~~The~~ Authorities contemplate that cooperation would be achieved primarily through ongoing, informal,

oral consultations, supplemented by more in-depth information sharing as implemented by the Authorities to address specific market surveillance concerns.

6. This MOU does not create any legally binding obligations, confer any rights, or supersede domestic laws. This MOU does not confer upon any person or organization the right or ability directly or indirectly to obtain, suppress, or exclude any information or to challenge the execution of a request for assistance under this MOU.
7. This MOU does not limit an Authority to taking solely those measures described herein in fulfillment of its supervisory functions. In particular, this MOU does not affect the right of any Authority to communicate with, or obtain information or documents from, any Person subject to its jurisdiction that is located in the territory of the other Authority.
8. This MOU is intended to complement, but does not alter, the terms and conditions of the following existing arrangements and statements of policy concerning cooperation and information sharing between the Authorities:
  - a) The *Memorandum of Understanding on Mutual Assistance and the Exchange of Information between (among others) the CFTC and FSA* (September 25, 1991), as amended) (the "UK/US MOU"), which covers primarily information sharing in the context of enforcement matters;

- b) The *IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information*, (the “IOSCO MMOU”) to which the CFTC and FSA are signatories, which also covers primarily information sharing in the context of enforcement matters;
- c) The *Declaration on Cooperation and Supervision of International Futures Markets and Clearing Organizations*, (as amended March 1998), whereby certain agreed triggering events affecting an exchange member’s financial resources or positions, unusually large price movements or relationships on a market, or a reasonable suspicion of abusive activity prompts information sharing;
- d) The *Tokyo Communiqué on Supervision of Commodity Futures Markets* (1997), to which the CFTC and FSA are signatories, which in its *Guidance on Components of Market Surveillance and Information Sharing* enumerates the types of information that market authorities should be prepared to share for routine and for cause market surveillance purposes; and
- e) The *Arrangement on Warehouse Information* (2000), which covers information sharing regarding deliverable commodities that are common to the US and UK for surveillance and enforcement purposes.

9. The Authorities intend in particular, and to the maximum extent possible, that the cooperation and information sharing arrangements under this MOU should be

implemented in a manner which is compatible with the obligations and commitments which an Authority may have under its respective statutes and regulations.

10. The Authorities intend to review periodically the functioning and effectiveness of this arrangement between the FSA and CFTC with a view, among other things, to expanding or altering the scope of operation of this MOU, or altering the MOU to take into consideration significant change in market or business conditions, should that be judged necessary by the Authorities.
11. To facilitate cooperation and communication under this MOU, the Authorities hereby designate contact persons as set forth in Appendix A.

### **ARTICLE THREE: SCOPE OF SUPERVISORY CONSULTATION, COOPERATION AND EXCHANGE OF INFORMATION**

#### **Ongoing consultations**

12. The Authorities recognize the importance of close communication concerning the cross-border operations of Exchanges, and intend to consult regularly regarding general supervisory developments and issues relevant to the cross-border operations of those Exchanges.

13. Each Authority endeavors to inform the other Authority of activities taking place on an Exchange in the Authority's jurisdiction that may assist the other Authority with surveillance of manipulative or abusive trading practices.

**Information to be Shared**

14. To the extent necessary to supplement periodic and ad hoc oral consultations each Authority intends to provide the other Authority the fullest cooperation in assisting with the identification of manipulative or abusive trading practices. Both Authorities recognize that there may be situations where information should be shared related to exchanges that are not necessarily dually authorized as defined in Paragraph 2 of this MOU. Without limiting the scope of possible cooperation, to the extent practicable and as appropriate in the particular circumstances, each Authority intends to provide, upon request, the following types of information:

- a) terms and conditions of each derivatives contract or instrument;
- b) details of an Exchange's market regulations such as position limits, reporting obligations, and price limits;
- c) details of delivery rules and procedures or cash settlement provisions;
- d) general details about market information collected and analyzed;

- e) details of designated delivery facilities, such as warehouses;
- f) details of traders' positions;
- g) details of large positions held by members and users of the exchange in respect of on-exchange, related OTC and cash positions;
- f) inventory levels and locations of delivery stocks;
- g) audit trail data; and
- h) additional margin calls.

15. It is anticipated that such requests will relate to information that is not otherwise available to the Requesting Authority.

**Periodic monitoring**

16. The Authorities recognize that there may be deterrent value in instituting periodic monitoring of trading with cross-border implications to identify whether suspected abusive market activity is occurring. Because the circumstances that may give rise to manipulative or abusive trading practices may vary, the Authorities intend to institute



programs periodically to share information to assist in the detection of manipulative or abusive trading practices.

17. The Authorities may, as appropriate, institute a program of a specified scope and duration to share relevant information for the purpose of detecting manipulative or abusive trading practices.

#### **ARTICLE FOUR: EXECUTION OF REQUESTS FOR ASSISTANCE**

18. To the extent possible, a request for information pursuant to Article Three should be made in writing, and addressed to the relevant contact person in Appendix A. A request generally should specify the following:

- a) The information sought by the Requesting Authority;
- b) A general description of the purpose for which the information is sought; and
- c) The desired time period for reply and, where appropriate, the urgency thereof.

19. For supervisory purposes, the Authorities may request receipt of the information on a routine basis. The duration and frequency of sharing information on a routine basis is determined by mutual understanding of the Authorities.

20. Prior to making a Request, an Authority should use reasonable efforts, consistent with the urgency of the Request, to obtain through other means any of the information referred to in Article Three that is publicly and readily available.
21. Notwithstanding the above, the Authorities understand that publicly available information may be requested under this Arrangement, and each Authority intends to assist the other Authority to obtain such publicly available information expeditiously.
22. In Emergency Situations, the Authorities will endeavor to notify each other of the Emergency Situation and communicate information to the other as would be appropriate in the particular circumstances, taking into account all relevant factors, including the status of efforts to address the Emergency Situation. During Emergency Situations, requests for information may be made in any form, including orally, provided such communication is confirmed in writing.

#### **ARTICLE FIVE: PERMISSIBLE USES AND CONFIDENTIALITY OF INFORMATION**

23. Except for disclosures in accordance with this MOU, each Authority intends to keep confidential to the extent permitted by law information shared under this MOU, requests made under this MOU, the contents of such request, and any other matters arising under this MOU.
24. Information received in response to a Request is intended, consistent with applicable law, to be used by the Requesting Authority solely for the purpose of enabling or

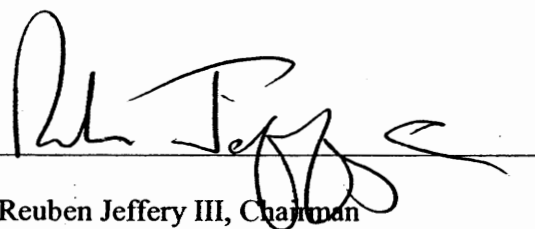
assisting it to exercise its regulatory oversight and supervisory functions.

25. As mentioned above, this MOU is intended to complement, but not alter in any way, either the US/UK MOU or the IOSCO MMOU. The Authorities recognize that the purpose of this MOU is not primarily to obtain information for enforcement purposes, although the Authorities subsequently may want to use the information obtained under this MOU for enforcement purposes. Use of information for enforcement purposes will be in accordance with the terms and conditions in Part V, Paragraph 16 of the US/UK MOU and Paragraph 10 of the IOSCO MMOU.
  
26. To the extent possible, the Requesting Authority intends to notify the Requested Authority of any legally enforceable demand for non-public information furnished under this MOU. Prior to compliance with the demand, the Requesting Authority intends to assert all appropriate legal exemptions or privileges with respect to such information as may be available.
  
27. The Authorities intend that the sharing or disclosure of such non-public information, including but not limited to deliberative and consultative materials, pursuant to the terms of this MOU, will not constitute a waiver of privilege or confidentiality of such information.

**ARTICLE SIX: TERMINATION**

28. Cooperation in accordance with this MOU will continue until the expiration of 30 days after either Authority gives written notice to the other Authority of its intention to terminate its cooperation under the MOU. If either Authority gives such notice, cooperation will continue with respect to all requests for assistance that were made under the MOU before the effective date of notification until the Requesting Authority terminates the matter for which assistance was requested. In the event of termination of this MOU, information obtained under this MOU will continue to be treated in the manner prescribed under Article Five.

This MOU is executed in duplicate in London, England, this 17th day of November 2006.



Reuben Jeffery III, Chairman

United States Commodity Futures

Trading Commission



Sir Callum McCarthy, Chairman

United Kingdom Financial Services Authority

**APPENDIX "A"**  
**CONTACT OFFICERS**

**US Commodity Futures Trading Commission**

1155 21<sup>st</sup> Street, N.W.  
Washington, DC 20581  
USA

Director

Division of Market Oversight

Tel: 202-418-5275

Fax: 202-418-5527

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**UK Financial Services Authority**

25 The North Colonnade  
Canary Wharf  
London E14 5HS  
UK

Head of Department

Markets Division

Tel: 44 20 7066 5906

Fax: 44 20 7066 5907