

MEMORANDUM OF UNDERSTANDING BETWEEN
THE UNITED STATES COMMODITY FUTURES TRADING COMMISSION
AND THE COMMISSIONE NAZIONALE PER LE SOCIETÀ E LA BORSA OF ITALY
ON CONSULTATION AND
MUTUAL ASSISTANCE FOR THE EXCHANGE OF INFORMATION

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MEMORANDUM OF UNDERSTANDING

The United States Commodity Futures Trading Commission and the Commissione Nazionale per le Società e la Borsa of Italy acknowledge the importance of ensuring compliance with and enforcement of the futures and options laws and regulations of the United States and Italy. In light of the increasing international activity in futures and options transactions, and the need for mutual cooperation in order to facilitate the performance of their respective duties, the Commodity Futures Trading Commission and the Commissione Nazionale per le Società e la Borsa have reached the following understanding with respect to consultations and mutual assistance for the exchange of information. The following understandings do not create legally binding obligations on the authorities or supersede domestic law.

CLAUSE I DEFINITIONS

For the purposes of this Memorandum of Understanding (Memorandum):

- (a) "Authority" means:
 - (i) the Commodity Futures Trading Commission of the United States (CFTC); and
 - (ii) the Commissione Nazionale per le Società e la Borsa of Italy (CONSOB).
- (b) "requested Authority" means an Authority to whom a request under this Memorandum is made.
- (c) "requesting Authority" means an Authority making a request under this Memorandum.
- (d) "person" means a natural person or legal entity, trustee, or partnership.
- (e) "futures business" means any person involved, in whole or in part, in effecting transactions in futures and options for the benefit of others, or otherwise soliciting such transactions for execution; operating as an introducing broker; buying and selling futures and options for one's own account by persons regulated or subject to regulation by the authorities; and advising others for compensation.
- (f) "futures processing business" means a clearing organization.

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(g) "futures transactions" means transactions in futures or options that are regulated or subject to regulation by the Authorities, whether transacted on or subject to the rules of an exchange or market, or over-the-counter; and

(h) "laws or regulations" means: -

(i) the provisions of the laws, or regulations promulgated thereunder, of the United States and;

(ii) the provisions of the laws, or regulations promulgated thereunder, of Italy;

concerning:

(a) insider trading, misrepresentation or the use of fraudulent, deceptive or manipulative practices in connection with futures or options contracts;

(b) the duties of persons to comply with reporting requirements;

(c) the making of a false or misleading statement or any material omission in any application or report made to the Authorities by persons subject to regulation by the Authorities;

(d) the duties of persons or futures businesses to make full and fair disclosure of information to investors in connection with futures transactions;

(e) the duties of futures businesses and futures processing businesses pertaining to their financial, operational or other requirements and their duties of fair dealing in the offer and sale of futures and options, the execution of transactions and the conduct of their businesses;

(f) the financial and other qualifications of those engaged in, or in control of, futures businesses or futures processing businesses regulated or subject to regulation by the Authorities; and

(g) any other futures or options matters which fall under the jurisdiction of the Authorities.

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CLAUSE II SCOPE OF ASSISTANCE

1. The requested Authority will provide to the requesting Authority the fullest mutual assistance to the extent permitted by domestic law, within the framework of this Memorandum, in response to any request concerning matters within the jurisdiction of the requesting Authority.

2. In order to comply with any request for assistance under this Memorandum, the requested Authority will use all the means provided under the laws of its jurisdiction to investigate a violation of any law or regulation within the jurisdiction of the requesting Authority.

3. Assistance available under this Memorandum includes, but is not limited to:

- (a) providing information in the files of the requested Authority;
- (b) taking statements of persons; and
- (c) obtaining documents from persons.

4. The Authorities recognize that they may not in all circumstances possess the legal authority to provide the assistance contemplated in this Memorandum. Subject to such limitation, the Authorities intend to provide or otherwise facilitate the provision of assistance to the full extent permitted by law to accomplish the objectives of this Memorandum.

CLAUSE III GENERAL PRINCIPLES FOR MUTUAL ASSISTANCE FOR THE EXCHANGE OF INFORMATION

1. This Memorandum sets forth a statement of intent of the Authorities regarding the exchange of information between the Authorities.

2. The provisions of this Memorandum do not create binding obligations on the Authorities; do not supersede domestic law; and will not give rise to a right, directly or indirectly, on the part of any person, other than the Authorities, to obtain, suppress or exclude any information or to challenge the execution of a request for assistance under this Memorandum.

3. Assistance under this Memorandum may be denied by the requested Authority where:

- (a) the request is not in accordance with the provisions set forth in this Memorandum;

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- (b) the execution of the request would prejudice the sovereignty, security, public interest or public order of the state of the requested Authority;
- (c) a criminal proceeding has already been initiated in the state of the requested Authority based upon the same facts and against the same persons, or the same persons have already been finally sanctioned on the same charges by the competent Authority, unless the requesting Authority can demonstrate that the relief or sanctions sought in any such proceeding would not be duplicative of any relief or sanctions obtained in the state of the requested Authority.

CLAUSE IV REQUESTS FOR ASSISTANCE

1. Requests for assistance are to be made in writing and addressed to the requested Authority's contact officer(s) listed in Appendix A. Requests will be accompanied by a translation into Italian in the case of a request to the CONSOB and into English in the case of a request to the Commodity Futures Trading Commission.

2. The request for assistance will specify:

- (a) the information sought by the requesting Authority;
- (b) a general description of both the matter which is the subject of the request and the purpose for which the information is sought;
- (c) the persons or entities suspected by the requesting Authority of possessing the information sought or the places where such information may be obtained, if the requesting Authority is knowledgeable thereof;
- (d) the laws or regulations pertaining to the matter which is the subject of the request; and
- (e) the desired time period for the reply and, where appropriate, the urgency thereof.

3. In the event of urgency, requests for assistance and replies to such requests may be transmitted by summary or emergency procedures provided that they are confirmed in the manners prescribed in paragraphs 1 and 2 of this Clause.

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CLAUSE V

EXECUTION OF REQUESTS

1. In making a request for assistance, the requesting Authority may designate the persons whose statement it wishes to be taken.

2. A person whose statement is taken pursuant to a request will have the right to have counsel present during the taking of the statement. Statements will be taken in the same manner and to the same extent as in proceedings in the State of the requested Authority.

3. If the requested Authority consents, representatives designated by the requesting Authority may be present when a statement is taken and may prescribe specific questions to be asked.

4. If the requested Authority consents, a verbatim transcript may be made of the statement.

5. If it appears that responding to a request for assistance under this Memorandum will involve substantial costs being incurred by the requested Authority, the requested Authority and requesting Authority will establish a cost sharing arrangement before continuing to respond to such request for assistance.

CLAUSE VI

PERMISSIBLE USES OF INFORMATION

1. The requesting Authority may use the information furnished solely:

- (a) for purposes stated in the request, including ensuring compliance with or enforcement of the law or regulation specified in the request and related provisions; and
- (b) for purposes within the general framework of the use stated in the request, including conducting a civil or administrative enforcement proceeding, or market surveillance, assisting in a criminal prosecution, or conducting any investigation related thereto for any general charge applicable to the violation of the law, or regulation specified in the request.

2. To use the information furnished for any purpose other than those stated in paragraph 1 of this Clause, the requesting Authority will first inform the requested Authority of its intention and provide the requested Authority an opportunity to oppose the utilization. If the requested Authority opposes the utilization, the information may be used only under the conditions imposed by the requested Authority. If use of the information is opposed by the

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requested Authority, the Authorities will consult pursuant to Clause VIII concerning the reasons for the refusal and the circumstances under which use of the information might otherwise be allowed.

CLAUSE VII CONFIDENTIALITY -

1. Each Authority will keep confidential, to the extent permitted by law, requests made within the framework of this Memorandum, the contents of such requests, and any other matters arising during the operation of this Memorandum, including consultations between the Authorities.

2. The requesting Authority will keep confidential, to the extent permitted by law, any information received pursuant to this Memorandum, except in the case where the information provided must be disclosed in the course of its use pursuant to Clause VI.

3. The Authorities may, by mutual arrangement, make an exception, to the extent permitted by law, to the principles set forth in paragraphs 1 and 2 above, applicable to each Authority.

CLAUSE VIII DISPUTES AND CONSULTATIONS

1. The Authorities will keep the operation of this Memorandum under continuous review and will consult with a view to improving its operation and resolving any matters that may arise. In particular, the Authorities will consult upon request in the event of:

- (a) a refusal by one Authority to comply with a request for information on the grounds set forth in paragraph 3 of Clause III, or a request to use information on the grounds set forth in paragraph 2 of Clause VI;
- (b) a change in market or business conditions or in the legislation governing matters within the jurisdiction of either Authority, or any difficulty which may make it necessary to amend or extend this Memorandum in order to achieve its purposes; or
- (c) a dispute regarding the meaning of any terms used in this Memorandum.

2. The Authorities may agree on such practical measures as may be necessary to facilitate the implementation of this Memorandum.

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CLAUSE IX

EFFECTIVE DATE

This Memorandum will be effective from the date of its signing by the Authorities. Each Authority will inform the other Authority of the adoption of the domestic measures that may be necessary to implement the provisions of this Memorandum.

CLAUSE X

TERMINATION

1. This Memorandum will continue to have effect unless terminated by either Authority by giving 30 days advance written notice to the other Authority that this Memorandum is no longer to have effect. If any Authority gives such notice, this Memorandum will continue to have effect with respect to all requests for assistance which are made before the effective date of notification until the requesting Authority terminates the matter for which assistance was requested.

Signed at Milan, this 22nd day of June, 1995

Commodity Futures Trading Commission

Commissione Nazionale per le Società e la
Borsa

by Mary L. Schapiro
Mary L. Schapiro
Chairman

by Enzo Berlanda
Enzo Berlanda
Chairman

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