

**PUBLIC**

**FILE COPY**

**DECLARATION ON COOPERATION AND SUPERVISION  
OF CROSS-BORDER MANAGED FUTURES ACTIVITY**

The U.S. Commodity Futures Trading Commission, an independent agency established pursuant to the Commodity Futures Trading Act of 1974, and the Hong Kong Securities and Futures Commission, an independent agency established pursuant to the Securities and Futures Commission Ordinance of 1989,

**Sharing** the goal of promoting customer protection;

**Observing** the growth of global futures markets and cross-border financial activity including, in particular, the dramatic increase in cross-border managed futures activity and the continuous development and innovation in financial products and activities in the managed futures arena; and

**Believing** that, in light of these developments it is appropriate to formalize and systematize mechanisms that currently exist and are operating for sharing information and conducting supervisory reviews or examinations, where an Authority is located in one jurisdiction and a Managed Futures Person is located in another;

Hereby make the following **Declaration**:

**DEFINITIONS**

1. For the purposes of this Declaration:
  - (a) "Associated Persons" means persons and entities affiliated or associated with, or doing business relating to the futures and options management activities of, Managed Futures Persons and subject to the supervision of the Authorities;

- (b) "Authority" means the Commodity Futures Trading Commission ("CFTC") or the Hong Kong Securities and Futures Commission ("SFC");
- (c) "Books and Records" means documents, books and records of, and other information about, Managed Futures Persons;
- (d) "Dual Registrants" means Managed Futures Persons that are authorized by, registered with or subject to the supervision of both Authorities or who are authorized by or registered with one Authority and manage or advise funds authorized by the other Authority;
- (e) "Inspection Report" means a report, prepared by an Authority, summarizing the results of a review or examination of a Managed Futures Person;
- (f) "Inspecting Authority" means the Authority performing an On-Site Inspection;
- (g) "Host Authority" means the Authority in whose jurisdiction a Managed Futures Person is situated;
- (h) "Managed Futures Persons" means commodity trading advisors and commodity pool operators subject to the respective laws and regulatory requirements of the United States or Hong Kong, and their Associated Persons;
- (i) "On-Site Inspection" means any review or examination by the Inspecting Authority, at the premises of the Managed Futures Person, of the Books and Records and premises of the Managed Futures Person.

## **SCOPE OF SUPERVISORY COOPERATION**

2. The Authorities intend to provide to each other the fullest possible cooperation in assisting in the enforcement of their respective laws and regulatory requirements governing Managed Futures Persons. It is anticipated that such cooperation will include assistance in the oversight of Managed Futures Persons located in the jurisdiction of a Host Authority and subject to the regulatory oversight of the other Authority.
3. Assistance under this Declaration may include:
  - (a) exchanging information concerning Managed Futures Persons; and
  - (b) assisting in the conduct of On-Site Inspections of Managed Futures Persons.
4. The Authorities intend to keep each other advised of significant changes in the laws and regulatory requirements relevant to their cooperation under this Declaration. Nothing in this Declaration limits, expands or affects the respective jurisdictions of the Authorities.
5. To facilitate cooperation under this Declaration, the Authorities hereby designate contact persons as set forth in Attachment A.

## **EXCHANGE OF INFORMATION**

6. The Authorities intend to provide each other, and update on a regular basis, a list identifying the names of Dual Registrants.

7. Each Authority intends to notify the other of the commencement of a review or examination of a Dual Registrant identified on the list referred to in Paragraph 6 above.
8. The Authorities intend to provide to each other, on a routine basis and without advance request, copies of Inspection Reports of Dual Registrants.
9. Each Authority intends to provide the other, upon request and consistent with the laws and regulatory requirements which govern it, assistance in obtaining information concerning the contents of public and non-public Books and Records relating to Managed Futures Persons. Such assistance may include, without limitation:
  - (a) cooperation and consultation in reviewing, interpreting and analyzing such Books and Records and Inspection Reports; and
  - (b) obtaining information from the officers, directors, and other personnel of Managed Futures Persons.
10. Each Authority intends, upon request and consistent with the laws and regulatory requirements which govern it, to provide other information located in its jurisdiction that may be relevant to the other Authority's review, examination or determinations pertaining to registration or authorization status of Managed Futures Persons.

## **INSPECTIONS**

11. The Authorities intend to comply with the following procedure for an On-Site Inspection: The Inspecting Authority will notify the Host Authority of its intent to perform an On-Site Inspection in the jurisdiction of the Host Authority by providing a

copy of the notice or request for Books and Records that it issues to the Managed Futures Person prior to the time that such notice or request is issued. In routine reviews or examinations, the Inspecting Authority will provide notice to the Host Authority one week prior to the Inspecting Authority's notification of the Managed Futures Person. In routine reviews or examinations, two weeks prior notice will be given to the Managed Futures Person of the On-Site Inspection. In other cases, the Authorities may agree to vary these notice periods.

12. In its discretion, the Host Authority may accompany the Inspecting Authority during the On-Site Inspection and, to the extent permitted by law, assist in all aspects of the On-Site Inspection. Such assistance may include, without limitation:
  - (a) compiling, reviewing, interpreting and analyzing Books and Records;
  - (b) interpreting and understanding the internal controls and other procedures of the Managed Futures Person; and
  - (c) obtaining such other information as may be relevant to the On-Site Inspection.

#### **APPLICABILITY OF MOU**

13. This Declaration is being made within the framework of the Memorandum of Understanding, dated October 5, 1995 (the "MOU"), between the CFTC and the SFC, and nothing contained herein modifies or amends the MOU.
14. Materials and information provided hereunder are to be kept confidential and governed by the provisions of Section 3.6 of the MOU.

**CONSULTATIONS**

15. The Authorities intend to engage in regular consultations regarding managed futures activity in their markets, and to review this Declaration periodically for the purpose of assessing its operation.

Signed at Washington, DC

this 6<sup>th</sup> day of October, 1995

FOR THE COMMODITY FUTURES  
TRADING COMMISSION OF THE  
UNITED STATES:

Mary L. Schapiro  
Mary L. Schapiro  
Chairman

this 5<sup>th</sup> day of October, 1995

FOR THE HONG KONG SECURITIES  
AND FUTURES COMMISSION:

Anthony Neoh  
Anthony Neoh  
Chairman