

FINANCIAL INFORMATION SHARING  
MEMORANDUM OF UNDERSTANDING

ARTICLE I: GENERAL

The United States Commodity Futures Trading Commission ("CFTC"), an independent regulatory agency of the U.S. government, the Securities and Investments Board ("SIB"), a "designated agency" to which statutory powers have been transferred under the Financial Services Act of 1986 ("FSA") of the government of the United Kingdom and the self-regulatory organizations in the United States ("U.S. SROs") and in the United Kingdom ("U.K. SROs"), as defined in Article II and subscribed hereto, have reached the following understanding with respect to futures commission merchants ("FCMs") that are applicants or designated members, as defined in Article II.

Section 50 of the FSA and parallel provisions in the Rulebooks of the U.K. SROs provide authority for the SIB or a U.K. SRO to waive application of those Financial Regulation Rules that deal with capital adequacy, where it finds that compliance would be unduly burdensome and waiver would not result in undue risk to customers. As part of their responsibilities under the Commodity Exchange Act ("CEA"), the CFTC and U.S. SROs monitor the capital adequacy of the aforesaid FCMs consistent with financial requirements promulgated under the CEA, and parallel financial requirements of the U.S. SROs, which have been approved by the CFTC. In consideration of these responsibilities, the

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applicability of such requirements and the understanding with respect to the exchange of information set forth below, the SIB and the U.K. SROs will not require designated member FCMs to comply with their respective capital adequacy requirements and any reporting standards relating solely to the measure or maintenance of capital adequacy. This understanding does not prevent a party from requesting other information from a designated member or the other parties hereto.

ARTICLE II: DEFINITIONS

1. For purposes of this Financial Information Sharing Memorandum of Understanding ("FISMOU"):

- (a) "Applicant" means an FCM registered with the CFTC that is a member of a U.S. SRO that is a party to this FISMOU, that is a person that has requested authorization from its relevant U.K. regulator to establish a branch or to otherwise carry on an investment business in the United Kingdom ("U.K.") and that has requested that those Financial Regulation Rules that deal with capital adequacy be waived by the SIB and the relevant U.K. SRO. In order to be an applicant, an FCM must complete three originals of a signed consent in the form of the consent annexed as Exhibit 1 hereto and made a part hereof, addressed to the relevant U.K. regulator, such FCM's designated U.S. SRO and the CFTC.

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- (b) "Designated member" means an FCM registered under the CEA that is a member of a U.S. SRO that is a party to this FISMOU, that has a branch or otherwise carries on an investment business in the U.K., that is an authorized or interim authorized person under the FSA for which those Financial Regulation Rules that deal with capital adequacy have been waived by the SIB or the relevant U.K. regulator. In order to be a designated member, an FCM must complete three originals of a signed consent in the form of the consent annexed as Exhibit 1 hereto and made a part hereof, addressed to the relevant U.K. regulator, such FCM's designated U.S. SRO and the CFTC.
- (c) "Designated U.S. self-regulatory organization" or "designated U.S. SRO" means a U.S. SRO that has primary responsibility for examining a member FCM for compliance with minimum financial and related reporting requirements under CFTC oversight (i) pursuant to Section 4f(2) of the CEA and Rule 1.52 promulgated thereunder, and in accordance with a joint audit plan approved by the CFTC under that rule, or (ii) because the member FCM is a member solely of that U.S. SRO.
- (d) "Form 1-FR-FCM filing" means the financial report filed pursuant to Rule 1.10 under the CEA by an FCM on at least a semiannual basis with its designated U.S. SRO.

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- (e) "Joint Audit Committee" means that certain committee of representatives of all U.S. SROs which was established to coordinate audit and financial surveillance, plans, policies and procedures, particularly with respect to FCMs that are members of more than one U.S. SRO.
- (f) "Relevant U.K. regulator" means (i) where the FCM has been authorized under the FSA through membership in a single U.K. SRO, the U.K. SRO of which the FCM is a member, (ii) where the FCM has been authorized under the FSA through membership in more than one U.K. SRO, the U.K. SRO that the U.K. SROs have agreed should be the recipient of information under this FISMOU, or (iii) the SIB, where the FCM has been interim authorized or authorized by SIB under the FSA.
- (g) "Rule 1.12 telegram" means the telegraphic or written notice filed by an FCM with its designated U.S. SRO and the CFTC pursuant to Rule 1.12 promulgated under the CEA if the FCM's (i) adjusted net capital falls below the minimum required by an applicable capital rule, (ii) adjusted net capital falls below 150 percent of the minimum required by an applicable capital rule, (iii) books and records are not current, (iv) accounting system, accounting controls, procedures for safeguarding customer and firm assets or the practices and procedures specified in Rule 1.16(d)(1) promulgated under the CEA, contain a material inadequacy, as

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defined in Rule 1.16(d)(2) promulgated under the CEA, or (v) carried accounts include an account which is undermargined by an amount which exceeds the firm's adjusted net capital.

- (h) "U.S. self-regulatory organization" or "U.S. SRO" means the Board of Trade of the City of Chicago, the Chicago Mercantile Exchange, the Commodity Exchange, Inc., New York Mercantile Exchange, National Futures Association or any other self-regulatory organization as defined in Rule 1.3(ee) promulgated under the CEA that becomes a party to this FISMOU in accordance with Article VII.
- (i) "U.K. self-regulating organisation" or "U.K. SRO" means the Association of Futures Brokers and Dealers, The Securities Association or any other self-regulating organisation that has been recognized pursuant to Section 10 of the FSA and is or becomes a party to this FISMOU in accordance with Article VII.

ARTICLE III: EXCHANGE OF INFORMATION

1. (a) Each U.S. SRO will provide to the relevant U.K. regulator, commencing with the first filing due after the effective date hereof as to that U.S. SRO, as promptly as practicable after receipt of the relevant report, the following information with respect to a designated member for which it is the designated U.S. SRO.

- (i) Copies of the cover sheet used by the U.S. SRO in its review of each Form 1-FR-FCM filing. The U.S. SRO will

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represent that it has reviewed the Form 1-FR-FCM filing and that, based solely on its review of the information in that filing, it has no reason to believe (or it has reason to believe) that there exists a violation of the minimum adjusted net capital requirement set forth in Rule 1.17 promulgated under the CEA. The U.S. SRO also will provide a copy of the Form 1-FR-FCM upon request of the relevant U.K. regulator.

- (ii) Copies of Rule 1.12 telegrams.
- (iii) Notification if the designated member is classified as high risk under the Joint Audit Committee criteria, e.g., the ratio of customers' equities to the firm's adjusted net capital as calculated pursuant to the applicable capital rule exceeds 15 to 1.

(b) Each U.S. SRO will provide the relevant U.K. regulator as promptly as practicable upon request the following information with respect to an applicant for which it is the designated U.S. SRO.

- (i) Copies of the cover sheet used by the U.S. SRO in its review of the most recent Form 1-FR-FCM filing. The U.S. SRO will represent that the copy provided is the cover sheet with respect to the most recent Form 1-FR-FCM filing, that it has reviewed such filing and that, based solely on its review of the information in that filing, it has no reason to believe (or it has reason to believe) that there exists a violation of the

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minimum adjusted net capital requirement set forth in Rule 1.17 promulgated under the CEA. The U.S. SRO will also provide a copy of the most recent Form 1-FR-FCM upon request of the relevant U.K. regulator.

(ii) Copies of Rule 1.12 telegrams since the "as of" date of the most recent 1-FR-FCM filing.

(iii) Notification if the applicant is classified as high risk under the Joint Audit Committee criteria, e.g., the ratio of customers' equities to the firm's adjusted net capital as calculated pursuant to the applicable capital rule exceeds 15 to 1.

2. (a) Notwithstanding any other provision of this FISMOU, if information is provided by a U.S. SRO to the relevant U.K. regulator pursuant to paragraph 1(a) of this Article III, such information need not be provided by that U.S. SRO to any other U.K. SRO or U.K. regulator; provided further, however, that subject to Article IV, such U.K. SRO directly may furnish such information to another U.K. SRO or U.K. regulator.

(b) If any relevant U.K. regulator agrees to indemnify any regulatory or self-regulatory authority in the United States or any other country in connection with the receipt of information or representations similar to that described in paragraphs 1(a) or 1(b) of this Article III, the relevant U.K. regulator must make such indemnity arrangement available to each U.S. SRO providing it with information under paragraphs 1(a) or 1(b) of this Article III.

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3. (a) The CFTC will use its best efforts to notify the SIB if it becomes aware, through a U.S. SRO or otherwise, that an event has occurred that, in the sole judgment of the CFTC, materially and adversely affects the financial or operational viability of an applicant or a designated member.

(b) The relevant U.K. regulator will use its best efforts to notify and discuss with the CFTC if it becomes aware, through a U.K. SRO or otherwise, of a substantial financial, operational or other problem at a United Kingdom branch of, or as a result of investment business conducted in the U.K. by, a designated member. The CFTC may make information received pursuant to this paragraph available to a U.S. SRO.

(c) The SIB or the relevant U.K. SRO will use its best efforts to notify and discuss with the CFTC if it becomes aware, through a U.K. SRO or otherwise, of any information which in its respective judgment affects the financial or operational viability of a U.K.-domiciled firm doing business in the U.S. under a comparability exemption granted pursuant to Rule 30.10 promulgated under the CEA which may defer to the financial regulation rules of the SIB and the relevant U.K. SRO. The CFTC may make information received pursuant to this paragraph 3(c) available to National Futures Association.

4. Where an indemnity, or other mutually acceptable arrangement, for protecting the exchange of information is in place between a designated U.S. SRO and a relevant U.K. SRO, notification, information, and representations by the relevant

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U.K. SRO under paragraphs 3(b) of this Article III, and notification and information as to an event which in a designated U.S. SRO's sole judgment materially and adversely affects the financial or operational viability of an applicant or designated member also may be exchanged directly between the designated U.S. SRO and relevant U.K. SRO. A copy of the applicable agreement will be provided to the CFTC by the designated U.S. SRO and to the SIB by the relevant U.K. SRO.

5. Where SIB or a U.K. SRO intends to take action in relation to a designated member or an applicant on the basis of information supplied by the CFTC, or a designated U.S. SRO, pursuant to this FISMOU, SIB or such U.K. SRO, as appropriate, will to the extent practicable give prior notice to the CFTC and the designated U.S. SRO.

ARTICLE IV: CONFIDENTIALITY OF INFORMATION

1. (a) Each party to this FISMOU has advised the other parties of the rules, regulations and procedures which govern the maintenance of confidentiality of information exchanged hereunder. Each party will comply with its procedures for maintaining confidentiality and will advise the SIB or the CFTC as appropriate of any changes therein.

(b) Each party to this FISMOU will keep confidential to the extent permitted by law any information exchanged between the parties pursuant to this FISMOU under Article III, provided that such information may be disclosed in appropriate circumstances in accordance with this FISMOU and otherwise under applicable law to

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any person associated with or employed by the U.S. Congress, CFTC, SIB, Bank of England, the U.K. Department of Trade and Industry [Insurance Division] (U.K.), the Serious Fraud Office (U.K.), Board of Governors of the Federal Reserve System, U.S. Department of the Treasury, U.S. Department of Justice, U.S. Securities and Exchange Commission, U.S. Securities Investor Protection Corporation, a receiver, any agency of the federal government or of a state government in the U.S., U.S. self-regulatory organizations (as defined in Rule 1.3(ee) promulgated under the CEA) or U.K. self-regulating organisations (that are recognized pursuant to Section 10 of the FSA) pursuant to their use for the purpose of:

- (i) securing compliance with or enforcement of or conducting any investigation relating to the statutes, rules and requirements of the United States or the United Kingdom or the rules of the U.S. self-regulatory organization (as defined in Rule 1.3(ee) promulgated under the CEA) or U.K. self-regulating organisation (that is recognized pursuant to Section 10 of the FSA) or
- (ii) conducting a civil or administrative enforcement or receivership proceeding or other U.S. self-regulatory organization (as defined in Rule 1.3(ee) promulgated under the CEA) or U.K. self-regulating organisation (that is recognized pursuant to Section 10 of the FSA) disciplinary proceeding, assisting in a criminal

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prosecution, or conducting any investigation related thereto for any possible violation related to the statutes, rules or requirements specified in subparagraph 1(b)(i) of this Article IV.

(c) The SIB will keep confidential and will not disclose to other parties to this FISMOU or otherwise any information received from the CFTC pursuant to this FISMOU under paragraph 3(a) of Article III, provided that such information may be disclosed in connection with an adjudicatory action or proceeding brought under the laws of the U.K. or the rules and requirements of the SIB in the U.K. or the SIB is a party thereto or, provided further, that such information may be provided by the SIB to a U.K. SRO if applicable U.S. and U.K. law permits or if the designated member provides such consents to the CFTC and the SIB as may be legally effective to permit such disclosure.

2. Except as contemplated in paragraph 1(b) of this Article IV, if any party to this FISMOU receiving information pursuant to this FISMOU becomes aware that such information has been received by any person that is not a party to this FISMOU, it shall inform the party providing the information and will thereafter use its best efforts to ensure that such information will not be used in any way that involves disclosure not permitted by this FISMOU.

3. If a party which receives information pursuant to this FISMOU receives any legally enforceable demand for such information, such party will to the best of its ability, prior to complying with the demand, promptly notify the party who provided such

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information, and assert appropriate legal exemptions or privileges with respect to such information as may be available.

4. Upon the execution of this FISMOU, the CFTC and the SIB will exchange lists of the designated members and applicants and the designated U.S. SRO and relevant U.K. regulator with respect to each. Thereafter, the SIB and CFTC will report any changes as to the relevant U.K. regulator and the designated U.S. SRO. When an applicant applies to a relevant U.K. regulator for a waiver of its financial regulation rules, the relevant U.K. regulator will advise the CFTC and the designated U.S. SRO reported by the applicant. The designated U.S. SRO will confirm in writing to the SIB its status as such.

ARTICLE V: LIMITATIONS OF LIABILITY

1. The parties to this FISMOU and their respective commissioners, directors, officers, employees or agents shall not be liable to the other parties to this FISMOU and their respective commissioners, directors, officers, employees or agents for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of information or any representation regarding that information as provided hereby or the failure to provide any such information or representation. It is understood that the information is being supplied on a best efforts basis and no warranties, expressed or implied, are made by the parties with respect to the information to be furnished hereunder.

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2. The provisions of this FISMOU shall not give rise to the right on the part of any non-party to this FISMOU, directly or indirectly, to obtain any information or to challenge the execution of a request for information or the furnishing of any information or representation under this FISMOU. Nothing in this FISMOU shall entitle any person, entity or government authority to any rights as a third party beneficiary.

ARTICLE VI: DISPUTES AND CONSULTATIONS

1. The parties will engage in consultations with respect to this FISMOU with a view to improving its operation and resolving any issues that may arise. The parties will also use their best efforts to notify each other of significant financial rule changes.

2. Except for the limitation on disclosure of information set forth in paragraph 1(c) of Article IV of this FISMOU, any of the conditions of this FISMOU may be amended, relaxed or waived by mutual agreement of the CFTC, SIB, the relevant U.K. regulator and the designated U.S. SRO. Any such amendment, relaxation, or waiver shall be confirmed in writing among the affected parties as soon as practicable.

ARTICLE VII: EXECUTION

1. This FISMOU will be effective from the date of its execution by the SIB, the CFTC and any U.S. SRO and relevant U.K. SRO; thereafter, it shall be effective as to each U.S. SRO or U.K. SRO from the date of its execution by such U.S. SRO or U.K. SRO.

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2. Any U.S. self-regulatory organization (as defined in Rule 1.3(ee) promulgated under the CEA) or U.K. self-regulating organisation (that is recognized pursuant to Section 10 of the FSA) may become a party to this FISMOU by executing a counterpart hereof together with the CFTC and SIB and providing notice to the other U.S. SROs and U.K. SROs thereof that are parties to this FISMOU. The executed counterpart shall be deemed to be a part of the original FISMOU.

ARTICLE VIII: CONTACT OFFICERS

Information shall be exchanged pursuant to this FISMOU through the contact officers identified in Appendix A or their designees.

ARTICLE IX: TERMINATION

Any party may terminate its participation in this FISMOU provided it furnishes the other parties with at least 120 days prior written notice.

DATED this 1st day of Sep., 1988

United States Commodity  
Futures Trading Commission

by Wendy L. Gamm

Board of Trade of the City  
of Chicago

by \_\_\_\_\_

Chicago Mercantile Exchange

by \_\_\_\_\_

Securities and Investments  
Board

by \_\_\_\_\_

The Association of Futures  
Brokers and Dealers Limited

by \_\_\_\_\_

The Securities Association  
Limited

by \_\_\_\_\_

2. Any U.S. self-regulatory organization (as defined in Rule 1.3(ee) promulgated under the CEA) or U.K. self-regulating organisation (that is recognized pursuant to Section 10 of the FSA) may become a party to this FISMOU by executing a counterpart hereof together with the CFTC and SIB and providing notice to the other U.S. SROs and U.K. SROs thereof that are parties to this FISMOU. The executed counterpart shall be deemed to be a part of the original FISMOU.

ARTICLE VIII: CONTACT OFFICERS

Information shall be exchanged pursuant to this FISMOU through the contact officers identified in Appendix A or their designees.

ARTICLE IX: TERMINATION

Any party may terminate its participation in this FISMOU provided it furnishes the other parties with at least 120 days prior written notice.

DATED this 1st day of Sep, 1988

United States Commodity  
Futures Trading Commission

Securities and Investments  
Board

by \_\_\_\_\_

by \_\_\_\_\_

Board of Trade of the City  
of Chicago

The Association of Futures  
Brokers and Dealers Limited

by Thomas K. Donovan, Pres.

by \_\_\_\_\_

Chicago Mercantile Exchange

The Securities Association  
Limited

by William J. Broderick, Pres.

by \_\_\_\_\_

*VPD*  
*[Handwritten initials]*





Commodity Exchange, Inc.

by *[Signature]*

New York Mercantile Exchange

by *[Signature]*

National Futures Association

by \_\_\_\_\_

Investment Management  
Regulatory Organisation Ltd.

by \_\_\_\_\_

Commodity Exchange, Inc.

by \_\_\_\_\_

New York Mercantile Exchange

by \_\_\_\_\_

National Futures Association

by Robert W. Bennett Pres.

Investment Management  
Regulatory Organisation Ltd.

by \_\_\_\_\_

10/10  
JED  
PKL

Commodity Exchange, Inc.

by \_\_\_\_\_

New York Mercantile Exchange

by \_\_\_\_\_

National Futures Association

by \_\_\_\_\_

Investment Management  
Regulatory Organisation Ltd.

by J. H. Fagan

Commodity Exchange, Inc.

by \_\_\_\_\_

New York Mercantile Exchange

by \_\_\_\_\_

National Futures Association

by \_\_\_\_\_

Coffee Sugar & Cocoa Exchange Inc.

by *Brent*

Investment Management  
Regulatory Organisation Ltd.

by \_\_\_\_\_

Commodity Exchange, Inc.

by \_\_\_\_\_

New York Mercantile Exchange

by \_\_\_\_\_

National Futures Association

by \_\_\_\_\_

Investment Management  
Regulatory Organisation Ltd.

by \_\_\_\_\_

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Commodity Exchange, Inc.

by \_\_\_\_\_

New York Mercantile Exchange

by \_\_\_\_\_

National Futures Association

by \_\_\_\_\_

Coffee, Sugar & Cocoa Exchange Inc.

by \_\_\_\_\_

New York Futures Exchange, Inc.

by Leon J. Murray

Investment Management  
Regulatory Organisation Ltd.

by \_\_\_\_\_