

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

Washington, D.C.

May 11, 1995

MEMORANDUM OF UNDERSTANDING

The Comisión Nacional Bancaria y de Valores of the United Mexican States and the Commodity Futures Trading Commission of the United States of America acknowledge the significance of independent futures markets for economic development and growth and the need to ensure the development and maintenance of open, fair, efficient and sound domestic futures markets in Mexico and the United States of America. The Authorities recognize that the development of effective domestic legal and regulatory structures is essential to market integrity and investor protection. Additionally, the Authorities believe that international cooperation and consultation can facilitate the development and effective operation of futures markets. Therefore, the Authorities desire to establish a mutually acceptable basis for cooperation and consultation.

Based on the foregoing, the Comisión Nacional Bancaria y de Valores of the United Mexican States and the Commodity Futures Trading Commission of the United States of America have reached the following understanding with respect to consultations, technical assistance, and mutual assistance for the exchange of information. The following understanding does not impose any legally binding obligations on the Authorities or supersede domestic law.

CLAUSE I: DEFINITIONS

For the purposes of this Memorandum of Understanding:

- (a) "Authority" means:
 - (i) the Comisión Nacional Bancaria y de Valores of the United Mexican States, or
 - (ii) the Commodity Futures Trading Commission of the United States of America.
- (b) "requested Authority" means an Authority to whom a request under this Memorandum of Understanding is made.
- (c) "requesting Authority" means an Authority making a request under this Memorandum of Understanding.
- (d) "laws or regulations" means the laws, regulations and regulatory policies applicable to matters in the jurisdictions of the Authorities.
- (e) "futures markets" means those futures and options markets that are subject to regulation, regulated or supervised by the Authorities.
- (f) "person" means natural person, unincorporated association, partnership, body corporate, government, political subdivision, agency or instrumentality of a government, or any equivalent authority.

In any case of dispute over the meaning of any term used in this Memorandum of Understanding, the Authorities will consult as provided in Clause III, Section 7.

**CLAUSE II: CONSULTATIONS REGARDING MATTERS OF MUTUAL INTEREST AND
PROVISION OF TECHNICAL ASSISTANCE FOR 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 markets and the protection of investors. 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 regulation and enforcement, and on the development and operation of their futures markets.

**Section 2: CONSULTATION ON THE STABILITY, EFFICIENCY AND
INTEGRITY OF THE MARKETS**

The Authorities intend to consult periodically about matters of mutual interest in order to enhance cooperation and the protection of investors by ensuring the stability, efficiency, and integrity of futures markets of Mexico and the United States. The purpose of such consultations is to assist in the development of mutually agreeable approaches for strengthening futures markets of Mexico and the United States, 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 FUTURES MARKETS IN MEXICO**

1. The Commodity Futures Trading Commission intends to consult with and provide advice to the Comisión Nacional Bancaria y de Valores with a view toward establishing and implementing an ongoing technical assistance program for the development, administration and operation of futures markets in Mexico. 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:
 - (i) systems to promote the risk management, price discovery and hedging functions of markets;
 - (ii) types of futures and options products to fill particular needs;
 - (iii) order handling systems;
 - (iv) trade recording and comparison systems;
 - (v) quotation and transaction data transmission systems;
 - (vi) clearance and settlement mechanisms;
 - (vii) regulatory requirements relating to market professionals and capital adequacy;
 - (viii) systems and related regulatory mechanisms relating to accounting and disclosure;
 - (ix) systems necessary for effective futures market surveillance and enforcement programs; and
 - (x) procedures and practices to protect investors.

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 MARKETS

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

CLAUSE III: MUTUAL ASSISTANCE FOR THE EXCHANGE OF INFORMATION

Section 1: SCOPE OF ASSISTANCE

1. In accordance with the domestic laws and regulations of their respective States, the Authorities will provide the fullest measure of mutual assistance, as contemplated by this Clause. Such assistance will be provided to facilitate the futures market oversight functions; the enforcement of the laws and regulations applicable to futures markets; and the conduct of investigations, litigation or prosecution in cases where information located within the jurisdiction of the requested Authority would be useful in determining whether, or proving that, the laws or

regulations of the requesting Authority may have been violated.

Assistance will not be provided where the execution of a request would require the requested Authority to exceed its legal authority or would otherwise be prohibited by the laws of the State of the requested Authority.

2. 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) obtaining the statements of persons; and
 - (c) obtaining information and documents from persons.
3. 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 authorization, or the assistance of such other governmental agencies that have such authority, necessary to provide the assistance described in this Clause.

Section 2: GENERAL PRINCIPLES FOR PROVIDING ASSISTANCE

1. This Clause sets forth a statement of intent of the Authorities to establish a framework to facilitate the exchange of information between the Authorities to the fullest extent possible in accordance with the laws of their respective jurisdictions.

2. The provisions of this Clause will 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 information or to challenge the execution of a request for assistance under this Clause.
3. A request for assistance may be denied by the requested Authority:
 - (a) where the request would require the requested Authority to act in a manner which 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 grounds of essential public interest; or
 - (d) on grounds of national security.

Section 3: REQUESTS FOR ASSISTANCE

1. Requests for assistance will be made in writing and addressed to the requested Authority's contact officer listed in Appendix A.
2. Requests shall specify:
 - (a) a general description of both the matter that is the subject of the request and the purpose for which the assistance or information is sought;
 - (b) a general description of the assistance, documents, information and statements of persons sought by the requesting Authority;

- (c) the persons believed by the requesting Authority to possess the information sought, or the places where such information may be obtained, if the requesting Authority is knowledgeable thereof;
 - (d) the legal provisions pertaining to the matter that is the subject of the request; and
 - (e) the desired time period for the reply.
3. In the event of urgency, requests for assistance and replies to such requests may be effected by summary procedures or by means of communication other than the exchange of letters, provided that all such communications are confirmed in the manner prescribed in the foregoing paragraphs of this Section.

Section 4: EXECUTION OF REQUESTS

1. 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. In making a request for assistance, the requesting Authority may designate the persons whose statements it wishes the requested Authority to obtain.

3. When requested by the requesting Authority, the requested Authority will use its best efforts to obtain statements from 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 requested Authority also will require the production of other evidence from any other person or persons designated by the requesting Authority.
4. The obtaining of statements, the gathering of documents, and the response to a request under this Memorandum of Understanding will be conducted in accordance with the procedures of the requested Authority and by persons designated by the requested Authority, unless otherwise agreed by the Authorities.
5. Notwithstanding any other provision of this Memorandum of Understanding, any person providing statements, information or documents as a result of a request made under this Memorandum of Understanding 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 law of the State of the requesting Authority shall be preserved for consideration by the courts in the State of the requesting Authority.

Section 5: PERMISSIBLE USES OF INFORMATION

1. The requesting Authority may use the information furnished by the requested Authority solely:
 - (a) for the purposes stated in the request with respect to ensuring compliance with or enforcement of the laws and regulations of the requesting Authority, including the legal provisions 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 enforcement proceeding, assisting in a criminal prosecution, or conducting any investigation related thereto for any general charge applicable to the violation of the provisions specified in the request.
2. The requesting Authority will not use the information furnished for any purpose other than those stated in paragraph 1 of this Section, unless it has first informed the requested Authority of its intention and the requested Authority has not objected, within 14 days, to such intended use of the information. If the requested Authority opposes such use, 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 agree to consult pursuant to Section 7 of this Clause concerning the reasons for the refusal and the circumstances under which use of the information might otherwise be allowed.

Section 6: CONFIDENTIALITY OF REQUESTS

1. To the extent permitted by law, except for disclosures in accordance with Section 5 of this Clause and disclosures that are absolutely necessary to carry out the request:
 - (a) each Authority will keep confidential 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 and unsolicited assistance; and
 - (b) the requesting Authority will keep confidential any information received by the requested Authority pursuant to this Clause.

Such confidentiality may be waived by the mutual agreement of the Authorities.

2. Except as contemplated by Section 5 of this Clause, the requesting Authority will not offer the information to, and will use its best efforts to ensure that it is not obtained by, any other person. Where appropriate, to further ensure the confidentiality of any information provided by a requested Authority in response to a request under this Clause, the requested Authority will in good faith determine and represent that public disclosure of the information would violate its country's laws. Unless

otherwise agreed, if such information is obtained by any other person, the requesting Authority will use its best efforts to ensure that such information will not be used by that person in any way that involves disclosure to any other person.

3. 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.
4. When the requesting Authority has terminated the matter for which assistance has been requested under this Clause, upon request of the requested Authority, it will return to the requested Authority, to the extent permitted by law, all documents and copies thereof not already disclosed in proceedings referred to in Section 5 of this Clause and other material disclosing the contents of such documents, other than material that is generated as part of the deliberative or internal analytical process of the requesting Authority.
5. Any document or any other material provided by the requested Authority in response to a request under this Clause and any other material disclosing its content, other than material that is generated as part of the deliberative or internal analytical process of the requesting Authority, will not become the property of the requesting Authority, and must be redelivered, upon demand, to the requested Authority without delay to the

extent permitted by the law of the requesting Authority; provided that such demand may be made only if the requested Authority has reason to believe that the information has been or is likely to be disclosed or used other than as contemplated by Section 5 of this Clause.

Section 7: CONSULTATION REGARDING MUTUAL ASSISTANCE PURSUANT TO THIS CLAUSE

1. The Authorities will engage in consultation with respect to this Clause 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 grounds set forth in paragraphs 3(a) and (b) of Section 2 of this Clause; or
 - (b) a change in market or business conditions, or in domestic legislation, or any other circumstance that makes it necessary or appropriate to amend or extend this Clause in order to achieve its purposes.
2. The Authorities may agree on such practical measures as may be necessary to facilitate the implementation of this Clause.

Section 8: COSTS OF INVESTIGATION

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 the requesting Authority will establish a cost-sharing arrangement before continuing to respond to such request for assistance.

Section 9: AMENDMENTS AND WAIVERS

Any provision established in this Memorandum of Understanding may be amended or waived by mutual agreement of the parties, formalized by written communications in which the effective date of the amendment or the application of the waiver is specified.

CLAUSE IV: FINAL PROVISIONS

Section 1: EXECUTION

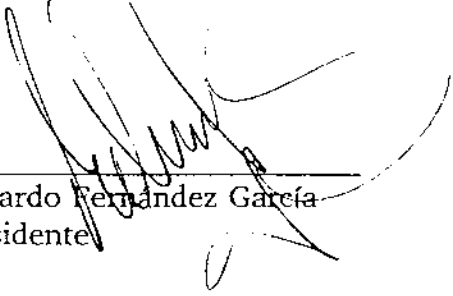
This Memorandum of Understanding will be effective from the date of its execution.

Section 2: TERMINATION

This Memorandum of Understanding may be terminated by either Authority by that Authority giving 30 days notice to the other Authority that this Memorandum of Understanding is no longer in effect. If either Authority gives such notice, this Memorandum of Understanding will 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.

COMISION NACIONAL BANCARIA Y DE
VALORES OF THE UNITED MEXICAN
STATES

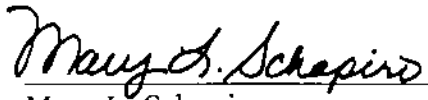
by



Eduardo Fernández García
Presidente

UNITED STATES COMMODITY
FUTURES TRADING COMMISSION

by



Mary L. Schapiro
Chairman

DATED this 11th day of May, 1995