

**MEMORANDUM OF UNDERSTANDING ON  
THE EXCHANGE OF INFORMATION  
BETWEEN**

**THE NETHERLANDS**

**AUSTRALIA**



**Autoriteit  
Financiële Markten**



**THE NETHERLANDS AUTHORITY  
FOR THE FINANCIAL MARKETS**

**AUSTRALIAN SECURITIES  
AND INVESTMENTS  
COMMISSION**

5-11-2005

**MEMORANDUM OF UNDERSTANDING**

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## 1. INTRODUCTION

The Netherlands Authority for the Financial Markets (AFM) and the Australian Securities and Investments Commission (ASIC), recognising the increasing international activity in the financial markets, and the corresponding need for cooperation between the relevant national authorities, have reached the following understanding under this bilateral Memorandum of Understanding.

ASIC is also a signatory to the International Organisation for Securities Commissions (IOSCO) Multilateral Memorandum of Understanding (MMOU) and will continue acting in furtherance of its obligations under the MMOU. This bilateral Memorandum of Understanding is not intended to supercede ASIC's obligations or entitlements under the MMOU. This bilateral Memorandum of Understanding is otherwise endeavoring to address issues specific to the relationship and the AFM.

## STATUTORY AUTHORITIES

The AFM is responsible for the supervision of securities markets as well as the conduct of business (including consumer information and advice) of all financial services providers in the market domain (banks, investment funds, insurance companies and securities firms). The AFM's mandate is to ensure the proper functioning of the securities markets, to protect the position of investors and to increase the transparency of the securities markets.

The AFM is responsible for the administration and enforcement of the conduct of business rules of the Act on the supervision of the Securities Trade 1995 (Act 1995) and the Act on the Disclosure of Major Holdings in Listed Companies 1996 (Act 1996).

The Australian Securities and Investments Commission (ASIC) is the national corporate regulator that is responsible for the regulation of companies, the supervision of capital markets and participants, and for consumer protection in relation to financial services in Australia. ASIC is established under section 7 of the *Australian Securities and Investment Commissions Act 1989*.

ASIC is responsible for the administration and enforcement of the *Corporations Act 2001* and the *Australian Securities and Investments Commissions Act 2001* which provide for the regulation of corporations, securities markets and intermediaries, and investor protection in relation to financial services and products.

The Australian Securities and Investments Commission's ability to exercise coercive powers on behalf of foreign regulators for the administration or enforcement of foreign business laws is governed by the Mutual Assistance in Business Regulation Act 1992.

## 2. DEFINITIONS

For the purposes of this Memorandum of Understanding:

- **“Authorities”** means ASIC and AFM;
  - **“Authority”** means ASIC or AFM as the case may be;
  - **“Information”** includes information, documents and evidence;
  - **“Investment Services Providers”** means financial service providers, investment firms, credit institutions and any other person as authorized to provide Investment Services within the law and regulations applicable in the countries of the Authorities;
  - **“Investment Services”** means trading or carrying out transactions involving Securities on Regulated Markets on its own account and/or on behalf and for the account of third parties;
  - **“Issuer”** means a natural or legal person who issues or proposes to issue any security;
- “Laws and Regulations”** “Laws and Regulations” mean the provisions of the laws of the jurisdictions of the Authorities, the regulations promulgated thereunder, and other regulatory requirements that fall within the competence of the Authorities, concerning the following:
- a. insider dealing, market manipulation, misrepresentation of material information and other fraudulent or manipulative practices relating to securities, derivatives and options including solicitation practices, handling of investor funds and customer orders;
  - b. the registration, issuance, offer, or sale of securities and derivatives, and reporting requirements related thereto;
  - c. market intermediaries, including investment and trading advisers who are required to be licensed or registered, collective investment schemes, brokers, dealers, and transfer agents; and
  - d. markets, exchanges, and clearing and settlement entities.
- **“Person”** means a natural person, body corporate, partnership, or unincorporated association, government or political subdivision, agency or instrumentality of a government;
  - **“Requested Authority”** means the Authority to whom a request is made pursuant to paragraph 5 of this Memorandum of Understanding;
  - **“Requesting Authority”** means the Authority making a request pursuant to paragraph 5 of this Memorandum of Understanding;
  - **“Territory”** means the country, state or other territory, as the case may be, in which an Authority has legal authority, power and, or, jurisdiction conferred by law.

### 3. PRINCIPLES

- 3.1. This Memorandum of Understanding sets forth a statement of intent of the Authorities to establish a framework for mutual assistance and to facilitate the exchange of information between the Authorities to enforce or ensure compliance with their respective securities and futures laws or regulatory requirements.
- 3.2. The purpose of this Memorandum of Understanding is for increased investor protection and further promotion of the integrity of markets by providing a framework for co-operation, increased mutual understanding, exchange of information and investigative assistance, to the extent permitted by the laws and practices of the Authorities.
- 3.3. The Memorandum of Understanding serves as a basis for co-operation for the Authorities and does not create any binding legal obligations, nor does it modify or supersede any "Laws and Regulations" in force in or applying in Australia or The Netherlands. The Memorandum of Understanding does not create any enforceable rights including rights enforceable by third parties, nor does it affect any arrangements made or to be made under other Memoranda of Understanding.
- 3.4. This Memorandum of Understanding does not affect any right of any Authority under "Laws and Regulations" to take measures otherwise than as provided herein to obtain information necessary to ensure compliance with, or to enforce, its "Laws and Regulations". In particular, this Memorandum of Understanding does not affect the ability of either Authority to communicate with or obtain information or documents from any other person on a voluntary basis subject to any applicable laws and procedures of the Authorities.
- 3.5. To the extent permitted by laws and procedures, each Authority will use reasonable effort to provide the other Authority with any information in its possession which gives rise to a suspicion of a breach or anticipated breach of the Laws and Regulations of the Authorities, or may assist in the administration and enforcement of the Laws and Regulations of the Authorities.
- 3.6. The Authorities recognise the need and desirability for providing mutual assistance and exchanging information to assist each other in ensuring compliance with laws or regulations of their respective countries. However, the Requested Authority may deny assistance requested under this Memorandum of Understanding on the ground that:-
  - (a) the provision of assistance would violate the national or public interest or the domestic law of the Requested Authority; or
  - (b) the request is not made in accordance with the provisions of this Memorandum of Understanding.

#### 4. SCOPE

- 4.1 The Authorities will, within the framework of this Memorandum of Understanding, provide each other with the fullest assistance permissible to enable the proper administration and enforcement of the Laws and Regulations of the Authorities.
- 4.2 The Authorities agree to provide mutual assistance and exchange of information in response to requests to assist them perform their respective duties according to "Laws and Regulations". Under the foregoing general theme, the scope of this Memorandum will include the following:-
- (a) assisting in discovery of and taking action against insider dealings, market manipulation and other fraudulent, deceptive and manipulative practices;;
  - (b) enforcement of laws, "Laws and Regulations" relating to issuing, dealing in, arranging deals in, managing and advising on securities, derivatives, options and financial products
  - (c) supervising and monitoring stock markets and clearing and settlement activities and their compliance with the relevant "Laws and Regulations";
  - (d) promoting and securing the fitness and properness of registered persons and promoting high standards of fair dealing and integrity in their conduct of business;
  - (e) the compliance by issuers with any duties under any "Laws and Regulations" and any obligation to make full, accurate and timely disclosure of information relevant to investors;
  - (g) take-overs and mergers, related to public companies, and
  - (h) any other matters agreed upon between the Authorities from time-to-time.

#### 5. REQUESTS FOR ASSISTANCE OR INFORMATION

- 5.1. This Memorandum of Understanding does not affect the ability of the Authorities to obtain information from persons on a voluntary basis, provided that existing laws and procedures in the territory of each Authority for the obtaining of such information are observed in the territory of each Authority.
- 5.2. The requests for information or other assistance will be made in writing in the English Language, unless otherwise agreed, and addressed to the Requested Authority's contact person(s) referred to in paragraph 13 herein. In urgent cases, requests may be made orally and confirmed with a full request in writing within five (5) business days thereafter.
- 5.3. Assistance available under this Memorandum of Understanding may include :  
Providing access to information in the possession of the requested Authority.

5.4. Requests for information should specify:-

- (a) the information required (identity of persons, specific questions to be asked, list of documents sought etc.)
- (b) a general description of the matter and the purpose for which the information is sought (including details of the rule or law pertaining to the subject matter of the request),
- (c) the link between the specified "Laws and Regulations" and the regulatory functions of the Requesting Authority,
- (d) to whom, if anyone, onward disclosure of information is likely to be necessary, and in this context, the reason for such disclosure,
- (e) the desired time period for the reply;
- (f) any other matters specified by the laws and regulations in the territory of the Requested Authority.

5.5 The Authorities agree to provide assistance on matters that are not necessarily an offence in their own jurisdiction.

## 6. EXECUTION OF REQUESTS

- 6.1 In cases where the Requesting Authority is not satisfied with the information provided, additional information can be requested by the Requesting Authority pointing out the subjects to be clarified.
- 6.2 Each request will be assessed on a case-by-case basis by the Requested Authority to determine whether information can be provided under the terms of this Memorandum of Understanding, the IOSCO Multilateral Memorandum of Understanding and the Laws and Regulations of the Authorities. In any case, where the request cannot be accepted completely, the Requested Authority will consider whether other relevant information or assistance can be given.
- 6.3 In deciding whether or not to accept or decline a request, the Requested Authority will take account of:
  - (a) Matters specified by the laws and procedures of the Requested Authority's country;
  - (b) Whether broadly equivalent assistance would be available from the country of the Requesting Authority;
  - (c) Whether the request involves an assertion of a jurisdiction not recognised by the Requesting Authority;

- (d) Whether it would be contrary to the public interest for assistance to be given;
- (e) Whether the communication of information might adversely affect the sovereignty, security or public policy of the Requested Authority;
- (f) Whether judicial proceedings have already been initiated in respect of the same facts against the persons in question or whether a final judgment has been passed.

6.4 The Requested Authority may impose conditions of the onward release of such information to third parties. These conditions include prohibiting the onward release of information to third parties. The Authorities will consult with each other regarding the reasons for refusal and the circumstances under which use of the information might otherwise be allowed.

6.5 If the Requested Authority believes that a request does not accord with this Memorandum of Understanding, taking into account the provisions of this Article, it will promptly inform the Requesting Authority of the reasons for its refusal.

6.6 Any document or other material provided in response to a request under this Memorandum of Understanding and any copies thereof are to be returned on request.

## **7. UNSOLICITED INFORMATION**

Where one Authority has information that will assist another Authority in the performance of its regulatory functions, the former may provide such information, or arrange for such information to be provided, on a voluntary basis even though no request has been made by the other Authority. The terms and conditions of this Memorandum of Understanding will apply if the providing Authority specifies that the information is passed under this Memorandum of Understanding.

## **8. PERMISSIBLE USES OF INFORMATION**

8.1. Any assistance or information will be provided by an Authority only for the purposes of assisting the other Authority in the performance of its regulatory functions. Any assistance or information provided under this Memorandum of Understanding should be used by the recipient only for:-

- (a) the purpose of performing its regulatory functions;
- (b) the purposes stated in the request, including ensuring the proper administration and enforcement of the Laws or Regulations of the Requesting Authority specified in the request; or



- 8.2. In the event that the Requesting Authority desires to use the information obtained for any purpose other than that stated in 8.1 above, the Requesting Authority must notify and seek the consent of the Requested Authority to such use of the information.

## 9. CONFIDENTIALITY

- 9.1. The assistance or information obtained pursuant to this Memorandum of Understanding should not be disclosed to third parties without the prior consent of the Requested Authority. Each Authority will establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of such information or assistance.
- 9.2. Each Authority will keep confidential, to the extent permitted by law,
  - (a) any request for information made under this Memorandum of Understanding and any matter arising in the course of this Memorandum of Understanding, including consultations between the Authorities and unsolicited assistance, unless such disclosure is necessary to carry out the request or the other Authority waives such confidentiality.
  - (b) any information received pursuant to this Memorandum of Understanding unless it is disclosed in furtherance of the purpose for which it was requested.
- 9.3. If an Authority becomes aware that information passed under this Memorandum of Understanding may be subject to a legally enforceable demand to disclose that information the Authority will, to the extent permitted by law, inform the other Authority of the situation. The Authorities will then discuss and determine the appropriate course of action.

## 10. CONSULTATION

- 10.1. The Authorities will keep the operation of this Memorandum of Understanding under continuous review and will consult one another informally at any time about a request or proposed request. In particular, the Authorities will consult upon any request in the event of a denial by one Authority of, or opposition by an Authority to, a request or proposal made by the other Authority pursuant to this Memorandum of Understanding.
- 10.2. The Authorities may consult and may revise the terms of the Memorandum of Understanding in the event of a substantial change in laws, practices, market or business conditions affecting the operation of this Memorandum of Understanding.

**11. COST OF INVESTIGATION OR ASSISTANCE**

The Requested Authority may as a condition of agreeing that assistance be given under this Memorandum of Understanding, require the Requesting Authority to make a contribution to costs. Such a contribution may, in particular, be required where the cost of executing a request is substantial.

**12. TERMINATION**

This Memorandum of Understanding will continue in effect until the expiry of thirty (30) days after either Authority gives written notice to the other Authority of its intention to terminate. This Memorandum of Understanding will continue to have effect with respect to all requests for assistance that were made before the effective date of termination.

**13. CONTACT PERSONS**

All communications between the Authorities should be between the principal points of contact as set out in Appendix A unless otherwise agreed. Appendix A may however be amended by written notice from either Authority without the need for revising this Memorandum of Understanding.

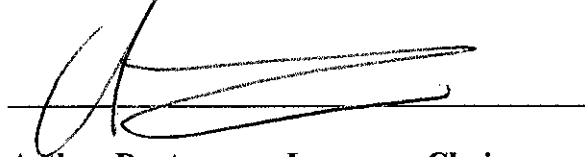
**14. ENTRY INTO EFFECT**

This Memorandum of Understanding will be effective from the date of signing by the Authorities.

5-1-2005


**FOR THE NETHERLANDS AUTHORITY FOR THE FINANCIAL MARKETS**

Signed in Amsterdam July 4, 2005



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**Arthur Docters van Leeuwen, Chairman of the Executive Board**




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**Paul Koster, Member of the Board**

**FOR THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**

Signed in Sydney, ...18/11/05



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**Jeffrey Lucy AM, Chairman**

25-11-2005

## APPENDIX A

The Requested Authority's contact officers pursuant to paragraph 13 of this Memorandum of Understanding are:

### For the Netherlands Authority for the Financial Markets

1. **Mr. Paul Mulder**  
Head of the Legal Department  
Phone: (31 20) 55 35 232  
Fax: (31 20) 55 21 396  
Email: [Paul.Mulder@afm.nl](mailto:Paul.Mulder@afm.nl)
2. **Mr. Peter Bakker**  
Deputy Head of the Legal Department  
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### For the Australian Securities and Investment Commission

1. **Mr Greg Tanzer**  
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