

ARRANGEMENT ON WAREHOUSE INFORMATION

WHEREAS the United States Commodity Futures Trading Commission ("CFTC") and the United Kingdom Financial Services Authority ("FSA") (the "Authorities") recognize that, in connection with commodities that are the subject of futures or options trading in either the United States or the United Kingdom, information concerning the operations, stocks and use of futures and options exchange or other regulated derivatives delivery markets ("regulated market") warehouse facilities ("Information") may be relevant to the detection, investigation, deterrence and/or imposition of sanctions regarding possible price manipulation or other potentially abusive conduct,

WHEREAS the CFTC and FSA may have access to Information,

WHEREAS the CFTC and FSA, as more specifically set forth herein, may exchange Information for the purpose of facilitating the performance of their respective regulatory oversight, supervisory and enforcement functions, including the sharing of information for the purposes contemplated by the *Declaration on Cooperation and Supervision of International Futures Markets and Clearing Organizations*,

WHEREAS for the purpose of sharing Information the CFTC and FSA, formerly the Securities and Investments Board ("SIB"), are parties to the *Memorandum of Understanding on Mutual Assistance and the Exchange of Information between the United States Securities and Exchange Commission and Commodity Futures Trading Commission and the United Kingdom Department of Trade and Industry and Securities and Investments Board* (September 25, 1991) (the "US/UK MOU"), and

WHEREAS certain additional procedures subject to the US/UK MOU may be desirable to facilitate the sharing of Information between the CFTC and FSA,

NOW THEREFORE the CFTC and FSA have reached the following understanding (the "Arrangement") to facilitate the exchange of information regarding the operations, stocks and use of warehouses that are identified as eligible to receive, store, and deliver commodities in connection with the performance of transactions concluded on regulated markets or through regulated clearing organisations (if separate from such markets and vested with commodity delivery functions that are executed through warehouse type facilities) ("warehouses") subject to the jurisdiction of an Authority.

1 General Principles

- 1.1 The Authorities have various powers to obtain and share information, and arrangements for doing so, in the exercise of their functions other than pursuant to this Arrangement, including the US/UK MOU. The Authorities undertake to use their best endeavours to fulfil the provisions of this Arrangement. However, nothing in this Arrangement affects the exercise of such powers or the operation of any other arrangements, including the US/UK MOU.

1.2 The provisions of this Arrangement do not give rise to a right on the part of any third party, directly or indirectly, to obtain, suppress or exclude any information that is the subject of this Arrangement as or from evidence or otherwise to challenge the execution of a request for Information under this Arrangement.

2. **Subject of Arrangement**

2.1 This Arrangement addresses requests for Information between the Authorities (individually, "Request") regarding:

- A. the operations and stocks of warehouses; and
- B. the use of warehouses by regulated market members, their licensees, or customers,

as such Information relates to commodities traded on regulated markets, or commodity transactions concluded through clearing organisations, if such organisation is separate from the market and is vested with delivery functions, subject to the jurisdiction of the Requested Authority.

2.2 For these purposes the term "commodity transaction" means a future or option on a commodity and "commodity" means any physical commodity of finite supply subject to delivery through warehouses traded on a regulated market, or clearing organization where relevant, that has executed or is the subject of an operational side letter facilitating the operation of this Arrangement.

3. **Ability to Provide Information**

3.1 As set forth in its side letter to this Arrangement, the CFTC has the authority and procedures to obtain Information from warehouses, including warehouses located outside the United States, where they are designated for delivery by regulated markets subject to the CFTC's jurisdiction.

3.2 As set forth in its side letter to this Arrangement, the FSA has the capacity and procedures to obtain Information on a voluntary basis from regulated markets subject to its jurisdiction, which may obtain Information pursuant to rules or contract from warehouses which they have designated for delivery, including warehouses located outside the United Kingdom.

3.3 To the extent permitted by law, each Authority has the power and procedures to provide the Information received by it to the other Authority for the purpose of assisting it in the exercise of its regulatory oversight, supervisory and enforcement functions.

4. **Examples of Information**

4.1 Examples of Information that may be the subject of a Request include but are not limited to:

- A. the total stocks of a commodity specified in the Request received, stored or delivered and the origin of such shipments and deliveries over a period specified in the Request in connection with the performance of commodity transactions;
- B. the grade or quality of such stocks;
- C. whether such stocks are, or may be, deliverable;
- D. information about the ownership of such stocks and, to the extent reasonable, whether warehouses, members, and customers of members hold an interest in them;
- E. the identity of the members, or other traders or brokers as appropriate, depositing or removing such stocks over a period specified in the request;
- F. the warehouse fees for storing, receiving and delivering any commodity.

5. **Publicly Available Information**

5.1 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 4 that is publicly and readily available.

5.2 Notwithstanding Article 5.1, 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.

6. **Requests for Information**

6.1 All requests for Information under this Arrangement shall comply with paragraph 12 of the UK/US MOU.

6.2 Without prejudice to the scope of other existing information-sharing arrangements and the US/UK MOU between the Authorities, an Authority may make a Request when that Authority has determined, at its discretion, that there are reasonable grounds for the Authority to believe that one of the following market events has occurred:

- A. unusually large price movements in a market subject to its jurisdiction and in related markets;
- B. unusual price relationships in a market subject to its jurisdiction and in related markets;
- C. abnormal movement of a commodity into or out of warehouse which is impacting the price of a commodity or commodity transaction subject to its jurisdiction; or
- D. a person may be attempting to accumulate an unusually large position which may have a substantial impact on the price of a commodity or commodity transaction subject to its jurisdiction.

6.3 Such a Request is intended to be considered by the Requested Authority to be a request to secure compliance with or enforcement of a legal rule or requirement related to manipulative or other abusive market practices provided the Requesting Authority can on further request indicate the relevant legal rule or requirement, as set out in paragraphs 12(b)(ii) and 12(d) of the US/UK MOU.

7. **Execution of Requests**

The Requested Authority may provide, or may seek to cause the relevant regulated market or clearing organisation or warehouse to provide, the requested Information to the Requesting Authority directly, or the Authorities may agree to request an inspection of a relevant warehouse in conformity with the terms set out in Part IV of the US/UK MOU.

8. **Use and Confidentiality of Information**

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, supervisory, or enforcement functions in accordance with, and subject to the confidentiality provisions of, Part V the US/UK MOU .

9. **Contact Officers**

For purposes of Requests made under this Arrangement, the contact officers are:

CFTC:

Director, or his or her designee, Division of Economic Analysis
Director, or his or her designee, Office of International Affairs.

FSA:

Director, Division of Market Supervision/Enforcement

10. **Consultation**

The Authorities intend to consult periodically on the operation of this Arrangement in order to determine whether any adjustments to this arrangement are desirable to improve its operation or resolve any matters and in particular upon enactment of the UK Financial Services and Markets Bill into law.

11. **Scope**

11.1 This Arrangement is intended to apply to those regulated markets and clearing organisations that are or may become subject to the jurisdiction of the CFTC or FSA and that have been specifically identified by the CFTC and FSA in their operational side letters submitted as contemplated by paragraphs 3.1 and 3.2, respectively.

11.2 The CFTC and FSA may, from time to time, after consultation amend their side letters to add a regulated market or clearing organisation to the scope of this Arrangement.

Signed and effective this 17th day of May 2000

CFTC



FSA


