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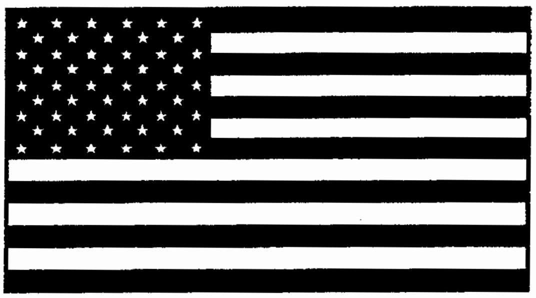
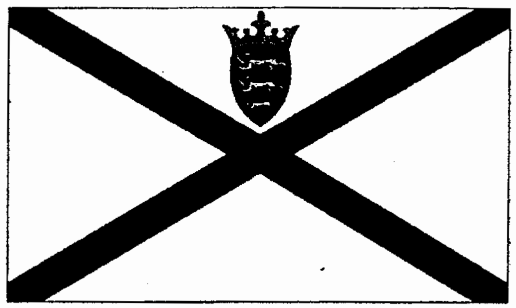
LEG 4

# MEMORANDUM

# OF

# UNDERSTANDING





***THE UNITED STATES***
***SECURITIES AND EXCHANGE COMMISSION***
***COMMODITY FUTURES TRADING COMMISSION***

***THE JERSEY FINANCIAL***
***SERVICES COMMISSION***

**CONCERNING COOPERATION, CONSULTATION**
**AND THE EXCHANGE OF INFORMATION**

**MAY 22, 2002**

*The Commodity Futures Trading Commission of the United States and the Securities and Exchange Commission of the United States, on the one hand, and the Financial Services Commission of Jersey, on the other hand, recognizing increased international activity in futures and securities transactions and the corresponding need for mutual cooperation between relevant authorities, have reached the following understanding.*

**DEFINITIONS**

For the purposes of this Memorandum of Understanding:

1. "Authority" means:

   (a) the United States Commodity Futures Trading Commission;

   (b) the United States Securities and Exchange Commission; or

   (c) the Jersey Financial Services Commission.

2. "Requested Authority" means an Authority to whom a request is made under this Memorandum of Understanding.

3. "Requesting Authority" means an Authority making a request under this Memorandum of Understanding.

4. "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.

5. "Futures Market" means an exchange or other market, including an over-the-counter market, for futures contracts that is recognized, supervised, or subject to regulation by an Authority.

6. "Securities Market" means an exchange or other market, including an over-the-counter market, for securities that is recognized, supervised, or subject to regulation by an Authority.

7. "Laws and Regulations" mean:

   (a) for futures contracts, the provisions of the laws of the United States and Jersey, the regulations promulgated thereunder, and other regulatory requirements that fall within the jurisdiction of an Authority, concerning futures contracts; and

   (b) for securities, the provisions of the laws of the United States and Jersey, the regulations promulgated thereunder, and other regulatory

requirements that fall within the jurisdiction of an Authority, concerning securities.

8. "Self-Regulatory Organization" means an organization given delegated authority by a government to administer or enforce a law, rule, or regulation as it relates to a securities or futures matter.

9. Except as provided in paragraphs 1 through 8, for the purposes of a request for assistance made pursuant to this Memorandum of Understanding, the Authorities will define terms in accordance with the relevant laws of the Requesting Authority's jurisdiction, unless such definition would require the Requested Authority to exceed its legal authority, or otherwise would be prohibited by the law of the Requested Authority's jurisdiction. In any case where such definition of a term would require the Requested Authority to exceed its legal authority or otherwise would be prohibited by the law of the Requested Authority's jurisdiction, the Authorities will consult in accordance with paragraph 17.

## ESTABLISHMENT OF A FRAMEWORK FOR CONSULTATIONS REGARDING MATTERS OF MUTUAL INTEREST

10. The Authorities intend to consult periodically about matters of mutual concern. Such consultation will be undertaken in the interest of improving cooperation to avoid the conflicts that may arise from the application of differing regulatory laws, regulations, and practices, and to enhance: the protection of investors and customers; the efficiency and integrity of the Futures and Securities Markets of the United States and Jersey; appropriate market oversight; and the effective performance by the Authorities of their respective functions regarding the Laws and Regulations of the United States and Jersey. Such consultations between the Authorities may include, but are not limited to, correspondence and other exchanges in which the Authorities share investigative analyses, progress, procedures, or strategies, and are subject to the confidentiality provisions of paragraph 16.

## MUTUAL ASSISTANCE AND THE EXCHANGE OF INFORMATION

11. General Principles Regarding Mutual Assistance and the Exchange of Information

    (a) This Memorandum of Understanding sets forth the Authorities' intent with regard to mutual assistance and the exchange of information for the purpose of enforcing and securing compliance with the respective Laws and Regulations of the Authorities. The provisions of this Memorandum

of Understanding are not intended to create legally binding obligations or supersede domestic laws.

(b) This Memorandum of Understanding does not limit an Authority to taking solely those measures described herein to obtain information necessary to ensure enforcement of or compliance with the Laws and Regulations applicable in its jurisdiction. In particular, this Memorandum of Understanding does not affect any right of any Authority to communicate with, or obtain information or documents from, any Person on a voluntary basis in the jurisdiction of the other Authority.

(c) This Memorandum of Understanding does not confer upon any Person 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 Memorandum of Understanding.

(d) The Authorities recognize the importance and desirability of providing assistance and information for the purpose of enforcing and securing compliance with the Laws and Regulations applicable in their respective jurisdictions. However, a request for assistance may be denied by the Requested Authority:

(i) where the request would require the Requested Authority to act in a manner that would violate its domestic law;

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

(iii) on grounds of public interest.

Where a request for assistance is denied, or where assistance is not available under its domestic law, the Requested Authority will provide the reasons for not granting the assistance and consult pursuant to paragraph 17.

12. Scope of Assistance

(a) 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 Jersey. Such assistance will be provided in order to facilitate: the enforcement of the Laws and Regulations applicable to Futures and Securities Markets and their participants; market oversight including market and financial

surveillance; the granting of licenses, registrations, authorizations, waivers, or exemptions for the conduct, supervision, and inspection of Persons that are regulated by an Authority; the investigation, litigation, or prosecution by an Authority of activity that potentially violates the Laws and Regulations applicable in its respective jurisdiction; and any other matters that the Authorities deem appropriate.

(b) The assistance available upon request under this Memorandum of Understanding includes, but is not limited to, providing information held in the files of the Requested Authority; and, if assistance is requested in connection with an investigation or proceeding to enforce the laws and regulations administered by the Requesting Authority:

(i) taking statements and the testimony of Persons; and

(ii) obtaining information and documents from Persons.

(c) It is the common understanding of the Authorities that any request for assistance made by the Commodity Futures Trading Commission or the Securities and Exchange Commission pursuant to the Memorandum of Understanding that describes any matter that they believe involves acts or courses of conduct that created a false or misleading impression as to the market in or the price or value of any investment, and which they believe were undertaken by any Person for the purpose of creating that impression and, thereby, inducing any other Person to acquire, dispose of, subscribe for, or underwrite that investment or to refrain from doing so or to exercise, or refrain from exercising, any rights conferred by those investments, shall provide a sufficient basis for the Jersey Financial Services Commission to exercise the powers in Article 29(2) or Article 30, as appropriate, of the Financial Services (Jersey) Law of 1998, subject only to the Jersey Financial Services Commission's determination that the preconditions for assistance set forth in Article 33 of the Financial Services (Jersey) Law of 1998 have been met.

(d) Where a request for assistance is made pursuant to this Memorandum of Understanding, and an Authority does not have the power to provide the requested assistance, the Authority will use all reasonable efforts to obtain the aid of other governmental agencies in order to provide the requested assistance.

13. Requests for Assistance

(a) Requests for assistance will be made in writing and will be addressed

to the Requested Authority's contact officer listed in Appendix A.

(b) Requests for assistance will include the following:

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

(ii) a general description of the assistance, documents, information, testimony, or statements sought by the Requesting Authority;

(iii) any information known to or 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;

(iv) the Laws and Regulations pertaining to the subject matter of the request; and

(v) the desired time period for the reply.

(c) In urgent circumstances, requests for assistance, and the response to such requests, may be effected by telephone or e-mail, provided such communication is confirmed in writing.

14. Execution of Requests for Assistance

In accordance with paragraph 12(b), in responding to a request for assistance,

(a) The Requested Authority will provide requested information held in its files.

(b) The Requested Authority will provide to the Requesting Authority the requested information or documents that the Requested Authority obtains from (i) any Person designated by the Requesting Authority or (ii) any other Person who may possess, have custody of, or control over, the requested information or documents.

(c) The Requested Authority will take the testimony or 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 relating, directly or indirectly, to the activities that are the subject matter

of the request for assistance. The Requesting Authority may, in its discretion, request the taking of statements or testimony of designated Persons. When requested by the Requesting Authority, testimony and statements will be taken under circumstances where a knowingly false statement could subject the declarant to criminal penalties.

(d) Notwithstanding paragraph 14(f), any Person providing a statement pursuant to a request for assistance under this Memorandum of Understanding will have the right to have counsel present. In addition, a representative or representatives of the Requesting Authority may be present at the taking of testimony or statements and may prescribe, to a designated representative of the Requested Authority, specific questions to be asked of any witness. The Requested Authority will make a transcript of any testimony or statement it takes on behalf of the Requesting Authority.

Where the Requested Authority grants a request which specifies that the law of the State of the Requesting Authority requires the opportunity for counsel for the witness or for a party to an adjudicative proceeding to pose questions to the witness, the Requested Authority will use its best efforts to ensure that such an opportunity will be given.

(e) In addition to participating in the taking of testimony or statements pursuant to paragraph 14(c) of this Section, the Requesting Authority may submit to the Requested Authority a request, with reasons, that a Person or Persons designated by the Requesting Authority be permitted to take the testimony of any Person or take a statement of any Person.

(f) Unless otherwise decided 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.

(g) Notwithstanding any other provision of this Memorandum of Understanding, any Person providing testimony, statements, 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.

(h) 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, ask the Requesting Authority to make a contribution to such cost in an amount agreed upon by the Authorities.

15. Permissible Uses of Information

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

(i) for the purpose stated in the request for assistance with respect to ensuring compliance with or enforcement of the Laws and Regulations applicable in the jurisdiction of the Requesting Authority, including the legal provisions specified in the request and related provisions; and

(ii) for a purpose within the general framework of the use stated in the request for assistance, including conducting a civil or administrative enforcement proceeding, assisting in a Self-Regulatory Organization's surveillance or enforcement activities, assisting in a criminal prosecution, or conducting any investigation for any general charge applicable to the violation of the provisions specified in the request where such general charge pertains to a violation of the Laws and Regulations administered by the Requesting Authority.

(b) Before using non-public information furnished under this Memorandum of Understanding for a purpose other than those stated in paragraph 15(a), the Requesting Authority must first inform the Requested Authority of the intended use. The Requested Authority will advise its views within 14 days and, if necessary, the Authorities will consult pursuant to the provisions of paragraph 17 to discuss the reasons for any denial by the Requested Authority over such intended use and the circumstances under which the intended use might otherwise be allowed.

16. Confidentiality

(a) The Requesting Authority will not disclose non-public information received under this Memorandum of Understanding, except as contemplated by paragraph 15 or 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.

(b) Each Authority will keep confidential, to the extent permitted by law, requests made pursuant to this Memorandum of Understanding, consultations between the Authorities (including consultations under paragraph 10), and unsolicited assistance under paragraph 18, unless:

(i) such disclosure is absolutely necessary to carry out a request; or

(ii) the other Authority expressly waives such confidentiality.

(c) 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 the Requested Authority will assert such appropriate legal exemptions or privileges with respect to such information as may be available.

(d) In response to a request by the Requested Authority, and to the extent permitted by law, after the Requesting Authority has terminated the matter for which assistance has been requested under this Memorandum of Understanding, it will, to the extent practicable, return to the Requested Authority all documents and copies thereof not already disclosed in proceedings referred to in paragraph 15(a) and other material disclosing the contents of such documents, other than material that is generated as part of the investigative, deliberative, or internal analytical process of the Requesting Authority.

17. Consultation Regarding Mutual Assistance and the Exchange of Information

(a) In any case of dispute over the interpretation of this Memorandum of Understanding, the Authorities will consult each other with a view to reaching a mutually acceptable interpretation.

(b) 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 consult in the event of:

(i) an Authority's denial of a request made by another Authority pursuant to this Memorandum of Understanding;

(ii) a material change in market or business conditions or in the legislation governing the matters set forth in paragraph 7; and

(iii) any circumstance that makes it necessary or appropriate to amend or extend this Memorandum of Understanding in order to achieve its purposes.

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

(d) Any of the conditions of this Memorandum of Understanding may be amended or waived by mutual written consent.

18. Unsolicited Assistance

To the extent permitted by the Laws and Regulations of its respective jurisdiction, each Authority will use reasonable efforts to provide the other Authorities with any information it discovers that gives rise to a suspicion of a breach or an anticipated breach of the Laws and Regulations applicable in the jurisdiction of the other Authorities.

**FINAL PROVISIONS**

19. Effective Date

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

20. Termination

Cooperation and assistance in accordance with this Memorandum of Understanding will continue until the expiration of thirty days after any Authority gives written notice to the other Authorities of its intention to discontinue cooperation and assistance hereunder. If either the Commodity Futures Trading Commission or the Securities and Exchange Commission gives such notice, cooperation under this Memorandum will continue with respect to the other two Authorities. If any Authority gives a termination notice, the terms and conditions of 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.

FOR THE COMMODITY FUTURES TRADING COMMISSION OF THE UNITED STATES:

James E. Newsome
Chairman

Date: May 16, 02

FOR THE FINANCIAL SERVICES COMMISSION OF JERSEY:

Richard Pratt
Director General

Date: 22 May 2002

FOR THE SECURITIES AND EXCHANGE COMMISSION OF THE UNITED STATES:

Harvey L. Pitt
Chairman

Date: 15 May 02