



Treaty Series No. 54 (1995)

Agreement

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of the Kingdom of The Netherlands
on Mutual Assistance and the Exchange of Information
in Securities, Futures and Options Matters

London, 20 July 1994

[The Agreement entered into force on 1 July 1995]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
September 1995*

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**AGREEMENT
BETWEEN THE GOVERNMENT OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
AND THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS
ON MUTUAL ASSISTANCE AND THE EXCHANGE OF INFORMATION IN
SECURITIES, FUTURES AND OPTIONS MATTERS**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of The Netherlands;

Desiring to enhance the protection of investors and to promote the integrity of the securities, futures and options markets by providing a framework for co-operation, including channels for communication, increased mutual understanding and the exchange of information, to the extent permitted by the laws and practices of the United Kingdom and the Netherlands;

Recognising the increasing international activity in securities, futures and options markets and the corresponding need for mutual co-operation in non-criminal matters between the relevant national authorities;

Have agreed as follows:

ARTICLE 1

Assistance

1. The Contracting Parties shall, in accordance with the terms of this Agreement, grant to each other the fullest possible measure of assistance in regulatory and supervisory matters within the scope of this Agreement.
2. This Agreement does not create an enforceable right by third parties to initiate requests or have requests initiated on their behalf.
3. This Agreement shall be executed in accordance with the laws and regulations of the Contracting Parties.
4. The Agreement does not affect the obligations of the Contracting Parties which arise from their membership of international organisations or from international agreements to which they are parties.

ARTICLE 2

Competent Authorities

Each Contracting Party shall designate one or more Competent Authorities for the purpose of making and receiving requests under this Agreement.

ARTICLE 3

Consultation Prior to Designation

Before a designation of one or more Competent Authorities is made by one Contracting Party, other than such a designation made at the time of entry into force of this Agreement, it shall consult the other Contracting Party.

ARTICLE 4

Communications Between Competent Authorities

All requests pursuant to this Agreement shall be made and executed through a Competent Authority for each Contracting Party. The Competent Authorities shall communicate directly with each other for the purpose of carrying out the provisions of this Agreement.

ARTICLE 5

Spontaneous Reporting of Suspicions

To the extent permitted by law and in accordance with the practices in its State, each Competent Authority shall use reasonable efforts to ensure that the relevant Competent Authority or Authorities of the other Contracting Party are provided with any information which gives rise to a suspicion of a breach, or anticipated breach, of laws, rules or regulations having effect in the territory of the other Contracting Party.

ARTICLE 6

Criminal Matters

Mutual co-operation in criminal matters between the Contracting Parties shall continue to be governed by the European Convention on Mutual Legal Assistance in Criminal Matters, concluded in Strasbourg on 20 April 1959^{1,2}, and the additional Protocol, concluded in Strasbourg on 17 March 1978².

ARTICLE 7

Voluntary Co-operation and Co-operation outside the Terms of this Agreement

1. Nothing in this Agreement shall prevent or inhibit assistance being requested and given through channels other than those provided for in this Agreement.
2. Notwithstanding Article 4 above, a Competent Authority may:
 - (a) communicate from the territory of its State with any person in the territory of the other Contracting Party who agrees voluntarily to provide the requested information;
 - (b) make requests on an informal basis for information available from a public source in the territory of the other Contracting Party without complying with the terms of this Agreement.
3. If the request for information under paragraph 2(a) above is related to an investigation into, or a prosecution or other action in respect of, a serious breach of laws, rules or regulations having effect in the territory of either Contracting Party, then the requesting Competent Authority shall inform the relevant Competent Authority in the other country in advance of making the contact envisaged by paragraph 2(a).
4. The provisions of this Article are without prejudice to Article 6.

ARTICLE 8

Scope of Assistance

The Competent Authorities shall endeavour to provide the greatest possible measure of assistance to each other in the performance of their respective functions in the following areas of financial regulation:

- (a) insider dealing, market manipulation and other irregularities in relation to securities, futures and options;
- (b) regulation of investment business;
- (c) disclosure of interests in the securities of companies;
- (d) the duties of issuers of and offerors of securities to make full and fair disclosure of information relevant to investors;
- (e) other areas of financial regulation which are designated by mutual agreement of the Contracting Parties.

^{1,2} Treaty Series No. 24 (1992) Cm 1928.

ARTICLE 9

Consultation about Requests

The requesting and requested Competent Authorities may consult about a request or proposed request.

ARTICLE 10

Structure of Requests

The requesting Competent Authority shall specify:

- (a) the information required (documents, identity of persons, specific questions to be asked etc);
- (b) the purpose for which information is sought (including details of the laws, rules or regulations of which a breach is suspected);
- (c) a description of the circumstances which give rise to the request;
- (d) the link between the request and the regulatory function of the requesting Competent Authority;
- (e) whether it is desired that, to the extent permitted by the laws, rules and regulations applying to the requested Competent Authority, any persons from the requesting Competent Authority should be present during an investigation, and whether it is desired that such persons should be permitted to participate in the investigation.

ARTICLE 11

Return of Documents and other Material

Any document or other material provided by a requested Competent Authority in response to a request which has been made under this Agreement and any copies thereof shall be returned to that Competent Authority on its demand, to the extent permitted by law applicable in the State of the requesting Competent Authority.

ARTICLE 12

Consideration of Requests by the Requested Competent Authority

In deciding whether to accept or decline a request the following considerations may, in particular, be taken into account by the requested Competent Authority:

- (a) whether the request involves the assertion of a jurisdiction not recognised by the State of the requested Competent Authority;
- (b) whether executing the request would interfere with an existing investigation by the requested Competent Authority or any other enforcement or regulatory body in the State of the requested Competent Authority;
- (c) whether it would be contrary to public interest to give the assistance sought.

ARTICLE 13

Alternative Assistance

In any case where the request cannot be accepted completely, the requested Competent Authority shall consider whether there may be other assistance it can give.

ARTICLE 14

Costs

1. If it appears that responding to a request under this Agreement will involve substantial costs being incurred by a requested Competent Authority, the requested and requesting Competent Authorities shall establish a cost sharing arrangement before further proceeding with the request for assistance.

2. If in general the execution of this Agreement leads to costs being incurred mainly and substantially by one of the Competent Authorities, then the Competent Authorities concerned shall establish a general cost sharing arrangement.

ARTICLE 15

Restrictions on the Use of Information

The information supplied may be used solely for the purpose of:

- (a) assisting the requesting Competent Authority in the exercise of its regulatory functions in relation to the case specified;
- (b) conducting or assisting in civil proceedings in the United Kingdom or administrative proceedings in the Netherlands arising out of a breach of the laws, rules or regulations specified in the request and brought by a Competent Authority within its own State;
- (c) taking regulatory action or imposing regulatory requirements within the areas set out in Article 8 above.

ARTICLE 16

Exception to Restrictions on the Use of Information

Notwithstanding Article 15 above, information supplied under the terms of this Agreement may, subject to the prior written consent of the requested Competent Authority, be used by the requesting Competent Authority for purposes other than those falling within Article 15.

If that other purpose concerns use in criminal proceedings, the requested Competent Authority shall give its consent only after having consulted the relevant authority or authorities in criminal matters in its State.

ARTICLE 17

Confidentiality

Each Competent Authority shall keep confidential to the extent permitted by the law of its own State:

- (a) any request for information made under the Agreement unless disclosure is necessary to carry out the request or the requesting Competent Authority waives such confidentiality;
- (b) any information passed under the Agreement unless the requested Competent Authority waives such confidentiality.

ARTICLE 18

Notification in Advance of Public Disclosure

If a Competent Authority becomes aware that information it has received under this Agreement is likely to be disclosed into the public domain, it shall endeavour to inform the Competent Authority or Authorities which provided the information before such disclosure occurs.

ARTICLE 19

Disclosure to Bodies Responsible for Regulation and Law Enforcement

Unless the request provides otherwise, Articles 15, 16 and 17 of the Agreement shall not prevent the requesting Competent Authority from informing other bodies within the jurisdictions of the United Kingdom or the Netherlands of the request or of passing information received pursuant to a request to such bodies, provided that:

- (a) the requested Competent Authority is notified in advance of such disclosure of information;
- (b) such bodies have responsibility for regulating or enforcing laws, rules or regulations falling within the areas set out in Article 8 above;
- (c) the purpose of passing such information to such a body is to assist it to perform its functions in the areas set out in Article 8; and
- (d) in cases where no statutory or other legal restrictions equivalent to the provisions of Articles 15, 16, 17 and 18 of this Agreement apply to such a body, the requesting Competent Authority obtains an undertaking from the body that it shall comply with the provisions regarding confidentiality in this Agreement.

ARTICLE 20

Termination

The Agreement may be terminated by either Contracting Party by giving notice in writing to the other Contracting Party through the diplomatic channel. The Agreement shall cease to be effective thirty days after the receipt of such notice.

ARTICLE 21

Application of the Agreement

This Agreement shall apply:

- (a) to the Kingdom of The Netherlands in Europe.
- (b) to the United Kingdom of Great Britain and Northern Ireland.

ARTICLE 22

Entry into Force

This Agreement shall enter into force on the first day of the second month following the date on which the Government of the Kingdom of The Netherlands has informed the Government of the United Kingdom in writing that the relevant constitutional procedures in the Netherlands have been completed.¹

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at London this 20th day of July 1994 in the English language.

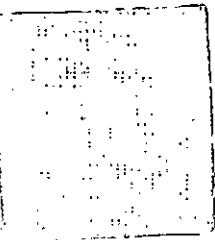
For the Government of the United
Kingdom of Great Britain and
Northern Ireland:

ANTHONY NELSON

For the Government of the United
Kingdom of The Netherlands:

A J QUANJER

¹ The Agreement entered into force on 1 July 1995



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