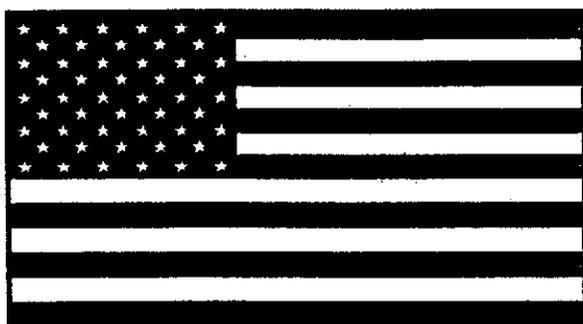


**MEMORANDUM  
OF  
UNDERSTANDING**



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



**THE MONETARY AUTHORITY  
OF  
SINGAPORE**

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

**May 16, 2000**

*The United States Commodity Futures Trading Commission, the United States Securities and Exchange Commission and the Monetary Authority of Singapore, recognizing increased international activity in securities and futures transactions and acknowledging the 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 Commodity Futures Trading Commission of the United States;
  - (b) the Securities and Exchange Commission of the United States; or
  - (c) the Monetary Authority of Singapore.
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. "Futures Contract" means a futures or options transaction regulated or subject to regulation by the Authorities whether transacted over-the-counter or on or subject to the rules of an exchange or market.
5. "Futures Business" includes, among others, any person involved in: the offer, purchase or sale of futures contracts for the account of others; the purchase or sale of futures contracts for one's own account; advising others for compensation, directly or through media, regarding the offer, purchase or sale of futures contracts; the management, promotion, offer or sale of collective investment schemes involving futures contracts; or equivalent activities. The definition of a futures business also includes persons, among others, acting in the capacity of commodity trading advisors, commodity pool operators, futures commission merchants, introducing brokers, associated persons, floor brokers and floor traders.
6. "Futures Market" means an exchange or other market, including an over the counter market, for futures and options that is recognized, supervised or subject to regulation by the Authorities.
7. "Futures Processing Business" means a clearing organization for futures contracts.

8. "Laws and/or Regulations" mean:
- (a) for securities, the provisions of the laws of the United States and/or Singapore, the regulations promulgated thereunder, and other regulatory requirements that fall within the jurisdiction of the Authorities, concerning securities; and
  - (b) for futures, the provisions of the laws of the United States and/or Singapore, the regulations promulgated thereunder, and other regulatory requirements that fall within the jurisdiction of the Authorities, concerning futures contracts.
9. "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.
10. "Securities" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.
11. "Securities Business" means, any business that involves, in whole or in part, the offer, purchase or sale of securities for the account of others; the purchase or sale of securities for one's own account; advising others for compensation, directly or through media, regarding the offer, purchase or sale of securities; the management, promotion, offer or sale of collective investment schemes involving securities; or equivalent activities. The definition of a securities business also includes persons, among others, acting in the capacity of dealers, investment advisers, introducing brokers, associated persons, floor brokers and floor traders. The definition also includes operation of a securities market.
12. "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 the Authorities.

13. "Securities Processing Business" means a clearing organization for securities, a securities clearing agency, a securities depository or securities transfer agent.

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

14. The Authorities intend to consult periodically about matters of mutual concern. Such consultation will be undertaken in the interest of improving cooperation to enhance: the efficiency and integrity of the Securities and Futures Markets of the United States and Singapore; the protection of investors and customers; appropriate market oversight; and the effective performance by the Authorities of their respective functions regarding the Laws and/or Regulations of the United States and Singapore.

#### **MUTUAL ASSISTANCE AND THE EXCHANGE OF INFORMATION**

15. **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/or Regulations of the Authorities. This Memorandum of Understanding does not create legally binding obligations or supersede domestic laws.
  - (b) This Memorandum of Understanding does not prohibit an Authority from taking measures other than those described herein to obtain information necessary to ensure enforcement of or compliance with the Laws and/or 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 not defined as an Authority within this Memorandum of Understanding, 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 exchanging assistance and information for the purpose of enforcing

and securing compliance with the Laws and/or 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 21.

#### **16. 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 Singapore. Such assistance will be provided in order to facilitate: market oversight including market and financial surveillance; the granting of licenses, authorizations, waivers or exemptions for the conduct of Securities and Futures Businesses and Securities and Futures Processing Businesses; the supervision of Securities and Futures Businesses and Securities and Futures Processing Businesses; the inspection of Securities and Futures Businesses and Securities and Futures Processing Businesses; and the investigation, litigation or prosecution by the Authorities of activity that potentially violates the Laws and/or Regulations applicable in their respective jurisdictions.
- (b) The assistance available under this Memorandum of Understanding includes, without limitation:
  - (i) providing information held in the files of the Requested Authority upon request by the Requesting Authority;
  - (ii) taking statements of Persons; and
  - (iii) obtaining information and documents from Persons.
- (c) The Authorities recognize that they may not in all circumstances possess the legal authority to provide the assistance or information

referred to in paragraph 16. In such circumstances, the Authorities will use all reasonable efforts to obtain the aid of such other governmental agencies that can provide the assistance or information described in paragraph 16.

**17. 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, 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/or 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 facsimile, provided such communication is confirmed in writing.

**18. Execution of Requests for Assistance**

- (a) Information held in the files of the Requested Authority will be provided to the Requesting Authority upon request.
- (b) Upon request, the Requested Authority will take the 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 that may assist in the execution of the request. The

Requested Authority will make a transcript of any statement it takes on behalf of the Requesting Authority.

- (c) Unless otherwise agreed 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.
- (d) Notwithstanding paragraph 18(c), any Person providing a statement pursuant to a request for assistance under this Memorandum of Understanding will have the right to have counsel present.
- (e) Notwithstanding any other provision of this Memorandum of Understanding, any Person providing a statement, 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.
- (f) Upon request, the Requested Authority will inspect specified books, records, Futures Businesses, Securities Businesses, Futures Processing Businesses or Securities Processing Businesses.
- (g) 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.

**19. 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/or 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 organisation's surveillance or enforcement activities (insofar as it is involved in the supervision of trading or conduct that is the subject of the request), assisting in a criminal prosecution, or conducting any investigation for any general charge applicable to the violation of the provision specified in the request where such general charge pertains to a violation of the Laws and/or 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 19(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 21 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. Fourteen-day advance notification need not be provided where disclosures are made to Persons having the legal power to compel disclosure; in such cases, notification will be provided according to paragraph 20(c).

## 20. Confidentiality

- (a) Each Authority will keep confidential, to the extent permitted by law, requests made under this Memorandum of Understanding, the contents of such requests, and any matters arising under this Memorandum of Understanding including consultations between the Authorities, and unsolicited assistance.
- (b) The Requesting Authority will not disclose non-public information received under this Memorandum of Understanding, except as contemplated by paragraph 19 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.
- (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 will assert such appropriate legal exemptions or privileges with respect to such information as may be available.

- (d) To the extent permitted by law, the Authorities may by mutual written consent make an exception to the principles set forth in paragraph 20(a) and (b).
- (e) In response to a request by the Requested Authority, and to the extent permitted by law, as soon as the Requesting Authority has terminated the matter for which assistance has been requested under this Memorandum of Understanding, it will return to the Requested Authority all documents and copies thereof not already disclosed in proceedings referred to in paragraph 19(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.

**21. 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 the other Authority pursuant to this Memorandum of Understanding;
  - (ii) a change in market or business conditions or in the legislation governing the matters set forth in paragraph 8; and
  - (iii) any other 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.

**22. Unsolicited Assistance**

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

**FINAL PROVISIONS**

**23. Effective Date**

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

**24. Termination**

Cooperation and assistance in accordance with this Memorandum of Understanding will continue until the expiration of 30 days after any Authority gives written notice to the other Authorities of its intention to discontinue cooperation and assistance hereunder. If either the CFTC or the SEC gives such notice, cooperation under this Memorandum will continue with respect to the other two Authorities. If any Authority gives a termination notice, cooperation and assistance in accordance with this Memorandum of Understanding will continue with respect to all requests for assistance that were made or information provided before the effective date of notification (as indicated in the notice but no earlier than the date the notice is sent) until the Requesting Authority terminates the matter for which assistance was requested.

SIGNED IN TRIPLICATE IN ENGLISH AT SYDNEY, AUSTRALIA, THIS 16<sup>th</sup> DAY OF  
MAY 2000.

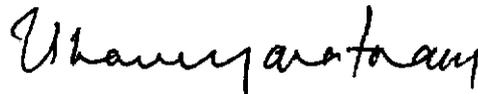
**FOR THE COMMODITY FUTURES  
TRADING COMMISSION OF  
THE UNITED STATES:**



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**William Rainer  
Chairman**

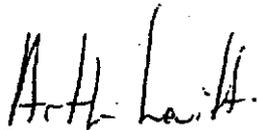
**FOR THE MONETARY  
AUTHORITY OF SINGAPORE:**



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**Tharman Shanmugaratnam  
Deputy Managing Director  
(Financial Supervision)**

**FOR THE SECURITIES AND  
EXCHANGE COMMISSION OF  
THE UNITED STATES**



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**Arthur Levitt  
Chairman**

**APPENDIX A**

**CONTACT OFFICERS**

**US Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581  
USA**

**For investigatory and enforcement information:  
Director, Division of Enforcement  
Chief Counsel, Division of Enforcement**

**Tel: (202) 418-5320  
Fax: (202) 418-5523**

**For supervisory information:  
Director, Division of Trading and Markets**

**Tel: (202) 418-5430  
Fax: (202) 418-5536**

**For market surveillance information:  
Director, Division of Economic Analysis**

**Tel: (202) 418-5260  
Fax: (202) 418-5527**

**US Securities and Exchange Commission  
450 5<sup>th</sup> Street, N.W.  
Washington D.C 20549  
USA**

**For all information  
Director of International Affairs  
Tel: (202) 942-2770  
Fax: (202) 942-9524**

**Monetary Authority of Singapore  
10 Shenton Way  
MAS Building  
Singapore 079117**

**For all information:**

**Head of Department,  
Securities and Futures Department**

**Tel: (65)-229-9461**

**Fax: (65)-229-9697**