

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

The United States Securities and Exchange Commission and Commodity Futures Trading Commission on the one hand, and the United Kingdom Department of Trade and Industry and Securities and Investments Board on the other hand, recognising the increasing international activity in the securities, futures and investments markets and the corresponding need for mutual cooperation between the relevant national authorities, have reached the following understanding:

Definitions

1. For purposes of this Memorandum of Understanding,
 - (a) "Authority" means
 - (i) for the United States, the Securities and Exchange Commission ("SEC") or the Commodity Futures Trading Commission ("CFTC") acting with respect to their respective areas of jurisdiction;
 - (ii) for the United Kingdom, the Department of Trade and Industry ("DTI") or the Securities and Investments Board ("SIB") acting with respect to their respective areas of responsibility.
 - (b) "Investment Businesses" means investment businesses, investment companies, other collective investment undertakings and their equivalents, investment banks, merchant banks, brokers, dealers, jobbers, investment advisers and investor advisory services and exchanges.
 - (c) "Securities Processing Businesses" means clearing corporations or securities transfer agents.
 - (d) "Futures Businesses" means commodity trading advisors, commodity pool operators, futures commission merchants, introducing brokers, associated persons and floor brokers, floor traders, clearing corporations, futures and options brokers and dealers and exchanges.
 - (e) "person" means a natural person, unincorporated association, or body corporate, government, or political subdivision, agency, or instrumentality of a government.
 - (f) "issuer" means a person who issues or proposes to issue any security.

- (g) (1) "requested Authority" means an Authority to whom a request under this Memorandum is addressed;
- (2) "requesting Authority" means an Authority making a request under this Memorandum.
- (h) "legal rule or requirement" means:
 - (1) for securities, those laws, regulations and requirements of the United States and the United Kingdom relating to:
 - (A) insider trading in relation to any security;
 - (B) misrepresentation or the use of fraudulent, deceptive or manipulative practices in connection with the offer, purchase or sale of any security;
 - (C) the making of a false or misleading statement or any material omission in any application or report made to the Authorities;
 - (D) the conduct of Investment or Securities Processing Businesses or reporting requirements imposed on such Businesses;
 - (E) the financial and other qualifications of those engaged in or in control of Investment or Securities Processing Businesses;
 - (F) the duty to comply with reporting requirements of persons whose securities or sponsored depository receipts in respect of such securities are registered or publicly traded;
 - (G) the disclosure of interests in the securities of companies; and
 - (H) the duties of issuers of and offerors for securities to make full and fair disclosure of information relevant to investors.
 - (2) for futures, those laws, regulations and requirements of the United States and the United Kingdom relating to:
 - (A) misrepresentation or the use of fraudulent, deceptive or manipulative practices in connection with the offer, purchase or sale of any futures or options contract;
 - (B) the making of a false or misleading statement or any material omission in any application or report made to the Authorities.

- (C) the conduct of futures or options trading on, or subject to the rules of, the markets of the requesting Authority;
 - (D) the conduct of Futures Businesses or reporting requirements imposed upon such Businesses; and
 - (E) the financial and other qualifications of those engaged in or in control of Futures Businesses.
2. The parties recognise that while in their laws, regulations and requirements they may define terms differently, requests for assistance will not be denied solely on the grounds of differences in the definitions used by the requesting and requested Authorities.

Part I: Consultations on Matters of Mutual Interest

3. The Authorities intend to engage in consultations about mutually agreeable approaches designed to enhance the integrity and efficiency of the securities and futures markets of the United States and the United Kingdom, the exercise of market oversight functions and the protection of investors, while avoiding the conflicts that may arise from the application of differing regulatory laws, regulations and practices.

Part II: General Principles

4. This Memorandum sets forth the basis upon which the United States Authorities and the United Kingdom Authorities reciprocally propose to provide assistance for the purpose of facilitating the performance of their respective functions regarding the laws, regulations and requirements of the United States and the United Kingdom. Such assistance will be provided even where the subject matter of the request for assistance does not constitute a violation of the laws, regulations and requirements of the requested Authority. In these circumstances the requesting Authority will determine whether particular conduct could be a violation of its laws, regulations and requirements.
5. This Memorandum sets forth a statement of intent of the Authorities regarding mutual assistance and the exchange of information between the Authorities. Accordingly, the provisions of this Memorandum will not give rise to a right on the part of any private person, directly or indirectly, to obtain, suppress or exclude any evidence or to challenge the execution of a request for assistance under this Memorandum.

6. In response to requests that satisfy the terms of Part III of this Memorandum, and subject to the conditions set out in Part IV, each Authority will provide the fullest possible measure of mutual assistance to the other subject to its law and national policy. Such assistance may include:
 - (a) providing access to information in the files of the requested Authority;
 - (b) questioning or taking the testimony of persons designated by the requesting Authority;
 - (c) obtaining specified information and documents from persons;
 - (d) conducting compliance inspections or examinations of Investment or Futures Businesses; and
 - (e) permitting the representatives of the requesting Authority to participate in the conduct of the enquiries made by the requested Authority pursuant to (b) through (d) of this paragraph.
7. The Authorities recognise the need and desirability of providing mutual assistance and exchanging information to assist each other in securing compliance with their respective legal rules or requirements. However, assistance may be denied on grounds of public interest.
8. The Authorities have defined "legal rule or requirement" to ensure that assistance will be provided in the maximum number of circumstances. However, the Authorities acknowledge that certain requests may relate to a possible breach of laws, regulations and requirements that involve an assertion of jurisdiction not recognised by a requested Authority. Where a requested Authority considers that an assertion of jurisdiction in a matter that is the subject of a request would conflict seriously with and prejudice its sovereign interests the request will be denied.
9. The Authorities recognise that, so long as there are differences in the scope of the laws, regulations and requirements applied in each country, conduct prohibited by the Authorities in one country may not be prohibited by the Authorities in the other. The Authorities intend to engage in consultations about individual cases falling outside the scope of the definition of legal rule or requirement to determine whether assistance will be provided in such cases.

10. Either the DTI or the SIB may refer a request to the other and, if it does so, it will at the same time notify the requesting Authority.
11. This Memorandum does not extend to information held by the DTI solely by virtue of powers and functions that relate to matters other than securities, investments, futures or company law.

Part III: Requests for Information

12. Any request for information made under this Memorandum will satisfy the following requirements:
 - (a) wherever possible it will be in writing but in cases of urgency it may be oral, and confirmed in writing within 10 days;
 - (b) it will clearly specify the following:
 - (i) the information requested;
 - (ii) the general purpose for which the information is sought, indicating in particular the legal rule or requirement pertaining to the matter that is the subject of the request;
 - (iii) a description of the conduct and its connection with the jurisdiction of the requesting Authority. However, where the legal rule or requirement in question is that a person be fit or qualified to set up or carry on an Investment, Securities Processing or Futures Business, or otherwise involves the conduct or qualifications of an Investment, Securities Processing or Futures Business, it is sufficient compliance with this subparagraph to specify that information is sought for that purpose;
 - (iv) the identity of the person, if known, whose conduct causes concern. However, where the relevant rule or requirement falls within paragraph 1(h)(1)(A) through (C) or 1(h)(2)(A) and (B) above, it is sufficient compliance with this subparagraph to specify that information is sought concerning the purpose specified in accordance with (ii) above in order to identify the person(s) against whom proceedings or actions are to be, or may be, taken; and

- (v) where it is apparent to the requesting Authority that another person may obtain the information for a purpose other than securing compliance with or enforcing the legal rule or requirement specified under subparagraph (ii) above in respect of the person(s) (if any) specified under subparagraph (iv) above, to the extent permitted by the laws of the jurisdiction of the requesting Authority, the particulars of that person and that person's interest; and
 - (vi) particular procedures contemplated in Part IV of this Memorandum that it requests be utilised for questioning, taking testimony or conducting inspections;
- (c) it will be addressed to one of the requested Authority's contact officers listed in Annex I, or that person's nominee, pursuant to written notice to the requesting Authority; and
 - (d) the requested information must be reasonably relevant to securing compliance with the legal rule or requirement specified in the request.

In any case where a requested Authority is not satisfied that a request fully complies with the requirements of this paragraph, it may require the Director of the Office of International Affairs of the SEC or the Director of the Division of Enforcement of the CFTC, or the Under Secretary, Financial Services Division, DTI, or the Group Director, Compliance and Enforcement of the SIB, where applicable, to certify that the request is cognisable under the terms of this Memorandum. A requested Authority may not challenge such a certification except on substantial grounds which will be fully stated in writing.

Part IV: Procedures for questioning or taking testimony and conducting inspections

13. In accordance with paragraph 6:

- (a) questioning or taking the testimony of persons, if requested, will be conducted in the same manner and to the same extent as investigations or other proceedings under the laws of the jurisdiction of the requested Authority;
- (b) when requested by the requesting Authority, questioning or taking testimony will be conducted under oath and a transcript will be made;

- (c) a representative of the requesting Authority may be present at the questioning or testimony, may prescribe specific questions to be asked of any witness and, pursuant to paragraph 14 of this Memorandum, may otherwise participate in the examination of any witness.
14. Subject to the following conditions, a requested Authority may grant a request made by the requesting Authority that a person or persons designated by the requesting Authority, including representatives of the requesting Authority, be permitted to conduct the interrogation of any person, or participate in the inspection or examination of the books and records of an Investment or Futures Business or its custodian or agent:
- (a) the requesting Authority must specify the reasons for this request;
 - (b) the request may be granted or denied by the requested Authority in its discretion. The requested Authority may impose such conditions on the participation of the requesting Authority as it deems appropriate;
 - (c) if the request is granted and the laws of the jurisdiction of the requesting Authority require the opportunity for the witness to consult with legal counsel, or for counsel to the witness to pose questions to the witness, such participation will, subject to (b) above, be permitted; and
 - (d) if the request is denied, the Authorities agree to consult pursuant to paragraph 24 of this Memorandum concerning the reasons for the denial and the circumstances under which the request might be granted.
15. Notwithstanding any other provision of this Memorandum, any person providing testimony, information or documents as a result of a request made under this Memorandum will be entitled to all the rights and protections of the laws of the jurisdiction of the requested Authority. Where assertions are made regarding other rights and privileges arising exclusively pursuant to the laws of the jurisdiction of the requesting Authority, the Authorities will consult to determine the most appropriate way to proceed.

Part V: Permissible Uses and Confidentiality

16. Information received will be used solely for the purpose of:
- (a) securing, through enquiries, investigations or litigation, compliance with or enforcement of the legal rule or requirement specified in the request, provided that the information may be used to secure compliance with or enforcement of other applicable legal rules or requirements in proceedings in which a violation of the legal rule or requirement specified in the request is alleged;
 - (b) securing compliance with or enforcement of a legal rule or requirement that was not specified in the request in proceedings in which a violation of the legal rule or requirement specified in the request is not alleged, if prior to such use, the requesting Authority informs the requested Authority of its intention to use the information for such purposes and the requested Authority does not object; or
 - (c) conducting civil or administrative enforcement proceedings, assisting in a criminal prosecution, or conducting any investigation related thereto for any general charge applicable to the violation of the legal rule or requirement identified in the request.
17. The requesting Authority will keep confidential any information provided under this Memorandum subject to the terms of this paragraph, unless it is disclosed in furtherance of the purpose for which it was requested under paragraph 16 above:
- (a) except as contemplated by paragraph 16 above, the requesting Authority will not offer the information to, and will use its best efforts to ensure that it is not obtained by, any other person. Unless otherwise agreed, in the event that such information is obtained by any public body, the requesting Authority will use its best efforts to ensure that it will not be used by that body in any way that involves its disclosure to any other person;
 - (b) if the requesting Authority becomes aware that the information has been or is likely to be disclosed otherwise than as contemplated by paragraph 16 above, it will inform the requested Authority of the situation; and

- (c) after the requesting Authority has terminated the matter for which assistance has been requested under this Memorandum, upon request of the requested Authority, it will return to the requested Authority, to the extent permitted by the laws of the jurisdiction of the requesting Authority, all documents and copies thereof not already disclosed in proceedings referred to in paragraph 16 above, and other material disclosing the content of such documents, other than material generated as part of the deliberative, investigative, internal or analytical process of the requesting Authority, which may be retained.
18. Any document or other material provided by an Authority in response to a request under this Memorandum and any copies or other material disclosing its content, other than material generated as part of the deliberative, investigative, internal or analytical process of the requesting Authority, will not become the property of the requesting Authority, and must be redelivered to the requested Authority without delay on demand to the extent permitted by the laws of the jurisdiction of the requesting Authority; provided that such demand may be made only if the requested Authority has reason to believe that the information has been or is likely to be disclosed or used otherwise than as contemplated by paragraph 16 above.
19. Each Authority will keep confidential to the extent permitted by law any request for information made under this Memorandum and any matters arising in the course of its operation, including consultation under this Part or Part I of this Memorandum, unless:
- (a) such disclosure is absolutely necessary to carry out the request; or
 - (b) the other Authority waives such confidentiality.

A requesting Authority may specify that if the requested Authority considers such disclosure to be absolutely necessary, then the Authorities will consult before such disclosure is made.

This paragraph does not apply to general matters of proper public interest relating to the operation of this Memorandum.

Part VI: Other Means of Obtaining Information

20. The Authorities have various powers to obtain information in the exercise of regulatory functions that are within the scope of this Memorandum. If, in the exercise of its

powers, any Authority obtains information that it recognises as clearly giving rise to a suspicion of a breach of any legal rule or requirement of any other Authority, then it will, to the extent permitted by law, offer to provide such information to such Authority for any purpose, and subject to compliance by the other with any conditions that would have been applicable had a request pursuant to this Memorandum been made.

21. Where one Authority wishes to make enquiries of, or seek information from, a person within the territory of another Authority on a voluntary basis, the enquiries will be conducted in accordance with arrangements agreed between the Authorities.
22. The execution of this Memorandum will not prejudice the respective positions of the Authorities concerning the use of procedures for obtaining information other than as provided for in this Memorandum.

Part VII: Costs

23. When the costs of providing or obtaining information under this Memorandum are substantial, the requested Authority may require the requesting Authority to undertake to pay those costs. In such an event the relevant Authorities will consult on the issue at the request of either Authority.

Part VIII: Consultations and Waiver

24. The Authorities will keep the operation of this Memorandum under continuous review and consult with a view to improving its operation and resolving any matters. In particular, any Authority will consult another Authority upon request in the event of:
 - (a) a request being denied in whole or in part;
 - (b) a change in market or business conditions or in the laws, regulations or requirements governing the matters mentioned in paragraph 1(h) above, or any other difficulty arising which makes it necessary to amend or extend this Memorandum in order to achieve its purposes; or
 - (c) an assertion by the requested Authority that the provision of assistance would be so burdensome as to disrupt the proper performance of its functions.
25. Where the specific conduct set out in the request for assistance may constitute a breach of a legal rule or requirement in both the territory of the requesting and the

requested Authorities, the relevant Authorities will consult in order to determine the most appropriate means for each Authority to provide assistance.

26. In cases where the requested Authority is either the SEC or CFTC, denial of a request under paragraph 7 or 8 will be made by its respective Commission after consultation with relevant officials within the United States Government, and in cases where the requested Authority is a UK Authority, such a denial will be made by the Secretary of State.
27. Any of the conditions of this Memorandum may be relaxed or waived by mutual agreement.

Part IX: Termination

28. This Memorandum will continue to have effect unless terminated by the SEC and CFTC, on the one hand, or the DTI and SIB, on the other hand, by giving 30 days advance written notice to the other Authorities that the understandings set out herein are no longer to have effect. Such notice may in particular be given in consequence of a change in the laws or regulations applicable to any matter governed by this Memorandum which is regarded by an Authority as material and in the absence of an agreed amendment to take account of the change. The SEC, CFTC, DTI or SIB may withdraw from participation in this MOU only with respect to areas of the Memorandum regarding that Authority's areas of competence and the arrangements relating thereto. Termination by the DTI may take effect with respect to the areas within the competence of the SEC and/or the CFTC and the arrangements relating thereto and will be so specified.

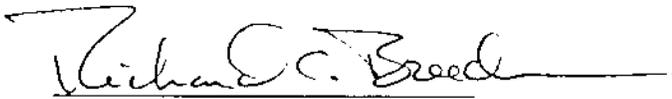
Part X: Entry into Effect

29. This Memorandum will be effective from the date of its signature by the United States Securities and Exchange Commission, the United States Commodity Futures Trading Commission, the United Kingdom Department of Trade and Industry and the United Kingdom Securities and Investments Board.

SIGNED THIS 2th DAY OF September 1991

SECURITIES AND
EXCHANGE COMMISSION

DEPARTMENT OF TRADE
AND INDUSTRY



Richard C. Breeden
Chairman



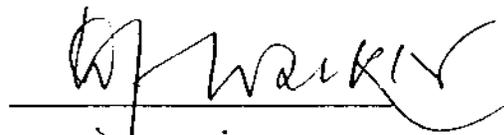
John Redwood
Minister of State for
Corporate Affairs

COMMODITY FUTURES
TRADING COMMISSION

SECURITIES AND
INVESTMENTS BOARD



Wendy Gramm
Chairman



Sir David Walker
Chairman