MECHANISMS TO ENHANCE OPEN AND TIMELY COMMUNICATION BETWEEN MARKET AUTHORITIES OF RELATED CASH AND DERIVATIVE MARKETS DURING PERIODS OF MARKET DISRUPTION

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APPENDICES

1. Background

1.1 The Technical Committee of the International Organization of Securities Commissions ("IOSCO") created the Working Party on Regulation of Secondary Markets (the "Working Party"), [1/] among other things, to identify issues relevant to the relationship between cash and derivative markets for equities which IOSCO members should consider in their supervision of such markets and products. In this connection, the Working Party developed two papers which were approved and published by IOSCO at the recommendation of its Technical Committee during its annual meeting in London, England in October, 1992: "Contract Design of Derivative Products on Stock Indices" and "Measures to Minimize Market Disruption." [2/]

1.2 The paper on "Measures to Minimize Market Disruption" reported that after the market break of 1987, some market authorities argued that the lack of measures for coordination between cash and derivative markets accelerated the price declines in both markets, while others challenged any such causal relationship and argued instead that trading in the derivative markets actually stabilized relevant cash markets.

1/ The Working Party's members include: Australian Securities Commission; Commission des Operations de Bourse (France); Der Bundesministerium der Finanzen (Germany); Commissione Nazionale per le Societa e la Borsa (Italy); Ministry of Finance (Japan); Ontario Securities Commission (Ontario); Commission des Valeurs Mobilieres du Quebec (Quebec); Comision Nacional del Mercado de Valores (Spain); Commission for Regulation, Association of Swiss Exchanges (Switzerland); Securities Board (Netherlands); Securities and Investments Board (United Kingdom); Commodity Futures Trading Commission (United States); and Securities and Exchange Commission (United States).

2/ For purposes of that paper and as used herein, the term "market disruption" refers to the effects of large, rapid market declines that threaten to create panic conditions or disorderly market conditions. The mechanisms discussed herein, however, may be more broadly applicable.

1.3 That paper examined the various regulatory measures implemented by certain Working Party members to minimize the effects of such market events, for example, circuit breakers (including shock absorbers) and price limits, and concluded that there was a need for open and timely communication between and among relevant market authorities during periods of market disruption. With respect to circuit breakers and price limits, some members were found to rely upon one or more of these measures while others did not consider any of these measures necessary. The paper concluded that:

> the differences in approaches to circuit breakers and price limits demonstrate that, in establishing such measures, regulatory authorities and markets should take into consideration their unique market circumstances, mechanisms of trading, and legal and market customs and practices. However, with the rapid growth of derivative markets in recent years, and the concomitant arbitrage with cash markets, it is difficult in some cases to prevent market disruption through regulatory measures in only the cash or derivative market. Therefore, regulatory authorities should keep pursuing desirable, coordinated measures between the cash and the derivative markets to minimize the effects of potential market disruption based on recognition that cash and derivative markets are one market from an economic point of view.

1.4 Although regulators differ on the nature of the mutual influences between cash and derivative markets during periods of market disruption, all Working Party members agree as to the importance of information sharing as a means of facilitating regulatory decision-making during these periods. In this connection, the market disruption paper concluded that market authorities should make substantive efforts to enhance open and timely communication among themselves, both at the domestic and international levels, with a view to minimizing the adverse effects of market disruption.

1.5 The term "open and timely communication" was used to refer to the full range of mechanisms by which relevant market authorities may find it appropriate to communicate with each other during such market events, whether that communication takes the form of (i) formal or informal information exchanges, by report or upon request, or (ii) consultations on and/or coordination of policy measures or regulatory responses. No single mechanism for open and timely communication is endorsed by this paper.

1.6 Although this discussion paper identifies the range of views reflected among Working Party members on specific issues, matters on which Working Party members agree are identified and highlighted within the text and are also listed separately at the end of this Paper as **"Points of Consensus on Mechanisms to Enhance Open and Timely Communication Between Market Authorities of Related Cash and Derivative Markets During Periods of Market Disruption."**

2. Scope

2.1 The Working Party proposed in its market disruption paper, and IOSCO agreed, that the Working Party should further consider, identify and describe appropriate mechanisms to enhance open and timely communication between cash and derivative markets during periods of unusual price volatility or market disruption. This paper summarizes the results of those considerations and addresses issues relevant to how best to foster communication between relevant market authorities during such periods. As such, it focuses on related cash and derivative products which trade on supervised markets. [3/]

2.2 This paper addresses the scope, uses and benefits of communications, the markets which should be considered related, the types of information available to share, the methodology and mechanisms for sharing, and the types of market events best addressed by such communications.

2.3 Certain members suggested that the paper not limit itself to the need for open and timely communication during periods of market disruption but also address more generally the importance of such communication, consultation and coordination mechanisms for other regulatory or supervisory purposes when markets or products are related. In particular, two additional circumstances were identified as occasions during which market authorities may find it beneficial to engage in open and timely communication.

2.4 First, it was suggested that any discussion address non-episodic measures taken in one market which could have an impact on products traded in another market. Examples of these types of measures would include the introduction of new products in one market which may be related to products traded in another market or the adoption of regulatory measures such as position limits in one market which similarly could impact related products traded in another market. For example, some Working Party members believe that consultations are indispensable for coordination between cash and derivative markets when

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3/ This is because although Working Party members recognize that the products which trade on a supervised market can be influenced by trading activity on related cash or derivative products which trade off-exchange (over-the-counter), the lack of centralized supervision of off-exchange products would make it difficult for market authorities to engage in open and timely communication with respect to such products. Accordingly, the issue of the impact of off-exchange trading in related cash or derivative products in times of market disruptions is not addressed by this paper.

a market authority introduces new derivative products based upon foreign cash and derivative markets, such as futures or options or another jurisdiction's sovereign debt.

2.5 Second, it was suggested that market authorities may benefit from routine sharing of information to enhance each market authority's ability to monitor trading activity on its market. For example, as the monitoring for inter-market frontrunning (see paragraph 5.3) for general supervisory purposes is a matter with respect to which information must be obtained from another market authority, it was proposed that inter-market frontrunning could be identified as one "critical event" with respect to which market authorities may wish to engage in open and timely communication on a routine basis.

2.6 Such topics may be relevant to the general issue of open and timely communication between market authorities overseeing related products. However, they are not within the scope of this paper, which focuses on appropriate communications only as they may be relevant during (or when there is reasonable basis to anticipate) periods of market disruption. The Working Party may address these and related issues in the future taking into account the efforts of other IOSCO Working Parties.

2.7 Accordingly, Working Party members agree that:

To assure effective oversight of related cash and derivative markets during periods of market disruption, market authorities may need information about any related market that is subject to another authority's supervision.

Market authorities for related cash and derivative markets should consult with each other on a timely basis with a view toward minimizing the adverse effects of market disruption, especially during such a disruption.

3. Product/Market Relationships for Which Open and Timely Communication Would Be Useful

3.1 With cross listing of securities (that is, listing a security for trading on more than one market, each of which is subject to different market authorities), the development of derivative products based on securities, including sovereign issues traded in different jurisdictions, and the fungible nature of derivative products which facilitate their replication on other markets, market authorities may not have direct access to information which could have an impact on the products and markets subject to their supervision.

3.2 In particular, concerns have been raised as to the availability of needed information where a derivative product is traded on a market other than the market on which the underlying cash product is traded and where each market is subject to oversight by different market authorities.

3.3 In determining whether and the extent to which specific arrangements for facilitating open and timely communications would be useful with respect to a cash product and a related derivative product traded on different markets, factors market authorities should consider are how and the extent to which such products are related, including price correlations, the extent to which market participants subject to their supervision trade both products, the amount of open interest on the market considered as a whole and/or the comparative sizes of the markets.

3.4 In analyzing the potential benefits of arrangements or mechanisms for open and timely communication as to related products another factor to take into account is whether the different markets on which such products trade are located in the same or different jurisdictions or under the jurisdiction of different supervisory authorities or supervisory regimes. Such differences may affect the determination of, among other things:

(a) who has the needed information and in what form;

(b) who is the appropriate market authority(s) to participate in the communication (either providing and/or receiving the information);

(c) what means are available for obtaining the information under applicable law;

(d) what are the permitted uses of such information under applicable law;

(e) what are the confidentiality constraints relevant to the production, exchange and use of such information; and

(f) the form and timing of sharing.

These considerations, as discussed in more detail below, will implicate the design and implementation of any mechanism for open and timely communication between market authorities during periods of market disruption and should be taken into account by market authorities in determining the relationship between products and markets which should give rise to effective communication arrangements.

3.5 The discussion herein may also be relevant to information sharing concerns which arise with the cross listing of securities, or when two derivative products which are traded on markets subject to oversight by different market authorities are related, whether by connected pricing mechanisms, similar underlying cash markets or other relationships.

3.6 Accordingly, Working Party members agree that:

Although the points of consensus set forth in this paper were reached with respect to the oversight of related cash and derivative products, there may be analogous concerns as to the oversight of derivative markets whose products are correlated as to price and cross listed cash products.

4. Potential Benefits of Open and Timely Communication During Periods of Market Disruption

4.1 Working Party members recognize the importance of open and timely communication as a means of facilitating regulatory decision-making during periods of market disruption. For example, by sharing information on product specifications, prices, average trading volume, margin requirements, circuit breakers, price limits, trading halts and similar pre-prescribed regulatory measures, market authorities may be better able to analyze market conditions and take appropriate regulatory measures. Advance warning of ad hoc actions such as market interventions taken by market authorities is also important and may assist contingency planning or monitoring activities in other markets.

4.2 At a minimum, mechanisms for open and timely communication may enhance the ability of market authorities to formulate more effective unilateral measures to address such events and can assist in ensuring that regulatory responses do not exacerbate the situation or are not over-reactive because they are based on inadequate information. In addition, market authorities may find it useful to consult with each other based on the content of the information and, if appropriate, agree on a coordinated response. Therefore, Working Party members agree that:

> **Information concerning the related cash or derivative market is useful for the purpose of developing approaches to minimize the adverse effects of market disruption. Such approaches range from unilateral actions to cooperative or coordinated responses.**

5. Types of Information Market Authorities Consider Important and Useful to Address Market Disruption

5.1 In assessing what types of information could be useful to communicate during periods of market disruption, the Working Party members determined to:

- identify the structural measures currently in place in participating jurisdictions to minimize the adverse effects of market disruption; [4/]

- identify the types of information which individual participating jurisdictions consider relevant to share during periods of market disruption; [5/] and

- identify issues relevant to the implementation of any such mechanism for communication, consultation or coordination purposes.

Structural Measures in Place to Address Market Disruption

5.2 After the 1987 market crash, the attention of regulators focused on developing structural measures to minimize the adverse effects of market disruption. In addressing that issue, the report on "Measures to Minimize Market Disruption" identified circuit breakers, shock absorbers and price limits as examples of such regulatory measures.

5.3 In addition to the above measures, the measures identified below also have been implemented in various jurisdictions in advance of and also in response to market disruption. Knowledge of measures implemented by one market authority may be of interest to a market authority of a related market because the effects of such measures (e.g.,

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4/ See Appendix 1 for descriptions of specific structural measures currently in place intended to minimize the adverse effects of market disruption implemented by Australia, Canada (Ontario and Quebec), France, Germany, Hong Kong, Italy, Japan, Mexico, Switzerland, the United Kingdom, and the United States (CFTC and SEC).

5/ See Appendix 2 for the description of the types of information which Australia, Canada (Ontario and Quebec), France, Germany, Hong Kong, Italy, Japan, Spain, Switzerland, the United Kingdom and the United States (CFTC and SEC) consider relevant to share during periods of market disruption.

enhanced margin calls may lead to liquidity restraints, changes in trading hours during periods of market volatility could result in migration of trading volume to other markets, and changes in time of settlements may produce anomalies in price correlations) could implicate the structural measures of that market authority:

(a) margin requirements - including levels, types, required timeframes for payment and cross-margining -- margin requirements for derivative products generally are established at a level sufficient to cover a certain (typically one day) price move based upon historical volatility and, at the customer level, reflect the type of transaction involved (e.g., speculative or hedge). In the case of futures, frequently the variation in price is collected daily and paid from persons holding contracts losing value to persons holding contracts gaining value. On days when extreme market moves occur, clearing organizations and brokerage firms may make intraday margin calls for variation margin and may require clearing members or traders to deposit additional standing margin immediately or risk having their positions liquidated. Cross-margining systems permit market participants to deposit a single margin payment to support positions on different markets where movements in one position tend to be offset by price movements in the other market;

(b) position and exercise limits - such limitations generally are intended to minimize the potential for market disruption;

(c) frontrunning restrictions - intermarket frontrunning is generally defined as trading in one market with knowledge of an imminent transaction in a related market that reasonably can be expected to have a market impact in relation to trading in the first market;

(d) listing or contract design standards and changes thereto - see paper of the Working Party on Regulation of Secondary Markets on "Contract Design of Derivative Products on Stock Indices" approved by IOSCO in October 1992;

(e) changes in trading hours;

(f) changes in time of settlement or manner of calculating settlement price;

(g) contingency planning - following the 1987 and 1989 market breaks, some Working Party members developed written contingency plans which address types of actions to be taken in the event of unusual price volatility or market disruption. Other jurisdictions, in anticipation of market problems relative to the Persian Gulf War, in addition to following routine volatile market procedures, encouraged markets to engage in contingency planning activities including: (1) simulation analysis to test the potential effects of any unusual price volatility to determine which firms would be most affected and to aid in emergency planning; (2) special review of margin levels based on historical volatility in light of projected events; (3) review of the accounts and financial positions of large traders to determine if carrying firms had adequate assurances of their customers' capabilities to meet their obligations; (4) review of wire transfer arrangements for large accounts and accounts located outside the jurisdiction; and (5) review and simulation testing of a market's ability to halt or otherwise accommodate trading during times of unusual market volatility or disturbance, including review and stress and/or capacity testing of any relevant automated systems;

(h) intra-jurisdiction coordination forums for relevant market authorities; and

(i) affirmative obligations on markets to maintain orderly markets and emergency authority to take action without prior review of other authorities.

Information as to Implementation of Measures in Place

5.4 Working Party members generally believe that advance knowledge of another jurisdiction's structural measures to minimize the effects of market disruption can be of critical importance in assisting them to respond appropriately during market events. For example, general knowledge of another market authority's contingency plan or other structural measures such as triggers for and implementation of trading halt mechanisms, plans to increase margin levels or price limits upon the occurrence of specified events, or changes in trading hours could be helpful in planning appropriate regulatory responses in anticipation of potentially disruptive market events. In addition, market authorities may wish to prepare a contingency plan which identifies such structural measures as well as key individuals at each relevant market authority to be contacted during periods of market stress, and periodically verify that the plan information is current.

5.5 Subject to the concerns expressed in paragraphs 5.13-5.14 below, Working Party Members generally expressed interest in the timely availability of information relating to regulatory action by a market authority as follows:

- individual instrument or market-wide quotation and trading halts or suspensions;

- resumption of trading following any quotation and/or trading halt or suspension;

- alerts/monitoring/watches placed on a given instrument;

- expansion of price limits;

- passing of any level of trading which triggers a watch/halt/circuit breaker/speed bump, etc.;

- triggering of any alerts/monitoring/watches or other uncommon action with respect to any fund or loan facility that is intended to fulfill execution or clearing obligations of a market participant (including customers) which "fails" on a given transaction, or payment;

- triggering of any alerts/monitoring/watches or other uncommon action with respect to any market participant's (including customers') net capital levels, including the depletion of any market participant's (including customers') net capital levels below market requirements (<u>see</u> discussion in paragraph 5.13 below, however);

- emergency action taken in response to, for example, manipulative activity, failure of payment system, governmental intervention, physical emergencies such as bomb threats, fire, floods, computer or communication system failures or bankruptcy; and

- changes in margin levels or methodologies.

5.6 Market authorities should take into account whether publicly available information on regulatory or likely regulatory action will be accurate and consider whether to set up private mechanisms for sharing information in case of the failure, cessation or questionable reliability of public sources. Further, consideration of the timing of when the information becomes available to another market authority may be important in developing mechanisms to enhance open and timely communication. For example, although a trading halt or resumption of trading would become public information upon its occurrence, market authorities may need access to information regarding anticipated action with respect to any regulatory measure to dispel local rumors, and to plan for potential impacts in related markets.

. <u>Market Information</u>

a. Price Information

5.7 Working Party members uniformly believe that information on price should be shared. Information under this category would include:

- opening value of instrument on given trading day(s);
- instrument value throughout given trading day(s) and average instrument value over given range of trading days;
- currency changes throughout given trading day(s) and average currency changes over given range of trading days;
- constituent prices throughout given trading day(s) and average constituent prices over given range of trading days;
- highest bid/lowest offer or sale on given day(s) at time of given trades;
- fluctuations in value throughout given day(s) and/or period(s);
- expansion of price limits; and
- settlement prices.

5.8 In most cases, price information on exchange-traded products, particularly products which are related and traded internationally, will be available through public means. However, to the extent a market authority may wish to obtain any analysis on price-related information, such information may not be publicly available.

b. Trading Activity

5.9 The types of information relevant to analyzing trading activity on markets could include:

- general trading activity in the market throughout the day(s) and/or period(s) (including number and size of orders and executions);
- trading activity in any instrument throughout a given day(s) and/or period(s) (including number, size, price and time of orders and executions) and identity of customer(s) for whom a given transaction was executed)(see discussion in paragraphs 5.13-5.14 below, however); and
- trading activity of any market participant in relation to an instrument throughout given day(s) and/or period(s) (including number, size, price and time of orders and executions) and identity of customer(s) for whom a given transaction was executed)(see discussion in paragraphs 5.13-5.14 below, however).

c. Other

5.10 Some Working Party members caution that no benefit can be derived by constructing mechanisms for open and timely communication which duplicate existing commercial media for obtaining information, especially as regulatory resources already will be strained during periods of market disruption. Other members believe that to the extent information generated by electronic services is made available to regulators before its publication, market authorities may wish to consider sharing such information prior to its general availability. Other Working Party members note that market authorities should consider taking steps prior to any market disruption to ascertain what type of information is available through commercial sources and the accuracy and immediacy of information generally provided through such sources. Market authorities may wish to make prior arrangements to obtain information from appropriate market authorities if such commercial sources prove inadequate during periods of market disruption.

5.11 In assessing the types of information market authorities consider important and useful to address market disruptions, Working Party members agree that:

The information which may be needed to develop approaches to minimize the adverse effects of market disruptions include:

- **contingency plans, contact persons and structural measures to address market disruption,**
- **market conditions:**
  - **actions taken under contingency plans, market interventions and implementation of structural measures,**
  - **prices,**
  - **trading activities such as trading volume, state of program trading, including arbitrage transactions,**
  - **aggregate market data, such as open interests of related products and clearing data.**

Market authorities for related cash and derivative markets should be encouraged to develop mechanisms to share the aforesaid information.

Participant Information

5.12 Market participant information which could be shared includes:

- net capital levels, including depletions of levels below market requirements;
- trading activity in particular markets, indicating number, size, price and type of orders and executions; and
- firm defaults.

5.13 There is a divergence of views among Working Party members as to whether participant (including customer) information should be shared during market disruptions. Some members believe that any vehicle developed to address systemic risk through facilitating open and timely communication during periods of market disruption, to the extent possible, not result in the identification of specific traders and their trading activities or develop information which could be used subsequently for investigatory and enforcement purposes.

5.14 In particular, some Working Party members expressed concern about sharing information which would separately disclose individual market participant's positions, or the capital status of firms or financial problems which market participants may be experiencing as a result of the market disruption or in anticipation of the market event. These members considered such information more appropriately the subject of a financial information sharing arrangement or an investigatory and enforcement arrangement. Some members also indicated that they may be restricted from sharing such information by confidentiality and other use restrictions. For these and other reasons, certain market authorities may be unable to share certain participant information.

5.15 Other Working Party members believe that the full range of information which may be necessary to address the market disruption ought to be the subject of any communication mechanism, particularly as the effects of any market disruption can be exacerbated by the problems experienced by particular firms due to position (either proprietary or customer) concentrations and/or cash flow problems (including as to particular customers of the firm). In addition, the suspension during periods of market disruption of the trading or clearing privileges of market participants active in one market will be of interest and concern to many Working Party members who may want to protect themselves and market participants from dealing with persons who are the subject of serious regulatory concern to another market authority.

5.16 For the reasons stated above, Working Party members agree that:

Market participant information specifically related to the market disruption, including the positions of firms, also may be relevant. However, the sensitivity of such information and confidentiality and other legal constraints may restrict how or whether it is provided and who is a competent authority to provide, receive and use it.

6. Issues to be Considered in Developing Mechanisms for Enhancing Open and Timely Communication

Where is the Information, Who Can Share it and How?

6.1 The content and form of securities and futures markets regulation vary by jurisdiction. As a consequence, the differences in the legal or regulatory framework of the various jurisdictions must be examined to identify the market authority who has oversight or supervisory responsibility for relevant markets and participants and/or who is able to share information needed to supervise markets during periods of market disruption. For some jurisdictions, there may be several authorities responsible for supervising markets and market participants. In those instances, the parties to any communication mechanism may need to include all relevant authorities in that jurisdiction or only to include the one or more market authorities to whom the other market authorities have delegated responsibility for such communications. Arrangements to communicate may be entered into by any combination of governmental, quasi-governmental or private organizations with relevant supervisory powers. Market authorities also may consider adopting a lead regulator arrangement or coordinating any arrangement for open and timely communication with other "lead regulator" arrangements which may be in existence.

6.2 Subject to the constraints of applicable law, most Working Party members agree that the exchange of information should be directly between those market authorities in the best position to provide and make use of the information without the intermediation of other market authorities. Generally speaking, this means that information sharing should be between market authorities at the most practical level, e.g., exchanges should share information available to them with other exchanges, to the extent permitted by law.

6.3 However, as access to information may be subject to different legal constraints, determinations as to who can most effectively exchange information during market events must be made taking into consideration legal and practical restrictions on the relevant market authorities. In cases where the authority responsible for overseeing or supervising the integrity of the markets and the participants does not have the legal authority to enter into an information sharing mechanism or to fully share the information covered by such mechanism, it could consult with the appropriate governmental authority to arrange for an appropriate authority to enter into such an agreement on its behalf.

6.4 A flexible approach to deciding which is the appropriate market authority to provide the information is essential for jurisdictions where supervisory activities may be distributed between a central authority on the federal level, the state governments and the markets themselves or where a self-regulatory organization is required by law to "route" information to a foreign authority via a governmental intermediary. Where the market authorities sharing the information are not governmental authorities, it would be useful if such authorities provide notification to the relevant governmental authorities of relevant information.

6.5 Accordingly, Working Party members agree that:

To the extent possible, information should be available to the market authority or authorities with supervisory responsibility for acting on the information shared.

Access, Confidentiality and Use Restrictions

6.6 In many jurisdictions, some of the information to be shared in implementing a mechanism for open and timely communication during periods of market disruption will be non-public information. Even if the relevant information becomes public eventually, market authorities may wish to have access to such information prior to its general dissemination.

6.7 Most market authorities are subject to domestic laws and regulations governing the confidential treatment of nonpublic information. Some market authorities also are subject to internal rules and procedures or contractual obligations regarding confidentiality while others may follow customary trade and practice regarding the confidential treatment of information. Since the confidentiality requirements vary by jurisdiction, it is possible that the procedures of one market authority for maintaining confidentiality will not be consistent with the disclosure or confidentiality provisions of another market authority. Therefore, Working Party members agree that market authorities should advise each other of relevant laws, regulations or other restrictions applicable in this regard. Specifically, knowledge of restrictions on the market authority's ability to transmit the information and on the permitted uses by the market authority receiving the information may affect the design of any formal and/or informal arrangement and the selection of the parties best situated to effect open and timely communications under given circumstances. For example, in some jurisdictions, information relevant to particular market participants can be obtained only through enforcement-type arrangements.

6.8 It may be possible to overcome differences between the confidentiality requirements and procedures of the market authorities by including confidentiality provisions in any particular arrangement negotiated and undertaken that satisfy the needs of all participating market authorities, although there may be issues as to the enforceability of such arrangements vis-a-vis third parties. In certain instances, however, market authorities should keep in mind that legislation may be required to assure the needed level of confidentiality in the hands of any particular party and to encourage the most effective communication mechanism.

6.9 Market authorities also may wish to address whether and under what circumstances confidential information obtained pursuant to the arrangement may be forwarded by the market authority to other authorities -- domestic or foreign -- which may have an interest in such information. Some market authorities may be required to provide shared information to other regulators, legislators and/or judicial bodies. If restrictions on the permitted uses of the shared information would contravene the domestic laws and regulations of the market authority receiving or providing the information, market authorities may wish to consider the utility of sharing such information or whether separate communication arrangements for periods of market disruption are warranted. Wherever possible, attempts should be made to overcome differences between the permitted use requirements and procedures of the market authorities by including permitted use provisions in any particular arrangement negotiated and undertaken that satisfy the needs of all market authorities.

Form and Timing of Sharing

6.10 To the maximum extent possible, market authorities should be encouraged to determine the content (including the desirability of any analysis or characterization related thereto), form and timing of the information to be shared without concerns of incurring liabilities to each other and to third parties. To this end, as noted in paragraph 6.13 below, market authorities may wish to address the issue of limitation of liability and the right of third parties, particularly in jurisdictions where governmental immunity for providing such information is restricted.

6.11 Market authorities may also wish to consider the types of communication which would best suit their need to facilitate decision-making during periods of market disruption. For example, depending on the type of information, such information could be the subject of (a) routine, periodic sharing; (b) ad hoc sharing based on the occurrence of specified triggering events; or (c) sharing upon the request of a market authority. In making this determination, market authorities should take into account their current information gathering systems and administrative capacity to transmit the information and whether any additional or different procedures should be applicable for requested as opposed to reported information.

Applicability of Other Information Arrangements

6.12 In considering mechanisms for open and timely communication between market authorities of related cash and derivative markets during periods of market disruption, market authorities should take into account the interaction between any such mechanism and any existing arrangement between such authorities. For example, market authorities may already have an arrangement in place for the exchange of information for financial supervision, including risk assessment during periods of major market moves, which would facilitate the sharing of financial information on specific market participants. Mutual recognition arrangements similarly may provide for notification to other signatories in the event the financial or operational viability of the notifying authority's firm is impaired. In addition, an arrangement for sharing of investigative or enforcement information may provide for routine notification to other signatories in the event one authority believes the laws, rules or regulations of such other authorities may be being violated. Moreover, information shared in the first instance under one arrangement or mechanism may become the subject of concern addressed in another arrangement. For these reasons, market authorities may wish to ensure that any mechanism to facilitate open and timely communication during periods of market disruption not contravene or duplicate efforts addressed in another arrangement.

Incentives to Share - Limitation of Liability

6.13 Whether or not market authorities choose to limit the liability of the information provider the communication mechanism should make explicit that the information is being supplied on a best efforts basis and that no warranties, express or implied, are made by the market authorities with respect to the information exchanged under the arrangement, and that no third party rights are created.

6.14 Therefore, Working Party members agree that:

The design of mechanisms for sharing information on related cash and derivative markets to minimize the adverse effects of market disruptions should take into account the following:

- **which market authority, whether governmental, quasi-governmental or private, has access to and is able to provide the information,**
- **how such access can be obtained under applicable law,**
- **confidentiality and use restrictions under applicable law,**
- **the form and timing of the sharing,**
- **the applicability of other arrangements, including MOUs, between such authorities for sharing investigative and financial information, and**
- **the advisability of expressly limiting liability.**

7. POINTS OF CONSENSUS ON MECHANISMS TO ENHANCE OPEN AND TIMELY COMMUNICATION BETWEEN MARKET AUTHORITIES OF RELATED CASH AND DERIVATIVE MARKETS DURING PERIODS OF MARKET DISRUPTION

To assure effective oversight of related cash and derivative markets during periods of market disruption, market authorities may need information about any related market that is subject to another authority's supervision.

Market authorities for related cash and derivative markets should consult with each other on a timely basis with a view toward minimizing the adverse effects of market disruption, especially during such a disruption.

Although the points of consensus set forth in this paper were reached with respect to the oversight of related cash and derivative products, there may be analogous concerns as to the oversight of derivative markets whose products are correlated as to price and cross listed cash products.

Information concerning the related cash or derivative market is useful for the purpose of developing approaches to minimize the adverse effects of market disruption. Such approaches range from unilateral actions to cooperative or coordinated responses.

The information which may be needed to develop approaches to minimize the adverse effects of market disruptions include:

- contingency plans, contact persons and structural measures to address market disruption,
- market conditions:
  - actions taken under contingency plans, market interventions and implementation of structural measures,
  - prices,
  - trading activities such as trading volume, state of program trading, including arbitrage transactions,
  - aggregate market data, such as open interests of related products and clearing data.

Market authorities for related cash and derivative markets should be encouraged to develop mechanisms to share the aforesaid information.

Market participant information specifically related to the market disruption, including the positions of firms, also may be relevant. However, the sensitivity of such information and confidentiality and other legal constraints may restrict how or whether it is provided and who is a competent authority to provide, receive and use it.

To the extent possible, information should be available to the market authority or authorities with supervisory responsibility for acting on the information shared.

The design of mechanisms for sharing information on related cash and derivative markets to minimize the adverse effects of market disruptions should take into account the following:

- which market authority, whether governmental, quasi-governmental or private, has access to and is able to provide the information,

- how such access can be obtained under applicable law,

- confidentiality and use restrictions under applicable law,

- the form and timing of the sharing,

- the applicability of other arrangements, including MOUs, between such authorities for sharing investigative and financial information, and

- the advisability of expressly limiting liability.