

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE U.S. SECURITIES AND EXCHANGE COMMISSION ("SEC")
AND
THE U.S. COMMODITY FUTURES TRADING COMMISSION ("CFTC")
REGARDING
THE OVERSIGHT OF SECURITY FUTURES PRODUCT TRADING
AND
THE SHARING OF SECURITY FUTURES PRODUCT
INFORMATION**

Defined Terms and Phrases

"CEA" shall refer to the Commodity Exchange Act.

"CFMA" shall refer to the Commodity Futures Modernization Act of 2000.

"CFMA Notice-Registered BD" shall mean a futures commission merchant ("FCM") or an introducing broker ("IB") that is registered with the SEC as a broker-dealer ("BD") under Section 15(b)(11) of the Exchange Act.

"CFMA Notice-Registered FCM or CFMA Notice-Registered IB" shall mean a BD that is registered with the CFTC as an FCM or as an IB under Section 4f(a)(2) of the CEA.

"CFMA Notice-Registered Futures Exchange" shall mean a national securities exchange, a national securities association, or an alternative trading system that is a designated contract market under Section 5f of the CEA.

"CFMA Notice-Registered Exchange(s)" shall mean a CFMA Notice-Registered Futures Exchange and/or a CFMA Notice-Registered Securities Exchange.

"CFMA Notice-Registered Intermediaries" shall mean a CFMA Notice-Registered BD and/or a CFMA Notice-Registered FCM and/or a CFMA Notice-Registered IB.

"CFMA Notice-Registered Securities Exchange" shall mean a designated contract market or derivatives transaction execution facility that is registered with the SEC as a national securities exchange under Section 6(g) of the Exchange Act.

"Dual Registrant" shall mean a person that is registered both with the CFTC as an FCM or an IB under Section 4f(a)(1) of the CEA and with the SEC as a BD under Section 15(b)(1) of the Exchange Act.

"Exchange Act" shall mean the Securities Exchange Act of 1934.

"Limited Purpose National Securities Association" shall mean a futures association that is a registered national securities association under Section 15A(k) of the Exchange

Act.

"**MOU**" shall mean this Memorandum of Understanding.

"**NFA**" shall mean the National Futures Association.

"**Parties**" shall mean the SEC and the CFTC.

"**Security Futures Product ("SFP") Regulator**" shall mean: (a) the SEC, with respect to CFMA Notice-Registered Securities Exchanges, Limited Purpose National Securities Associations, and CFMA Notice-Registered BDs; and (b) the CFTC, with respect to CFMA Notice-Registered Futures Exchanges, CFMA Notice-Registered FCMs, and CFMA Notice-Registered IBs.

"**SFP**" shall mean security futures product, as defined in Section 1a(32) of the CEA and Section 3(a)(56) of the Exchange Act.

"**SFP Primary Regulator**" shall mean: (a) the SEC, with respect to CFMA Notice-Registered Futures Exchanges, CFMA Notice-Registered FCMs, and CFMA Notice-Registered IBs; and (b) the CFTC, with respect to CFMA Notice-Registered Securities Exchanges, Limited Purpose National Securities Associations, and CFMA Notice-Registered BDs.

Information Sharing and Oversight of SFP Trading

The Commodity Futures Modernization Act of 2000 permits the trading of SFPs and amended the CEA and the Exchange Act to give the SEC and the CFTC joint authority for regulating SFPs. Facilities that trade SFPs and intermediaries of SFP transactions must be registered with both the SEC and the CFTC.

The SEC and the CFTC recognize that in light of these obligations, sharing SFP examination-related information concerning certain futures and securities exchanges, associations, and firms is important to provide effective oversight and to avoid duplicative oversight. In addition, the SEC and the CFTC recognize the importance of sharing trading data and related information with respect to trading activity in SFPs in connection with surveillance activities and enforcement inquiries and investigations. The Parties agree that a primary goal of the MOU is to avoid unnecessary regulatory duplication or undue regulatory burdens. Further, the Parties agree that nothing in this agreement modifies in any way each Party's ability and responsibility to enforce its

statute and regulations. Therefore, in order to expedite this cooperation, the SEC and the CFTC wish to enter into a MOU that incorporates the following agreement.

The Parties agree to the following:

1. Each Party will request that the NFA develop and regularly update a listing of all CFMA Notice-Registered Intermediaries about which the agencies will share information.
2. Notwithstanding any other provision of this MOU, the records of a CFMA Notice-Registered Exchange, Limited Purpose National Securities Association or CFMA Notice-Registered Intermediary shall not be subject to routine periodic examinations by its SFP Regulator.
3. With regard to examinations other than those referenced in paragraph 2, each Party will provide the SFP Primary Regulator with notice of any examination of a CFMA Notice-Registered Exchange, CFMA Notice-Registered Intermediary, or Limited Purpose National Securities Association within a reasonable period of time prior to conducting any such examination, consult with the SFP Primary Regulator, advise the SFP Primary Regulator of the reasons for the intended examination, discuss the feasibility and desirability of coordinating any examinations, discuss examinations completed by either Party during the quarter, and use the reports of examinations if the information made available therein is sufficient for the purposes of the examinations. The SEC and CFTC will provide to the other Party all SFP examination-related information upon request of the other Party. In furtherance of the stated goals of this MOU, the Parties agree that the SFP Regulator may, after consultation, conduct those examinations that are not time-sensitive together with examinations scheduled by the SFP Primary Regulator, provided that the scheduled examination occurs within a reasonable period of time of the examination request by the SFP Regulator. The SFP Primary Regulator shall provide the SFP Regulator sufficient notice of its examination schedule in order to facilitate such coordination between the Parties.

4. Prior to conducting an examination of a CFMA Notice-Registered Exchange, Limited Purpose National Securities Association, or CFMA Notice-Registered Intermediary, each Party will consider whether any reports that have been made available by the other Party or a designated self-regulatory organization, or a designated examining authority, as applicable, are sufficient for conducting the examination.
5. The SEC will notify the CFTC promptly of significant issues pertaining to investor protection and the public interest noted in its oversight of the trading of SFPs or in connection with SFPs, including, but not limited to, market manipulation, abusive trading and sales practices, insider trading, and other types of fraud.
6. The CFTC will notify the SEC promptly of significant issues pertaining to investor protection and the public interest noted in its oversight of the trading of SFPs or in connection with SFPs, including, but not limited to, market manipulation, abusive trading and sales practices, insider trading, and other types of fraud.
7. The Parties will work together to share information stored in their respective electronic databases relating to trading in SFPs.
8. The Parties will share trading data and related information within their possession or control with respect to trading activity in SFPs in connection with surveillance activities and enforcement inquiries and investigations upon written request.
9. The Parties agree to treat as confidential, to the extent permitted by applicable laws, all non-public information provided pursuant to this MOU. Nothing in this MOU waives or alters any provisions of any applicable laws relating to non-public information.
10. The Parties will protect the confidentiality of non-public information furnished under the MOU, in matters not involving actions or proceedings brought by a Party or the United States by:

- a. Establishing and maintaining such safeguards as are necessary and appropriate to protect the confidentiality of any such information provided;
- b. Unless prohibited by law, promptly notifying the other Party in writing of any legally enforceable demand or request for such information (including, but not limited to, a subpoena, court order, or request pursuant to the Freedom of Information Act), providing the other Party a reasonable opportunity to respond to the demand prior to complying with the demand or request, and asserting all legal exemptions or privileges on the other Party's behalf as such Party may request;
- c. Not furnishing such information to any third party other than those identified in paragraph b above or otherwise making public such information without prior written approval of the Party providing the information; and
- d. Consenting to application by the other Party to intervene in any related action for the purposes of asserting and preserving any privileges or claims of confidentiality with respect to the originating Party's non-public information.

11. Notwithstanding the confidentiality provisions of paragraph 9 and paragraph 10, the MOU does not prevent the Parties from using non-public information furnished under the MOU in either Party's investigations or proceedings. The Parties may also transfer the information to criminal law enforcement authorities. Consistent with restrictions found in applicable laws, the Parties will cooperate to facilitate transfer of data to criminal law enforcement authorities, and will notify each other of any such transfer and use their best efforts to obtain appropriate assurances of confidentiality.

12. The SEC designates:

- The Chief Counsel and/or his or her designee(s) in its Office of Compliance Inspections and Examinations ("OCIE") as its point(s) of contact for requesting examination-related information and for initiating inquiries regarding other examination-

related matters.

- The Chief of the Office of Market Surveillance in the Division of Enforcement and/or his or her designee(s) as its point(s) of contact for requesting trading data and related information in connection with surveillance activities, enforcement inquiries, and investigations.

Each SEC regional and district office will designate liaisons with whom examination-related information regarding firms that are trading SFPs can be discussed.

13. The CFTC designates:

- The Director of the Division of Clearing and Intermediary Oversight and/or his or her designee(s) as its point(s) of contact for requesting registration, financial, sales practice and related recordkeeping and reporting examination-related information and for initiating inquiries regarding such examination-related matters.
- The Director of the Division of Market Oversight and/or his or her designee(s) as its point(s) of contact for requesting (i) trade practice and related recordkeeping and reporting examination-related information and for initiating inquiries on such examination-related matters, and (ii) trading data and related information in connection with surveillance activities.
- The Director of the Division of Enforcement and/or his or her designee(s) as its point(s) of contact for requesting information in connection with enforcement inquiries and investigations .

Each CFTC regional office will designate liaisons to share information with and discuss particular firms that are trading SFPs.

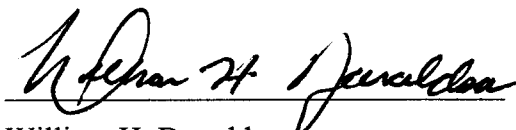
14. The Parties intend that the disclosure of non-public information pursuant to the terms

of the MOU will not constitute a waiver with regard to any confidentiality or privilege of such information. In addition, this MOU does not create any legally binding obligations on the SEC or the CFTC, and does not create any right enforceable against the SEC or the CFTC or any of their officers or employees or any other person.

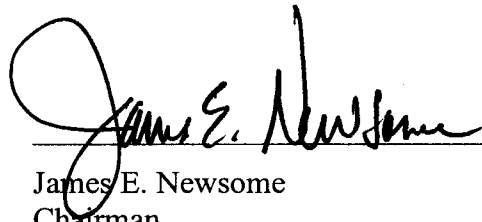
15. This MOU shall become effective as of the date of its signing, and may be revised or modified, upon agreement, or as required by changes in relevant laws. The Party recommending the revision or modification shall provide the other Party with 30 days' written notice of the proposed change. Issues raised by the Parties relating to administration of this agreement shall be resolved by the Chairmen of the respective Parties, or by the Chairmen's designees.

16. Either Party may terminate this MOU upon 30 days' written notice to the other Party. Following termination, all information that was provided subject to this MOU shall remain confidential pursuant to its terms.

Agreed to this 17th day of March, 2004.



William H. Donaldson
Chairman
Securities and Exchange Commission



James E. Newsome
Chairman
Commodity Futures Trading Commission