

12/1/76

AGREEMENT
BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS
ON MUTUAL ADMINISTRATIVE ASSISTANCE
IN THE EXCHANGE OF INFORMATION IN FUTURES MATTERS

The Government of the United States of America and the Government of the Kingdom of the Netherlands;

CONSIDERING that the development of the internationalization of trading in futures and options requires increasing exchange of information between the supervisory authorities;

HAVE AGREED AS FOLLOWS:

ARTICLE 1 - DEFINITIONS

- I. For the purpose of this Agreement:
 - a. the term "Competent Authority" means:
 - for the Government of the United States of America, the United States Commodity Futures Trading Commission ("Commission") or the Commission's designee and other authorities designated by the United States Government;
 - for the Government of the Kingdom of the Netherlands, the Minister of Finance or the Minister's designee;
 - b. the term "futures contract" means any agreement, transaction involving or contract for the purchase or sale of a commodity, including any financial instrument or index, for future delivery within the jurisdiction of the Competent Authority of a Requested State;
 - c. the term "option contract" means any agreement, transaction involving or contract or transaction which is of the character of, or is commonly known to the futures markets as an option, bid, offer, put, or call, within the jurisdiction of the Competent Authority of a Requested State;
 - d. "futures business" means the business of:
 - (i) purchasing or selling futures or option contracts for such person's own account;
 - (ii) purchasing or selling futures or option contracts for the account of any other person;
 - (iii) soliciting or accepting orders from any other person for the purchase or sale of a futures or option contract;

(iv) accepting money, securities, property or anything of value from any other person to margin, guarantee or secure a futures or option trade or contract;

(v) advising any other person, directly or indirectly, as to the value or the advisability of trading in any futures or option contract, or promulgating analyses or reports concerning the foregoing;

(vi) collecting, executing or transmitting orders given by any person in connection with futures or option contracts;

(vii) engaging in a business in the nature of an investment trust, syndicate or other similar enterprise and soliciting, accepting or receiving in connection therewith anything of value for the purpose of trading in futures or option contracts; or

(viii) equivalent activities conducted by persons or entities; and

e. the term "futures exchange" means a market, including an over-the-counter market, for futures or option contracts which is recognized, regulated or supervised by the Competent Authorities.

2. For the purpose of this Agreement, the terms herein shall be deemed to be defined in accordance with the relevant laws of the jurisdiction of the Competent Authority of the Requesting State.

ARTICLE 2 - SCOPE OF ASSISTANCE

1. Each Competent Authority undertakes, in accordance with the provisions of this Agreement, to provide the Competent Authority of the other Contracting Party with the

greatest possible measure of mutual administrative assistance in obtaining and exchanging information relating to the administration and enforcement of the other's futures and options laws and regulations.

2. The assistance available under this Agreement includes but is not limited to:
 - a. obtaining and providing information and documents by the Competent Authority of the Requested State;
 - b. taking statements of persons by the Competent Authority of the Requested State; and
 - c. conducting compliance inspections or examinations of futures businesses by the Competent Authority of the Requested State.
3. In particular, each Competent Authority shall give assistance to the other Competent Authority in obtaining and exchanging information that is relevant to the laws and regulations of the Requesting Competent Authority concerning:
 - a. the granting of licenses, waivers or exemptions for the conduct of futures business;
 - b. the observance of the laws and regulations applicable to futures business;
 - c. the observance of the laws and regulations applicable to futures exchanges;
 - d. the observance of the regulations of futures exchanges by their members; and
 - e. the prevention and detection of futures and option fraud and other irregularities in connection with the offer, purchase or sale of any futures or option contract.

ARTICLE 3 - GENERAL PRINCIPLES

1. All requests for information or assistance pursuant to this Agreement shall be made and executed through a Competent Authority for each Contracting Party. The Competent Authorities of the Contracting Parties shall communicate directly with each other for the

purpose of carrying out the provisions of this Agreement. Notwithstanding these principles:

- a. each Competent Authority may communicate from its own territory with any person in the territory of the other Contracting Party who voluntarily agrees to provide the information or documents requested; and
 - b. requests by a Competent Authority for information that is available from any public source in the territory of the other Contracting Party may be communicated on an informal basis without compliance with the terms of this Agreement.
2. The provisions of this Agreement will not give rise to a right, directly or indirectly, on the part of any person other than the Competent Authorities, to obtain, suppress or exclude any information or to challenge the execution of a request for assistance under this Agreement, without prejudice to the constitutional law of the Contracting Parties.
3. The Competent Authority of the Requested State may refuse to comply with a request for assistance on the grounds that:
- a. such compliance would prejudice the security or other essential public interest of the Requested State; or
 - b. such compliance would interfere with an ongoing investigation being conducted by the Requested State.

ARTICLE 4 - REQUESTS FOR ASSISTANCE

1. Requests for assistance shall be made in writing and shall be reasoned. Requests shall be addressed to the contact officers, designated by the Competent Authorities.
2. Requests shall specify:
 - a. the information which is sought, the persons or entities which may be in possession of the information, and the place where the information may be available;

- b. a general description of the matter which is the subject of the request and the purpose for which the information is sought;
 - c. the reason for requesting the information;
 - d. the legal provisions relating to the matter; and
 - e. the desired time period for the reply and, in cases of urgency, the justification therefor.
3. In the event of urgency, requests for assistance and replies may be effected by summary procedures or by means of communication other than the exchange of written information, provided that all communications are confirmed in the manner prescribed in this Article.

ARTICLE 5 - EXECUTION OF REQUESTS

1. The Competent Authority of the Requested State shall deal with the request for assistance within a reasonable period.
2. Requests shall be executed in accordance with the laws and procedures of the Requested State.
3. The Competent Authority of the Requested State shall obtain the information requested by the Competent Authority of the Requesting State. The information shall be obtained in conformance with paragraph 2 and, in so far as it is reasonably possible to do so, in the form and pursuant to the procedures desired by that Authority, including requiring statements of persons.
4. The Competent authority of the Requested State shall, upon request, in so far as it is reasonably necessary to do so, conduct examinations of the books and records of a futures business or its custodian or agent.
5. At the time a request is being executed, the Competent Authority of the Requested State may permit the presence of persons designated by the Competent Authority of the Requesting State. Those designated persons shall be allowed to formulate questions to be asked at the execution of the request.

ARTICLE 6 - PERMISSIBLE USE OF INFORMATION

The Competent Authority of the Requesting State may use the information supplied only for the use indicated in its request:

- a. With respect to the use of information in criminal proceedings, prior approval of the Competent Authority of the Requested State shall be obtained.
- b. With respect to all other uses of information, the Competent Authority of the Requesting State must inform the Competent Authority of the Requested State before using the information supplied for reasons other than those indicated in its initial request. The Competent Authority of the Requested State may oppose such other use only in cases where such use would not be in the interest of the administration and enforcement of futures laws and regulations or when the circumstances mentioned in paragraph 3 of Article 3 are applicable. Unless such opposition is made within fourteen days of the receipt of the notification of the intended use of the Competent Authority of the Requesting State, the information may be used in the manner specified in the notification.

ARTICLE 7 - CONFIDENTIALITY

1. Except as contemplated in Article 6, each Competent Authority will maintain the secrecy, to the extent permitted by law, of the request for assistance, the component parts of the request and the information gathered and provided pursuant to the request. Such secrecy may be waived, to the extent permitted by law, by the mutual agreement of the Competent Authorities of the Requesting and the Requested States.

2. When the Requesting Competent Authority has terminated the matter for which assistance has been requested under this Agreement, upon request of the Requested Competent Authority, it will return to the Requested Competent Authority, to the extent permitted by law, all documents and copies thereof and other material disclosing the contents of such documents not already disclosed in proceedings referred to in Article 6, or pursuant to paragraph 1 of this Article, other than material which is generated as part of the deliberative or internal analytical process of the Requesting Competent Authority.

ARTICLE 8 - EFFECT ON OTHER AGREEMENTS

1. Mutual cooperation in criminal matters between the Contracting Parties shall continue to be governed exclusively by the Treaty between the United States of America and the Kingdom of the Netherlands on Mutual Assistance in Criminal Matters of June 12, 1981.
2. Prior approval by the Competent Authority of the Requested State is required for the use in a criminal proceeding of information that previously has been exchanged under this Agreement.

ARTICLE 9 - COSTS

1. If it appears that responding to an individual request for assistance under this Agreement will involve substantial costs being incurred by the Competent Authority of the Requested State, the Competent Authorities of both States shall establish a cost sharing arrangement before further effecting 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, the Competent Authorities of the Contracting Parties concerned shall conclude a general cost sharing arrangement.

ARTICLE 10 - CONSULTATION

1. The Competent Authorities will engage in consultations with respect to this Agreement with a view to improving its operation and to resolving any matters which may arise. In particular, the Competent Authorities will consult upon request in the event of:
 - a. a refusal by one Competent Authority to comply with a request for information on the grounds set forth in paragraph 3 of Article 3; or
 - b. a change in market or business conditions, or in the legislation governing the matters set forth in paragraph 3 of Article 2; or
 - c. any other difficulty which makes it necessary or appropriate to amend or extend this Agreement in order to achieve its purposes.
2. The Competent Authorities may agree on such practical measures as may be necessary to facilitate the implementation of this Agreement.

ARTICLE 11 - ENTRY INTO FORCE

This Agreement shall enter into force on the first day of the second month following the date on which both the Contracting Parties have informed each other in writing that the procedures constitutionally required therefor in their respective countries have been complied with.

ARTICLE 12 - TERRITORIAL APPLICATION OF THE AGREEMENT

With regard to the Kingdom of the Netherlands this Agreement shall apply to the territory of the Kingdom of the Netherlands in Europe.

ARTICLE 13 - TERMINATION

1. Any Contracting Party may at any time denounce this Agreement by means of notification to the other Party.
2. Such denunciation shall become effective six months after the receipt of the notification. If any Contracting Party gives such notice, this Agreement will continue to have effect with respect to all requests for assistance made before the effective date of such notification until the Competent Authority of the Requesting State concludes the matter for which assistance was requested.

IN WITNESS WHEREOF, the undersigned, being duly authorized to that effect, have signed this Agreement.

DONE at Washington this twenty-ninth day of April, 1993, in the English language.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

W. P. Albert

FOR THE GOVERNMENT OF THE
KINGDOM OF THE NETHERLANDS:

J. H. M.