

# ด่วน

ที่ พณ. กสอ. / 959



สำนักเลขาธิการคณะรัฐมนตรี  
รับที่.....  
วันที่ 15 มี.ค. 2549 เวลา 16.38

กระทรวงพาณิชย์

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15 มี.ค. 49  
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15 มีนาคม 2549

เรื่อง ร่างข้อตกลง (Arrangement) ระหว่างสำนักงานคณะกรรมการกำกับและส่งเสริมการประกอบธุรกิจการค้าเกษตรล่วงหน้ากับ  
The United States Commodity Futures Trading Commission

เรียน เลขาธิการคณะรัฐมนตรี

จัดเข้าวาระ 21 มี.ค. 2549

- สิ่งที่ส่งมาด้วย
1. เอกสารประกอบโดยย่อ เกี่ยวกับ The United States Commodity Futures Trading Commission (CFTC) ของ CFTC จำนวน 20 ชุด
  2. "Arrangement between The United States Commodity Futures Trading Commission and The Office of the Agricultural Futures Trading Commission of Thailand" จำนวน 20 ชุด
  3. หนังสือที่ กต 0802/53 เรื่อง ร่างข้อตกลง (Arrangement) ระหว่างสำนักงานคณะกรรมการกำกับและส่งเสริมการประกอบธุรกิจการค้าเกษตรล่วงหน้า กับ The United States Commodity Futures Trading Commission ลงวันที่ 24 มกราคม 2549 จำนวน 20 ฉบับ

คณะกรรมการกำกับและส่งเสริมการประกอบธุรกิจการค้าเกษตรล่วงหน้า ("คณะกรรมการ ก.ส.ล.") มีอำนาจและหน้าที่ในการวางนโยบายการส่งเสริมและพัฒนาตลาดจนกำกับดูแลการซื้อขายสินค้าเกษตรล่วงหน้า การประกอบธุรกิจที่เกี่ยวข้องหรือเกี่ยวเนื่องกับการซื้อขายสินค้าเกษตรล่วงหน้า โดยมีสำนักงานคณะกรรมการกำกับและส่งเสริมการประกอบธุรกิจการค้าเกษตรล่วงหน้า ("สำนักงาน") เป็นนิติบุคคลที่จัดตั้งขึ้นตามพระราชบัญญัติการซื้อขายสินค้าเกษตรล่วงหน้า พ.ศ. 2542 ทำหน้าที่เป็นองค์กรกำกับดูแลและส่งเสริมพัฒนาการซื้อขายสินค้าเกษตรล่วงหน้าให้เป็นไปตามมติและนโยบายของคณะกรรมการ ก.ส.ล. หลังจากการจัดตั้งตลาดสินค้าเกษตรล่วงหน้าแห่งประเทศไทยและเปิดทำการซื้อขายล่วงหน้าไปแล้ว เมื่อวันที่ 28 พฤษภาคม 2547 จนถึงปัจจุบัน คณะกรรมการ ก.ส.ล. และสำนักงานได้ส่งเสริมและกำกับดูแลผู้ประกอบการซื้อขายล่วงหน้าและตลาดสินค้าเกษตรล่วงหน้าแห่งประเทศไทยประสบผลเป็นที่น่าพอใจในระดับหนึ่ง

อย่างไรก็ดีเนื่องจากสำนักงานเป็นองค์กรจัดตั้งขึ้นใหม่ หากจะให้การทำหน้าที่ในการกำกับดูแลการซื้อขายสินค้าเกษตรล่วงหน้าให้เป็นไปอย่างมีประสิทธิภาพยิ่งขึ้นและเป็นที่น่าเชื่อถือในระดับสากล คณะกรรมการ ก.ส.ล. เห็นความจำเป็นที่จะต้องได้รับการสนับสนุนทางวิชาการจากองค์กรกำกับดูแลการซื้อขายล่วงหน้าในต่างประเทศ ที่มีประสบการณ์และเป็นที่ยอมรับของหน่วยงานหรือองค์กรที่เกี่ยวข้อง ในการนี้ จึงได้มอบหมายให้สำนักงานประสานกับ The United States Commodity Futures Trading Commission (CFTC) ซึ่งเป็นหน่วยงานอิสระ (Independent Agency) ของรัฐบาลสหรัฐอเมริกา จัดตั้งขึ้นโดยสภานิติบัญญัติของประเทศสหรัฐอเมริกา ในปี ค.ศ. 1974 ให้ทำหน้าที่กำกับดูแลการซื้อขาย

Futures และ Options สำหรับสินค้าโภคภัณฑ์และสินค้าประเภทอื่น ๆ ในประเทศสหรัฐอเมริกา (สิ่งที่ส่งมาด้วย 1) เพื่อขอทำข้อตกลง (Arrangement) ในอันที่จะส่งเสริมความสัมพันธ์อันดีระหว่างกัน และให้ความร่วมมือกันในการแลกเปลี่ยนข้อมูลข่าวสารต่าง ๆ โดยเฉพาะอย่างยิ่งให้ความช่วยเหลือเกี่ยวกับการวางระบบและกฎหมายในการดำเนินการเกี่ยวกับธุรกรรมการซื้อขายสินค้าเกษตรล่วงหน้าในประเทศไทย ทั้งนี้ภายใต้ขอบเขตที่กฎหมายของแต่ละประเทศอนุญาตให้ดำเนินการได้อีกทั้งข้อตกลงดังกล่าวจะไม่ก่อให้เกิดพันธะผูกพันทางกฎหมายหรือมีผลเหนือกฎหมายของแต่ละประเทศ

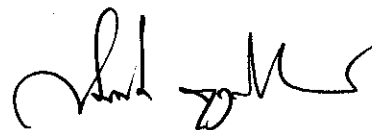
โดยที่ข้อตกลงดังกล่าวเป็นข้อตกลงระหว่างหน่วยงานของรัฐทั้ง 2 ประเทศ สำนักงานจึงได้ขอความอนุเคราะห์กรมสนธิสัญญาและกฎหมาย กระทรวงการต่างประเทศ พิจารณาตรวจจ้อยคำร่างข้อตกลงระหว่าง 2 หน่วยงาน (สิ่งที่ส่งมาด้วย 2) ทั้งในประเด็นนโยบายของรัฐและประเด็นข้อกฎหมายที่เกี่ยวข้อง รวมทั้งคำแนะนำอันจะเป็นประโยชน์ต่อการลงนามในร่างข้อตกลงระหว่าง CFTC กับสำนักงาน ซึ่งกรมสนธิสัญญาและกฎหมายได้ให้ความเห็นว่า (สิ่งที่ส่งมาด้วย 3)

1. ร่างข้อตกลงดังกล่าวเป็นความร่วมมือด้านกฎระเบียบและความช่วยเหลือด้านวิชาการระหว่างสำนักงานและ CFTC มิได้ก่อให้เกิดพันธะผูกพันทางกฎหมาย และมีขีดความตกลงระหว่างประเทศ
2. ในด้านสารัตถะ หากสำนักงานสามารถปฏิบัติตามข้อบทในร่างข้อตกลงดังกล่าวได้ โดยเฉพาะอย่างยิ่งความร่วมมือในการแลกเปลี่ยนข้อมูลทั่วไปและข้อมูลลับตามที่ระบุไว้ในข้อ 4 ก็ไม่มีข้อขัดข้อง
3. สำหรับการเสนอเรื่องร่างข้อตกลงดังกล่าวให้คณะรัฐมนตรีพิจารณานั้น ต้องดำเนินการตามพระราชกฤษฎีกาว่าด้วยการเสนอเรื่องและการประชุมคณะรัฐมนตรี พ.ศ. 2548

เมื่อสำนักงานได้รับทราบผลการพิจารณาของกรมสนธิสัญญาและกฎหมายดังกล่าวแล้ว จึงได้ประสานกับ CFTC เพื่อลงนาม "Arrangement between The United States Commodity Futures Trading Commission and The Office of the Agricultural Futures Trading Commission of Thailand" ซึ่งได้รับแจ้งในเบื้องต้นกำหนดการลงนามประมาณกลางเดือนมีนาคม 2549

จึงเรียนมาเพื่อโปรดพิจารณานำเสนอคณะรัฐมนตรีเพื่อโปรดทราบด้วย จะขอบคุณยิ่ง

ขอแสดงความนับถือ



(นายสมคิด จาตุศรีพิทักษ์)

รัฐมนตรีว่าการกระทรวงพาณิชย์

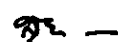
ประธานกรรมการกำกับกำกับการซื้อขายสินค้าเกษตรล่วงหน้า

สำนักงานคณะกรรมการกำกับกำกับการซื้อขายสินค้าเกษตรล่วงหน้า  
ฝ่ายกฎหมาย โทรศัพท์ 0-2685-3250 ต่อ 500, 501

8 ม. / ๕  
ได้นำเสนอคณะรัฐมนตรี  
เมื่อวันที่ 21 มี.ค. 2549

(ทราบเพื่อเป็นข้อมูล)

จัดอยู่ในประเภทเรื่องทราบเพื่อเป็นข้อมูล



(นายสุรชัย ภูประเสริฐ)

รองเลขาธิการคณะรัฐมนตรี ปฏิบัติราชการแทน  
เลขาธิการคณะรัฐมนตรี

## The CFTC at a Glance

### **The CFTC Mission:**

The Commodity Futures Trading Commission (CFTC) was created by Congress in 1974 as an independent agency with the mandate to regulate commodity futures and option markets in the United States. The agency protects market participants against manipulation, abusive trade practices and fraud. Through effective oversight and regulation, the CFTC enables the markets to serve better their important functions in the nation's economy—providing a mechanism for price discovery and a means of offsetting price risk.

### **What is a Futures Contract?**

A futures contract is an agreement to buy or sell in the future a specific quantity of a commodity at a specific price. Most futures contracts contemplate that actual delivery of the commodity can take place to fulfill the contract. However, some futures contracts require cash settlement in lieu of delivery, and most contracts are liquidated before the delivery date. An option on a commodity futures contract gives the buyer of the option the right to convert the option into a futures contract. Futures and options must be executed on the floor of a commodity exchange—with very limited exceptions—and through persons and firms who are registered with the CFTC.

### **Who Uses Futures and Options Markets?**

Most of the participants in the futures and option markets are commercial or institutional users of the commodities they trade. These users, most of whom are called "hedgers," want the value of their assets to increase and also want to limit, if possible, any loss in value. Hedgers may use the commodity markets to take a position which will reduce the risk of financial loss in their assets due to a change in price. Other participants are "speculators" who hope to profit from changes in the price of the futures or option contract.

### **History of Futures Trading in the U.S.**

Futures contracts for agricultural commodities have been traded in the U.S. for more than 100 years and have been under Federal regulation since the 1920s. In the last 20 years, futures trading has expanded rapidly into many new markets, beyond the domain of traditional physical and agricultural commodities. Futures and options are now offered on many energy commodities such as crude oil, gasoline heating, oil, and natural gas, as well as on a vast array of financial instruments, including foreign currencies, U.S. and foreign government securities, and U.S. and foreign stock indices. In addition, in recent years, new futures contracts have been offered in non-traditional commodity areas such as electricity, seafood, dairy products, crop yields, and weather derivatives.

### **CFTC's Responsibilities to the Markets and Their Users**

#### **Contract Review and Market Surveillance:**

To ensure the financial and market integrity of the nation's futures markets, the CFTC reviews the terms and conditions of proposed futures and option contracts. Before an exchange lists a new futures or option contract for trading, it must certify that the contract complies with the requirements of the Commodity Exchange Act (CEA) and the Commission's regulations, including the requirement that the contract terms reflect commercial trading practices and that the contract not be readily susceptible to manipulation. The Commission conducts daily market surveillance and can, in an emergency, order an exchange to take specific action or to restore orderliness in any futures contract that is being traded.

#### **Regulation of Futures Professionals:**

Companies and individuals who handle customer funds or give trading advice must apply for registration through the National Futures Association (NFA), a self-regulatory organization approved by the Commission. The CFTC also seeks to protect customers by requiring registrants to disclose market risks and past performance information to prospective customers, by requiring that customer funds be kept in accounts separate from those maintained by the firm for its own use, and by requiring customer accounts to be adjusted to reflect the current market value at the close of trading each day. In addition, the CFTC monitors registrant supervision systems, and internal controls and sales practice compliance programs.

Commodity exchanges complement Federal regulation with rules of their own—rules covering clearance of trades, trade orders and records, position limits, price limits, disciplinary actions, floor trading practices, and standards of business conduct. A new or amended exchange rule may be implemented upon certification by the exchange that the new or amended rule complies with the CEA and Commission regulations. The CFTC may also direct an exchange to change its rules or practices if found to be in violation. The NFA performs similar functions for non-exchange member firms. The CFTC also regularly audits each exchange's and the NFA's compliance program.

## **How the CFTC is Organized**

### **Commissioners**

The Commission consists of five Commissioners, appointed by the President with the advice and consent of the Senate to serve staggered five-year terms. The Commission develops and implements agency policy and direction. One of the Commissioners is designated by the President to serve as Chair. The Chair's staff has direct responsibility for providing information about the Commission to the public and interacting with other governmental agencies and the Congress, and for the preparation and dissemination of Commission documents. The Chair's staff also ensures that the Commission is responsive to requests filed under the Freedom of Information Act. The Chair's staff includes the Office of the Inspector General, which conducts audits of CFTC programs and operations, and the Office of International Affairs, which is the focal point for the Commission's global regulatory coordination efforts.

Major policy decisions and Commission actions, such as adoption of agency rules and regulations and the authorization of enforcement actions, must be approved by a majority vote of the Commissioners. Most Commission meetings are open to the public. Information on Commission meetings can be obtained from the Commission's Office of External Affairs or the CFTC's website at <http://www.cftc.gov/>.

The CFTC monitors markets and market participants closely by maintaining, in addition to its headquarters office in Washington, offices in cities that have futures exchanges—New York, Chicago, Kansas City, and Minneapolis. For enforcement purposes, the Commission also maintains an office in Los Angeles.

### **Operating Units**

Under the CFTC restructuring announced on February 1, 2002, to facilitate the implementation of the Commodity Futures Modernization Act of 2000, the Commission now has six major operating units: the Division of Clearing and Intermediary Oversight, the Division of Market Oversight, the Division of Enforcement, the Office of the Chief Economist, the Office of the General Counsel, and the Office of the Executive Director.

### **Division of Clearing and Intermediary Oversight**

The functions of the new Division of Clearing and Intermediary Oversight include oversight of derivatives clearing organizations, financial integrity of registrants, customer fund protection, stock-index margin, registration and fitness of intermediaries, sales practice reviews, National Futures Association activities related to intermediaries, and foreign market access by intermediaries.

### **Division of Market Oversight**

The new Division of Market Oversight has regulatory responsibility for initial recognition and continuing oversight of trade execution facilities, including new registered futures exchanges and derivatives transaction execution facilities. The regulatory functions of the new Division include, among other things, market surveillance, trade practice reviews and investigations, rule enforcement reviews, review of product-related and market-related rule amendments, and associated product and market-related studies.

### **Division of Enforcement**

The Division of Enforcement investigates and prosecutes alleged violations of the Commodity Exchange Act and CFTC regulations. Violations may involve commodity futures or option trading on domestic commodity exchanges, or the improper marketing of commodity investments. The Division may, at the direction of the Commission, file complaints before the

agency's administrative law judges or in the U.S. District Courts. Alleged criminal violations of the Commodity Exchange Act or violations of other Federal laws which involve commodity futures trading may be referred to the Justice Department for prosecution. The Division also provides expert help and technical assistance with case development and trials to U.S. Attorneys Offices, other Federal and state regulators, and international authorities.

**Office of Chief Economist**

The Office of the Chief Economist is an independent office with responsibility for providing expert economic advice to the Commission. Its functions include policy analysis, economic research, expert testimony, education, and training.

**Office of the General Counsel**

The Office of the General Counsel (OGC) is the Commission's legal advisor. OGC staff represent the Commission in appellate litigation and certain trial-level cases, including bankruptcy proceedings which involve futures industry professionals. As its legal advisor, OGC reviews all substantive regulatory, legislative, and administrative matters presented to the Commission and advises the Commission on the application and interpretation of the Commodity Exchange Act and other administrative statutes. OGC also assists the Commission in performing its adjudicatory functions.

**Office of the Executive Director**

The Office of the Executive Director (OED) formulates and implements the management and administrative policies and functions of the agency. OED staff formulate the agency's budget, supervise the allocation and use of agency resources, promote management controls and financial integrity, and develop and maintain the agency's automated information systems. The Office of Proceedings, which is under the administrative direction of OED, provides an inexpensive and expeditious forum for handling customer complaints against people or firms registered with NFA through its reparations program. The Office of Proceedings also hears and decides enforcement cases brought by the Commission.

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Date: April 27, 2005

## **THE CFTC: AN ACTIVE PARTNER IN GLOBAL COOPERATION THROUGH INFORMATION-SHARING WITH OTHER FINANCIAL REGULATORS**

The U.S. Commodity Futures Trading Commission (CFTC) cooperates with a number of foreign regulatory and enforcement authorities through formal Memoranda of Understanding (MOUs) and other arrangements to combat cross-border fraud and other illegal practices that could harm customers or threaten market integrity.

Cross-border information-sharing among market authorities plays an integral role in the effective surveillance of global markets linked by products, participants, and technology. Indeed, information-sharing arrangements can be critical in combating cross-border fraud and manipulation, addressing the financial risks of market participants, and sharing regulatory expertise on market oversight and supervision. The CFTC makes and receives a significant number of requests for assistance and information to and from foreign authorities in connection with various surveillance and enforcement issues.

The CFTC has entered into MOUs and cooperative arrangements with many jurisdictions, including cooperative enforcement arrangements, arrangements relating to sharing financial and other types of fitness information, and arrangements for sharing information on matters related to the implementation of the CFTC's Part 30 regulations, which grant foreign firms an exemption from certain CFTC requirements.<sup>1</sup> The CFTC also was instrumental in developing the Declaration on Cooperation and Supervision of International Futures Markets and Clearing Organizations (Boca Declaration) and its companion exchange MOU, multilateral, large exposure, information-sharing arrangements.

### **I. ARRANGEMENTS FOR COOPERATIVE ENFORCEMENT**

The CFTC has entered into numerous arrangements for cooperative enforcement with authorities in more than 20 jurisdictions. The arrangements include 21 MOUs,<sup>2</sup> two Agreements, one exchange of Diplomatic Notes pursuant to a Treaty (signed by the U.S. Department of State on behalf of the CFTC), one Joint Communiqué, one Joint Statement, and various exchanges of letters.

- **Argentina**

#### **Comisión Nacional de Valores (CNV)**

May 30, 1995 - MOU on Consultation, Technical Assistance, and Mutual Assistance for the Exchange of Information

- **Australia**

#### **Australian Securities Commission (ASC)**

*(now Australian Securities and Investments Commission (ASIC))*

October 19, 1994 - MOU concerning Consultation and Cooperation in the Administration and Enforcement of Futures Laws

- **Brazil**

#### **Comissão de Valores Mobiliários (CVM)**

April 12, 1991 - MOU on Mutual Assistance and Exchange of Information

agency's administrative law judges or in the U.S. District Courts. Alleged criminal violations of the Commodity Exchange Act or violations of other Federal laws which involve commodity futures trading may be referred to the Justice Department for prosecution. The Division also provides expert help and technical assistance with case development and trials to U.S. Attorneys Offices, other Federal and state regulators, and international authorities.

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- **Canada**

**Ontario Securities Commission (OSC)**

July 7, 1992 - MOU

**Commission des valeurs mobilières du Québec (CVMQ)**

July 7, 1992 - MOU

- **France**

**Commission des Opérations de Bourse (COB)**

June 6, 1990 - Administrative Agreement<sup>3</sup>

- **Germany**

**Bundesaufsichtsamt für den Wertpapierhandel (BAWe)**

October 17, 1997 - MOU concerning Consultation and Cooperation in the Administration and Enforcement of Futures Laws

- **Hong Kong**

**Securities and Futures Commission (SFC)**

October 5, 1995 - MOU concerning Consultation and Cooperation in the Administration and Enforcement of Futures Laws

- **IOSCO (International Organization of Securities Commissions)**

**IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (IOSCO Multilateral MOU)**

May 2002 - The IOSCO Multilateral MOU is a multilateral mechanism for sharing information on a bilateral basis between signatories. A list of signatories can be found at [www.iosco.org](http://www.iosco.org).

- **Ireland**

**Irish Financial Services Regulatory Authority (IFSRA)**

March 17, 2004 - The CFTC-IFSRA Statement of Intent (SOI) concerns consultation and cooperation in the administration and enforcement of futures laws. The SOI provides a framework for information sharing, thereby facilitating cooperation in cross-border investigations of potential violations of commodity futures and options laws.

- **Isle of Man**

**Financial Supervision Commission (FSC)**

April 12, 2005 - Statement of Intent Concerning Mutual Assistance and Cooperation Arrangements

- **Italy**



## **Commissione Nazionale per le Società e la Borsa (CONSOB)**

June 22, 1995 - MOU on Consultation and Mutual Assistance for the Exchange of Information

- **Japan**

## **The Japanese Financial Services Agency (FSA) and the U.S. Securities and Exchange Commission (SEC)**

May 17, 2002 - Statement of Intent (SOI) Concerning Cooperation, Consultation and the Exchange of Information

- **Jersey**

## **The Jersey Financial Services Commission (FSC) and the U.S. Securities and Exchange Commission (SEC)**

May 30, 2002 - MOU Concerning Cooperation, Consultation and the Exchange of Information

- **Mexico**

## **Comisión Nacional Bancaria y de Valores (CNBV)**

May 11, 1995 - MOU on Consultation, Technical Assistance, and Mutual Assistance for the Exchange of Information

- **The Netherlands**

## **Government of the Kingdom of the Netherlands<sup>4</sup>**

April 29, 1993 - Agreement (through the Government of the United States of America) on Mutual Administrative Assistance in the Exchange of Information in Futures Matters

- **New Zealand**

## **New Zealand Securities Commission (NZSC)**

September 16, 1996 - MOU on Consultation and Mutual Assistance for the Exchange of Information

- **Portugal**

## **Comissão do Mercado de Valores Mobiliários (CMVM)**

February 4, 1999 - MOU concerning Consultation and Cooperation in the Administration and Enforcement of Futures Laws

- **Singapore**

## **Monetary Authority of Singapore**

May 16, 2000 - MOU concerning Consultation, Co-operation and the Exchange of Information (concluded jointly with the U.S. Securities and Exchange Commission)

- **South Africa**

## **Financial Services Board of the Republic of South Africa (FSB)**

May 27, 1997 - Joint Communiqué on Exchange of Information for Cooperation and Consultation

- **Spain**

## **Comisión Nacional del Mercado de Valores (CNMV)**

October 26, 1992 - MOU on Mutual Assistance and Exchange of Information

- **Switzerland**

## **Swiss Confederation**

November 3, 1993 - Diplomatic Notes (through the U.S. government) amending Article 1, Paragraph 3 of the Treaty on Mutual Assistance in Criminal Matters (MLAT)

- **Taiwan**

## **Securities and Futures Commission**

January 11, 1993 - MOU between the CFTC and the Taiwan Securities & Exchange Commission (now the Securities & Futures Commission) through, respectively, the American Institute in Taiwan and the Coordination Council for North American Affairs (now the Taipei Economic and Cultural Representative Office in the United States).

- **Turkey**

## **Capital Market Board Of Turkey**

June 25, 2001 - MOU between the CFTC and the Capital Market Board of Turkey concerning Consultation, Cooperation, and the Exchange of Information.

- **United Kingdom**

## **Department of Trade and Industry (DTI)**

## **Securities and Investments Board (SIB)**

*(now Financial Services Authority (FSA))*

## **HM Treasury (HMT) *(added on May 9, 1994)***

September 25, 1991 - MOU on Mutual Assistance and Exchange of Information, concluded jointly with the U.S. Securities and Exchange Commission.

## **II. REGULATION OF CROSS-BORDER FUTURES ACTIVITY**

These arrangements establish a framework for cooperation and assistance in the regulation of cross-border futures activity, including the sharing of routine audit information, cooperation in conducting on-site examinations, the sharing of information regarding the underlying reference value or the supply of a product covered by a futures contract, and the sharing of fitness and properness information on intermediaries and other registered entities.

- **France**

#### **Conseil des Marchés Financiers**

March 21, 2002 - Memorandum of Understanding (regarding the sharing of fitness and properness information on remote members of regulated markets)

- **Hong Kong**

#### **Securities and Futures Commission (SFC)**

October 5, 1995 - Declaration on Cooperation and Supervision of Cross-Border Managed Futures Activity

- **Italy**

#### **Commissione Nazionale per le Società e la Borsa (CONSOB)**

April 5, 2000 - Exchange of letters relating to the listing of equity-based futures contracts

September 11, 2000 Supplemental MOU to facilitate the recognition of regulated markets

- **United Kingdom**

#### **Financial Services Authority (FSA)**

May 14, 2000 - Arrangement on Warehouse Information to facilitate exchanges of information for surveillance and enforcement purposes regarding deliverable commodities.

### **III. FINANCIAL INFORMATION-SHARING MEMORANDA OF UNDERSTANDING**

Financial Information-Sharing MOUs (FISMOUs) originally provided a basis to exempt firms from the application of one jurisdiction's capital requirements in deference to home state requirements coupled with information exchange. Current FISMOUs include risk assessment of related firms that are located in different jurisdictions.

- **Canada**

#### **Ontario Securities Commission (OSC)**

#### **Commission des valeurs mobilières du Québec (CVMQ) (& Canadian Self-Regulatory Organizations (SROs))**

September 23, 1991 - Financial Information-Sharing MOU

- **United Kingdom**

#### **Securities and Investments Board (& U.K. SROs)**

*(now Financial Services Authority (FSA))*

September 1, 1988 - Financial Information-Sharing MOU

May 15, 1989 - Addendum to FISMOU

### **IV. CROSS-SECTORAL INFORMATION-SHARING FOR SUPERVISORY, PRUDENTIAL, AND RISK ASSESSMENT PURPOSES**

This arrangement facilitates information-sharing for supervisory, prudential, and risk-assessment purposes with respect to U.S., U.K., and/or third-country-owned broker-dealers, futures commission merchants, or banks that conduct operations in both the United States and the United Kingdom.

- **United Kingdom**

**Bank of England (BOE)**

**Financial Services Authority (FSA)**

October 28, 1997 - MOU, concluded jointly with the U.S. Securities and Exchange Commission

## **V. INFORMATION SHARING RELATING TO TECHNICAL ASSISTANCE**

- **Chile**

**Superintendencia de Valores y Seguros de Chile (SVS)**

September 13, 2002 - Memorandum of Understanding regarding futures regulatory cooperation and the provision of technical assistance.

- **China**

**China Securities Regulatory Commission**

January 18, 2002 – Memorandum of Understanding regarding regulatory cooperation and the provision of technical assistance

- **India**

**Securities and Exchange Board of India (SEBI)**

April 28, 2004 - Understanding regarding regulatory cooperation, consultation and the provision of technical assistance.

- **Russia**

**Commodities' Exchanges Commission of the Ministry of the Russian Federation Anti-Monopoly Policy and Support of Entrepreneurship**

December 11, 2000 - Joint Statement regarding cooperation, consultation and the provision of technical assistance

## **VI. OTHER – U.S. GOVERNMENT AGENCIES**

- **CFTC and U.S. Securities Exchange Commission (SEC) MOU Regarding the Oversight of Security Futures Product Trading and the Sharing of Security Futures Product Information**

**March 17, 2004 – The CFTC-SEC Memorandum of Understanding (MOU)** covers the oversight of security futures product (SFP) trading and the sharing of security futures product information. Pursuant to the Commodity Futures Modernization Act of 2000 (CFMA) the CFTC and the SEC have joint authority for the oversight and regulation of security futures products. With respect to security futures products, the MOU provides that the CFTC and the SEC will notify each other of any planned examinations, advise the other of reasons for an intended examination, provide each other with examination-related information, and conduct examinations jointly, if feasible. The CFTC and the SEC will also notify each other of significant

issues arising from these markets and share trading data and related information for SFP activity. Implementation of this MOU should serve to increase the effectiveness and efficiency of the joint CFTC/SEC oversight of SFPs. In November 2002, OneChicago and NQLX began trading these products under the joint supervision of the agencies. The sharing of information and coordination recognized under this memorandum is an important element in providing oversight that is effective but avoids unnecessary regulatory burdens.

## **VII. MULTILATERAL ARRANGEMENTS AND OTHER COOPERATION**

- **Declaration on Cooperation and Supervision of International Futures Exchanges and Clearing Organizations (Boca Declaration)**

March 15, 1996 (as amended) <sup>5</sup>

The Boca Declaration and a companion exchange MOU constitute multilateral mechanisms for sharing information on a bilateral basis between the requesting and requested market authority consistent with their legal and contractual obligations. The documents establish mechanisms whereby the occurrence of certain agreed triggering events affecting an exchange member's financial resources or positions will prompt the sharing of information under the Boca Declaration and/or MOU. The trigger levels are designed to facilitate the identification of large exposures by firms that could have a potentially adverse effect on markets.

The Boca Declaration, which originally was signed in March 1996, subsequently was amended in October 1997 to delete language that had prevented certain regulators from signing the Declaration. In March 1998, the Declaration was amended again to permit regulators to make requests for information based upon possible manipulative or other disruptive conduct.

### **Boca Declaration Signatories (as of April 2002):**

Comisión Nacional de Valores (Argentina)

Australian Securities and Investments Commission (Australia)

Ministry of Finance (Austria)

Commission bancaire et financière (Belgium)

Comissão de Valores Mobiliários (Brazil)

Commission des valeurs mobilières du Québec (Canada, Québec)

Ontario Securities Commission (Canada, Ontario)

Danish Financial Supervisory Authority/Finanstilsynet (Denmark)

Commission des Opérations de Bourse (France)

Bundesaufsichtsamt für den Wertpapierhandel (Germany)

Securities and Futures Commission (Hong Kong)

Hungarian Banking and Capital Market Supervision (Hungary)

Central Bank of Ireland (Ireland)

Commissione Nazionale per le Società e la Borsa (Italy)

Ministry of International Trade and Industry (Japan)

Ministry of Agriculture, Forestry and Fisheries (Japan)

Securities Commission (Malaysia)

Securities Board of the Netherlands (Netherlands)

New Zealand Securities Commission (New Zealand)

Comissão do Mercado de Valores Mobiliários (Portugal)

Monetary Authority of Singapore (Singapore)

Financial Services Board (South Africa)

Comisión Nacional del Mercado de Valores (Spain)

Financial Supervisory Authority/Finansinspektionen (Sweden)

Securities and Futures Commission (Taiwan)

Capital Markets Board (Turkey)

Financial Services Authority (United Kingdom)

Commodity Futures Trading Commission (United States)

- **Memorandum of Understanding Concerning Consultation, Cooperation and the Exchange of Information of the International Organization of Securities Commissions (IOSCO) (October 16, 2003).**

The IOSCO MOU is the first worldwide multilateral enforcement cooperation arrangement among securities and derivatives regulators. The IOSCO MOU provides for the exchange of essential information to investigate cross-border securities and derivatives violations, including the most serious offenses, such as manipulation, insider trading and customer fraud. The MOU enables regulators to share critical information, including bank, brokerage, and client identification records and to use that information in civil and criminal prosecutions. (For more information, see CFTC News Release 4851-03, October 16, 2003.)

**List of Signatories to the IOSCO Multilateral MOU Concerning Consultation and Cooperation and the Exchange of Information (16 October 2003):**

ALBERTA

Alberta Securities Commission

AUSTRALIA

Australian Securities and Investments Commission

BRITISH COLUMBIA

British Columbia Securities Commission

FRANCE

Commission des opérations de bourse

GERMANY

Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)

GREECE  
Capital Market Commission

HONG KONG  
Securities and Futures Commission

HUNGARY  
Hungarian Financial Supervisory Authority

INDIA  
Securities and Exchange Board of India (SEBI)

ITALY  
Commissione Nazionale per le Società e la Borsa

JERSEY  
Jersey Financial Services Commission

LITHUANIA  
Lithuanian Securities Commission

MEXICO  
Comisión Nacional Bancaria y de Valores

NEW ZEALAND  
New Zealand Securities Commission

ONTARIO  
Ontario Securities Commission

POLAND  
Polish Securities and Exchange Commission

PORTUGAL  
Comissão do Mercado de Valores Mobiliários

QUEBEC  
Commission des valeurs mobilières du Québec

SPAIN  
Comisión Nacional del Mercado de Valores

SOUTH AFRICA  
Financial Services Board

TURKEY  
Capital Markets Board

UNITED KINGDOM  
Financial Services Authority

UNITED STATES OF AMERICA  
United States Commodity Futures Trading Commission (CFTC)

UNITED STATES OF AMERICA  
United States Securities and Exchange Commission (SEC)

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<sup>1</sup> For information on regulatory and self-regulatory authorities that have received exemptions under CFTC Rule 30.10, please consult the Backgrounder on this topic, which is available at the CFTC Internet website at <http://www.cftc.gov/opa/backgrounder/p30bkoia.htm>.

<sup>2</sup> MOUs typically provide for access to non-public documents and information already in the possession of the authorities and often include undertakings to obtain documents and to take testimony of, or statements from, witnesses on behalf of a requesting authority. CFTC MOUs are public documents, and copies may be obtained from the Office of the Secretariat.

The CFTC also exchanges information and cooperates in enforcement and regulatory matters on a case-by-case basis with foreign regulatory, law enforcement, and self-regulatory organizations (SROs) in many countries.

<sup>3</sup> The CFTC and the COB also signed a Mutual Recognition MOU (MRMOU) that provides for information sharing to facilitate monitoring and compliance matters related to the mutual recognition of intermediaries and products. 55 Fed. Reg. 23902 (June 13, 1990).

<sup>4</sup> The Ministry of Finance designated the Securities Board of the Netherlands (the Dutch futures, options, and securities regulator) and the Dutch Central Bank (the regulator for collective investment schemes) to implement the Agreement, which entered into force on February 1, 1994, after approval by the Dutch Parliament.

<sup>5</sup> A copy of the Boca Declaration is available at <http://www.cftc.gov/oia/oiabocadec0398.htm>.



ARRANGEMENT

BETWEEN THE

UNITED STATES  
COMMODITY FUTURES  
TRADING COMMISSION

AND

THE OFFICE OF THE  
AGRICULTURAL  
FUTURES TRADING  
COMMISSION OF  
THAILAND

REGARDING REGULATORY COOPERATION  
AND TECHNICAL ASSISTANCE

1. The United States Commodity Futures Trading Commission (CFTC) was created by the United States Congress as an independent agency with the mandate to supervise and oversee commodity futures and options markets in the United States.
2. The Office of the Agricultural Futures Trading Commission of Thailand (AFTC), is the designated agency under the Agricultural Futures Trading Act, B.E. 2542 for the supervision, surveillance, regulation and development of agricultural futures and other applicable derivatives trading in Thailand.
3. The CFTC and the AFTC (collectively the Authorities) are jointly committed to maintaining open, fair, efficient and sound futures and options markets; recognize that the development and maintenance of domestic legal and regulatory structures are essential to market integrity and investor protection; believe that international cooperation can facilitate the development and effective operation of futures and options markets; and desire to establish a mutually acceptable basis for cooperation and the provision of technical assistance. The CFTC and the AFTC have reached the following understanding with respect to cooperation, consultation and the provision of technical assistance.

## **CLAUSE I     CONSULTATION REGARDING MATTERS OF MUTUAL INTEREST**

### **Section 1.     General Principles**

1.     This Arrangement Regarding Regulatory Cooperation and Technical Assistance (Arrangement) describes the intent of the Authorities and does not create legally binding obligations or supersede domestic law of either Authority.
2.     The Authorities recognize the desirability of providing assistance, as set forth in Clauses II and III, to each other pursuant to this Arrangement. The provision of any such assistance should be consistent with the domestic laws of the Authorities and the availability of resources. If assistance is outside the competency of jurisdiction of an Authority then the Authority shall use its best efforts to provide assistance. Where the provision of assistance would be contrary to the public interest such assistance may be denied.
3.     The Authorities intend to engage in a dialogue on all aspects of futures and options regulation related to the development and operation of futures and options markets on agricultural commodities.

### **Section 2.     Consultation**

The Authorities intend to consult periodically about matters of mutual interest in order to promote cooperation and market integrity, and to further the protection of futures and options market participants. Such consultation may cover, among other things, the development of prudential standards and conduct of business standards for the operation of futures businesses (brokers, dealers and markets), the development of clearance and settlement and other market

systems, market oversight, and the administration of the Authorities' futures and options laws, rules, and regulations. The purpose of such consultation is to assist in the development of effective approaches to strengthening domestic and international futures and options markets.

### Section 3. Information Sharing

The Authorities intend to share information on each other's laws, rules and regulations pertaining to futures markets and options markets, if applicable, and how those laws, rules and regulations are implemented and interpreted.

## CLAUSE II PROVISION OF TECHNICAL ASSISTANCE

### Section 1. Technical Assistance

The CFTC intends to consult with and provide capacity building advice and assistance to the AFTC regulatory programs related to the development, administration, and operation of the agricultural futures and options markets in the Kingdom of Thailand. Such consultation should identify specific types of technical assistance the Authorities believe are desirable and reasonable. Technical assistance may include the provision of information and advice relating to the development of:

- a. Systems to improve and/or promote the risk management, price discovery and hedging functions of markets;
- b. Futures and options products and the basics of designing contracts not readily susceptible to manipulation;
- c. Order handling systems;
- d. Trade recording and comparison systems;
- e. Quotation and transaction data transmission systems;
- f. Clearance and settlement mechanisms;
- g. Regulatory requirements and best practices relating to market professionals, products and markets;
- h. Systems and related regulatory mechanisms relating to financial surveillance;
- i. Systems for effective market surveillance and enforcement programs;
- j. Disclosure and other procedures and practices to inform and protect futures and options customers and market participants; and

- k. Information on transparency.

## Section 2. Specific Technical Assistance

Specific technical assistance may be provided in the following manner:

- a. Comment by CFTC staff on draft laws and regulations;
- b. Availability of CFTC staff and other relevant experts to provide consultation regarding futures and options markets;
- c. General training sessions concerning futures and options regulation; and
- d. Internship programs of short duration for AFTC personnel at the CFTC, conditioned upon the requisite legal authority to do so and the entering into of any necessary confidentiality agreements.

## Section 3. Availability

The Authorities recognize that specific technical assistance is subject to the availability of resources.

## CLAUSE III COOPERATION

Each Authority may, subject to Clause IV, Sections 2, 3, and 4 give assistance as to:

- a. The granting of licenses, waivers, or exemptions for the conduct of futures business;
- b. The laws and regulations applicable to futures business;
- c. The laws and regulations applicable to futures exchanges and other types of markets;
- d. The oversight of futures exchanges by regulatory and market authorities;
- e. The prevention and detection of futures and options fraud and other irregularities or unlawful activities in connection with the offer, purchase or sale of any futures or options contract; and
- f. The prevention and detection of market manipulation.

## CLAUSE IV

## OPERATIONS

### Section 1. Laws, Rules and Requirements

The Authorities have exchanged general information on the laws, rules and requirements applicable to the confidentiality and use of information and intend to abide by the same.

### Section 2. Permissible Uses of Information

The requesting Authority may use non-public information and non-public documents furnished in response to a request for assistance under this arrangement solely for: the purposes set forth in the request for assistance, including ensuring compliance with the laws, regulations and/or requirements related to the request; and 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 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, regulations and/or requirements administered by the requesting Authority. The use may include enforcement proceedings which are public.

If a requesting Authority intends to use information furnished under this Arrangement for any purpose other than those stated above, it must obtain the consent of the requested Authority.

### Section 3. Confidentiality

Each Authority will keep confidential requests made under this Arrangement, the contents of such requests, and any matters arising under this Arrangement, including consultations between or among the Authorities, and unsolicited assistance. After consultation with the requesting Authority, the requested Authority may disclose the fact that the requesting Authority has made the request if such disclosure is required to carry out the request.

The requesting Authority will not disclose non-public documents and information received under this Arrangement, except as contemplated by Clause IV, Section 2, or in response to a legally enforceable demand. In the context of a civil or administrative enforcement proceeding, disclosure may be made solely in such a proceeding to which the requesting Authority or the government of the requesting Authority is a party. In the event of a legally enforceable demand, the requesting Authority will notify the requested Authority prior to complying with the demand, and will assert such appropriate legal exemptions or privileges with respect to such information as may be available. The requesting Authority will use its best efforts to protect the confidentiality of non-public documents and information received under this Arrangement.

Section 4.     Requests

Requests for assistance under Clause III, procedures for making and executing such requests, permissible uses of information, confidentiality requirements, costs and other matters not explicitly included in this Arrangement will be addressed on a case-by-case basis.

Section 5.     Official Contacts

To further ensure the effective operation of this Arrangement, and to facilitate communication between the Authorities, the Authorities hereby designate the contact officials set forth in Attachment A.

CLAUSE V                   FUTURE ASSURANCES

1.       The Authorities plan to regularly review their efforts pursuant to this Arrangement with a view toward improving communication between them. In this regard, when material additions or amendments to new United States and/or Thai futures and options laws take effect, the Authorities intend to consider whether this Arrangement should be supplemented or superseded.

2.       The Authorities intend to cooperate to the fullest extent permitted by applicable law and where relevant will work toward bringing applicable information sharing law into compliance with international benchmarks.

3.       The Authorities intend to move toward more formal information sharing arrangements after they have some experience with the operation of this Arrangement.

4.       This Arrangement is not intended to supersede the IOSCO Multilateral MOU or any other arrangement to which the Authorities are a party.

CLAUSE VI                   EFFECTIVE DATE AND TERMINATION

Section 1.     Effective Date

This Arrangement is effective from the date of its signing by the Authorities.

Section 2.     Termination

This Arrangement may be terminated at any time by either Authority giving thirty days' written notice to the other Authority. If such notice is given, this Arrangement continues to have effect with respect to all requests for assistance under Clause III that are made before the effective date of notification until the requesting Authority terminates the matter for which assistance was requested.

This Arrangement is executed in duplicate in *[insert place]* on *[insert month and day]*,  
2006

FOR THE  
UNITED STATES COMMODITY  
FUTURES TRADING COMMISSION:

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REUBEN JEFFERY III  
CHAIRMAN

FOR THE  
OFFICE OF THE AGRICULTURAL FUTURES  
TRADING COMMISSION OF THAILAND:

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CHAIPAT SAHASAKUL  
SECRETARY-GENERAL

## ATTACHMENT A

The United States Commodity Futures Trading Commission designates as its contact official:

Director  
Office of International Affairs  
Commodity Futures Trading Commission  
3 Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581-0001  
USA

Tel: (202) 418 5645  
Fax: (202) 418 5548  
e-mail: [international@cftc.gov](mailto:international@cftc.gov)

The Office of the Agricultural Futures Trading Commission designates as its contact official:

Director  
Research and Development Department  
Office of the Agricultural Futures Trading Commission  
Level 15, CRC Tower, All Seasons Place  
87/2 Wireless Road, Lumpini, Patumwan  
Bangkok 10330  
Thailand

Tel: 66 2 685 3250  
Fax: 66 2 685 3259  
e-mail: [Waraporn@aftr.or.th](mailto:Waraporn@aftr.or.th)



ที่ กต 0802/ 53



กระทรวงการต่างประเทศ

ถนนศรีอยุธยา กทม.10400

24 มกราคม 2549

เรื่อง ร่างข้อตกลง (Arrangement) ระหว่างสำนักงานคณะกรรมการกำกับและส่งเสริมการประกอบธุรกิจการค้าระหว่างประเทศ  
ล่วงหน้ากับ The United States Commodity Futures Trading Commission  
เรียน เลขาธิการคณะกรรมการกำกับและส่งเสริมการประกอบธุรกิจการค้าระหว่างประเทศล่วงหน้า  
อ้างถึง หนังสือสำนักงานคณะกรรมการกำกับและส่งเสริมการประกอบธุรกิจการค้าระหว่างประเทศล่วงหน้า ที่ ก.ส.ล. 1135/2548  
ลงวันที่ 22 ธันวาคม 2548

ตามหนังสือที่อ้างถึง ขอให้กรมสนธิสัญญาและกฎหมายพิจารณาตรวจสอบร่างข้อตกลง (Arrangement) ระหว่างสำนักงานคณะกรรมการกำกับและส่งเสริมการประกอบธุรกิจการค้าระหว่างประเทศล่วงหน้ากับ The United States Commodity Futures Trading Commission (CFTC) ทั้งในประเด็นนโยบายของรัฐและประเด็น ข้อกฎหมายที่เกี่ยวข้อง รวมทั้งคำแนะนำอื่นใดอันจะเป็นประโยชน์ต่อการลงนามต่อไป นั้น

กรมสนธิสัญญาและกฎหมายพิจารณาแล้ว ขอเรียนดังนี้

1. โดยที่ร่างข้อตกลงดังกล่าวเป็นความร่วมมือด้านกฎระเบียบและความช่วยเหลือ ด้านวิชาการระหว่างสำนักงานฯ และ CFTC มิได้ก่อให้เกิดพันธผูกพันทางกฎหมาย และมีใช้ความตกลง ระหว่างประเทศ

2. ในด้านสาระัตถะ หากสำนักงานคณะกรรมการกำกับและส่งเสริมการประกอบธุรกิจการค้าระหว่างประเทศล่วงหน้าสามารถปฏิบัติตามข้อบทในร่างข้อตกลงดังกล่าวได้ โดยเฉพาะอย่างยิ่งความร่วมมือในการ แลกเปลี่ยนข้อมูลทั่วไปและข้อมูลลับตามที่ระบุไว้ในข้อ 4 ก็ไม่มีข้อขัดข้อง

3. สำหรับการเสนอเรื่องร่างข้อตกลงดังกล่าวให้คณะรัฐมนตรีพิจารณานั้น ต้อง ดำเนินการตามพระราชกฤษฎีกาว่าด้วยการเสนอเรื่องการประชุมคณะรัฐมนตรี พ.ศ. 2548

จึงเรียนมาเพื่อโปรดทราบ

ขอแสดงความนับถือ

กรมสนธิสัญญาและกฎหมาย

กองกฎหมาย

โทร. 0-2643-5000 ต่อ 1086

โทรสาร 0-2643-5032

(นายวีรพันธุ์ วัชรชาติย์)

อธิบดีกรมสนธิสัญญาและกฎหมาย