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**MEMORANDUM OF UNDERSTANDING**

**BETWEEN THE**

**UNITED STATES COMMODITY FUTURES TRADING COMMISSION**

**AND THE**

**PORTUGUESE COMISSÃO DO MERCADO DE VALORES MOBILIÁRIOS**

**CONCERNING CONSULTATION**

**AND COOPERATION IN THE**

**ADMINISTRATION AND ENFORCEMENT OF**

**FUTURES LAWS**



**February 4, 1999**

*The United States Commodity Futures Trading Commission and the Portuguese Comissão Do Mercado De Valores Mobiliários, recognizing increased international activity in futures and options transactions and acknowledging the need for mutual cooperation to facilitate the administration and enforcement of the futures and options laws applicable in their respective jurisdictions, have reached the following understanding. This understanding does not create legally binding obligations or supersede domestic laws.*

## **ARTICLE 1: DEFINITIONS**

For the purposes of this Memorandum of Understanding:

- 1.1 "Authority" means:
  - 1.1.1 the Commodity Futures Trading Commission of the United States; or
  - 1.1.2 the Comissão Do Mercado De Valores Mobiliários of Portugal.
- 1.2 "requested Authority" means an Authority to whom a request is made under this Memorandum of Understanding.
- 1.3 "requesting Authority" means an Authority making a request under this Memorandum of Understanding.
- 1.4 "foreign futures authority" means any foreign government, or any department, agency, governmental body, or regulatory organization empowered by a foreign government to administer or enforce a law, rule, or regulation as it relates to a futures or options matter, or any department or agency of a political subdivision of a foreign government empowered to administer or enforce a law, rule, or regulation as it relates to a futures or options matter.
- 1.5 "person" means a natural person, unincorporated association, partnership, trust, body corporate, or government - or a political subdivision, agency, instrumentality or equivalent authority of a government.

- 1.6 "futures contract" means a futures or options transaction regulated or subject to regulation by the Authorities whether transacted over-the-counter or on or subject to the rules of an exchange or market.
- 1.7 "futures business" includes, among others, any person involved in: the offer, purchase or sale of futures contracts for the account of others; the purchase or sale of futures contracts for one's own account; advising others for compensation, directly or through media, regarding the offer, purchase or sale of futures contracts; the management, promotion, offer or sale of collective investment schemes involving futures contracts; or equivalent activities. The definition of a futures business also includes persons, among others, acting in the capacity of commodity trading advisors, commodity pool operators, futures commission merchants, introducing brokers, associated persons, floor brokers and floor traders.
- 1.8 "futures processing business" means a clearing organization for futures contracts.
- 1.9 "futures laws or regulations" mean the provisions of the laws of the United States and/or Portugal, or the regulations promulgated thereunder, concerning:
- 1.9.1 price manipulation or trading ahead of a customer;
  - 1.9.2 misrepresentation, or the use of fraudulent or deceptive practices in connection with the offer, purchase, or sale of futures contracts or the conduct of futures businesses;
  - 1.9.3 the duties of persons to comply with registration and reporting requirements;
  - 1.9.4 the making of false or misleading statements, or any material omissions in any application or report to the Authorities;

- 1.9.5 the duties of persons or futures businesses to make full and fair disclosure of information in connection with the offer, purchase or sale of futures contracts;
- 1.9.6 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, purchase, sale and execution of futures contracts and conduct of business;
- 1.9.7 the financial and other qualifications of those engaged in, or in control of, futures businesses and futures processing businesses; and
- 1.9.8 any other futures matters that fall within the jurisdiction of the Authorities.


**ARTICLE 2: ESTABLISHMENT OF A FRAMEWORK FOR CONSULTATIONS REGARDING MATTERS OF MUTUAL INTEREST**

The Authorities intend to consult periodically about matters of mutual concern. Such consultation will be undertaken in the interest of enhancing cooperation to ensure: the efficiency and integrity of the futures markets of the United States and Portugal; customer protection; appropriate market oversight; and the effective administration of the futures laws and regulations applicable in the United States and Portugal.

**ARTICLE 3: MUTUAL ASSISTANCE AND THE EXCHANGE OF INFORMATION**

**3.1: General Principles regarding Mutual Assistance and the Exchange of Information**

3.1.1 This Memorandum of Understanding sets forth the Authorities' intent with regard to mutual assistance and the exchange of information for the purpose of

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enforcing and securing compliance with the futures laws or regulations applicable in their respective jurisdictions. This Memorandum of Understanding does not create legally binding obligations or supersede domestic laws.

3.1.2 This Memorandum of Understanding does not prohibit an Authority from taking measures other than those herein to obtain information necessary to ensure enforcement of or compliance with the futures laws or regulations applicable in its jurisdiction.

3.1.3 This Memorandum of Understanding does not confer upon any person, other than the Authorities designated herein, the ability directly or indirectly to obtain, suppress or exclude any information or to challenge the execution of a request for assistance under this Memorandum of Understanding.

3.1.4 The Authorities recognize the importance and desirability of exchanging assistance and information for the purpose of enforcing and securing compliance with the futures laws or regulations applicable in their respective jurisdictions. However, a request for assistance may be denied by the requested Authority:

3.1.4.1 where the request would require the requested Authority to act in a manner that would violate domestic law;

3.1.4.2 where the request is not made in accordance with the provisions of this Memorandum of Understanding; or

3.1.4.3 on grounds of public interest.

Where a request for assistance is denied or opposed or where assistance is not available under domestic law, the requested Authority will provide the reasons for not granting the assistance and consult pursuant to Article 3.7.

### 3.2: Scope of Assistance

3.2.1 The Authorities will, within the framework of this Memorandum of Understanding, provide each other with the fullest assistance permissible under the laws of the United States and Portugal. Such assistance will be provided in order to facilitate: market oversight, including market and financial surveillance; the grant of licenses, authorizations, waivers or exemptions for the conduct of futures businesses and futures processing businesses; the inspection or examination of futures businesses and futures processing businesses; and the investigation, litigation or prosecution by the Authorities of activity that potentially violates the futures laws or regulations applicable in their respective jurisdictions. Assistance will be provided without regard to whether the activity described in the request for assistance would constitute a violation of the futures laws or regulations applicable in the jurisdiction of the requested Authority.

3.2.2 The assistance available under this Memorandum of Understanding includes, without limitation:

- 3.2.2.1 providing access to information in the files of the requested Authority;
- 3.2.2.2 taking statements of persons;
- 3.2.2.3 obtaining information and documents from persons; and
- 3.2.2.4 inspecting or examining futures contracts, futures businesses, and futures processing businesses.

3.2.3 The Authorities recognize that they may not in all circumstances possess the legal authority to provide the assistance or information referred to in Article 3.2. In such circumstances, the Authorities will use all reasonable efforts to

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obtain the aid of such other governmental agencies that can provide the assistance or information described in Article 3.2.

### 3.3 Requests For Assistance

3.3.1 Requests for assistance will be made in writing and will be addressed to the requested Authority's contact officer listed in Appendix A.

3.3.2 Requests for assistance will include the following:

3.3.2.1 a general description of both the subject matter of the request and the purpose for which the assistance or information is sought;

3.3.2.2 a general description of the assistance, documents, information, or statements sought by the requesting Authority;

3.3.2.3 any information in the possession of the requesting Authority that might assist the requested Authority in identifying either the persons believed to possess the information or documents sought or the places where such information may be obtained;

3.3.2.4 the futures laws or regulations pertaining to the subject matter of the request; and

3.3.2.5 the desired time period for the reply.

3.3.3 In urgent circumstances, requests for assistance, and the response to such requests, may be effected by summary procedures and may be transmitted by means of communication other than the exchange of letters, provided such communication is confirmed in writing.

### 3.4: Execution of Requests for Assistance

- 3.4.1 Access to information held in the files of the requested Authority will be provided upon the request of the requesting Authority.
- 3.4.2 Upon request, the requested Authority will take the statements of any person involved, directly or indirectly, in the activities that are the subject matter of the request for assistance or in possession of information that may assist in the execution of the request. The requested Authority will make a transcript of any statement it takes on behalf of the requesting Authority.
- 3.4.3 Unless otherwise agreed by the Authorities, information and documents requested under this Memorandum of Understanding will be gathered in accordance with the procedures applicable in the jurisdiction of the requested Authority and by persons designated by the requested Authority.
- 3.4.4 Notwithstanding Article 3.4.3, any person providing a statement pursuant to a request for assistance under this Memorandum of Understanding will have the right to have counsel present.
- 3.4.5 Notwithstanding any other provision of this Memorandum of Understanding, any person providing a statement, information, or documents as a result of a request for assistance under this Memorandum of Understanding will be entitled to all rights and privileges applicable in the jurisdiction of the requested Authority. Assertions regarding rights and privileges arising exclusively under the laws applicable in the jurisdiction of the requesting Authority will be preserved for consideration by the courts in that jurisdiction.
- 3.4.6 Upon request, the requested Authority will inspect or examine specified books, records, futures businesses or futures processing businesses.



3.4.7 If it appears that responding to a request for assistance under this Memorandum of Understanding will involve substantial cost, the requested Authority may, as a condition to executing the request, require the requesting Authority to make a contribution to such cost in an amount agreed upon by the Authorities.

### 3.5: Permissible Uses of Information

3.5.1 The requesting Authority may use non-public information furnished in response to a request for assistance under this Memorandum of Understanding solely:

3.5.1.1 for the purpose stated in the request for assistance with respect to ensuring compliance with or enforcement of the futures laws or regulations applicable in the jurisdiction of the requesting Authority, including the legal provisions specified in the request and related provisions; and

3.5.1.2 for a purpose within the general framework of the use stated in the request for assistance, including conducting an adjudicatory action or proceeding, conducting market and financial surveillance, assisting in a criminal prosecution, or conducting any related investigation for any general charge applicable to the violation of the provision specified in the request.

3.5.2 Before using non-public information furnished under this Memorandum of Understanding for a purpose other than those stated in Article 3.5.1, the requesting Authority must first inform the requested Authority of the intended use and provide the requested Authority with an opportunity to refuse such use. If the requested Authority refuses the intended use, the Authorities will consult pursuant to Article 3.7 to discuss the reasons for the refusal and the circumstances under which the intended use might otherwise be allowed.

### **3.6 Confidentiality**

- 3.6.1 Each Authority will keep confidential, to the extent permitted by law, requests made under this Memorandum of Understanding, the contents of such requests, and any matters arising under this Memorandum of Understanding.
- 3.6.2 The requesting Authority will not disclose non-public information received under this Memorandum of Understanding, except pursuant to a legally enforceable demand, or in connection with an adjudicatory action or proceeding brought under the laws applicable in the jurisdiction of the requesting Authority to which the requesting Authority or its government, or a political subdivision thereof, is a party.
- 3.6.3 To the extent possible, the requesting Authority will notify the requested Authority of any legally enforceable demand for non-public information furnished under this Memorandum of Understanding prior to compliance, and will assert such appropriate legal exemptions or privileges with respect to such information as may be available.
- 3.6.4 To the extent permitted by law, the Authorities may by mutual consent make an exception to the principles set forth in Articles 3.6.1 and 3.6.2.

### **3.7: Consultation Regarding Mutual Assistance and the Exchange of Information**

- 3.7.1 The Authorities will consult with each other regarding this Memorandum of Understanding with a view to improving its operation and resolving any matters that may arise. In particular, the Authorities will, upon request, consult in the event of:

- 3.7.1.1 a dispute over the meaning of any term used in this Memorandum of Understanding;
- 3.7.1.2 an Authority's denial of or opposition to a request or proposal made by the other Authority pursuant to this Memorandum of Understanding; or
- 3.7.1.3 a change in market or business conditions or in the legislation governing the matters set forth in Article 1.9 or any other circumstance that makes it necessary or appropriate to amend or extend this Memorandum of Understanding in order to achieve its purposes.

3.7.2 The Authorities may agree on such practical measures as may be necessary to facilitate the implementation of this Memorandum of Understanding.

3.7.3 Any of the conditions of this Memorandum of Understanding may be amended, relaxed, or waived by mutual consent.

### **3.8: Unsolicited Assistance**

To the extent permitted by the laws and regulations of their respective jurisdictions, each Authority will use reasonable efforts to provide the other Authority with any information it discovers that gives rise to a suspicion of a breach or anticipated breach of the laws or regulations applicable in the jurisdiction of the other Authority.

## **ARTICLE 4: FINAL PROVISIONS**

### **4.1: Effective Date**

Cooperation in accordance with this Memorandum of Understanding will begin on the date of its signing by the Authorities.

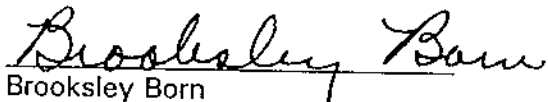
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4.2: Termination

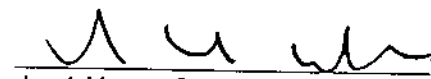
Cooperation and assistance in accordance with this Memorandum of Understanding will continue until the expiration of 30 days after either Authority gives written notice to the other Authority of its intention to discontinue cooperation and assistance. If either Authority gives such notice, cooperation and assistance in accordance with this Memorandum of Understanding 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.

FOUR ORIGINALS SIGNED IN LONDON, UNITED KINGDOM this 4<sup>th</sup> day of February 1999, TWO IN ENGLISH, TWO IN PORTUGUESE, ALL OF WHICH ARE EQUALLY AUTHORITATIVE.

FOR THE COMMODITY FUTURES  
TRADING COMMISSION OF  
THE UNITED STATES:

  
Brooksley Born  
Chairperson

FOR THE COMISSÃO DO  
MERCADO DE VALORES  
MOBILIÁRIOS OF PORTUGAL:

  
José Nunes Pereira  
Chairman