

# The Netherlands Securities Trading Act and Securities Trading Decree

with Supplementary Regulations  
and  
Official Commentary

A Translation  
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# INTRODUCTION

by  
F.G.B. Graaf

## 1. General

Until recently there was no regulatory framework in The Netherlands for the protection of investors in unlisted shares and other securities. Apart from the Act on the Supervision of the Credit System, which only applies to the issue of debentures to the public, no regulations existed in respect of the issue and public offering of unlisted securities. In the field of trading in unlisted securities, the Stock Exchange Decree of 1947 required that, in the absence of a specific exemption, all sales of shares and securities had to take place through a member of the Amsterdam Stock Exchange, but, as a general rule, this Decree was not actively enforced.

In contrast, listed securities are subject to the regulations on the admission and issue of and trade in shares and debentures of the Amsterdam Stock Exchange<sup>1</sup> and (in respect of share, gold, silver and currency options) of the European Options Exchange. The implementation of the former regulations takes place through the Amsterdam Stock Exchange Association ('the Association'), whose members are permitted to trade in securities both listed and unlisted. Non-compliance with the Association's regulations may result in dealings in the securities concerned being suspended or prohibited.

Due to the absence of regulatory safeguards, and also because membership of the Association is not mandatory for securities dealers, malpractices flourished in the issue of and trading in unlisted securities in The Netherlands. To counter such fraudulent practices, the Government introduced a Bill to Parliament in November 1984. As an interim measure in anticipation of future legislation regulating all aspects of the trade in and issue of securities (both listed and unlisted) and a future Act on Investment Institutions, the Bill was intended to provide statutory protection against fraudulent investment offers of unlisted securities particularly for non-professional investors. Parliament reacted swiftly and adopted the Bill on 30th October 1985. Pursuant to a Royal Decree, the new Securities Trading Act (the 'Act') took effect on 1st May 1986, although its main prohibitions apply as from 1st July 1986.

<sup>1</sup> These regulations implement E.E.C. Directives number 79/279, 80/390 and 82/121 (on admission, listing particulars and regular information requirements for a listing on a stock exchange within the E.E.C.).

The Act does not affect trading in securities subject to the rules of the Amsterdam Stock Exchange, the European Options Exchange or the Amsterdam Gold Futures Market. It affects trading in securities officially listed on any other official exchange in the European Communities only to the extent that such securities are offered to the general public in or from The Netherlands.

The Act will be incorporated into the general Securities and Exchange Act and the Act on Investment Institutions (insofar as the Act's rules on mutual funds are concerned) upon their enactment. In view of the Act's system of prohibitions and licences, the Stock Exchange Decree of 1947 had become obsolete and it was consequently repealed with effect from 1st May 1986. The Act does not apply in The Netherlands Antilles.

## **2. Main Prohibitions of the Act**

Under the Act it is prohibited, save within a limited group, to do any of the following in or from The Netherlands:

- (a) to offer securities upon issue to individuals or companies not engaged in the business of dealing or investing in securities. This prohibition extends to secondary offerings, i.e. the offer of securities of a class that has only been available to a limited group since their issue;
- (b) without a license, (to offer) to act as an intermediary in securities transactions (including securities brokerage services), to individuals or companies which do not regularly issue securities or which do not engage in the business of investing or trading in such securities. This prohibition does not extend to the rendering of investment advice;
- (c) without a licence, to offer (units of) participation in a mutual fund to individuals or companies not engaged in the business of dealing or investing in securities.

To qualify as a 'limited group' the following criteria should be met:

- (1) the group must be limited in size and clearly defined; and
- (2) there must be more than just a financial relationship between the group and the party offering the securities (or, in case of (c), the participation); and
- (3) the offer should be open for acceptance only by the members of the group.

A typical example of an offering to a limited group is an employee share (option) scheme.

## **3. Scope of the Act**

The Act defines 'securities' as:

- share certificates, debt instruments (debentures, bonds, notes, commercial paper), profit sharing certificates and founders' shares, traded options, warrants and similar securities;

- participation rights (units of participation in a mutual fund), options, registrations in share and debt registers and similar rights whether conditional or not;
- depositary receipts, provisional certificates; and
- forward contracts regularly traded on a futures exchange.

Excluded from the Act are:

- bearer savings certificates (if interest is payable only on maturity);
- instruments that serve exclusively as a means of payment (banknotes, cheques and drafts, letters of credit, bills of exchange); and
- condominium rights.

For the purposes of the Act an 'exchange' means:

- any securities exchange in the European Communities on which trading currently takes place; and
- any other exchange designated by the Minister of Finance. So far the Swiss stock exchanges of Basle, Berne, Geneva, Lausanne and Zürich and the United States stock and futures exchanges subject to the supervision of the Securities Exchange Commission (this includes the over-the-counter market maintained by NASDAQ) or of the Commodities Futures Trading Commission have been designated by Ministerial Decree.

#### **4. Primary Market: Offering of Securities upon Issue**

The prohibition referred to under 2(a) and the exceptions there to aim to ensure that new securities offered upon issue to the public are fully and adequately described in a prospectus. Consequently, the Act permits the following securities to be offered to the public upon issue:

- (i) securities that are or will be officially listed on an exchange as defined in the Act<sup>2</sup>; or
- (ii) unlisted securities offered with a generally available prospectus that meets the requirements of the Securities Trading Decree (the 'Decree') and to which every written announcement of the offer refers; or
- (iii) securities in respect of which an exemption applies or a dispensation has been granted.

The prospectus requirements are based on the regulations of existing stock, options and futures exchanges in The Netherlands and therefore closely resemble the Listing Directives of the European Communities. Consequently, for example, companies (including finance companies of multinationals) established in The Netherlands and contemplating the

2. This includes securities officially listed on the Amsterdam Parallel Market, but there is a difference of opinion between the Ministry of Finance and the Association whether the London Unlisted Securities Market and the Paris Second Marché are included.

issue of commercial paper through a Note Issuance or Revolving Underwriting Facility (N.I.F., R.U.F.) must prepare a prospectus in accordance with the Act's requirements<sup>3</sup>, unless the banks offering the facility sell the paper exclusively to professional investors. This could be ensured by including a selling restriction to that effect or by the choice of a large denomination for the debentures combined with the use of a clearing system accessible only to institutional investors and banks (e.g. securities accounts maintained with CEDEL or Euro-Clear). The policy of the Ministry of Finance in respect of commercial paper, N.I.F.'s and R.U.F.'s under the Act has not been announced at the time of going to press.

Where unlisted debentures are offered to the general public, the obligation to make a prospectus available falls upon:

- a. the members of the issuing group that takes over the issue and then places the securities with the public. The issuer itself is exempt, because it issues to a 'limited group'; or
- b. the issuer where the banks underwrite the issue, i.e. guarantee subscription by the investors.

Although it would seem to be possible to avoid making a prospectus available by arranging a facility with non-resident banks that take over the (unlisted) debentures and sell the same to the general public abroad (as the offer could then not be said to have been made in or from the Netherlands), the Ministry of Finance has indicated that it will nevertheless treat such an offering as taking place from The Netherlands and therefore a prospectus will be required.

## **5. Secondary Market: Securities Brokerage Services**

Under the Act it is permitted to engage in the business of providing services as an intermediary in securities transactions (including securities brokerage services), in or from The Netherlands:

- (i) *to the professional public*, i.e. those individuals or corporate entities which regularly engage in the issue of shares or other securities or whose ordinary business it is to invest or trade in such securities;
- (ii) *to the non-professional public* only if:
  - (a) the services are offered by members of an exchange (as defined by the Act) and relate exclusively to securities that are or will be officially listed on such exchange; or

3. This may prove cumbersome where issues under the facility take place at intervals of several months as (part of) the prospectus would then have to be amended each time to reflect the latest financial position of the issuer. Dispensation could be applied for to avoid these consequences.

- (b) a specific licence has been granted by the Minister of Finance; or
- (c) a general exemption applies or an individual dispensation has been obtained from the Minister of Finance.

Pursuant to an exemption issued by the Minister of Finance, the members of the Association and banks and financial institutions supervised by De Nederlandsche Bank N.V. are authorised to act as intermediaries in respect of any securities irrespective of whether or where they are listed.

This exemption is subject to the following conditions:

- compliance with the rules of the Association (insofar as its members are concerned) and the rules of the stock exchange where the securities are officially listed;
- any member of the public must be provided, upon request, with written information on the listing and trading of the securities offered, the address at which prospectuses and regular listing information may be obtained and the commissions, expenses and mark-ups charged by the exempted firm and the general terms and conditions applicable to its dealings;
- a securities transaction statement of account must be sent to customers within 5 days after each transaction.

International securities houses in The Netherlands which are either members of the Association or branches of non-Dutch banks subject to the supervision of De Nederlandsche Bank N.V. also benefit from the exemption.

Exemptions have also been granted in respect of:

- (a) investment companies recognised pursuant to the Guarantee Scheme for Private Participation Companies (which applies only to their acting as intermediaries in respect of shares in their own share capital); and
- (b) to members of the potato and hogs forward contract markets (insofar as they act as an intermediary in respect of contracts traded on such markets); and
- (c) to members and associate members of the Netherlands Association of Commodities Futures Traders (insofar as they act as an intermediary in respect of forward contracts or traded options).

The Minister of Finance will grant a licence referred to in (ii) (b) above only if certain requirements set out in the Decree relating to expertise, reliability, financial guarantees, conduct of business and information to the public are met by the applicant. A licence may be limited to certain types of securities and may be made conditional upon certain terms.

Following the grant of a licence, the licensed intermediary must demonstrate to the Ministry of Finance each year by means of an auditor's statement that its business is conducted in accordance with the information and draft documentation provided in the application.



## 6. Mutual Funds

A mutual fund is defined in the Act as a joint fund of investors (the 'participants') pooled for investment by the fund's manager. The participants become the joint owners of the assets in the mutual fund. The Act applies only if the fund does not take the form of a separate legal entity that issues shares to the participants, but is held (on trust) by the manager itself. In other jurisdictions this is often described as an open-ended mutual fund trust issuing units of participation.

The Act requires that a specific licence be obtained from the Minister of Finance to publicly offer, in or from The Netherlands, participations in a mutual fund, unless:

- (i) the participations are or will be officially listed on an exchange (as defined by the Act); or
- (ii) a general exemption is applicable or an individual dispensation has been obtained from the Minister of Finance.

A general exemption has been granted to mutual funds managed by (i) a corporate entity that is a member of the Association, (ii) a bank or financial institution that is subject to the supervision of De Nederlandsche Bank N.V., or (iii) a wholly-owned subsidiary of such a bank or financial institution, provided the latter guarantees the subsidiary's liabilities. This exemption is subject to the following conditions:

- the manager of the fund must enter into a contract with a depositary (which must be a corporate entity) regarding the management and custody of the fund;
- a prospectus in accordance with the Decree's requirements should be generally available when offering participations in the fund;
- thereafter the manager must provide information at the request of third parties in respect of the terms of the fund's management, custody and investment.

An exemption has also been granted to mutual funds managed by a member of the Netherlands Association of Commodities Futures Traders (insofar as the fund is invested in futures contracts or options).

The Minister of Finance will only grant a specific licence, if (i) a prospectus in respect of the participation is made generally available and complies with the Decree's requirements, (ii) the fund is managed by a corporate entity, and (iii) the applicant for the licence (usually the manager) shows that the Decree's requirements in respect of expertise, reliability, financial guarantees, conduct of business and information to the public are met. A licence may be issued subject to certain conditions.



## 7. Application for licenses

Application for licenses are submitted to the Minister of Finance, Department of Domestic Monetary Affairs, addressed to the Ministry of Finance, Head of the Financial Markets and Institutions Division, P.O. Box 20201, 2500 EE The Hague. The application must clearly state whether it is for a license to act as an intermediary in securities transactions, or for a license to publicly offer participations in a mutual fund.

With the application for a license the following documents must be submitted by the applicant:

- (i) in respect of a license to act as an intermediary in securities transactions:
  - (a) documentary evidence that each person to be authorised in the business to enter into transactions as an intermediary has been engaged, in a right and proper manner, for a period of two full years as an authorised agent or managing director of an undertaking engaged in the business of acting as intermediary in securities and who has relevant working experience in the type of securities in which the business offers to act as an intermediary;
  - (b) the name, address, date and place of birth of all persons authorised within the business to enter into transactions as an intermediary and of any person having the right to appoint or dismiss members of the management and staff of the business and certificates on the conduct of such persons;
  - (c) a specimen of a contract with a credit institution (established in the European Communities) providing for the separation of the accounts of clients and the intermediary; a declaration of such credit institution indicating its willingness to enter into such contract and the name, address and place of establishment of such credit institution;
  - (d) a specimen of the applicable administrative system under the Decree;
  - (e) a specimen of a securities invoice under the Decree; and
  - (f) the general terms and conditions applicable to agreements with customers and the commissions, expenses and mark-ups that will be charged;
- (ii) in respect of a license to publicly offer participations in a mutual fund:
  - (a) a prospectus meeting the Act's requirements;
  - (b) documentary evidence that the person to be authorised in the business to invest the assets of the fund has been engaged, in a right and proper manner, for a period of two full years as an authorised agent or managing director of an undertaking engaged in the business of capital management and who has relevant working experience in respect of the intended investment policy of the fund;

- (c) the name, address, date and place of birth of all persons authorised within the business to invest the assets of the fund and of any person having the right to appoint or dismiss members of the management and staff of the business and certificates on the conduct of such persons;
- (d) a specimen of a contract for the management and custody of the fund; a declaration of the custodian indicating its willingness to enter into such contract and the name, address and place of establishment of the custodian;
- (e) a specimen of the monthly report on the composition of the fund; and
- (f) the terms and conditions of management and custody of the fund; and
- (iii) in respect of either license:
  - (a) an accountant's certificate from which it appears that the applicant has net assets of at least Dfl. 250,000 or annual accounts for the previous fiscal year with an accountant's certificate showing net assets of at least Dfl. 250,000 or a bank guarantee for that amount; and
  - (b) the information in respect of the business that must be registered at the Commercial Register pursuant to statutory provisions.

## **8. Overlapping Legislation**

The Act on the Supervision of the Credit System describes the various financial undertakings subject to banking supervision. It deals with the licensing and registration of banks, gives details of the controls that may be imposed by De Nederlandsche Bank N.V. and describes how other financial institutions are supervised. This Act requires an exemption from the Minister of Finance for any public issue of or trading in debentures (but not shares) with a denomination of less than Dfl. 100,000 unless (a) the instruments are or will be listed on an exchange in the European Communities or (b) the company issuing or dealing in the instruments is already subject to supervision by De Nederlandsche Bank N.V. as a 'credit institution'. This provision may apply concurrently with the Act.

## **9. Effect on Trading of Foreign Listed Securities**

If securities are officially listed in a Member State of the European Communities (other than The Netherlands), the underwriters and selling group of the securities are free to offer any of the securities to Netherlands traders or investors from their home country. The new legislation will only apply to intermediary services performed in or from The Netherlands, i.e. if:

- (i) the entity offering such services is resident in The Netherlands or is acting through its Dutch branch office; and

(iii) acting as an intermediary in securities is within the ordinary business of the entity acting in or from The Netherlands.

If its services qualify as 'trade in or from The Netherlands', the dealer may only offer the securities to the public if it is a member of the exchange where the securities are officially listed. For example, United Kingdom licensed dealers who are not 'members' of the London Stock Exchange ('LSE'), or of the Association or who are not subject to the supervision of De Nederlandsche Bank N.V. would require a specific license or dispensation if they offer securities officially listed in London directly to the public in or from The Netherlands.

It is expected that the majority of licensed dealers will apply for and obtain membership of the LSE following the 'big bang' in October of 1986.

In view of these requirements, foreign issuers will generally have an interest to include in their issue documentation restrictions in respect of the sale of securities in The Netherlands to avoid a breach of the Act.

## **10. Enforcement**

The monitoring of compliance with the Act has been entrusted to the Economic Investigation Department. Breach of any of the above prohibitions or of the terms of any licence, exemption or individual dispensation constitutes a criminal offence under the Economic Offences Act and may attract a maximum penalty of 6 months imprisonment and/or a fine of Dfl. 10,000 (or Dfl. 25,000 in case of aggravating circumstances).

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## *Translators' Notes*

<sup>1</sup> In the translation, the term 'bemiddelend verlenen' is translated as 'acting as an intermediary' because the more commonly used term, 'dealing as a broker', does not convey the wider meaning implied by the Dutch term.

<sup>2</sup> In the securities trade the term 'opslag' (in the singular) specifically means the charge due to the Stock Exchange Association by a member on securities transactions. The plural form is repeatedly used in the text of the legislation extending the general connotation to 'mark-ups'.

THE NETHERLANDS  
SECURITIES TRADING ACT AND SECURITIES TRADING  
DECREE

WITH SUPPLEMENTARY REGULATIONS AND OFFICIAL COMMENTARY

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# WET EFFECTENHANDEL

# SECURITIES TRADING ACT



# Staatsblad van het Koninkrijk der Nederlanden

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Jaargang 1985

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**570**

## **Wet van 30 oktober 1985, houdende regelen ter bestrijding van ongewenste ontwikkelingen die zich bij de handel in effecten voordoen (Wet effectenhandel)**

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Wij Beatrix, bij de gratie Gods, Koningin der Nederlanden, Prinses van Oranje-Nassau, enz. enz. enz.

Allen, die deze zullen zien of horen lezen, saluut! doen te weten:

Alzo Wij in overweging genomen hebben, dat het wenselijk is in afwachting van de herziening van wetgeving met betrekking tot de handel in effecten een regeling te treffen ter bestrijding van ongewenste ontwikkelingen die zich bij de handel in effecten voordoen;

Zo is het, dat Wij, de Raad van State gehoord, en met gemeen overleg der Staten-Generaal, hebben goedgevonden en verstaan, gelijk Wij goedvinden en verstaan bij deze:

### **HOOFDSTUK I**

#### *Inleidende bepalingen*

#### **Artikel 1**

In deze wet en de daarop berustende bepalingen wordt verstaan onder:

a. effecten:

- 1°. aandeelbewijzen, schuldbrieven, winst- en oprichtersbewijzen, optiebewijzen, warrants, en soortgelijke waardepapieren;
- 2°. rechten van deelgenootschap, opties, inschrijvingen in aandelen- en schuldregisters, en soortgelijke, al dan niet voorwaardelijke, rechten;
- 3°. certificaten van waarden als hiervoor bedoeld;
- 4°. recepten van waarden als hiervoor bedoeld;

b. beurs:

een in Nederland of in een van de andere Lid-Statens van de Europese Gemeenschappen gelegen en werkzame effectenbeurs alsmede een beurs die door Onze Minister van Financiën als beurs in de zin van deze wet is aangewezen;

# STATUTE BOOK

## KINGDOM OF THE NETHERLANDS

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Volume 1985

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**570**

### **An Act of 30th October 1985 to provide for regulations to combat undesirable developments in the securities trade (Securities Trading Act)**

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We Beatrix, by the grace of God, Queen of The Netherlands, Princess of Oranje-Nassau, etc., etc., etc.

Greetings to all who shall read or hear this read! We hereby make known:

That We have considered it desirable pending the revision of legislation in respect of the securities trade to provide for regulations to combat undesirable developments in the securities trade.

Therefore, having heard the Council of State and in deliberation with the States General, We hereby approve and enact the following:

#### **PART I**

##### *Introductory provisions*

#### **Article 1**

In this Act and the provisions based thereon the following expressions shall have the following meanings:

a. 'securities':

1° share certificates, debt instruments, profit sharing certificates and founders' shares, traded options, warrants and similar securities;

2° participation rights, options, registrations in share and debt registers and similar rights whether conditional or not;

3° value certificates as referred to herein;

4° provisional certificates as referred to herein;

b. 'exchange':