

**MEMORANDUM
RESPECTING ADMINISTRATIVE
ARRANGEMENTS**

AUSTRALIA

**Australian Securities
Commission**

FRANCE

**Commission des Opérations
de Bourse**

**SYDNEY
14 March 1995**



AUSTRALIA
AUSTRALIAN SECURITIES
COMMISSION

REPUBLIQUE FRANÇAISE
COMMISSION DES OPÉRATIONS
DE BOURSE

MEMORANDUM RESPECTING ADMINISTRATIVE
ARRANGEMENTS

The Australian Securities Commission (ASC) and the Commission des opérations de bourse (COB);

Considering, in light of the increasing international activity in securities, the need for mutual co-operation and consultation in order to enhance investor protection, to promote the integrity of financial markets and more generally to facilitate the performance of their functions in the matters mentioned hereinafter;

Considering the importance of ensuring compliance with and enforcement of the laws and regulations governing securities, which are applicable in Australia and in France;

Willing therefore to establish the fullest mutual assistance, in order to facilitate the performance of the functions they are entrusted with in Australia and in France to enforce or secure compliance with any law or regulation, as that term is defined herein;

Have reached the following understanding:

1. Purpose of the Arrangement

1. The purpose of this Arrangement is to establish a system for mutual assistance between the Authorities designated hereinafter, in order to facilitate the performance of the functions they are entrusted with, and to enforce and secure compliance with the laws and regulations governing securities, including:

- (a) to prohibit and provide sanction against the abusive use of confidential information and other manipulative market practices;



(b) to protect the rights of investors to obtain timely and accurate information regarding securities and the issuers of these securities;

(c) to ensure compliance by all securities professionals with the laws and regulations governing their profession and their operations in securities, including laws and regulations concerning the transmission and execution of orders, the management, provision of advice concerning, or trading or individual or collective portfolios or accounts of securities.

2. Each Authority has determined that this Arrangement represents the preferred way of obtaining the confidential information necessary to ensure compliance with or enforcement of the laws and regulations of the State of the Requesting Authority. However, it does not prohibit either Authority from taking other measures in order to achieve the same purpose, to the extent permitted by international law. Before resorting to such other measures the requesting Authority will notify the requested Authority that it intends to resort to such other measures. The requesting Authority will consult the requested Authority, as to how such measures may affect the interests of the requested Authority.

3. This Arrangement does not modify or supersede any laws or regulatory requirements applicable in Australia or France and does not affect any other Arrangement entered into by the Authorities.

4. This Arrangement does not affect the ability of the Authorities to exchange non-confidential information.

2. Definitions

For the purpose of this Arrangement:

1. "Authority" means:

(a) the Australian Securities Commission of Australia

The Australian Securities Commission (ASC) is the national corporate and securities regulator established under section 7 of the Australian Securities Commission Act 1989. The ASC is responsible for the administration and enforcement of the Corporations Law and the Australian Securities Commission Act 1989 which provide for the regulation of corporations and the securities and futures industries. The ASC's ability to exercise coercive powers on behalf of foreign regulators is governed by the Mutual Assistance in Business Regulation Act 1992.

- (b) the Commission des opérations de bourse of France;

The Commission des opérations de bourse is the securities and futures regulator established by the Ordinance of September 28, 1967. Under article 1 of the Ordinance, the COB is responsible for seeing to the protection of savings invested in securities and all other investments involving a public offering, to the provision of information to investors and to the proper functioning of markets for securities, listed financial products or negotiable futures contracts. The Law of December 31, 1970, extended the competence of the COB to real estate companies, even though those companies are not listed. In addition, under the law of December 23, 1988, the establishment, the transformation, the merger, split or liquidation of a collective investment scheme is subject to prior approval of the COB. Under article 5bis of the Ordinance of 1967, the COB may conduct investigations at the request of foreign authorities fulfilling similar duties and communicate information covered by professional secrecy to such authorities, subject to reciprocity and provided that the competent foreign authority is bound by professional secrecy under the same guarantees as in France.

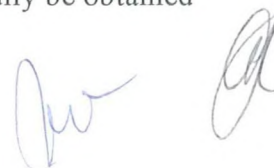
2. "requested Authority" means the Authority to whom a request under this Arrangement is made;
3. "requesting Authority" means the Authority making a request under this Arrangement;
4. "issuer" means a person who issues or proposes to issue any security;
5. "laws and regulations" means provisions of the laws and regulations or any rule or policy applicable in Australia and in France with respect to securities;
6. "person" means a natural person, legal entity, partnership or unincorporated association;
7. "securities professionals" means:
 - (a) any person who engages in the business of purchasing, selling, distributing, transferring, clearing or settling securities; receiving and keeping securities on deposit; collecting, executing or transmitting orders given by investors concerning the purchase or sale of securities; engaging for his or her own account, or for the accounts of investors, in the management of individual or collective securities portfolios or accounts; or advising others in these matters; and
 - (b) any person who is associated with another person who performs any function listed in subparagraph (a) including, without limitation, an employee or authorised representative.

8. "securities" means:
- (a) any share, stock, bond, note, debenture or any instrument similar to shares, stocks, bonds, notes, debentures;
 - (b) any contract or right giving the right to subscribe, buy or sell any instrument mentioned in (a);
 - (c) any exchange contract, futures contract, options contract, or any financial instrument based on instruments mentioned in (a);
 - (d) any index contract based on instruments mentioned in (a);
 - (e) any exchange contract, commodity futures contract or any commodity futures option contract.
9. "investor" means a person who has, holds or places an order to obtain an interest in securities, or who intends to invest or is solicited to invest in securities by securities professionals.

3. Scope of Assistance

1. The Authorities will provide each other the fullest assistance under this Arrangement, in accordance with the laws of their respective States, in order to facilitate the exchange of information between such Authorities relating to facts in connection with market surveillance and with investigations to determine whether any person has violated the laws or regulations of the State of the requesting Authority. For that purpose, the requested Authority will use its powers and means according to procedures provided under the laws of the State of the requested Authority; the requested Authority will provide access to the information it holds; it will obtain information useful to comply with the request for assistance.

2. Assistance under this Arrangement may be denied:
- (a) where the execution of the request would prejudice the sovereignty, the security, the fundamental economic interests, or public policy of the State of the requested Authority;
 - (b) where the execution of the request would lead to a violation of the laws and regulations of the State of the requested Authority;
 - (c) where a criminal proceeding has already been initiated in the State of the requested Authority, based upon the same facts and against the same person(s);
 - (d) where the information or assistance would more readily be obtained through other channels;



(e) where the same person(s) has already been finally sanctioned on the same charges by the competent authorities of the State of the requested Authority.

The denial of assistance does not undermine the ability of the Authorities to consult with each other.

Where the requested Authority does not possess the legal authority to provide the assistance requested, the requested Authority will consult with the requesting Authority about alternative means of addressing the request.

3. Without prior request for assistance, the Authorities may communicate to each other information they hold and which they consider may be useful to the other Authority to fulfil its mission and for the purposes that may be specified in the transmission letter.

4. Requests for Assistance

1. Requests for assistance must be made in writing and addressed to the requested Authority's contact officer listed in Appendix A.

2. The request for assistance must specify the following:

(a) a general description of the information sought by the requesting Authority;

(b) a general description of both the matter which is the subject of the request and the purpose for which the information is sought;

(c) the laws or regulations which may have been violated, including copies of the relevant sections of statute;

(d) the persons or entities suspected by the requesting Authority of possessing the information sought, or the places where such information may be obtained, if the requesting Authority is knowledgeable thereof;

(e) where the requesting Authority is the COB, the fact that the information received by the COB from the ASC may be transmitted by the COB to the French Public Prosecutor ("Public Prosecutor") who discretionarily decides on the initiation of a criminal proceeding and that, should the COB transmit information obtained by the ASC under the Mutual Assistance in Business Regulation Act of 1992 to the Public Prosecutor, the COB will inform the Public Prosecutor of the origin of the information transmitted and of its legal status under Australian law;

(f) the desired time period and means for the reply and, where appropriate, the urgency thereof.

3. In the event of urgency, requests for assistance and replies to such requests may be transmitted by summary or emergency procedures defined by mutual arrangement between the Authorities, provided that they are confirmed subsequently in the manner prescribed in subparagraphs 1 and 2.

4. Under this Arrangement, where a request for assistance is made by the requesting Authority upon request of another authority of the State of the requesting Authority, the Authorities will consult on the follow-up to such request and the precise content of the information to be provided by the requested Authority.

5. Any document or other material provided in response to a request under the Arrangement and any copies thereof must be returned on request, to the extent permitted by law.

5. Execution of Requests

Subject to paragraphs 1, 3 and 4, the requested Authority will provide to the requesting Authority the information that it holds or that it will obtain by relevant means determined by the requested Authority, in accordance with the applicable rules of the State of the requested Authority.

6. Permissible Use of Information

1. The requesting Authority will use the information furnished solely for purposes stated in the request, with a view to ensuring compliance or enforcement of the provisions of the laws and regulations specified in the request.

2. The requesting Authority will inform the requested Authority at the time of making a request as to whether the requesting Authority believes that transmission to the Public Prosecutor of information obtained pursuant to the request is likely.

3. Where the requesting Authority is required by the law of the state of the requesting Authority to transmit to the Public Prosecutor information obtained from the requested Authority which gives rise to a suspicion or belief that a criminal offence has been committed, the requesting Authority will inform the requested Authority of such transmission.



4. Where the COB transmits information obtained by the ASC pursuant to the Mutual Assistance in Business Regulation Act 1992 to the Public Prosecutor, the COB will inform the Public Prosecutor of the origin of the information transmitted and of its legal status under Australian law and will inform the ASC of such transmission. The ASC will inform the COB of the transmission to the Australian Director of Public Prosecutions of information received from the COB for the possible initiation of a criminal proceeding. The Authorities will inform each other of the use made of information transmitted by them to their respective Public Prosecutors, when this becomes available.

5. Any information provided on an unsolicited basis will not be used for any purpose other than those stated in the transmission letter. The Authority which has received such information will inform the other Authority prior to the use of the information received for the purposes of an administrative proceeding. The transmission of such information to the French Public Prosecutor or to the Australian Director of Public Prosecutions will be made pursuant to subparagraph 4. The transmission of such information with a view to instituting a civil or disciplinary proceeding will be subject to the prior authorisation of the Authority which has provided the information on an unsolicited basis.

6. However, if the requesting Authority wishes to use the information provided for any purpose other than those stated in paragraph 1, but remaining within the scope of this Arrangement, including the transmission of this information to other competent authorities in the field of securities, it must first ask permission of the requested Authority. If the requested Authority agrees to the use of the information for purposes other than those stated in subparagraphs 1, 3 and 5, it may consent to the use of the information subject to certain conditions. The requested Authority may refuse such use of the information; in that case, the Authorities will consult each other pursuant to paragraph 8 concerning the reasons for the refusal and the circumstances under which the use of the information might otherwise be allowed.

7. Confidentiality of Requests

1. Each Authority will keep confidential, to the extent permitted by law, requests or communications of information, made within the framework of this Arrangement, the contents of such requests, and any other matters arising during the implementation of this Arrangement, including consultations between the Authorities.

2. In all cases, the requesting Authority will keep confidential, to the extent permitted by law, any information received pursuant to this Arrangement to the same extent as such information would be kept confidential in the State of the Authority which has furnished the information.



8. Consultations and Disputes

1. The Authorities will inform each other of any change in the laws and regulations falling within the scope of this Arrangement, and will consult on a periodic basis or whenever necessary.
2. The Authorities will keep the operation of this Arrangement under continuous review and will consult with a view to improving its operation and resolving any matters which may arise.
3. The Authorities may conclude further arrangements on such practical measures as may be necessary to facilitate the implementation of this Arrangement.
4. In any case of dispute over the interpretation of this Arrangement, the Authorities will consult with a view to reaching a mutually acceptable interpretation.

9. Amendments to the Arrangement

Further to consultations held pursuant to paragraph 8, the Authorities may determine amendments to be made to this Arrangement, as may be necessary.

10. Effective Date

This Arrangement will be effective from the date of its signature by the Authorities.

11. Publication

The Authorities will publish this Arrangement.

12. Termination

This Arrangement will remain in effect unless terminated by any Authority upon 30 days' written notice. Where the requested Authority gives such notice, this Arrangement will continue to have effect with respect to all requests for assistance which are made before the effective date of notification.



IN WITNESS WHEREOF the Undersigned have signed this Arrangement.

DONE in Sydney, in quadruplicate, this fourteenth day of March, 1995, two in English, two in French, each text being equally authoritative.

FOR THE AUSTRALIAN SECURITIES
COMMISSION

A handwritten signature in black ink, appearing to read 'Alan Cameron', with a long horizontal flourish extending to the right.

Alan CAMERON
Chairman

FOR THE COMMISSION DES
OPERATIONS DE BOURSE

A handwritten signature in blue ink, appearing to read 'Jean Saint-Geours', with a horizontal line underneath.

Jean SAINT-GEOURS
Président

APPENDIX A

The requested Authority's contact officer pursuant to paragraph 4 of the Arrangement is:

For the Australian Securities Commission:

Head of International Relations

Telephone: 61.2.911 2075

Fax: 61.2.911 2634

For the Commission des opérations de bourse:

Le Directeur Général

Telephone: 33.1.40.58.65.65

Fax: 33.1.40.58.68.00

Two handwritten signatures in blue ink are located to the right of the contact information. The first signature is a circular scribble, and the second is a more fluid, cursive signature.