



Yale SCHOOL OF MANAGEMENT  
*Program on Financial Stability*

## EliScholar – A Digital Platform for Scholarly Publishing at Yale

---

YPFS Resource Library

---

10-12-2006

### **Act of September 28, 2006: Rules Regarding the Financial Markets and the Supervision**

De Nederlandsche Bank (DCB)/Central Bank of the Netherlands

<https://elischolar.library.yale.edu/ypfs-documents/717>

---

This resource is brought to you for free and open access by the Yale Program on Financial Stability and [EliScholar](#), a digital platform for scholarly publishing provided by Yale University Library. For more information, please contact [ypfs@yale.edu](mailto:ypfs@yale.edu).

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

(Text applicable as at 8 November 2007)

## **Act of 28 September 2006, on rules regarding the financial markets and their supervision (Act on Financial Supervision)**

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

Greetings to all who shall see or hear these presents! Be it known:

Whereas We have considered that the reformation of the supervision of the financial markets into functionally structured supervision necessitates a revision of the legislation regarding that supervision;

We, therefore, having heard the Council of State, and in consultation with the Parliament, have approved and decreed as We hereby approve and decree:

### **1. General Provisions**

#### **Chapter 1.1. Introductory provisions**

##### **Part 1.1.1. Definitions**

###### **Section 1:1**

In this Act and the provisions ensuing from this Act, unless otherwise stipulated, the following terms shall have the following meaning:

*to offer:*

- a. in the pursuit of a profession or business make a sufficiently specific proposal, either directly or indirectly, to act as the other party in a contract with a consumer or, where it concerns insurance, client, regarding a financial product that is not a financial instrument, or to enter into, manage or perform such a contract in the pursuit of a profession or business; or
- b. to make a sufficiently specific proposal, either directly or indirectly, to act as the other party in a contract with a client regarding units in a collective investment scheme, or to request or acquire, either directly or indirectly, funds or other goods from a client in order to hold units in a collective investment scheme;

*provider:* a party making an offer;

*designated State:* a State designated under this Act as the State in which the supervision of collective investment schemes, clearing institutions and funeral expenses and benefits in kinds insurers provides sufficient safeguards with regard to the interests which this Act seeks to protect;

*registration period:* the period during which the securities for which a public takeover bid is made can be registered;

*auditor:* an auditor as referred to in Section 393(1) of Book 2 of the Dutch Civil Code (*Burgerlijk Wetboek*);

*to advise:* to recommend, in the pursuit of a profession or business, one or more specific financial products to a particular consumer or, in the case of a financial instrument or insurance, client;

*advisor:* a party issuing advice;

*Authority for the Financial Markets:* Stichting Autoriteit Financiële Markten;

*bank:* a party whose business it is to obtain the disposal of callable funds from others than professional market parties beyond a restricted circle, and to extend loans at its own expense;

*management company:* a legal person managing one or more collective investment schemes;

*individual portfolio management:* the discretionary management conducted in the pursuit of a profession or business, other than as a management company, of financial instruments belonging to a person or of funds belonging to this person that are available for investment in financial instruments, pursuant to instructions issued by this person;

*investor-compensation scheme:* a system providing a guarantee for investors' investment-related claims against banks, investment firms or financial institutions that are permitted to provide investment services, with regard to the risk that these financial enterprises are unable to fulfil their obligations relating to such claims;

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

*unit trust:* capital not held by an investment company that includes funds or other goods requested or acquired for collective investment in order to have the unit-holders share in the return on the investments;

*collective investment scheme:* investment company or unit trust;

*collective investment scheme having its registered office in a non-designated State:* a collective investment scheme having its registered office outside the Netherlands in a State not designated under Section 2:66(1) as a State in which the supervision of collective investment schemes provides sufficient safeguards with regard to the interests which this Act seeks to protect, not being an enterprise for collective investment in transferable securities;

*investment company:* a legal person requesting or acquiring funds or other goods for collective investment in order to have the unit-holders share in the return on the investments;

*investment object:*

- a. an item of property, a right to an item of property or a right to part of or the full return in money or a part of the proceeds of an item of property, not being a product as referred to under (b) to (h) of the definition of financial product in this section, acquired for consideration, upon which acquisition a return in money is pledged to the acquiring party and whereby a party other than the acquiring party performs most of the management of the item of property; or
- b. another right, to be specified by Decree;

*investment firm:* a party providing an investment service or performing an investment activity;

*investment firm operating as a systematic internaliser:* an investment firm which frequently conducts transactions in an organised, regular and systematic manner for its own account and outside a regulated market or a multilateral trading facility, by executing client orders with regard to shares;

*broker:* a party providing brokerage services;

*to provide brokerage services:*

- a. all activities carried out in the pursuit of a profession or business focused on establishing, as a broker, a contract regarding a financial product other than a financial instrument, credit or insurance between a consumer and a provider;
- b. all activities carried out in the pursuit of a profession or business focused on establishing, as a broker, a contract regarding credit between a consumer and a provider, or on assisting in the administration and performance of such a contract; or
- c. all activities performed in the pursuit of a profession or business focused on establishing, as a broker, an insurance contract between a client and an insurer, or on assisting in the administration and performance of an insurance contract;

*restricted circle:* a circle composed of persons or companies from which a person or company obtains the disposal of callable funds,

- a. that is accurately defined;
- b. whose joining criteria have been defined beforehand, are verifiable and do not facilitate entry for persons or companies not belonging to the circle; and
- c. in which the members of the circle already have a legal relationship with the person or company obtaining the disposal of the funds at the time when the callable funds are received, based on which they may in all reasonableness be aware of its financial position;

*depository:* a legal person entrusted with the safekeeping of a collective investment scheme's assets;

*administrator:* the administrator as referred to in Section 3:162(4), or the party appointed by the administrative or judicial bodies in another Member State in order to implement financial reorganisation measures;

*bidder:* a natural person, legal person or company, or an equivalent body or joint venture under foreign law, by which or on whose behalf, either individually or together with other natural persons, legal persons, companies or equivalent bodies or joint ventures, a public takeover bid is prepared or made, or has been made;

*branch office:*

- a. a section without legal personality of a financial enterprise that is not an insurer or investment firm permanently existing in a State other than the State where this financial enterprise has its registered office; or
- b. a permanent section of an insurer, other than the registered office, that is managed by the insurer's own staff or by an independent person authorised to represent the insurer on a permanent basis; or

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

- c. joint sections without legal personality of an investment firm that performs investment services, investment activities or ancillary services, permanently existing in a State other than the State where this investment firm has its registered office;

*central credit institution*: a bank which co-determines the policy relating to a group of banks of which the bank itself also forms part;

*clearing institution*: a party whose business it is to conclude contracts regarding financial instruments with a central counterparty that acts as an exclusive other party in respect of these contracts, of which the provisions indicating the essence of the performance correspond to the provisions forming part of contracts concluded on a trading platform by third parties or by the party itself in its capacity as a party to the contract, and which indicate the essence of the performance in the latter contracts;

*clearing institution established in a non-designated State*: a clearing institution having its registered office in a State outside the Netherlands that is not designated under Section 2:6(2) as a State in which the supervision provides sufficient safeguards with regard to the interests which this Act seeks to protect;

*client*: a person to whom a financial enterprise provides a financial service or to whom it intends to provide a financial service;

*Community co-assurance*: direct non-life insurance regarding major risks, effected in co-insurance, whereby:

- a. the non-life insurer that acts as the first non-life insurer has assumed its obligations under the non-life insurance contract from a place of business in a Member State other than the Member State in which at least one of the other co-insurers has done so; and
- b. the risk is situated in a Member State;

*consumer*: a natural person not acting in the pursuit of his business or profession to whom a financial enterprise provides a financial service or to whom it intends to provide a financial service;

*unit-holder*: a shareholder or a holder of a unit in a collective investment scheme;

*deposit*: a credit that is formed by funds in an account or that temporarily arises out of normal bank transactions, and that a bank must repay pursuant to the applicable statutory and contractual conditions, as well as debts represented by debt instruments issued by a bank, with the exception of bonds that satisfy the conditions stated in Article 22(4) of the UCITS Directive;

*deposit-guarantee scheme*: a system providing a guarantee for deposit holders' claims against banks with regard to the risk that these banks are unable to fulfil their obligations relating to such claims;

*offeree company*: the institution that issued securities on which a public takeover bid has been announced, is made or must be made;

*durable medium*: a device enabling a person to store information addressed personally to him in a manner that makes this information accessible for future reference for a period of time appropriate for the objective which the information may serve, and that allows the unchanged reproduction of the information stored;

*security*:

- a. a negotiable share or other negotiable instrument or right considered equivalent, or an apartment right;
- b. a negotiable bond or other negotiable debt instrument; or
- c. any other negotiable instrument issued by a legal person, company or institution by which securities referred to under (a) or (b) may be acquired through exercising the rights attached to this instrument or through conversion, or that can be settled in cash;

*effective credit compensation percentage*: the lending fee to be charged to the consumer in the performance of a credit contract in accordance with the repayment schedule, expressed as an annual percentage of the outstanding balance, calculated in a manner to be specified by ministerial regulation;

*electronic money*: a monetary value stored on an electronic device or stored on-distance in a central accounting record;

*electronic money institution*: a party, not being a bank, whose business it is to obtain the disposal of funds in exchange for which electronic money is issued with which payments can be made, also to parties other than the party issuing the electronic money;

*European investment firm*: investment firm having its registered office in another Member State that holds a licence there to conduct its business;

*European credit institution*: credit institution having its registered office in another Member State that holds a licence there to conduct its business;

*European life insurer or non-life insurer*: life insurer or non-life insurer having its registered office in another Member State that holds a licence there to conduct its business corresponding to the licence referred to in Section 2:27;

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

*financial instrument:*

- a. securities;
- b. money market instruments;
- c. units in a collective investment scheme, not being securities;
- d. options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivative instruments, indices or financial measures which may be settled physically or in cash;
- e. options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties, otherwise than by reason of a default or other termination event;
- f. options, futures, swaps and any other derivative contracts relating to commodities that can only be physically settled provided they are traded on a regulated market or a multilateral trading facility;
- g. options, futures, swaps or forward rate agreements other than those referred to under (f) and any other derivative contracts relating to commodities which can be physically settled and are not intended for commercial purposes, and which have the characteristics of other derivative financial instruments;
- h. derivative instruments for the transfer of credit risk;
- i. financial contracts to settle differences;
- j. options, futures, swaps, forward rate agreements and any other derivative contracts relating to climate variables, freight rates, emission allowances, inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties, otherwise than by reason of default or other termination event, as well as any other derivative contracts relating to assets, rights, obligations, indices or measures other than those referred to above which have the characteristics of other derivative financial instruments;

*financial product:*

- a. an investment object;
- b. a current account including the ancillary payment facilities;
- c. electronic money;
- d. a financial instrument;
- e. credit;
- f. a savings account including the ancillary savings facilities;
- g. an insurance contract; or
- h. another product to be specified by Decree;

*financial service:*

- a. to offer;
- b. to advise on financial products other than financial instruments;
- c. to provide brokerage services;
- d. to provide reinsurance brokerage services;
- e. to act as a clearing institution;
- f. to act as an authorised agent or authorised sub-agent; or
- g. to provide an investment service;
- h. to perform an investment activity;

*financial service provider:* a party that offers a financial product other than a financial instrument, that advises on a financial product other than a financial instrument or that provides brokerage services, provides reinsurance brokerage services or acts as an authorised agent or authorised sub-agent;

*financial institution:* a party, not being a credit institution, that has as its main business the performance of one or more of the activities referred to under 2-12 of Annex I to the Recast Banking Directive, or the acquisition or holding of units;

*financial Dutch parent holding company:* financial holding company having its registered office in the Netherlands that is not a subsidiary of a Dutch investment firm or a Dutch credit institution or of a financial holding company having its registered office in the Netherlands, whereby the term 'subsidiary' shall be deemed to mean a subsidiary as referred to in Articles 1 and 2 of the Consolidated Accounts Directive, or an enterprise over which, in the opinion

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

of the Dutch Central Bank, a parent enterprise exercises a predominant influence;  
*financial enterprise:*

- a. a management company;
- b. a collective investment scheme;
- c. an investment firm;
- d. a depositary;
- e. a clearing institution;
- f. a financial service provider;
- g. a financial institution;
- h. a credit institution; or
- i. an insurer;

*qualified investor:*

- a. legal person or company that holds a licence or is otherwise regulated to be active on the financial markets;
- b. legal person or company that does not hold a licence or is not otherwise regulated to be active on the financial markets and whose only corporate object is to invest in securities;
- c. national or regional government body, central bank, international or supranational financial organisation or other similar international institution;
- d. legal person or company having its registered office in the Netherlands that:
  - 1°. is classified as a small enterprise under rules to be laid down by Decree; and
  - 2°. was registered by the Authority for the Financial Markets as a qualified investor at its own request;
- e. legal person or company, not being a legal person or company as referred to in Subsection (d), opening words and under 1°;
- f. natural person residing in the Netherlands who satisfies the rules to be laid down by Decree and who was registered by the Authority for the Financial Markets as a qualified investor at his own request; or
- g. natural person or enterprise classified as a qualified investor in another Member State as referred to in Article 2(1)(e)(iv) and (v) respectively of the Prospectus Directive;

*qualified shareholding:* a direct or indirect holding representing ten percent or more of an enterprise's issued capital or the right to exercise, directly or indirectly, ten percent or more of the voting rights in an enterprise, or the right to exercise, directly or indirectly, equivalent control over an enterprise, whereby in determining the number of voting rights of a party in an enterprise, the voting rights shall also include the voting rights which it has or is deemed to have under Section 5:45;

*municipal credit bank:* a party offering credit, established by one or more municipalities;

*regulated market:* multilateral system which brings together or facilitates the bringing together of multiple buying and selling interests in financial instruments – within the system and in accordance with its non-discretionary rules – in a way that results in a contract with regard to financial instruments that have been admitted to trading in accordance with the rules and system of that market, and which operates on a regular basis and in accordance with the applicable rules on licensing and ongoing supervision;

*authorised agent:* a party acting as an authorised agent;

*derivatives on commodities:* a financial instrument as referred to under (e), (f) and (g) of the definition of financial instrument;

*large risks:*

- a. the risks pertaining to the sectors Railway Rolling Stock, Aircraft, Ships (sea, lake, river and canal vessels), Goods in Transit, Aircraft Liability and Liability for Ships (sea, lake, river and canal vessels), as listed in the Sectors Annex to this Act
- b. the risks pertaining to the sectors Credit and Suretyship, as listed in the Sectors Annex to this Act, insofar as the policyholder acts in the pursuit of a profession or business and the risk pertains to such a profession or business; or
- c. the risks pertaining to the sectors Land Vehicles (other than railway rolling stock), Fire and Natural Forces, Other Damage to Property, Motor Vehicle Liability, Road Transport Liability, General Liability and various monetary losses, as listed in the Sectors Annex to this Act, insofar as the policyholder satisfies two or more of the following requirements:

1°. the value of the assets according to the balance sheet is more than €6,200,000;

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

2°. the net turnover of the previous financial year is more than € 12,800,000;

3°. the average number of employees of the previous financial year amounts to more than 250;  
whereby these requirements are applied on the basis of the consolidated accounts if the policyholder forms part of a group whose consolidated accounts are prepared in accordance with the Consolidated Accounts Directive, and these requirements apply to the participants in the joint venture collectively if the policyholder forms part of a joint venture;

*own-account trading*: dealing in financial instruments using one's own capital, which results in the conducting of transactions;

*trading portfolio*: portfolio as referred to in Article 11(1) of the Recast Capital Adequacy Directive;

*reinsurer*: a party, not being a life insurer, funeral expenses and benefits in kind insurer or non-life insurer, that has as its business the acceptance of risks transferred by a life insurer, funeral expenses and benefits in kind insurer, non-life insurer or other reinsurer;

*reinsurance broker*: a party providing reinsurance brokerage services;

*to provide reinsurance brokerage services*: all activities in the pursuit of a profession or business focused on establishing, as a broker, a contract in which risks from contracts of insurance are ceded or on assisting in the administration and performance of such a contract;

*Recast Banking Directive*: Commission Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and the pursuit of the business of credit institutions (recast) (OJEU L 177);

*Recast Capital Adequacy Directive*: Commission Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast) (OJEU L 177);

*eligible counterparty*:

- a. management company of a collective investment scheme;
- b. management company of a pension fund or of a comparable legal person or company;
- c. collective investment scheme;
- d. investment firm;
- e. national or regional government body, or government body administering the public debt;
- f. central bank;
- g. financial institution;
- h. international or supranational organisation governed by public law or comparable international organisation;
- i. credit institution;
- j. market maker;
- k. pension fund or comparable legal person or company;
- l. person or company trading for its own account in commodities and derivatives on commodities;
- m. local firm;
- n. insurer;

*Enterprise for collective investment in transferable securities (UCITS)*: a collective investment scheme as referred to in Article 1(2) of the UCITS Directive;

*institutional investor*:

- a. collective investment scheme;
- b. life insurer; or
- c. pension fund;

*credit*: monetary credit or commodities credit, whereby these terms shall have the following meaning:

- a. monetary credit: to make a sum of money available to a consumer, regarding which the consumer is required to make one or more payments;
- b. commodities credit:
  - 1°. to make the enjoyment of movable property, a financial instrument or an investment object available to a consumer, or to make a sum of money available to a consumer or a third party regarding the enjoyment of movable property, a financial instrument or an investment object to be made available to that consumer, regarding which the consumer is required to make one or more payments; or
  - 2°. to provide a service to a consumer that is not provided pursuant to a contract stipulating the regular provision of services and whereby the consumer is required to effect payment in instalments throughout the period in which the service is provided, or to make a sum of money available to a consumer or a third party

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

with regard to the provision of a service to that consumer, regarding which the consumer is required to make one or more payments;

*credit institution*: a bank or electronic money institution;

*life insurer*: a party that has as its business the conclusion of life insurance contracts for its own account and the settlement of such life insurance contracts;

*life insurance*: a life insurance contract as referred to in Section 975 of Book 7 of the Dutch Civil Code, on the understanding that the life insurer's performance is made only in money, or a funeral expenses and benefits in kind insurance contract as referred to in this section;

*Member State*: a State that is a member of the European Union as well as a State, not being an EU Member State, that is party to the European Economic Area Agreement;

*limit order*: an order to buy or sell a financial instrument for the limit price stated or a better price, and in a specified quantity;

*market maker*: a person that constantly displays a willingness on the financial markets to trade for his own account by buying and selling financial instruments for prices set by him;

*market operator*: a person managing or operating a regulated market;

*parent company*: a legal person having one or more subsidiaries as referred to in Section 24a of Book 2 of the Dutch Civil Code;

*parent enterprise*: a parent enterprise as referred to in Articles 1 and 2 of the Consolidated Accounts Directive, or an enterprise which, in the opinion of the Dutch Central Bank, effectively exercises a predominant influence over another enterprise;

*multilateral trading facility*: multilateral system operated by an investment firm which brings together multiple buying and selling interests in financial instruments – within the system and in accordance with its non-discretionary rules – in a way that results in a contract in accordance with the applicable rules on licensing and ongoing supervision;

*funeral expenses and benefits in kind insurer*: a party, not being a life insurer, that has as its business the conclusion of funeral expenses and benefits in kind insurance contracts for its own account and the settlement of such insurance contracts;

*funeral expenses and benefits in kind insurer having its registered office in a non-designated State*: a funeral expenses and benefits in kind insurer having its registered office in a State outside the Netherlands that is not designated under Section 2:50(2) as a State in which the supervision provides sufficient safeguards with regard to the interests which this Act seeks to protect;

*funeral expenses and benefits in kind insurance*: an insurance contract relating to the provision of the funeral of a natural person, whereby the insurer undertakes to perform an obligation that does not include the payment of a financial benefit;

*the Dutch Central Bank*: De Nederlandsche Bank N.V.;

*Dutch investment firm*: investment firm having its registered office in the Netherlands that holds a licence to conduct its business;

*Dutch EU parent investment firm*: parent investment firm having its registered office in the Netherlands that is not itself a subsidiary of an investment firm, credit institution or of a financial holding company having its registered office in a Member State;

*Dutch EU parent credit institution*: parent credit institution having its registered office in the Netherlands that is not itself a subsidiary of an investment firm, credit institution or a financial holding company having its registered office in a Member State;

*Dutch financial EU parent holding company*: financial holding company having its registered office in the Netherlands that is not a subsidiary of an investment firm, credit institution or a financial holding company having its registered office in a Member State;

*Dutch credit institution*: credit institution having its registered office in the Netherlands that holds a licence to conduct its business;

*Dutch life insurer or non-life insurer*: life insurer or non-life insurer having its registered office in the Netherlands that holds a licence to conduct its business;

*Dutch parent investment firm*: investment firm having its registered office in the Netherlands that has as a subsidiary an investment firm, credit institution or financial institution or that owns a shareholding in such a financial enterprise and that is not itself a subsidiary of another Dutch investment firm, Dutch credit institution or financial holding company having its registered office in the Netherlands;

*Dutch parent credit institution*: credit institution having its registered office in the Netherlands that has as a subsidiary an investment firm, credit institution or financial institution or that owns a shareholding in such a financial enterprise and that is not itself a subsidiary of another Dutch investment firm, Dutch credit institution or financial holding company having its registered office in the Netherlands;

*ancillary service*:



Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

- a. custody and management of financial instruments for the account of clients, including safekeeping and related services such as cash or securities custody;
- b. granting credits or loans to an investor so as to enable the latter to conduct a transaction in one or more financial instruments, where the firm granting the credit or loan is a party to the transaction;
- c. advice to enterprises on capital structure, industrial strategy and related matters, and advice and services relating to mergers and the purchase of enterprises;
- d. foreign exchange services where these are connected to the provision of investment services;
- e. investment research and financial analysis or other forms of general recommendations relating to transactions in financial instruments;
- f. services related to underwriting;
- g. investment services or activities as well as ancillary services relating to the underlying security of the financial instruments, as referred to under (e), (f), (g) or (i) of the definition of financial instrument, to the extent that these are connected to the provision of investment or ancillary services;

*non-European investment firm*: investment firm that has been licensed in a non-Member State where, in the opinion of the Dutch Central Bank, the prudential supervision is at least equivalent to the prudential supervision based on this Act;

*non-European credit institution*: credit institution having its registered office in a non-Member State that holds a licence there to conduct its business;

*non-European life insurer or non-life insurer*: life insurer or non-life insurer having its registered office in a non-Member State that holds a licence there to conduct its business;

*non-professional investor*: a client that is not a professional investor;

*sub-broker*: a broker providing brokerage services for another broker;

*authorised sub-agent*: a party acting as an authorised sub-agent;

*Our Minister*: Our Minister of Finance;

*public takeover bid*: a bid for securities as referred to in Section 217(1) of Book 6 of the Dutch Civil Code, made by means of a public announcement, or an invitation to make a bid for securities, whereby the bidder has the intention to acquire these securities;

*to act as an authorised agent*: to conclude an insurance contract with a client in the pursuit of a profession or business as an authorised party of an insurer for the latter's account;

*to act as an authorised sub-agent*: to conclude an insurance contract with a client in the pursuit of a profession or business under a sub-authorisation issued by an authorised agent or by an authorised sub-agent, as an authorised party of an insurer for the latter's account;

*relief institution*: a public limited company having its registered office in the Netherlands whose sole object is to help, on the instructions of the Dutch Central Bank, a life insurer in trouble by reinsurance or by assuming the life insurer's portfolio;

*callable funds*: funds that must be repaid at some point, for whatever reason, and regarding which it is clear beforehand which nominal sum must be repaid;

*distance contract*:

- a. a contract regarding a financial service or financial product, concluded between a financial enterprise and a consumer in the context of a system organised by the financial enterprise for distance sales or services, which contract is established exclusively by using one or more distance communication technologies;
- b. a contract intended to accrue a fund to pay for the provision of the funeral of a natural person, concluded between a funeral expenses and benefits in kind insurer and a consumer in the context of a system organised by the funeral expenses and benefits in kind insurer for distance sales or services, which contract does not entail an investment risk for the latter and is established exclusively by using one or more distance communication technologies;

*predominant control*: the right to exercise 30 percent or more of the voting rights in a general meeting of shareholders of a public limited company;

*persons acting in joint consultation*: natural persons, legal persons or companies collaborating under a contract with the aim to acquire predominant control in a public limited company or, if the offeree company is one of the collaborators, to frustrate the success of an announced public takeover bid for that company; the following categories of natural persons, legal persons or companies are deemed in any case to act in joint consultation:

- 1°. legal persons or companies which together form part of a group as referred to in Section 24b of Book 2 of the Dutch Civil Code;
- 2°. legal persons or companies and their subsidiaries;

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

- 3°. natural persons and their subsidiaries as referred to in Section 1(1)(d) of the Act on the Disclosure of Major Holdings in Listed Companies 1996 (*Wet melding zeggenschap in ter beurze genoteerde vennootschappen 1996*).

*person*: a natural person or legal person;

*pension fund*:

- a. a sectoral pension fund as referred to in Section 1 of the Pensions Act (*Pensioenwet*);
- b. a company pension fund as referred to in Section 1 of the Pensions Act; or
- c. an occupational pension fund as referred to in Section 1 of the Occupational Pension Scheme (Compulsory Membership) Act (*Wet verplichte beroepspensioenregeling*) as well as the pension fund referred to in Section 113a(1) of the Notaries Act (*Wet op het notarisambt*);

*execution location*: regulated market, multilateral trading facility, investment firm operating as a systematic internaliser, market maker or other liquidity provider or entity performing a task in a third country similar to that of one of the aforesaid parties;

*local firm*: a party that trades, solely for its own account or for the account of investment firms that have been admitted to trading on those markets, or quoting these investment firms a price insofar as the execution and settlement of the transactions takes place under the responsibility of and is guaranteed by a clearing institution having its registered office in the Netherlands, on the markets for:

- a. options for the acquisition or disposal of financial instruments;
- b. commodities futures or equivalent instruments aimed at monetary settlement;
- c. other derivative financial instruments; or
- d. financial instruments in relation to the derivative financial instruments referred to under (a) to (c), solely to cover positions on markets for said derivative financial instruments;

*premium*: the performance, expressed in money, to be delivered by the policyholder under an insurance contract, not including insurance premium tax;

*professional investor*:

- a. management company of a collective investment scheme;
- b. management company of a pension fund or of a comparable legal person or company;
- c. collective investment scheme;
- d. investment firm;
- e. national or regional government body, or government body administering the public debt;
- f. central bank;
- g. financial institution;
- h. international or supranational organisation governed by public law or comparable international organisation;
- i. credit institution;
- j. market maker;
- k. enterprise whose main activity is investing in financial instruments, implementing securitisation programmes or other financial transactions;
- l. pension fund or comparable legal person or company;
- m. person or company trading for its own account in commodities and derivatives on commodities;
- n. local firm;
- o. legal person or company that satisfies two of the following magnitude requirements:
  - 1°. a balance sheet total of € 20,000,000 or more;
  - 2°. net turnover of € 40,000,000 or more;
  - 3°. equity capital of € 2,000,000 or more;
- p. insurer;

*professional market party*:

- a. qualified investor;
- b. subsidiary of a qualified investor that is involved in the supervision of the qualified investor on a consolidated basis;

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

- c. any other persons or companies designated by Decree as professional market parties;

*Prospectus Regulation:* Commission Regulation (EC) No. 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses, as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements (OJEU L 149);

*commission:* remuneration or fee, in whatever form, for acting as a broker or advisor in respect of a financial product or providing an investment service or ancillary service;

*legal assistance insurer:* a non-life insurer active in the Legal Assistance sector;

*advertisement:* any form of information provision that serves to praise or recommend a particular financial service or a particular financial product;

*register holder:*

- a. where the register concerns financial enterprises that may conduct activities under Parts 2.2.1 to 2.2.4 inclusive and 2.3.1 to 2.3.4 inclusive and data that may be registered under Part 2, Prudential Supervision of Financial Enterprises: the Dutch Central Bank;
- b. where the register concerns financial enterprises that may conduct activities under Parts 2.2.5 to 2.2.13 inclusive and 2.3.5 to 2.3.8 inclusive and data that may be registered under Part 4, Conduct of Business Supervision of Financial Enterprises or Part 5, Market Conduct Supervision: the Authority for the Financial Markets;

*UCITS Directive:* Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to enterprises for collective investment in transferable securities (UCITS) (OJEC L 375);

*Consolidated Accounts Directive:* Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts (OJEC L 193);

*Markets in Financial Instruments Directive:* Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJEU L 145);

*Prospectus Directive:* Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJEU L 345);

*Insurance Mediation Directive:* Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance brokerage (OJEC L 9);

*rationalisation measure:* the emergency regulations referred to in Part 3.5.5, or a measure taken in another Member State which entails any action of the competent authorities in that Member State and is meant to maintain or remedy the financial position of a credit institution or an insurer, and is of such a nature that the measure affects existing rights of third parties;

*non-life insurer:* a party that has as its business the conclusion of non-life insurance contracts for its own account and the settlement of such non-life insurance contracts;

*non-life insurance:*

- a. a non-life insurance contract as referred to in Section 944 of Book 7 of the Dutch Civil Code, not being a funeral expenses and benefits in kind insurance contract;
- b. an accident insurance contract; or
- c. an insurance contract providing for payment of a capital sum as referred to in Section 964 of Book 7 of the Dutch Civil Code, not being a non-life insurance contract or a financial instrument,

on the understanding that, for the purposes of this Act, insurance is only deemed to be non-life insurance if it involves a payment obligation as a consequence of an uncertain event or an uncertain circumstance that affects the insured party's interests;

*State in which the risk is situated:*

- a. the State in which the items of property covered by a non-life insurance contract are located, where the non-life insurance contract concerns immovable property or immovable property and its contents, insofar as this is covered by the same non-life insurance contract;
- b. the State of registration of vehicles or vessels irrespective of their nature which are covered by a non-life insurance contract;
- c. the State in which a policyholder has taken out an insurance contract where it concerns a non-life insurance

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

contract with a duration of four months or less that covers risks run during a trip or holiday, irrespective of the sector;

- d. in all other cases of non-life insurance, the State in which the policyholder has his habitual place of residence, or, where the policyholder is a legal person, the State in which this legal person has a fixed permanent establishment that is covered by the insurance contract;

*distance communication technology*: any device that, without the simultaneous physical presence of a financial enterprise and a consumer or client, may be used for providing financial services;

*supervisory authority*: a foreign government body or a foreign government-appointed body which is entrusted with the supervision of financial markets or persons working on such markets;

*supervisor*: the Dutch Central Bank or the Authority for the Financial Markets, each to the extent that they are entrusted with the supervision under Section 1:24 and Section 1:25 respectively;

*to delegate*: the issue of an instruction to a third party by a financial enterprise for it to carry out activities on behalf of that financial enterprise:

- a. which form part of or arise from the operation of its business or the provision of financial services; or
- b. which form part of the essential operating processes in support thereof;

*issuer*: any party that has issued securities or intends to issue securities;

*execution fees*: expenses which are directly related to the execution of an order with regard to a financial instrument and are charged to the client;

*Directive implementing the Markets in Financial Instruments Directive*: Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJEU L 241);

*Regulation implementing the Markets in Financial Instruments Directive*: Commission Regulation (EC) No. 2006/1287/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive (OJEU L 241);

*guarantee scheme*: the investor-compensation scheme or the deposit-guarantee scheme;

*tiered agent*: a person that, under the full and unconditional responsibility of only one investment firm for whose account he acts, provides the investment services referred to under (a), (d) or (e) of the definition of providing an investment service in Section 1:1 and recommends these services or ancillary services to clients;

*to provide an investment service*:

- a. to receive and forward, in the pursuit of a profession or business, client orders with regard to financial instruments;
- b. to execute, in the pursuit of a profession or business, orders with regard to financial instruments for the account of those clients;
- c. to manage an individual capital;
- d. to provide advice with regard to financial instruments in the pursuit of a profession or business;
- e. to underwrite or place financial instruments when they are offered, as referred to in Chapter 5.1, on a firm commitment basis, in the pursuit of a profession or business;
- f. to place financial instruments when they are offered, as referred to in Chapter 5.1, without a firm commitment basis, in the pursuit of a profession or business;

*portfolio manager*: a party that manages an individual capital;

*to perform services (by insurers)*:

- a. the conclusion of a life insurance contract by a life insurer from a place of business situated in a State other than that in which the policyholder has his habitual place of residence, or, where the policyholder is a legal person, the place of business of this legal person which is covered by the insurance contract;
- b. the conclusion of a funeral expenses and benefits in kind insurance contract by a funeral expenses and benefits in kind insurer from a place of business situated in a State other than that in which the policyholder has his habitual place of residence;
- c. the conclusion of a non-life insurance contract by a non-life insurer with regard to a risk that lies in a State other than the State of the place of business from where the insurance contract is concluded;

*to perform an investment activity*:

- a. to trade for one's own account in the pursuit of a profession or business;

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

- b. to operate a multilateral trading facility in the pursuit of a profession or business.

*representative of an insurer*: a party appointed by an insurer to represent it in a State other than the State where that insurer has its registered office in the exercise of the powers of the insurer and the compliance with the regulations applicable to the insurer in the first-mentioned State;

*insurer*: a life insurer, a funeral expenses and benefits in kind insurer or a non-life insurer;

*insurance*:

- a. life insurance;
- b. funeral expenses and benefits in kind insurance; or
- c. non-life insurance;

*place of business*: branch office or registered office;

*insurance claim*: a direct claim against the insurer of an insured party, policyholder, beneficiary or injured party, including the claim relating to sums reserved for these persons as long as not all elements of the claim are known, as well as the claim to refund premiums received by the insurer in the non-fulfilled expectation that an insurance contract would be concluded, or received under an insurance contract that was subsequently dissolved or annulled;

*registered office*: the place where an enterprise is established according to its articles of association or regulations or, where it is not a legal person, the place where such enterprise has its principal place of business.

## **Part 1.1.2. Scope with regard to financial enterprises**

### **1.1.2.1. General**

#### **Section 1:2**

This Act, with the exception of this part, Chapters 5.1, 5.3 and 5.5 and Part 5.4.2, shall not apply to the European Central Bank, the Member States' central banks, the Member States' national institutions with a similar function and the Member States' government institutions that are entrusted with or involved in the administration of the public debt, international institutions under public law in which one or more Member States participate and institutions as referred to in Article 2 of the Recast Banking Directive.

#### **Section 1:3**

For the purposes of the provisions arising from this Act, a financial enterprise shall also be understood to mean a person belonging to one of the categories of financial enterprises that does not have the objective of generating profits.

#### **Section 1:3a**

This chapter, Chapters 1.3, 1.4 and 1.5 and Part 1.6.3 of this Act shall apply *mutatis mutandis* to the supervision of compliance with and the enforcement of Articles 7, 8, 17, 24, 27, 29, 36 and 37 of the Regulation implementing the Markets in Financial Instruments Directive.

### **1.1.2.2. Clearing institutions and credit institutions**

#### **Section 1:4**

The Dutch Central Bank is not a clearing institution or credit institution within the meaning of this Act.

#### **Section 1:5**

1. As regards the pursuit of the business of an electronic money institution, this Act, with the exception of Sections 3:35 and 4:31, shall not apply to an electronic money institution which issues electronic money with a maximum monetary value of € 150 per electronic storage device, if:
  - a. the joint value of the financial liabilities of the electronic money institution relating to the issuance of

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

electronic money does at no time exceed €6,000,000;

- b. the electronic money is accepted only by an enterprise forming part of the group to which the electronic money institution belongs; or
  - c. the electronic money is accepted only by a limited number of clearly distinguishable enterprises that either share the same building, premises or other limited local area, or have close financial or business ties with the electronic money institution.
2. Section 3:71 and the provisions based on it shall apply mutatis mutandis to electronic money institutions as referred to in Subsection (1). The annual accounts shall specify which part of Subsection (1) applies and the total value of the financial liabilities relating to the issuance of electronic money.
3. This Act shall not apply to:
- a. financial services relating to electronic money accepted as payment only by the financial enterprise issuing the electronic money;
  - b. financial services relating to electronic money issued by an electronic money institution as referred to in Subsection (1) which are provided by a party other than the electronic money institution itself.

### **1.1.2.3. Life insurers, funeral expenses and benefits in kind insurers and non-life insurers**

#### **Section 1:6**

1. This Act shall not apply to:

- a. the Social Insurance Bank (*Sociale Verzekeringsbank*);
- b. the Employee Insurance Agency (*Uitvoeringsinstituut werknemersverzekeringen*) referred to in Chapter 5 of the Work and Income (Implementation Structure) Act (*Wet structuur uitvoeringsorganisatie werk en inkomen*);
- c. health insurance funds admitted under the Compulsory Health Insurance Act (*Ziekenfondswet*);
- d. mutual associations having their registered office in the Netherlands and mutual enterprises having their registered office outside the Netherlands that only conclude non-life insurance contracts with regard to damage or loss caused by armed conflict, civil war, insurrection, civil commotion, riot and mutiny; and
- e. enterprises exclusively operating in the Assistance sector that only grant cover in the event of an accident with or breakdown of a road vehicle, where, under the cover, assistance in the event of an accident or breakdown in the Netherlands or immediately across the border is limited to:
  - 1°. on-the-spot technical assistance regarding which the enterprise usually deploys its own personnel or equipment;
  - 2°. the transport of the road vehicle to the nearest or most suitable location for repair, and the possible transport of the driver and passengers, usually by the same means, to the nearest location where they can continue their journey by different means;
  - 3°. the transport of the road vehicle, possibly with the driver and passengers, to their place of residence, their point of departure or their original destination within the Netherlands;and, insofar as the cover extends to include an accident or breakdown abroad, where the assistance is limited to the activities listed under 1° and 2°, the driver or a passenger is a member of the enterprise and the assistance or the transport is provided merely on presentation of a membership card, without payment of any additional premium, by a similar organisation working in the State involved that undertakes this on the basis of reciprocity.

2. Where a life insurance contract, in addition to the liability to make payments in money, includes liabilities of another nature, or where the life insurance contract includes liabilities relating to incidents with an uncertain cause and affecting a natural person, the life insurer's business shall not lose its character and such liabilities shall not be deemed to have been assumed in the course of the business of a non-life insurer.

#### **Section 1:7**

The life insurers and non-life insurers united under the name of Lloyd's of London, United Kingdom, shall be regarded collectively as one life insurer or one non-life insurer for the purposes of this Act.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

#### **Section 1:8**

1. The business of a life insurer or the business of a non-life insurer shall not include the conclusion or settlement of life insurance contracts and non-life insurance contracts respectively for one's own account by a pension fund, insofar as that pension fund does so in performing a pension contract as referred to in Section 1 of the Pensions Act or an occupational pension scheme as referred to in Section 1 of the Occupational Pension Scheme (Compulsory Membership) Act.
2. The business of a life insurer or the business of a non-life insurer shall not include the conclusion or settlement of life insurance contracts and non-life insurance contracts respectively for one's own account by enterprises that do not conclude or settle any life insurance contracts or non-life insurance contracts for their own account other than those serving to perform a pension contract with a director and major shareholder as referred to in Section 1 of the Pensions Act.

#### **Section 1:9**

1. An insurer who holds a licence as referred to in Section 2:37(1) or Section 2:40(1) to conduct the business of a life insurer in the General Life Insurance sector, and on that basis conducts the business of a funeral expenses and benefits in kind insurer, shall be governed only by the provisions concerning the conduct of the business of a life insurer.
2. An insurer who holds a licence as referred to in Section 2:48(1) or Section 2:50(1) to conduct the business of a funeral expenses and benefits in kind insurer shall be governed only by the provisions concerning the conduct of the business of a funeral expenses and benefits in kind insurer.

#### **Section 1:10**

A Decree shall provide which of the rules arising from this Act as regards conducting the business of a non-life insurer and the business of a funeral expenses and benefits in kind insurer shall not apply, on conditions to be further specified in the Decree, in respect of the following categories:

- a. mutual associations of limited size having their registered office in the Netherlands that conduct the business of a non-life insurer and mutual enterprises of limited size having their registered office outside the Netherlands that conduct the business of a non-life insurer;
- b. non-life insurers having their registered office in the Netherlands that confine themselves to the conclusion and settlement of export credit insurance contracts for the account of or guaranteed by the State of the Netherlands;
- c. associations and mutual associations of limited size having their registered office in the Netherlands that conduct the business of a funeral expenses and benefits in kind insurer.

#### **Section 1:11**

For the purposes of the provisions laid down by or pursuant to this Act with regard to the business of a non-life insurer, the Swiss Confederation shall be regarded as a Member State, on the understanding that different rules may be laid down in respect of certain issues by or pursuant to a Decree.

#### **1.1.2.4. Collective investment schemes**

#### **Section 1:12**

1. This Act, with the exception of this part, Section 3:7 and Chapters 5.1, 5.3, 5.4 and 5.5, shall not apply to collective investment schemes which offer units to:
  - a. fewer than one hundred persons that are not qualified investors; or
  - b. only qualified investors.
2. This Act, with the exception of this part, Section 3:7 and Chapters 5.1, 5.3, 5.4 and 5.5, shall not apply to management companies and depositaries insofar as they manage collective investment schemes as referred to

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

in Subsection (1) or if they are responsible for the safekeeping of the assets of such collective investment schemes.

3. In the event of an offer of units as referred to in Subsection (1), opening words and under (a), not being securities, and in advertisements and documents announcing such an offer, it shall be stated that the collective investment scheme does not require a licence pursuant to this Act and that no supervision of the collective investment scheme is exercised pursuant to Part 2, Prudential Supervision of Financial Enterprises and Part 4, Conduct of Business Supervision of Financial Enterprises.
4. In the event of an offer of units as referred to in Subsection (1), opening words and under (b), not being securities, and in advertisements and documents announcing such an offer, it shall be stated that the offer is or will be directed exclusively at qualified investors.

### **Section 1:13**

1. The provisions arising from this Act in respect of a collective investment scheme which is a unit trust or an investment company with a separate management company shall be directed at its management company.
2. The provisions arising from this Act in respect of a management company shall apply mutatis mutandis to a an investment company without a separate management company, with the exception of Sections 1:60(1), 2:65(1)(a), 2:67, 2:71, 3:57, 3:95 and 4:59.
3. The provisions arising from Sections 4:46, 4:49, 4:50 and 4:52 in respect of a management company shall apply mutatis mutandis to a collective investment scheme having its registered office in a designated State which has no separate management company.
4. The registered office of a unit trust shall be situated in the State where its management company has its registered office.
5. The provisions arising from this Act in respect of collective investment schemes that offer units in the Netherlands, management companies of such collective investment schemes and depositaries associated with such collective investment schemes, shall apply mutatis mutandis to collective investment schemes that have offered units in the Netherlands, management companies of such collective investment schemes and depositaries associated with such collective investment schemes.

### **Section 1:14**

The provisions arising from this Act in respect of enterprises for collective investment in transferable securities shall not apply to:

- a. collective investment schemes that, pursuant to their articles or fund regulations, may conclude loans for amounts in excess of the maximum stated in the UCITS Directive, or may pursue an investment policy that is broader than the restrictions ensuing from the UCITS Directive; and
- b. investment companies that primarily invest via subsidiaries in objects other than financial instruments as referred to in Section 4:60(1).

### **Part 1.1.3. Scope with regard to financial services**

#### **1.1.3.1. General**

### **Section 1:15**

This Act, with the exception of this part and Part 5, Market Conduct Supervision, shall not apply to:

- a. the provision of financial services by pension funds, insofar as they provide these financial services to the sector, enterprise or professional group with which they are associated; and



Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

- b. portfolio management on behalf of pension funds as referred to under (a) or allied funds by persons that are associated with the fund to which this financial service is provided.

### **1.1.3.2. Services of the information society**

#### **Section 1:16**

1. This Act, with the exception of Sections 2:36(2) to (4), 2:38, 2:39 and 2:46, shall not apply to financial services that may be classified as a service of the information society as referred to in Section 15d(3) of Book 3 of the Dutch Civil Code and that are provided by a financial enterprise having its registered office in another Member State or from a branch office situated in another Member State by a financial enterprise having its registered office in a non-Member State.
2. If measures are required to protect any of the interests referred to in Section V(6)(a) of the Act amending the Electronic Commerce Directive (*Aanpassingswet richtlijn inzake elektronische handel*), Our Minister may stipulate, where necessary applying Section V(6), that Part 4, Conduct of Business Supervision of Financial Enterprises and the provisions based thereon shall apply, either wholly or in part, in derogation from Subsection (1), to a particular financial service as referred to in that subsection.

#### **Section 1:17**

The provision of a financial service in the Netherlands shall also mean the provision of an financial service that may be classified as a service of the information society as referred to in Section 15d(3) of Book 3 of the Dutch Civil Code in another Member State by a financial enterprise having its registered office in the Netherlands or by a branch office situated in the Netherlands of a financial enterprise having its registered office in a non-Member State.

### **1.1.3.3. The provision of investment services and performance of investment activities**

#### **Section 1:18**

This Act, with the exception of Part 5, Market Conduct Supervision, shall not apply to the provision of investment services and the performance of investment activities insofar as:

- a. these are provided to or performed for the enterprise of which the investment firm is a subsidiary, for its subsidiaries or for another subsidiary of the enterprise of which it is a subsidiary;
- b. these consist in the administration of an employee participation scheme in relation to financial instruments;
- c. these are provided or performed by investment firms whose main business consists in trading for own account in commodities or derivatives on commodities and which do not form part of a group whose main business consists in providing other investment services, performing other investment activities or conducting the business of a bank;
- d. these are provided or performed by life insurers, non-life insurers or reinsurers;
- e. this concerns investment services provided by investment firms which perform these financial services as an occasional activity in the context of another professional activity that is subject to statutory or administrative regulations or to a professional code of conduct and is not prohibited on that basis;
- f. this concerns advisory services regarding transactions in financial instruments in the context of another professional activity, and no specific payment is made for this financial service;
- g. these consist in trading for own account in financial instruments or providing investment services with regard to derivatives on commodities or financial instruments as referred to under (j) of the definition of financial instrument in Section 1:1 to clients of the main business of the party providing the service, if:
  - 1°. this trading or this service can be regarded at group level as a secondary activity of its main business, and
  - 2°. the group's main business does not consist in providing investment services, performing investment activities or conducting the business of a bank;
- h. this involves own-account trading, with the exception of own-account trading by market makers or own-account traders who frequently act in an organised and systematic manner outside a regulated market or multilateral trading facility by offering a system accessible to third parties for concluding transactions with them;

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

- i. these consist in acting exclusively as a local firm.

## **Section 1:19**

The provisions arising from this Act in respect of Subsections (a) and (b) of the definition of providing an investment service in Section 1:1 shall not apply to the buying or selling of units in collective investment schemes by the management companies of those collective investment schemes.

### **1.1.3.4. Credit-related financial services**

#### **Section 1:20**

This Act shall not apply to:

- a. the provision of credit by public bodies in execution of a statutory duty;
- b. financial services provided by registered money transaction offices as referred to in Section 2(1) of the Act on Money Transaction Offices (*Wet inzake de geldtransactiekantoren*), insofar as these are services which they are permitted to provide under that Act;
- c. credit-related financial services whereby the effective lending rate at the time when the credit contract is concluded does not exceed the statutory interest rate as referred to in Section 120(2) of Book 6 of the Dutch Civil Code, insofar as the credit is offered to fewer than 100 consumers or is offered by an employer to its employees;
- d. credit-related financial services consisting in a lease or encompassing a lease, unless this lease concerns items of property to be specified by Decree and serves to extend the provision of the enjoyment of the item of property to which the contract relates beyond the term of six months, whether or not through a renewal of that contract or the conclusion of a new contract;
- e. credit-related financial services consisting in the receipt of movable items of property of a consumer in exchange for making available a sum of money to the consumer, insofar as the repayment claim against the consumer will lapse if the financial enterprise converts the relevant movable items of property into cash; and
- f. credit-related financial services whereby it has been agreed that none of the payments owed by the consumer in this respect will be made later than three months after the sum of money was made available, the enjoyment of a movable item of property, financial instrument or investment object was provided or a service was performed.

### **1.1.3.5. Insurance-related financial services**

#### **Section 1:21**

This Act shall not apply to:

- a. insurance brokerage services, insofar as:
  - 1°. the provision of the brokerage services only requires knowledge of the insurance cover offered;
  - 2°. the insurance is not a life insurance contract and does not cover liability risks;
  - 3°. the broker concerned has a main professional activity other than insurance brokerage services;
  - 4°. the insurance is supplementary to the supply of an item of property or the provision of a service by the broker concerned, which will be the case where the relevant insurance contract covers the risk of breakdown, loss or damage to the items of property supplied by that broker, or covers the risk of damage to or loss of baggage or other risks pertaining to a journey booked through that broker, even if the insurance covers life insurance or liability risks provided that this cover is ancillary to the main cover regarding the risks pertaining to that journey; and
  - 5°. this concerns an insurance contract whereby the amount of the annual premium does not exceed € 500 and the full term of the insurance contract, including any extensions, does not exceed a period of five years; and
- b. insurance-related financial services in respect of risks and liabilities situated in a non-Member State.

#### **Section 1:22**

The provisions arising from Sections 4:9(1) and (2), 4:10, 4:11(2) and (3), 4:13(1) and (2), 4:15(1) and (2), 4:19, 4:20(1), 4:23(1) to (3), 4:30a(5) and 4:72(1) to (5) shall apply mutatis mutandis to the provision of insurance

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

brokerage services and the provision of reinsurance brokerage services from the Netherlands for clients that have their habitual residence in another Member State.

#### **Part 1.1.4. Affecting the validity of legal acts**

##### **Section 1:23**

The validity of a legal act under private law performed contrary to the rules laid down by or pursuant to this Act cannot be affected on that account, except where otherwise provided by this Act.

#### **Chapter 1.2. Supervisors**

##### **Part 1.2.1. General provisions**

###### **1.2.1.1. Responsibilities**

##### **Section 1:24**

1. Prudential supervision shall focus on the solidity of financial enterprises and their contribution to the stability of the financial sector.
2. Under this Act, the Dutch Central Bank shall be required to exercise the prudential supervision of financial enterprises and to decide on the admission of financial enterprises to the financial markets.

##### **Section 1:25**

1. Conduct of business supervision shall focus on orderly and transparent financial market processes, integrity in relations between market parties and due care in the provision of services to clients.
2. Under this Act, the Authority for the Financial Markets shall be required to exercise the supervision of conduct of the financial markets and to decide on the admission of financial enterprises to those markets.

###### **1.2.1.2. Institutional provisions**

##### **Section 1:26**

1. The Executive Board of the Authority for the Financial Markets shall have a minimum of three and a maximum of five members. The Chair and the other members of the Executive Board shall be appointed by Royal Decree. They shall be appointed for a maximum period of four years. The Supervisory Board may submit a non-binding recommendation to Our Minister for every appointment of a member of the Executive Board. Reappointments shall not be subject to any limitations.
2. Our Minister may suspend or dismiss by Royal Decree the Chair and the other members of the Executive Board if they fail to meet the requirements for the exercise of their duties or have failed seriously to perform them properly. The Chair and the members may also be dismissed at their own request.
3. Our Minister shall ensure that the appointments, suspensions and dismissals referred to in this section are published in the Government Gazette (*Staatscourant*).
4. The Supervisory Board shall determine the remuneration and the pension and expense reimbursement schemes of the Chair and the other members of the Executive Board, subject to Our Minister's approval.

##### **Section 1:27**

1. The Authority for the Financial Markets shall have a Supervisory Board.
2. The Supervisory Board shall ensure that the Executive Board carries out its duties – especially the financial management – in an efficient and effective manner, and shall provide the Executive Board with advice.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

3. The Supervisory Board shall have a minimum of three and a maximum of five members. Our Minister shall appoint the Chair and the other members of the Supervisory Board. They shall be appointed for a maximum period of four years. The Supervisory Board may submit a non-binding recommendation to Our Minister for every appointment. Members may be reappointed twice, each time for a maximum period of four years.
4. Our Minister may suspend and dismiss the Chair and the other members of the Supervisory Board on account of unsuitability or incompetence for their respective duties or for other important reasons relating to the person involved. The Chair and the members may also be dismissed at their own request.
5. Our Minister shall ensure that the appointments, suspensions and dismissals referred to in this section are published in the Government Gazette.

### **1.2.1.3. Regulatory powers**

#### **Section 1:28**

1. Where a power is conferred to the supervisor pursuant to this Act to lay down generally binding regulations, the supervisor shall only do so after consulting an eligible representative delegation from enterprises under its supervision.
2. The supervisor shall notify Our Minister without delay of any generally binding regulations it has laid down.

#### **Section 1:29**

1. Where Our Minister is of the opinion that the generally binding regulations laid down by the supervisor are contrary to the law, a treaty or a binding decree of an international institution, and the supervisor has failed to remove the observed shortcoming after consultations, Our Minister shall lay down rules regarding the matter concerned by ministerial regulation and simultaneously revoke the generally binding regulations laid down by the supervisor in respect of that matter.
2. Where the generally binding regulations laid down by the supervisor impose an unreasonable burden on the financial markets, and the supervisor has failed to remove the observed shortcoming after consultations, Our Minister may lay down rules regarding the matter concerned by ministerial regulation and simultaneously revoke the generally binding regulations laid down by the supervisor in respect of that matter.
3. Where Our Minister lays down regulations pursuant to Subsections (1) or (2), he shall, without delay, submit a recommendation for amendment of the Decree concerned.

#### **Section 1:29a**

1. The Dutch Central Bank shall disclose the following information:
  - a. the provisions laid down by or pursuant to Part 3, Prudential Supervision of Financial Enterprises;
  - b. the manner in which the Netherlands makes use of the options comprised in the directives of the European Union that are directed specifically at investment firms and credit institutions;
  - c. the general principles it adopts in utilising the scope for policy-making which it has under the provisions laid down by or pursuant to Part 3, Prudential Supervision of Financial Enterprises;
  - d. the general criteria and methods underlying the evaluation referred to in Section 3:18a; and
  - e. the aggregated statistical data regarding the main aspects of the implementation of the prudential rules.
2. The information disclosed pursuant to Subsection (1) shall be sufficient to allow a meaningful comparison to be made between the exercise of the prudential supervision by the supervisory authorities of the various Member States.

### **Part 1.2.2. Reporting and accounting**

#### **Section 1:30**

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

1. Each year, the supervisor shall draw up a budget of the profit and loss, investment expenditure as well as income and expenditure relating to the exercise of the duties assigned to the supervisor under this Act and the ensuing activities to be expected in the following year. The budget shall be prepared in such a manner that the loss and expenditure are structurally covered by the profit and income.
2. The budget items shall be accompanied by explanatory notes.
3. Unless the activities to which the budget refers have not been carried out before, the budget shall contain a comparison with the budget of the current year and the most recent annual accounts or accounting report approved by Our Minister.
4. The supervisor shall submit the budget to Our Minister for approval by 1 December of the year preceding the budget year.
5. Approval may be withheld if the budget is contrary to the law or public interest. In the event of contrariety, approval shall only be withheld after the supervisor has been given the opportunity to adjust the budget within a reasonable term to be specified by Our Minister.
6. Immediately upon approval, the supervisor shall publish a notification of the budget in the Government Gazette and keep it available for electronic inspection during a period of one year following the approval.
7. Where our Minister has not approved the budget by 1 January of the year to which it refers, the supervisor may, in the interest of the proper exercise of its duties, have disposal of no more than four twelfth parts of the amounts permitted in the corresponding parts of the budget of the preceding year for assuming obligations and incurring expenses.

#### **Section 1:31**

Where substantial differences arise or threaten to arise between the actual and the budgeted profit and loss or income and expenditure during the year, the supervisor shall notify Our Minister of this without delay, stating the reason for the differences.

#### **Section 1:32**

Rules may be laid down by ministerial regulation in respect of the structure of the budget.

#### **Section 1:33**

1. Each year, the Authority for the Financial Markets shall prepare annual accounts relating to the duties assigned to it under this Act and the ensuing activities.
2. The annual accounts of the Authority for the Financial Markets, rendering account of the financial management and the results attained in the past financial year, shall be structured where possible in accordance with Title 9 of Book 2 of the Dutch Civil Code.
3. The annual accounts shall be accompanied by a statement regarding the fair presentation, issued by an auditor designated by the Authority for the Financial Markets.
4. To the statement referred to in Subsection (2) the auditor shall add a report of findings on whether the collection and deployment of resources by the Authority for the Financial Markets are in accordance with this Act.
5. To the statement referred to in Subsection (2) the auditor shall also add a report of findings on the question as to whether the management and organisation of the Authority for the Financial Markets under this Act meet the requirements of efficiency.
6. The Authority for the Financial Markets shall submit the annual accounts to Our Minister for approval by 1 May of the year following the financial year.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

7. Approval may be withheld if the accounts are contrary to the law or public interest.
8. Immediately upon approval, the Authority for the Financial Markets shall publish a notification of the annual accounts in the Government Gazette and keep them available for electronic inspection during a period of one year following the approval.

#### **Section 1:34**

1. Each year, the Dutch Central Bank shall draw up an accounting report relating to the duties assigned to it under this Act and the ensuing activities.
2. The accounting report shall be accompanied by a statement regarding the fair presentation, issued by an auditor designated by the Dutch Central Bank.
3. To the statement referred to in Subsection (2) the auditor shall add a report of findings on whether the collection and deployment of resources by the Dutch Central Bank are in accordance with this Act.
4. To the statement referred to in Subsection (2) the auditor shall also add a report of findings on the question as to whether the management and organisation of the Dutch Central Bank under this Act meet the requirements of efficiency.
5. The Dutch Central Bank shall submit the accounting report referred to in Subsection (1) to Our Minister for approval by 1 May of the year following the financial year.
6. Approval may be withheld if the accounting report is contrary to the law or public interest.
7. Immediately upon approval, the Dutch Central Bank shall publish a notification of the accounting report in the Government Gazette and keep it available for electronic inspection during a period of one year following the approval.

#### **Section 1:35**

1. The difference between the supervisor's profit and the supervisor's loss realised at the end of a budget year shall constitute the net operating result.
2. Where a net operating result arises in any financial year and the supervisor wishes to include this in the costs to be charged as referred to in Section 1:40, the supervisor shall submit a proposal to this effect in the annual accounts or the accounting report.

#### **Section 1:36**

1. Each year, the supervisor shall prepare an annual report. The annual report shall describe the performance of its duties and the policies pursued to this effect under this Act in the preceding year. The annual report shall also describe the policies pursued in respect of quality assurance.
2. The supervisor shall submit the annual report to Our Minister by 1 May. Our Minister shall send a copy of the annual report to Parliament.
3. The supervisor shall keep the annual report available for electronic inspection.

#### **Section 1:37**

1. The supervisor shall submit proposals to amend the articles of association to Our Minister for prior approval. Sections 10:29 to 10:31 of the General Administrative Law Act (*Algemene wet bestuursrecht*) shall apply mutatis mutandis.
2. The approval referred to in Subsection (1) may be withheld:

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

- a. if the articles of association, following amendment, insufficiently correspond to the provisions of this Act;
- b. if the articles of association, following amendment, provide insufficient safeguards for the independent performance of its duties by the supervisor;
- c. on account of contrariety to the law or public interest.

### **Section 1:38**

1. In performing its duties under this Act, the supervisor shall ensure:
  - a. a timely preparation and implementation;
  - b. the quality of the procedures followed in this respect;
  - c. the treatment with due care of any party that comes into contact with the supervisor;
  - d. the treatment with due care of objections and complaints received.
2. The supervisor shall make arrangements enabling any party that comes into contact with the supervisor to submit proposals to improve working methods and procedures.
3. In the annual report referred to in Section 1:36, the supervisor shall report on the activities relating to the implementation of Subsections (1) and (2).

### **Section 1:39**

1. The supervisor shall organise consultations on:
  - a. the budget to be prepared by the supervisor;
  - b. the supervisor's profits and losses as well as income and expenditure, and the activities carried out;
  - c. the costs for enterprises relating to the performance of its duties under this Act and the ensuing activities.
2. The consultations shall be held by the supervisor and an eligible representative delegation from the enterprises under its supervision. The supervisor may also admit eligible client organisations to the consultations. Our Minister shall designate public officers who will attend the consultations on his behalf.
3. The consultations shall be held twice every year.
4. The supervisor shall make a report of the consultations available to the public within a reasonable term after the consultations.

### **Section 1:40**

1. The supervisor shall charge the costs of the activities which it carries out in performing its duties under this Act to the enterprises regarding which the activities are carried out, insofar as these costs are not included in the National Budget. Among other things, the costs shall include the costs incurred in preparation for the performance of new aspects of its duties, before these were assigned to the supervisor.
2. The supervisor requesting advice from the other supervisor in the context of an application for a licence or approval under Section 1:48 may charge the applicant the costs incurred by the other supervisor in relation to the activities carried out by the latter in this respect.
3. The costs shall be based on the budget which Our Minister has approved and on the net operating result if Our Minister has approved the annual accounts or the accounting report including a proposal as referred to in Section 1:35(2).
4. The budgeted costs shall be reduced by the proceeds from fines and forfeited penalty payments, insofar as the underlying decisions of the supervisor in the preceding year have become final and conclusive.
5. Further rules shall be laid down by or pursuant to a Decree in respect of Subsections (1) to (3). A distinction may thereby be made between costs to be charged occasionally or annually, and these rules may also give the

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

supervisor the power not to charge costs in full or in part in certain cases if charging the costs in full were to lead to material unfairness. These rules shall relate inter alia to the allocation of supervisory activities to enterprises.

6. Tariffs shall be laid down by ministerial regulation on the basis of which the costs referred to in Subsections (1) to (3) will be passed on.

#### **Section 1:41**

The supervisor shall supply Our Minister, on request, with the information required for the assessment of the feasibility of general policy intentions and intended statutory regulations, insofar as they refer to the supervision to be exercised by the supervisor under this Act.

#### **Section 1:42**

1. Our Minister may request from the supervisor data or information required for an investigation into the adequacy of this Act or the manner in which the supervisor implements or has implemented this Act, where so required for proper supervision.
2. Unless this is confidential data or information within the meaning of Section 1:89(1), the supervisor shall supply Our Minister with the data or information referred to in Subsection (1) which:
  - a. is related or can be traced back to an individual person or company, with the exception of data or information that is related or can be traced back to an individual financial enterprise:
    - 1°. which was licensed under Part 2, Market Access of Financial Enterprises, or which holds a supervisory status certificate as referred to in Section 3:110 or whose licence or certificate has been revoked or has lapsed; and
    - 2°. in whose respect a moratorium of payments has been granted, or emergency regulations have been declared applicable in accordance with Part 3.5.5, or which has been declared insolvent or has been dissolved under a court order;
  - b. is related to enterprises which are or have been involved in an attempt to enable a financial enterprise to continue its business; or
  - c. was received from a supervisory authority or was obtained further to a verification at a branch office situated in another State of a Netherlands-based financial enterprise, and no explicit permission was granted by that supervisory authority or by the supervisory authority of the State where the on-site verification was performed.
3. Our Minister may instruct a third party to examine the data or information supplied under Subsection (2) and to report to him. Our Minister may also authorize the third party acting on his instructions to obtain data or information on his behalf, in which case Subsections (1) and (2) shall apply mutatis mutandis.
4. Our Minister shall only make use of the data or information obtained under Subsections (2) or (3) in order to form an opinion on the adequacy of this Act or the manner in which the supervisor implements or has implemented this Act.
5. Our Minister and the parties acting on his instructions shall be required to observe the confidentiality of the data or information received under Subsection (2).
6. Notwithstanding Subsections (4) and (5), Our Minister may inform Parliament of the findings and conclusions derived from the data or information and publicise the general conclusions of the investigation.
7. The Government Information (Public Access) Act (*Wet openbaarheid van bestuur*), the National Ombudsman Act (*Wet Nationale ombudsman*) and Title 9.2 of the General Administrative Law Act shall not apply to the data or information referred to in this section which is held by Our Minister or by the third party working on his instructions.

#### **Section 1:43**

1. If Our Minister is of the opinion that the supervisor seriously fails to perform its duties, Our Minister may take the



Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*  
required measures.

2. In implementing Subsection (1), Our Minister may decide to carry out one or more aspects of the supervisor's duties himself, or to have them carried out by the other supervisor. In such a case, the relevant powers of the supervisor shall transfer to Our Minister or the other supervisor respectively.
3. The measures, except in urgent cases, shall not be taken before the supervisor has been given the opportunity to perform its duties properly within a term to be specified by Our Minister.
4. Our Minister shall, without delay, inform Parliament of the measures taken under Subsection (1).

#### **Section 1:44**

1. Three years after the entry into force of this Act and every five years thereafter, Our Minister shall submit a report to Parliament on the efficiency and effectiveness of the supervisors' performance.
2. Three years after the entry into force of this Act, Our Minister shall submit a report to Parliament on the collaboration of the supervisors under this Act.
3. The supervisors shall provide Our Minister, on request, with data and information for these reports.

#### **Section 1:45**

No appeal as referred to in Section 8:1 of the General Administrative Law Act shall lie against the decisions of Our Minister concerning approval of the budget, the annual accounts or the accounting report.

### **Chapter 1.3. Collaboration of supervisors**

#### **Part 1.3.1. Collaboration of supervisors at national level**

#### **Section 1:46**

1. The supervisors shall collaborate closely with a view to laying down generally binding regulations and policy rules, in order to ensure that these are equivalent wherever possible insofar as they relate to matters that are both subject to prudential supervision and supervision of conduct.
2. The matters referred to in Subsection (1) shall in any event include:
  - a. the use of the powers listed in Part 1.4.2;
  - b. the properness referred to in Sections 3:9 and 4:10;
  - c. the expertise referred to in Sections 3:8 and 4:9;
  - d. the controlled and sound operations referred to in Sections 3:17(2)(a) and (b) and 4:14(2)(a) and (b); and
  - e. other matters, to be specified by Decree.

#### **Section 1:47**

1. The supervisor shall provide the other supervisor with a reasonable term to submit its view before taking any of the measures referred to in Subsection (2).
2. The measures are:
  - a. the appointment of a custodian under Section 1:76;
  - b. the withdrawal of a licence under Section 1:104, opening words and under (b), (c), (d), (e), (f) or (j);
  - c. the imposition of the prohibition referred to in Sections 1:58, 1:59(2), 1:67(1) or 4:4; and
  - d. the designation under Section 1:75 intended to dismiss a person determining or co-determining the policy of a financial enterprise, or intended to dismiss a person belonging to a body responsible for supervising the policy and the general affairs of a financial enterprise.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

3. The view shall be submitted in writing, unless the urgent nature of the measure should oppose this, given the interests involved. In such a case, a verbally submitted view shall suffice, on the understanding that it will be confirmed in writing without delay. Where the supervisor takes a decision as referred to in Subsection (1) that differs from the view submitted by the other supervisor, the decision shall state the reasons for this. The view or the written confirmation of a verbally submitted view shall form an integral part of the decision to take a supervisory measure.
4. Subsections (1) and (3) shall apply mutatis mutandis to petitions for bankruptcy made under Sections 212k or 213b of the Bankruptcy Act (*Faillissementswet*) and to applications for emergency regulations made under Part 3.5.5.

#### **Section 1:47a**

The Authority for the Financial Markets shall consult the Dutch Central Bank before granting a licence to an investment firm which:

- a. is a subsidiary of a credit institution, life insurer or non-life insurer licensed in a Member State;
- b. is a subsidiary of a parent company of a credit institution, life insurer or non-life insurer licensed in a Member State;
- c. is controlled by a person that also exercises control over a credit institution, life insurer or non-life insurer licensed in a Member State.

#### **Section 1:48**

1. If the Dutch Central Bank, in processing an application referred to in Sections 2:13, 2:22, 2:32, 2:33, 2:42, 2:43, 3:33 or 3:110(4) or (5), is required to assess whether the applicant meets the requirements laid down by or pursuant to Part 4, Conduct of Business Supervision of Financial Enterprises, it shall request the opinion of the Authority for the Financial Markets before rendering a decision on such an application.
2. If the Authority for the Financial Markets, in processing an application referred to in Sections 2:67, 2:68 or 2:99, is required to assess whether the applicant meets the requirements laid down by or pursuant to Part 3, Prudential Supervision of Financial Enterprises, it shall request the opinion of the Dutch Central Bank before rendering a decision on such an application.
3. The supervisor that has been requested to give its opinion as referred to in Subsections (1) or (2) shall render such an opinion in writing within six weeks of the request.
4. If the Authority for the Financial Markets, in the context of an application for approval as referred to in Sections 2:122, 2:127 or 2:130 or in the context of a notification of change as referred to in Section 4:26(1) or (2), is required to assess whether the financial situation of the applicant or the financial enterprise concerned is adequate, it shall request the opinion of the Dutch Central Bank in this respect. The Dutch Central Bank shall give its opinion in writing within three weeks of the request.
5. If the supervisor having requested the recommendation considers deviating from the recommendation, it shall provide the supervisor having made the recommendation with the opportunity to give a verbal explanation of the recommendation.
6. The opinion referred to in Subsections (1), (2) or (4) shall form part of the decision relating to the licence or approval.

#### **Section 1:49**

1. If a supervisor finds that the properness of a person determining or co-determining the policy of a financial enterprise licensed by the other supervisor or belonging to a body responsible for supervising the policy and the general affairs of such an enterprise, is not or no longer beyond doubt, it shall notify the other supervisor of this and thereby make a recommendation on a measure to be taken as referred to in Part 1.4.2.
2. If a supervisor finds that a person determining the day-to-day policy of a financial enterprise licensed by the

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

other supervisor does not have or no longer has the expertise required under this Act, it shall notify the other supervisor of this and thereby make a recommendation on a measure to be taken as referred to in Part 1.4.2.

3. The notification and the recommendation shall be made in writing, unless their urgent nature should oppose this, given the interests involved. In such a case, a verbal notification and recommendation shall suffice, on the understanding that they will be confirmed in writing without delay.
4. The other supervisor shall inform the supervisor having made the notification and the recommendation within a reasonable term, stating its reasons, as to whether it will proceed to take a measure as referred to in Part 1.4.2 further to the notification and the recommendation.
5. Section 1:47 shall not apply if the other supervisor, further to the notification and the recommendation, takes a measure as referred to in Part 1.4.2.
6. If a measure as referred to in Part 1.4.2 is taken on the basis of the notification, the notification and the recommendation shall form an integral part of the decision to take the supervisory measure.

#### **Section 1:50**

1. Sections 1:54(1) to (4) shall apply mutatis mutandis to the Authority for the Financial Markets if the latter supervises a financial enterprise that forms part of a financial conglomerate as referred to in Section 3:290.
2. Section 1:154(1) to (4) shall apply mutatis mutandis to the collaboration between the Dutch Central Bank and the Authority for the Financial Markets.

#### **Part 1.3.2. Collaboration with other Member States in general**

##### **1.3.2.1. Collaboration and exchange of data and information**

#### **Section 1:51**

1. The supervisor shall collaborate with supervisory authorities of other Member States where this is required for the performance of its duties under this Act or for the performance of the duties of those supervisory authorities.
2. On request, the supervisor shall supply a supervisory authority of another Member State, with due observance of Subsection (3) and Section 1:90(1) to (3), with all data and information required for the performance of the duties of that supervisory authority.
3. If the request concerns an investment firm, the Authority for the Financial Markets may only decide not to supply data or information, if:
  - a. the provision of the data or information is not compatible with Dutch sovereignty, national security or public order;
  - b. legal proceedings are already pending in the Netherlands on the same charge and against the same person;
  - c. a final and conclusive judgment has already been delivered in the Netherlands on the same charge and against the same person.
4. The Authority for the Financial Markets shall notify the supervisory authority of the other Member State of its decision referred to in Subsection (3), stating its reasons.
5. On request, the Authority for the Financial Markets shall provide a supervisory authority of another Member State in which a market operator holding a licence as referred to in Section 5:26(1) takes appropriate measures in order to facilitate access to the trade in his system for the members established in that Member State or long-distance unit-holders, within a reasonable term with the names of the members of or unit-holders on the regulated market concerned.

#### **Section 1:51a**

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

1. For the purpose of the supervision as referred to in Part 3.6.2, the Dutch Central Bank shall collaborate with the relevant supervisory authorities of other Member States. In that context, the Dutch Central Bank, if so requested, shall furnish all relevant information to these supervisory authorities, with due observance of Section 1:90(1) to (3).
2. Of its own accord, the Dutch Central Bank shall provide the relevant supervisory authorities of other Member States with all information that is essential for them to fulfil their supervisory duties as referred to in Part 3.6.2.
3. Essential information as referred to in Subsection (2) shall in any event refer to / include information on:
  - a. the group structure, the major investment firms and credit institutions of the group, as well as the supervisory authorities of other Member States that supervise the investment firms and credit institutions of the group;
  - b. procedures for gathering information from the investment firms and credit institutions of the group, as well as for the verification of this information;
  - c. developments at investment firms, credit institutions or other enterprises of the group that could have serious detrimental consequences for the investment firms or credit institutions;
  - d. major sanctions and special measures imposed by the Dutch Central Bank or the supervisory authorities of other Member States with regard to the financial enterprises referred to in Part 3.6.2.
4. If the Dutch Central Bank supervises a Dutch investment firm or Dutch credit institution which is a subsidiary of an EU parent investment firm or an EU parent credit institution and it requires information about the introduction of approaches or methods as described pursuant to this Act and this information has already been furnished to the supervisory authority that supervises that EU parent investment firm or EU parent credit institution, it shall first apply to this supervisory authority.
5. Before taking a decision that affects the supervisory duties as referred to in Part 3.6.2 of another supervisory authority involved, the Dutch Central Bank shall consult with that supervisory authority with regard to:
  - a. changes in share ownership, the organisation or the management structure of investment firms and credit institutions in the group; and
  - b. major sanctions or special measures.
6. The Dutch Central Bank shall ask advice from the supervisory authority of another Member State that exercises supervision on a consolidated basis, before taking a decision as to the imposition of a sanction or measure as referred to in Subsection (5)(b).
7. In urgent cases, the Dutch Central Bank may refrain from asking advice as referred to in Subsection (6). In that case it shall inform the supervisory authorities of other Member States of its decision without delay.

#### **Section 1:52**

1. The supervisor may demand information from any party for the fulfilment of its duties under this section where this is required for the fulfilment of the duties of a supervisory authority in another Member State.
2. Sections 5:13 and 5:20 of the General Administrative Law Act shall apply mutatis mutandis.

#### **Section 1:53**

1. If a Dutch life insurer or non-life insurer and a European life insurer or non-life insurer are affiliated as referred to in Section 3:268(1)(i), the Dutch Central Bank shall, of its own accord, provide the supervisory authority in each of the other Member States concerned with all information that seems essential for the supervision to be exercised by that supervisory authority.
2. If a Dutch life insurer or non-life insurer and an investment firm or a credit institution having its registered office in another Member State are affiliated as referred to in Section 3:268(1)(i), the Dutch Central Bank shall provide the supervisory authorities that are charged with the supervision of those other financial enterprises with all the information that may facilitate the fulfilment of their duties.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

#### **Section 1:54**

1. For the purpose of the supervision as referred to in Part 3.6.4, the Dutch Central Bank shall collaborate with the relevant supervisory authorities of other Member States. In that context, the Dutch Central Bank shall provide these supervisory authorities with all relevant information if so requested and furnish them with all essential information of its own accord.
2. The collaboration referred to in Subsection (1) shall comprise at least the gathering and exchange of information with regard to the following aspects:
  - a. the group structure referred to in Section 3:289(e), all the major enterprises belonging to the financial conglomerate and the supervisory authorities of other Member States responsible for supervising the regulated entities, as referred to in Section 3:289(d), in the group;
  - b. the financial conglomerate's strategic policies;
  - c. the financial conglomerate's financial situation, in particular on capital adequacy, intra-group transactions, risk concentration as referred to in Section 3:289(l) and profitability;
  - d. the financial conglomerate's main shareholders and management;
  - e. the operations at financial conglomerate level;
  - f. the procedures for gathering information from the enterprises in the financial conglomerate and the verification of this information;
  - g. developments at regulated entities or other group members of the financial conglomerate which could have serious detrimental consequences for the regulated entities;
  - h. major sanctions and special measures imposed by the supervisory authorities of other Member States with regard to the financial conglomerate or sections thereof.
3. Before rendering decisions relating to the matters listed below, the Dutch Central Bank shall consult the supervisory authorities of other Member States responsible for supervising regulated entities in the financial conglomerate, where these decisions affect the supervisory duties of those supervisory authorities:
  - a. changes in share ownership, the organisation or the management structure of a regulated entity which require its approval;
  - b. major sanctions or special measures in respect of a regulated entity.
4. Without prejudice to the consultations referred to in Subsection (3), the Dutch Central Bank may omit such consultations in urgent cases or where the consultations may jeopardise the effectiveness of its decision. In that case it shall inform the supervisory authorities of other Member States of its decision without delay.
5. At the request of the coordinator referred to in Section 3:293(1), the Dutch Central Bank shall ask the parent company having its registered office in the Netherlands which, alone or together with another enterprise, heads the group to which a regulated entity belongs, for all information relevant to the performance of the coordinator's duties.
6. If the Dutch Central Bank is not the coordinator and the coordinator deems it necessary that, with a view to the supervision referred to in Part 3.6.4, measures be taken against a mixed financial holding company having its registered office in the Netherlands, it shall, at the coordinator's request, take the reasonably necessary measures against that mixed financial holding company by using the powers conferred on it under this Act.

#### **Section 1:54a**

If a market operator holding a licence as referred to in Section 5:26(1) has taken measures in another Member State enabling unit-holders or members of the regulated market to trade on that market from that Member State, and the activities of the regulated market are of significant importance for the operation of the securities markets and the protection of the investors in that Member State, the Authority for the Financial Markets, without prejudice to Section 1:51, shall make arrangements with the relevant supervisory authorities in that Member State about the performance of its supervisory activities.

#### **1.3.2.2. Collaboration in the context of supervision of compliance**

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

#### **Section 1:55**

1. If a management company, investment firm, credit institution, life insurer or non-life insurer having its registered office in the Netherlands has a branch office in another Member State, the supervisor may, for the purpose of the supervision of compliance with this Act by that financial enterprise:
  - a. request the supervisory authority of the other Member State to verify data or information at the branch office;  
or
  - b. having notified the supervisory authority of the other Member State, itself verify data or information at the branch office or arrange for such data or information to be verified.
2. If the Dutch Central Bank wishes to verify data or information at an enterprise based in another Member State for the purpose of the supervision on a consolidated basis as referred to in Chapter 3.6, it may, for the purpose of such supervision:
  - a. request the supervisory authority of the other Member State to verify data or information at that enterprise;
  - b. having notified the supervisory authority of the other Member State, itself verify data or information at the enterprise or arrange for such data or information to be verified.

#### **Section 1:56**

1. If a management company, investment firm, credit institution, life insurer or non-life insurer having its registered office in another Member State has a branch office in the Netherlands, the supervisory authority of that other Member State, having notified the supervisor, may verify data or information at the branch office that is required for the exercise of the supervision of that management company, investment firm, credit institution, life insurer or non-life insurer.
2. The supervisory authority of the other Member State may also request the supervisor to verify data or information at the branch office that is required for the exercise of the supervision of that management company, investment firm, credit institution, life insurer or non-life insurer. The supervisor shall grant this request or provide the supervisory authority of the other Member State with the opportunity to verify data or information at the branch office or to arrange for such data or information to be verified.
3. If a supervisory authority of another Member State wishes to verify data or information at a Netherlands-based enterprise for the purpose of the supervision on a consolidated basis of a credit institution having its registered office in that Member State, it may request the Dutch Central Bank to do so. The Dutch Central Bank shall grant this request or provide the supervisory authority with the opportunity to verify the data or information or to arrange for such data or information to be verified.
4. For the purpose of a verification as referred to in Subsections (1) or (2), the supervisor may demand information from the branch office and the enterprise respectively. Sections 5:13, 5:17 and 5:20 of the General Administrative Law Act shall apply *mutatis mutandis*.

#### **Section 1:56a**

1. If an investment firm having its registered office in another Member State has a branch office in the Netherlands, the Authority for the Financial Markets, at the request of the supervisory authority of that other Member State, may arrange for an expert to verify data or information or carry out an investigation at the branch office.
2. If an investment firm having its registered office in the Netherlands is a long-distance member of a regulated market licensed in another Member State, the supervisory authority of that other Member State, having notified the Authority for the Financial Markets, may itself verify data or information at this member, arrange for such data or information to be verified or have an investigation carried out.

#### **Section 1:56b**

1. The Authority for the Financial Markets may only refuse a request for collaboration in the performance of an

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

investigation, or a request as referred to in Section 1:56, insofar as this request relates to an investment firm, or Section 1:56a, if:

- a. the investigation or the verification of data or information is not compatible with Dutch sovereignty, national security or public order;
  - b. legal proceedings are already pending in the Netherlands on the same charge and against the same person;
  - c. a final and conclusive judgment has already been delivered in the Netherlands on the same charge and against the same person.
2. The Authority for the Financial Markets shall notify the supervisory authority of the other Member State of its decision, stating its reasons.

#### **Section 1:57**

1. If a supervisory authority of another Member State requests the verification of data or information concerning a group member as referred to in Section 3:289(f) having its registered office in the Netherlands for the purpose of the supervision referred to in Part 3.6.4, the Dutch Central Bank shall grant this request or provide that supervisory authority with the opportunity to verify the data or information or to arrange for such data or information to be verified.
2. The Dutch Central Bank may request information for the purpose of a verification as referred to in Subsection (1). Sections 5:13, 5:17 and 5:20 of the General Administrative Law Act shall apply *mutatis mutandis*.

#### **1.3.2.3. Collaboration in the context of enforcement**

#### **Section 1:58**

1. If a management company of an enterprise for collective investment in transferable securities having its registered office in another Member State or a credit institution, life insurer or non-life insurer having its registered office in another Member State that conducts its business or performs financial services from a branch office in the Netherlands or provides services to the Netherlands, fails to comply with an instruction issued by the supervisor as referred to in Section 1:75, the supervisor shall notify the supervisory authority of the other Member State.
2. If the relevant management company, credit institution, life insurer or non-life insurer, despite the measures taken by the supervisory authority of the Member State where the financial enterprise has its registered office, or because that supervisory authority has not taken measures, fails to comply with the provisions laid down by or pursuant to this Act, the supervisor, having notified that supervisory authority, may prevent the relevant management company, credit institution, life insurer or non-life insurer from concluding new contracts in the Netherlands, without prejudice to Sections 1:79 and 1:80.
3. The supervisor shall, without delay, inform the supervisory authority of the Member State where the relevant management company, credit institution, life insurer or non-insurer has its registered office of a decision rendered under Subsection (2).
4. The supervisor shall also publish a notification of a decision rendered under Subsection (2) in the Government Gazette as soon as the appeal period has expired or, where an appeal has been lodged, as soon as a final and conclusive decision has been rendered on the appeal.
5. Subsections (1) to (3) shall apply *mutatis mutandis* to:
  - a. insurance intermediaries having their registered office in another Member State;
  - b. financial service providers having their registered office in another Member State that conduct the business of a financial institution, credit institution or insurer; and
  - c. reinsurance intermediaries having their registered office in another Member State.

#### **Section 1:58a**

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

1. If an investment firm having its registered office in another Member State which provides investment services or performs investment activities in the Netherlands by providing services or operating from a branch office in the Netherlands, fails to fulfil the obligations imposed pursuant to Part 4, Conduct of Business Supervision of Financial Enterprises or Part 5, Market Conduct Supervision, the supervisor shall notify the supervisory authority of the other Member State.
2. If the investment firm, despite the measures taken by the supervisory authority of the Member State where it has its registered office, or because that supervisory authority has not taken measures, continues to act in a manner that clearly harms the interests of investors or the orderly operation of the financial markets, the supervisor, having notified the supervisory authority, may prevent the relevant investment firm from concluding new contracts in the Netherlands, without prejudice to Sections 1:79 and 1:80.
3. Section 1:58(3) and (4) shall apply mutatis mutandis.

#### **Section 1:58b**

1. If an investment firm having its registered office in another Member State which provides investment services or performs investment activities from a branch office in the Netherlands, fails to comply with an instruction issued by the supervisor as referred to in Section 1:75, the supervisor shall notify the supervisory authority of the other Member State.
2. In the case referred to in Subsection (1), the supervisor may also prevent the relevant investment firm from concluding new contracts in the Netherlands, without prejudice to Sections 1:79 and 1:80.
3. Section 1:58(3) and (4) shall apply mutatis mutandis.

#### **Section 1:58c**

1. If a market operator having its registered office in another Member State which makes its facilities available to members based in the Netherlands or long-distance unit-holders, fails to fulfil the obligations imposed pursuant to Part 4, Conduct of Business Supervision of Financial Enterprises or Part 5, Market Conduct Supervision, the supervisor shall notify the supervisory authority of the other Member State.
2. Subsection (1) shall apply mutatis mutandis to an investment firm having its registered office in another Member State which operates a multilateral trading facility in the Netherlands.
3. If the market operator or the investment firm, despite the measures taken by the supervisory authority of the Member State where it has its registered office, or because that supervisory authority has not taken measures, continues to act in a manner that clearly harms the interests of the investors or the orderly operation of the financial markets, the supervisor, having notified the supervisory authority, may prevent the relevant market operator or investment firm from making its facilities available to members based in the Netherlands or long-distance unit-holders, without prejudice to Sections 1:79 and 1:80.
4. Section 1:58(3) and (4) shall apply mutatis mutandis.

#### **Section 1:59**

1. If a management company, investment firm, credit institution, life insurer or non-life insurer having its registered office in the Netherlands which pursues its business, performs financial services or provides services to another Member State from a branch office in the other Member State, fails to comply with the statutory regulations applicable in that other Member State, the supervisor, having received a notification to that effect from the supervisory authority of that other Member State, shall, without delay, issue an instruction to the relevant management company, investment firm, credit institution, life insurer or non-life insurer to adhere to the line of conduct set out in the instruction order within a reasonable term specified by the supervisor, in order to put an end to the violation of the statutory regulations applicable in that other Member State.
2. If the management company, investment firm, credit institution, life insurer or non-life insurer has not or



Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

insufficiently complied with the instruction, the supervisor, having informed that supervisory authority, may prevent the management company, investment firm, credit institution, life insurer or non-life insurer from concluding new contracts in the other Member States.

3. The supervisor shall inform the supervisory authority of the other Member State of the measures taken under Subsections (1) or (2).

#### **1.3.2.4. Consultation in the context of other procedures and notification of certain decisions**

##### **Section 1:60**

1. The Authority for the Financial Markets shall consult the supervisory authority of the Member State involved before granting a licence to a management company which:
  - a. is a subsidiary of a management company, investment firm, credit institution, life insurer or non-life insurer that has been licensed in another Member State;
  - b. is a subsidiary of a parent company of a management company, investment firm, credit institution, life insurer or non-life insurer that has been licensed in another Member State;
  - c. is controlled by a person that also exercises control over a management company, investment firm, credit institution, life insurer or non-life insurer that has been licensed in another Member State.
2. The Authority for the Financial Markets shall consult the supervisory authority of the Member State involved before granting a licence to an investment firm which:
  - a. is a subsidiary of an investment firm, credit institution, life insurer or non-life insurer that has been licensed in another Member State;
  - b. is a subsidiary of a parent company of an investment firm, credit institution, life insurer or non-life insurer that has been licensed in another Member State;
  - c. is controlled by a person that also exercises control over an investment firm, credit institution, life insurer or non-life insurer that has been licensed in another Member State.
3. The Dutch Central Bank shall consult the supervisory authority of the Member State involved before granting a licence to a credit institution which:
  - a. is a subsidiary of a credit institution that has been licensed in another Member State;
  - b. is a subsidiary of a parent company of a credit institution that has been licensed in another Member State;
  - c. is controlled by a person that also exercises control over a credit institution that has been licensed in another Member State.
4. The Dutch Central Bank shall consult the supervisory authority of the Member State involved before granting a licence to a life insurer or non-life insurer which:
  - a. is a subsidiary of an investment firm, credit institution, life insurer or non-life insurer that has been licensed in another Member State;
  - b. is a subsidiary of a parent company of an investment firm, credit institution, life insurer or non-life insurer that has been licensed in another Member State;
  - c. is controlled by a natural or legal person that also exercises control over an investment firm, credit institution, life insurer or non-life insurer that has been licensed in another Member State.

##### **Section 1:61**

1. The supervisor shall inform the supervisory authorities of the Member States in which a financial enterprise having its registered office in the Netherlands conducts its business or performs financial services from a branch office, or to which a financial enterprise provides services, of the withdrawal of the licence referred to in Sections 2:11(1), 2:27(1), 2:65 or 2:96 granted to that financial enterprise.
2. If a financial enterprise having its registered office in another Member State conducts its business or performs financial services from a branch office in the Netherlands, or provides services to the Netherlands, and the

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

supervisory authority of that Member State has informed the supervisor of the withdrawal of the licence of that financial enterprise by that supervisory authority, the supervisor shall disclose this notification.

#### **Section 1:62**

The Dutch Central Bank shall provide the supervisory authority of the Member State involved with the opportunity to give its opinion before issuing a declaration of no objection as referred to in Section 3:95 or issuing a notification as referred to in Section 3:108(4), if the investment firm or credit institution in which the applicant wishes to own a qualified shareholding were to become a subsidiary of the applicant or be controlled by the applicant in any other way as a result of the qualified shareholding, and the applicant:

- a. is an investment firm, credit institution, life insurer, non-life insurer or management company of an enterprise for collective investment in transferable securities that has been licensed in another Member State;
- b. is the parent company of an investment firm, credit institution, life insurer, non-life insurer or management company of an enterprise for collective investment in transferable securities that has been licensed in another Member State; or
- c. is a person that otherwise controls an investment firm, credit institution, life insurer, non-life insurer or management company of an enterprise for collective investment in transferable securities that has been licensed in another Member State.

#### **Section 1:63**

1. The Dutch Central Bank shall provide the supervisory authority of the Member State referred to in Section 3:60(1) with the opportunity to give its opinion before granting a dispensation as referred to in that section to a life insurer or non-life insurer.
2. Before withdrawing a dispensation as referred to in Section 3:60(1), the Dutch Central Bank shall request the supervisory authority of the Member State involved that granted a similar dispensation to the same financial enterprise to withdraw this dispensation at the time proposed by the supervisor.
3. If the supervisory authority of the Member State referred to in Section 3:60(1) so requests, the Dutch Central Bank shall withdraw a dispensation as referred to in that section at the time proposed by that supervisory authority.

#### **Section 1:64**

If a financial enterprise having its registered office in the Netherlands that holds a supervisory status certificate no longer meets the provisions of Section 3:110(3) to (6), the Dutch Central Bank shall inform the supervisory authorities of other Member States in which that financial enterprise conducts its business or performs financial services from a branch office, or to which it provides services.

### **Part 1.3.3. Collaboration with supervisory authorities of non-Member States**

#### **Section 1:65**

1. The supervisor may supply a supervisory authority of a non-Member State with confidential data or information if the guarantees applicable under the law of that State with regard to the non-disclosure of this data and information are at least equivalent to those applicable under Section 1:90(1), and insofar as the exchange is made for the purpose of the exercise of supervision by the supervisory authority involved. Section 1:90(1) to (3) shall apply mutatis mutandis.
2. The Authority for the Financial Markets may supply confidential data or information in respect of an investment firm, a multilateral trading facility or a market operator to the following persons or bodies in a non-Member State:
  - a. a person charged in that State with the statutory audit of the annual accounts of financial enterprises, or with the administration of compensation schemes, insofar as the data or information is supplied for the purpose of the exercise of that person's duties;
  - b. a body responsible in that State for supervising persons charged with the statutory audit of the annual

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

accounts of a financial enterprise;

- c. a person involved in that State in the liquidation and winding-up of an investment firm or a similar procedure;
- d. a body responsible in that State for supervising persons involved in the liquidation and winding-up of investment firms and other similar procedures.

- 3. The Authority for the Financial Markets may only apply Subsection (2) if the guarantees applicable under the law of the State involved with regard to the non-disclosure of the data and information are at least equivalent to those applicable under Section 1:90, and insofar as the exchange is made for the purpose of the exercise of the duties by the person or body involved.
- 4. Insofar as the data and information referred to in Subsection (2) was obtained from a supervisory authority of a non-Member State, the Authority for the Financial Markets shall not disclose it to a person or body as referred to in Subsection (2) unless the supervisory authority from which the data and information was obtained has expressly consented to the disclosure of the data and information and, where applicable, has consented to the use of this data and information for a purpose other than that for which it was supplied.
- 5. Immediately upon concluding an agreement on the exchange of data and information with a supervisory authority of a non-Member State or a person or body as referred to in Subsection (2), with due observance for Subsections (1) or (2), the supervisor shall send a copy of this agreement to Our Minister.

#### **Section 1:66**

- 1. If a life insurer or non-life insurer having its registered office in a non-Member State fails to comply, in providing services to the Netherlands from another Member State, with an instruction issued by the Dutch Central Bank as referred to in Section 1:75, the latter shall inform the supervisory authority of that Member State.
- 2. Section 1:58(2) to (4) shall apply *mutatis mutandis*.

#### **Section 1:67**

- 1. If a clearing institution or a funeral expenses and benefits in kind insurer having its registered office in another State fails to comply with an instruction issued by the supervisor as referred to in Section 1:75, the supervisor, where appropriate, may prevent the relevant clearing institution or funeral expenses and benefits in kind insurer from concluding new contracts in the Netherlands by providing services, without prejudice to Sections 1:79 and 1:80.
- 2. Section 1:58(4) shall apply *mutatis mutandis*.

#### **Section 1:68**

- 1. The supervisor may request information from any party for the implementation of treaties on the exchange of data or information, or for the implementation of agreements concluded with supervisory authorities on the exchange of data and information as referred to in Section 1:65.
- 2. Sections 5:13 and 5:20 of the General Administrative Law Act shall apply *mutatis mutandis*.

### **Part 1.3.4. Information provision by supervisor to the Commission of the European Communities**

#### **Section 1:69**

The Dutch Central Bank shall notify the Commission of the European Communities of any licence granted under this Act:

- a. to conduct the business of a credit institution;
- b. to a subsidiary of a financial enterprise governed by the law of a non-Member State to conduct the business of a life insurer or non-life insurer.

#### **Section 1:69a**

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

The Authority for the Financial Markets shall notify the Commission of the European Communities upon request of a licence granted under this Act to a subsidiary of a financial enterprise governed by the law of a non-Member State to conduct the business of an investment firm, if a situation as referred to in Article 15(2) or (3) of the Markets in Financial Instruments Directive applies in respect of that State.

### **Section 1:70**

The Dutch Central Bank shall notify the Commission of the European Communities whenever:

- a. a declaration of no objection as referred to in Section 3:95 is granted in respect of a qualified shareholding in a bank, investment firm, life insurer or non-life insurer, if, as a result of the qualified shareholding, the bank, investment firm, life insurer or non-life insurer becomes a subsidiary of a financial enterprise governed by the law of a non-Member State; and
- b. a communication is made as referred to in Section 3:108(4), if, as a result of the qualified shareholding, the electronic money institution becomes a subsidiary of a financial enterprise governed by the law of a non-Member State;
- c. a decision is taken to grant approval as referred to in Section 3:275(6) or (8).

### **Section 1:71**

1. The supervisor shall notify the Commission of the European Communities of:

- a. the general difficulties which management companies, investment firms, credit institutions, life insurers or non-life insurers having their registered office in the Netherlands encounter in the pursuit of their business or the performance of financial services from a branch office in a non-Member State, or the provision of services to a non-Member State;
- b. the number and nature of the cases in which the supervisor has refused a request for approval of a proposal as referred to in Sections 2:108, 2:122 or 2:127 submitted by a management company, investment firm or credit institution;
- c. the number and nature of the cases in which it has taken a decision as referred to in Section 1:58(2) with regard to a management company, investment firm or credit institution with a branch office in the Netherlands.

2. The supervisor shall notify the Commission of the European Communities without delay of the cases in which it has taken a decision as referred to in Sections 1:58a(2), 1:58b(2) and 1:58c(3) respectively with regard to an investment firm or a market operator.

## **Chapter 1.4. Supervision and enforcement**

### **Part 1.4.1. Supervision of compliance**

#### **Section 1:72**

1. The persons designated by decision of the supervisor shall be responsible for supervising compliance with the rules laid down by and pursuant to this Act.
2. A notification of the decision referred to in the preceding subsection shall be published in the Government Gazette.

#### **Section 1:73**

1. The persons referred to in Section 1:72(1) shall not have the powers listed in Sections 5:18 and 5:19 of the General Administrative Law Act.
2. Insofar as the persons designated by the Authority for the Financial Markets under Section 1:72 to exercise the supervision of conduct in respect of financial enterprises licensed by the Dutch Central Bank require data on aspects of the operations as referred to in Section 3:17(2)(a) or (b), these persons shall not exercise their

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

powers under Sections 5:15, 5:16 or 5:17 of the General Administrative Law Act until the Dutch Central Bank has been requested to supply this data and it has become apparent that the Dutch Central Bank cannot grant this request.

3. Insofar as the persons designated by the Dutch Central Bank under Section 1:72 to exercise the prudential supervision in respect of financial enterprises licensed by the Authority for the Financial Markets require data on aspects of the operations as referred to in Section 4:14(2)(a) or (b), these persons shall not exercise their powers under Sections 5:15, 5:16 or 5:17 of the General Administrative Law Act until the Authority for the Financial Markets has been requested to supply this data and it has become apparent that the Authority for the Financial Markets cannot grant this request.
4. A derogation from Subsections (2) and (3) shall be permitted, after consultation with the other supervisor, if there is a reasonable suspicion of a violation of the provisions laid down by or pursuant to this Act, and the urgent nature of the interests involved so requires.

#### **Section 1:74**

1. The supervisor may request information from any party for the purpose of the supervision of compliance with the rules laid down by or pursuant to this Act.
2. Sections 5:13 and 5:20 of the General Administrative Law Act shall apply *mutatis mutandis*.
3. Insofar as the Authority for the Financial Markets, for the purpose of exercising the supervision of conduct in respect of financial enterprises licensed by the Dutch Central Bank, requires data on aspects of the operations as referred to in Section 3:17(2)(a) or (b), the Authority for the Financial Markets shall not demand any information until the Dutch Central Bank has been requested to supply this data and it has become apparent that the Dutch Central Bank cannot grant this request.
4. Insofar as the Dutch Central Bank, for the purpose of exercising the prudential supervision in respect of financial enterprises licensed by the Authority for the Financial Markets, requires data on aspects of the operations as referred to in Section 4:14(2)(a) or (b), the Dutch Central Bank shall not demand any information until the Authority for the Financial Markets has been requested to supply this data and it has become apparent that the Authority for the Financial Markets cannot grant this request.
5. A derogation from Subsections (3) and (4) shall be permitted, after consultation with the other supervisor, if there is a reasonable suspicion of a violation of the rules laid down by or pursuant to this Act, and the urgent nature of the interests involved so requires.

#### **Part 1.4.2. Enforcement**

##### **Section 1:75**

1. If any of the persons listed below fails to comply with the provisions laid down by or pursuant to this Act, the supervisor may oblige this person, by issuing an instruction, to adhere to a particular line of conduct within a reasonable term specified by the supervisor with regard to the points set out in the instruction order:
  - a. a financial enterprise;
  - b. a representative of an insurer;
  - c. a holder of a declaration of no objection under Sections 3:95, 3:96 or 5:32d;
  - d. any party which, operating in or from the Netherlands, attracts callable funds from others than professional market parties, obtains the disposal or has the disposal of such funds beyond a restricted circle in the pursuit of a business;
  - e. any party which, operating in or from the Netherlands, performs activities as a broker in another Member State as a service of the information society as referred to in Section 15d(3) of Book 3 of the Dutch Civil Code in the pursuit of a business or profession in order to attract or obtain the disposal of callable funds from others than professional market parties beyond a restricted circle;
  - f. a market operator.
2. The Dutch Central Bank may also issue an instruction within the meaning of Subsection (1) to a financial

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

enterprise where it detects signs of a development that may jeopardise the equity capital, solvency or liquidity of that financial enterprise.

3. An instruction issued to a person under Subsections (1) or (2) shall not affect contracts between that person and third parties.

#### **Section 1:76**

1. The supervisor may decide to appoint one or more persons as custodian with regard to all or certain bodies or representatives of a financial enterprise if the financial enterprise does not comply with the provisions arising from this Act.
2. The decision under Subsection (1) shall only be taken:
  - a. after the financial enterprise has failed to comply, either fully or in part, with an instruction as referred to in Section 1:75(1) within the specified term; or
  - b. if the violation referred to in Subsection (1) seriously jeopardises the adequate operation of the financial enterprise and that financial enterprise was previously provided with the opportunity to submit its view on the proposed decision; or
  - c. if the violation referred to in Subsection (1) seriously jeopardises the interests of consumers or, where it concerns financial instruments or insurance, the interests of clients, with the exception of professional investors, and that financial enterprise was previously provided with the opportunity to submit its view on the proposed decision.
3. Without prejudice to Subsections (1) and (2), the Dutch Central Bank may decide to appoint one or more persons as custodian with regard to all or certain bodies or representatives of a financial enterprise where it detects signs of a development that may jeopardise the equity capital, solvency or liquidity of that financial enterprise.
4. The decision under Subsection (1) shall only be taken:
  - a. after the financial enterprise has failed to comply, either fully or in part, with an instruction as referred to in Section 1:75(2) within the specified term; or
  - b. if urgent intervention is required and the financial enterprise was previously provided with the opportunity to submit its view on the proposed decision.
5. The appointment decision shall include a description of the interests which the custodian must observe. The supervisor shall appoint the custodian for a maximum period of two years, which term may be extended by a maximum period of one year at a time; the extension shall have immediate effect. From the moment when the financial enterprise has been informed of the appointment of the custodian, the relevant bodies or representatives may only exercise their powers subject to the custodian's approval and with due observance of the custodian's instructions.
6. After the appointment of a custodian:
  - a. the bodies and representatives of the financial enterprise shall lend the custodian their full cooperation;
  - b. the supervisor may permit the relevant bodies or representatives of the financial enterprise to carry out certain legal acts without approval;
  - c. the supervisor may replace the custodian at any time;
  - d. every person pertaining to the body of the financial enterprise which carried out acts in violation of a decision as referred to in Subsections (1) or (3) that resulted in loss or damage shall be jointly and severally liable towards that financial enterprise, unless these acts may not be attributable to this person and this person has not been negligent in taking measures to avert the consequences of these acts;
  - e. the acts referred to under (d), insofar as they are legal acts, shall be capable of annulment if the counterparty knew or should have known that the required approval had not been granted.
7. As soon as the circumstance referred to in Subsections (1) or (3) no longer exists, the supervisor shall revoke the decision to appoint the custodian. The supervisor shall inform the financial enterprise without delay of this

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*  
decision.

8. Subsections (1), (2) and (5) to (7) shall apply mutatis mutandis to any party which, operating in or from the Netherlands, attracts callable funds from others than professional market parties, obtains the disposal or has the disposal of such funds beyond a restricted circle in the pursuit of a business.

#### **Section 1:77**

1. If a financial enterprise regarding which the supervisor approved a proposal as referred to in Sections 2:107, 2:108, 2:111, 2:112, 2:115, 2:117, 2:118, 2:121, 2:122, 2:127 or 2:130 has received an instruction as referred to in Section 1:75 relating to its operations or its financial situation, and the financial enterprise has not or insufficiently complied with that instruction, the supervisor may decide to prevent that financial enterprise from conducting its business from a branch office or through the performance of services, or from providing financial services in the other Member State. The supervisor shall notify the supervisory authority of the Member State involved of this decision. From the time of this notification, the financial enterprise may no longer conduct its business from the branch office or through the performance of services, or perform services in the other Member State.
2. If an insurer has received an instruction as referred to in Section 1:75 relating to the properness or expertise of the insurer's representative or of a person determining the day-to-day policy of that insurer, and the insurer has not or insufficiently complied with that instruction, Subsection (1) shall apply mutatis mutandis.

#### **Section 1:78**

1. If an auditor or actuary does not provide or no longer provides the required safeguards that it will be able to perform its duties satisfactorily with regard to the financial enterprise, the supervisor may decide that this auditor or actuary is no longer authorised to issue the statements referred to in this Act in relation to that financial enterprise.
2. The supervisor shall inform the financial enterprise without delay of the decision referred to in Subsection (1).

#### **Section 1:79**

1. The supervisor may impose an order for incremental penalty payments in relation to a violation of regulations arising from the sections listed in the Annex to this section and the Prospectus Regulation and in relation to a violation of Section 5:20 of the General Administrative Law Act.
2. Sections 5:32(2) to (5) and 5:33 to 5:35 of the General Administrative Law Act shall apply with regard to the power referred to in Subsection (1).
3. Rules may be laid down by ministerial regulation with regard to exercising the power referred to in Subsection (1).

#### **Section 1:80**

1. The supervisor may impose an administrative fine in relation to a violation of regulations arising from the sections listed in the Annex to this section and the Prospectus Regulation and in relation to a violation of Section 5:20 of the General Administrative Law Act.
2. The administrative fine shall accrue to the supervisor which imposed the fine.
3. Rules may be laid down by ministerial regulation with regard to exercising the power referred to in Subsection (1).

#### **Section 1:81**

1. The amount of the administrative fine shall be determined by Decree, provided that the fine for an individual

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

violation shall not exceed € 900,000.

2. The Decree referred to in Subsection (1) shall determine for each violation the amount of the administrative fine to be imposed.
3. In specific cases, the supervisor may reduce the amount of the administrative fine as laid down by Decree if the amount of the fine is disproportionately high.

#### **Section 1:82**

1. Any person who has been questioned with a view to the imposition of an administrative fine shall not be required in respect of the violation to issue statements for that purpose.
2. Before being questioned, the person involved shall be informed that he has the right to remain silent..

#### **Section 1:83**

1. If the supervisor intends to impose an administrative fine, it shall notify the person involved of this and the grounds on which the intention is based.
2. In derogation from Part 4.1.2 of the General Administrative Law Act, the supervisor shall provide the person involved with the opportunity to submit its view either in writing or verbally, at one's discretion, before the administrative fine is imposed.

#### **Section 1:84**

1. The supervisor shall impose the administrative fine by means of an order.
2. The order shall specify in any case:
  - a. the fact regarding which the administrative fine is imposed, as well as the violated regulation;
  - b. the amount of the fine and the data on the basis of which this amount was determined; and
  - c. the period referred to in Section 1:85(1) within which the fine must be paid.

#### **Section 1:85**

1. The administrative fine shall be paid within six weeks after the order by which it was imposed took effect.
2. The submission of an objection or appeal against the imposition of an administrative fine shall suspend the obligation to pay the fine until the period for appeal has expired or, if an appeal has been lodged, until a decision has been given on the appeal.
3. If the administrative fine has not been paid within the period referred to in Subsection (1), it shall be increased by statutory interest. Statutory interest shall be owed from the day following the expiry of the period referred to in Subsection (1).
4. If the administrative fine was not paid in time, the supervisor shall issue a written demand that the fine, plus the costs of the demand, be paid within the next two weeks. The demand shall contain a notification to the effect that the fine, to the extent that it is not paid within the specified period, will be collected in accordance with Subsection (5).
5. If payment is not effected in time, the supervisor may collect the administrative fine, plus the costs of the demand and the collection charges, by way of a writ of execution.
6. The writ of execution shall be served at the offender's expense by means of a bailiff's notification, and shall constitute an enforceable order within the meaning of Book 2 of the Code of Civil Procedure (*Wetboek van Burgerlijke Rechtsvordering*).



Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

7. For six weeks after the date of service, it shall be possible to file an objection to the writ of execution by serving a summons on the supervisor that imposed the fine.
8. The objection shall not suspend the enforcement, unless the preliminary relief judge of the court in interlocutory proceedings rules otherwise upon request.
9. The objection may not be based on the argument that the administrative fine is inappropriate or too high.

#### **Section 1:86**

1. The power to impose an administrative fine shall lapse if criminal proceedings have been brought against the offender in respect of the violation for which the fine may be imposed and the court hearing has commenced, or if the right to prosecute has lapsed under Section 74 of the Criminal Code (*Wetboek van Strafrecht*).
2. The right to prosecute with regard to a violation as referred to in Section 1:80 shall lapse if the supervisor has already imposed an administrative fine on account of the same fact.

#### **Section 1:87**

1. The power to impose an administrative fine shall lapse three years from the day on which the violation was committed.
2. The period referred to in Subsection (1) shall be interrupted by the announcement of the order by which an administrative fine is imposed.

#### **Section 1:88**

The activities relating to the imposition of an administrative fine shall be carried out by persons who were not involved in establishing the violation and the preceding investigation.

### **Chapter 1.5. Duty of confidentiality, exceptions and publication options**

#### **Part 1.5.1. Duty of confidentiality and exceptions**

#### **Section 1:89**

1. Any party that performs or has performed any duties for the purpose of this Act or of decisions taken pursuant to this Act shall be prohibited from making any further or other use of confidential data or information supplied or obtained pursuant to this Act or pursuant to Section 5:2 of the General Administrative Law Act, or received from a person or body as referred to in Sections 1:90(1) and 1:191(1) respectively, and from publicising such data and information in any further or other way, than is required for the performance of that party's duties or required pursuant to this Act.
2. In derogation from Subsection (1), the supervisor may make disclosures by using confidential data or information obtained in the performance of its duties under this Act, provided that these cannot be traced back to individual persons.

#### **Section 1:90**

1. In derogation from Section 1:89(1), the supervisor may supply the other supervisor or the supervisory authority of another Member State with confidential data or information obtained in the performance of its duties under this Act, unless:
  - a. the purpose for which the confidential data or information will be used has not been adequately determined;
  - b. the intended use of the confidential data or information does not fit into the context of the supervision of financial markets or of persons operating on those markets;
  - c. the provision of the confidential data or information would not be compatible with Dutch law or public order;

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

- d. the non-disclosure of the data or information is not sufficiently guaranteed;
  - e. the provision of the confidential data or information is or might reasonably be considered contrary to the interests that this Act seeks to protect; or
  - f. there is insufficient guarantee that the confidential data or information will not be used for a purpose other than that for which it is supplied.
2. Insofar as the data or information referred to in Subsection (1) was obtained from a supervisory authority of another Member State, the supervisor shall not disclose it to the other supervisor or to the supervisory authority of another Member State, unless the supervisory authority of another Member State from which the data or information was obtained has expressly consented to the disclosure of the data and information and, where applicable, has consented to the use of this data or information for a purpose other than that for which it was supplied.
  3. If a supervisory authority in another Member State asks the supervisor which supplied the confidential data or information under Subsections (1) or (2) for permission to use that confidential data or information for a purpose other than that for which it was supplied, the supervisor shall only grant this request:
    - a. if the intended use is not contrary to Subsections (1) or (2); or
    - b. insofar as that supervisory authority might obtain the disposal of that data or information for that other purpose from the Netherlands in a manner not provided in this Act, with due observance of the applicable statutory procedures; and
    - c. after consultation with Our Minister of Justice, if the request referred to in the opening words of this section relates to a criminal investigation.
  4. The Authority for the Financial Markets or the organisational unit of the Dutch Central Bank entrusted with the duties referred to in Section 1:24 may supply confidential data or information to the organisational unit of the Dutch Central Bank entrusted with the performance of its monetary duties, insofar as the confidential data or information serves the performance of those duties.
  5. Subsections (1) to (3) shall apply mutatis mutandis to the exchange of confidential data or information between the supervisor's organisational units entrusted with different duties. The supervisor shall guarantee that such exchange of information occurs with due observance of the confidentiality regime applicable to the relevant data or information under European directives.

#### **Section 1:91**

1. In derogation from Section 1:89(1), the supervisor may supply confidential data or information obtained in the performance of its duties under this Act to a person as referred to under (a), (b), (c), (d), (e) or (f) insofar as the data or information serves the performance of its duties:
  - a. a delegated judge appointed under Section 3:162(4);
  - b. an administrator appointed under Section 3:162(4);
  - c. a delegated judge appointed under Section 223a of the Bankruptcy Act;
  - d. an administrator appointed under Section 215(2) of the Bankruptcy Act;
  - e. a delegated judge appointed under Section 14 of the Bankruptcy Act;
  - f. a liquidator appointed under Section 14 of the Bankruptcy Act.
2. The supervisor shall not supply any confidential data or information as referred to in Subsection (1):
  - a. if the provision of the confidential data or information is or might reasonably be considered contrary to the interests that this Act seeks to protect;
  - b. if the confidential data or information was obtained from the other supervisor or another supervisory authority, and this other supervisor or supervisory authority does not consent to the supply of the confidential data or information.
3. In derogation from Section 1:89(1), the liquidator appointed in the bankruptcy of an investment firm or market operator may supply confidential data or information as referred to in Subsection (1) to the district court, insofar as this data or information does not relate to third parties and such is required for the purpose of the liquidation.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

4. In derogation from Section 1:89(1), the liquidator appointed in the bankruptcy of a financial enterprise other than an investment firm or market operator may supply confidential data or information as referred to in Subsection (1) to the district court, insofar as this data or information does not relate to an enterprise that is or was involved in an attempt to enable the bankrupt enterprise to continue its business.
5. Section 1:89(1) shall not affect the applicability of the provisions of the Code of Civil Procedure relating to making a statement, as a witness or as a party in a personal appearance of parties, or as an expert in civil proceedings, with regard to data or information obtained in the performance of the duties assigned pursuant to this Act, insofar as it concerns confidential data or information regarding a financial enterprise that has been declared insolvent or has been dissolved under a court order.
6. In the event of the bankruptcy or dissolution under a court order of an investment firm or market operator, Subsection (5) shall not apply to confidential data or information concerning third parties. In the event of the bankruptcy or dissolution under a court order of a financial enterprise other than an investment firm or market operator, Subsection (5) shall not apply to confidential data or information concerning an enterprise that is or was involved in an attempt to enable the enterprise in question to continue its business.

#### **Section 1:92**

1. In derogation from Section 1:89(1), the supervisor may supply confidential data or information obtained in the performance of the duties assigned to it pursuant to this Act to a body entrusted with exercising powers to prosecute or to an expert issued with an instruction by such a body, insofar as the demanded data or information is necessary for the performance of that instruction.
2. If the body referred to in Subsection (1) intends to exercise the power to demand the transmission of an object liable to seizure or the power to demand inspection or a copy of documents as referred to in Sections 96a, 105 or 126a of the Code of Criminal Procedure (*Wetboek van Strafvordering*) or Sections 18 or 19 of the Economic Offences Act (*Wet op de economische delicten*), and the demand relates to confidential data or information as referred to in Section 1:89(1), that body shall provide the supervisor with the opportunity to express its view in this respect before exercising its power.

#### **Section 1:93**

1. In derogation from Section 1:89(1), the supervisor may supply confidential data or information obtained in the performance of the duties assigned to it pursuant to this Act to:
  - a. the European Central Bank, the national central bank of another country or another foreign body entrusted with a similar task, acting in its capacity of monetary authority, insofar as the data or information serves the performance of its monetary duties;
  - b. an auditor charged with the statutory audit of the annual accounts of a financial enterprise, insofar as the confidential data or information relates to that financial enterprise and is necessary for the audit;
  - c. an actuary charged with the statutory audit of a financial enterprise, insofar as the confidential data or information relates to that financial enterprise and is necessary for the audit;
  - d. the market operator, the investment firm operating a multilateral trading facility or the holder of a system comparable with a regulated market or a multilateral trading facility in a non-Member State, with a view to monitoring compliance with the rules applicable to that market; or
  - e. the Dutch Healthcare Authority, insofar as the data or information serves the performance of its statutory duties.
2. The supervisor shall not supply any confidential data or information as referred to in Subsection (1) if:
  - a. the purpose for which the confidential data or information will be used has not been adequately determined;
  - b. the intended use of the confidential data or information does not fit into the context of the supervision of financial markets or of persons operating on those markets;
  - c. the provision of the confidential data or information would be not be compatible with Dutch law or public order;
  - d. the non-disclosure of the data or information is not sufficiently guaranteed;
  - e. the provision of the confidential data or information can or might reasonably be considered contrary to the

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

- interests that this Act seeks to protect; or
  - f. there is insufficient guarantee that the confidential data or information will not be used for a purpose other than that for which it is supplied.
3. Insofar as the data or information referred to in Subsection (1) was obtained from a supervisory authority, the supervisor shall not disclose it to the other supervisor or to another supervisory authority, unless the supervisory authority from which the data or information was obtained has expressly consented to the disclosure of the data and information and, where applicable, has consented to the use of this data or information for a purpose other than that for which it was supplied.
  4. If a body or person as referred to in Subsection (1) asks the supervisor which supplied the confidential data or information for permission to use that confidential data or information for a purpose other than that for which it was supplied, the supervisor shall only grant this request:
    - a. if the intended use is not contrary to Subsections (1), (2) or (3); or
    - b. insofar as that body or person might obtain the disposal of that data or information for that other purpose in a manner not provided in this Act, with due observance of the applicable statutory procedures; and
    - c. after consultation with Our Minister of Justice, if the request referred to in the opening words of this section relates to a criminal investigation.

#### **Section 1:93a**

1. If the Authority for the Financial Markets has been designated as a contact point as referred to in Article 56(1), third sentence of the Markets in Financial Instruments Directive, it may, in derogation from Section 1:90(1), supply the Dutch Central Bank with confidential data or information obtained in the performance of its duties as a contact point.
2. Insofar as the data or information referred to in Subsection (1) was obtained from a supervisory authority in another Member State, the Authority for the Financial Markets shall not disclose it to bodies or persons as referred to in Section 1:91(1)(a) to (f), Section 1:92(1) and Section 1:93(1)(a) to (e), unless the relevant supervisory authority from which the data or information was obtained has expressly consented to the disclosure of the data and information and, where applicable, has consented to the use of this data or information for a purpose other than that for which it was supplied. In duly substantiated circumstances, the Netherlands Authorities for the Financial Markets may also disclose the data or information to the persons or bodies referred to in the preceding sentence for a purpose other than that for which it was supplied without the express consent of the relevant supervisory authority. In that case, the Authority for the Financial Markets shall notify the supervisory authority from which the data or information was obtained without delay.

#### **Part 1.5.2. Publication options of the supervisors**

##### **Section 1:94**

The supervisor may issue a public warning, where necessary stating the reasons for that warning, upon violation of a prohibitory provision of this Act or of Sections 1:58(2), 1:59(2), 1:67(1) or 4:4(1).

##### **Section 1:95**

1. If the supervisor decides to issue a public warning as referred to in Section 1:94, it shall inform the person involved of this decision.
2. The decision shall state in any event the violation established, the substance of the publication, the grounds on which the decision is based and the manner in which and the term within which the public warning will be issued.
3. Without prejudice to the provisions of Section 4:11 of the General Administrative Law Act, the supervisor may choose not to apply Section 4:8 of that Act if the address of the person involved is not known and cannot be obtained with reasonable effort.

##### **Section 1:96**

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

1. A public warning as referred to in Section 1:94 shall not be issued before five working days have elapsed after the date on which the person involved was informed of the decision in accordance with Section 1:95.
2. If preliminary relief as referred to in Section 8:81 of the General Administrative Law Act is sought, the decision's publication shall be suspended until the preliminary relief judge has rendered judgment.
3. If the protection of the interests which this Act seeks to protect does not allow delay, the supervisor, in derogation from the preceding subsections, may issue a public warning immediately.

#### **Section 1:97**

1. The supervisor shall publicise a decision to impose an administrative fine under this Act after its announcement, if the administrative fine was imposed in relation to a violation of:
  - a. a prohibitory provision of this Act or of Sections 1:58, 1:59(2), 1:67(1) or 4:4;
  - b. another provision that is subject to a fine with tariff number 4 or 5 under the Decree pursuant to Section 1:81(1); or
  - c. Sections 4:19, 4:20, 4:22, 4:23, 4:24, 4:42 or 4:87.
2. The decision to impose an administrative fine shall not be disclosed before five working days have elapsed after the date on which the person involved was informed of the decision.
3. If preliminary relief as referred to in Section 8:81 of the General Administrative Law Act is sought, the decision's publication shall be suspended until the preliminary relief judge has rendered judgment.
4. The decision shall not be publicised if its publication is or might be considered contrary to the object of the supervision of compliance with this Act to be exercised by the supervisor.

#### **Section 1:98**

Without prejudice to Section 1:97, the supervisor shall publicise a decision to impose an administrative fine under this Act if this has become irreversible by law, unless publication of the decision is or might be considered contrary to the object of the supervision of compliance with this Act to be exercised by the supervisor.

#### **Section 1:99**

1. The supervisor shall publicise a decision to impose an order for incremental penalty payments under this Act if the incremental penalty payment has been forfeited, unless publication of the decision is or might be considered contrary to the object of the supervision of compliance with this Act to be exercised by the supervisor.
2. If preliminary relief as referred to in Section 8:81 of the General Administrative Law Act is sought, the decision's publication shall be suspended until the preliminary relief judge has rendered judgment.

#### **Section 1:100**

If protection of the interests which this Act seeks to protect does not allow delay, the supervisor, in derogation from Sections 1:97(2) and (3), 1:98 or 1:99(1) and (2), may immediately publicise a decision to impose an administrative fine or an order for incremental penalty payments respectively.

#### **Section 1:101**

1. If preliminary relief as referred to in Title 8.3 of the General Administrative Law Act is sought against a decision as referred to in Sections 1:94, 1:97(1) and 1:99(1), the court hearing shall be held behind closed doors.
2. If the preliminary relief judge has banned the publication of a decision as referred to in Sections 1:94, 1:97(1) and 1:99(1), the parties involved in the objection shall not be heard in public.
3. If the preliminary relief judge has banned the publication of a decision as referred to in Sections 1:94, 1:97(1)

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

and 1:99(1), and an appeal is lodged against the decision on the objection to that decision, the court hearing shall be held behind closed doors.

## **Chapter 1.6. Procedures**

### **Part 1.6.1. Licensing**

#### **Section 1:102**

1. Rules shall be laid down by or pursuant to a Decree as regards the manner in which the application is filed.
2. The licence may be subject to conditions and limitations with a view to the interests which the respective part seeks to protect.
3. The supervisor shall render a decision on the application within 13 weeks of its receipt.
4. The supervisor shall confirm the receipt of the application to the applicant without delay.

#### **Section 1:103**

1. In derogation from Section 1:102(3), the supervisor shall defer the decision on a licence application if an application for a declaration of no objection as referred to in Section 3:95(1)(b) or (c) has also been submitted, until no later than six weeks after the moment when the order relating to the declaration of no objection was announced. If a petition for preliminary relief relating to that order was filed within that period, the supervisor shall suspend the decision until two weeks after the moment when a decision is rendered on that petition.
2. Irrespective of the application of the preceding subsection, the supervisor shall in any event render a decision on the licence within six months of the receipt of the application.

#### **Section 1:104**

1. The supervisor may modify, withdraw or limit, either fully or in part, or attach further conditions to the licence if:
  - a. the licence holder has filed an application to that end;
  - b. the licence holder, as subsequently becomes apparent, supplied incorrect or incomplete data when applying for the licence, and knowledge of the correct and complete data would have resulted in a different decision;
  - c. the licence holder suppressed circumstances or facts on the grounds of which, if they had occurred or been known by the time when the licence was granted, the licence would have been refused;
  - d. the licence holder no longer complies with the rules laid down by or pursuant to this Act, or no longer complies with the conditions or limitations attached to the licence;
  - e. the licence holder did not make use of the licence within 12 months of having been granted the licence;
  - f. the licence holder has terminated the activity for which the licence was required, is an investment firm which has discontinued its business for a period of more than six months or is an insurer which has discontinued its business in the sector for which the licence was granted for a period of more than six months;
  - g. the licence holder has transferred the enterprise for which the licence was granted, either fully or in part;
  - h. the licence holder dies (in the case of a natural person) or is dissolved (in the case of a legal person or partnership);
  - i. the statement regarding the fair presentation that forms part of the other information referred to in Section 3:71(1), or the statement referred to in Sections 3:72(7), 3:81(3) or 3:86(1) or (2), does not show that the annual accounts or the records referred to in Section 3:72(1) or (3) give a true and fair view of the enterprise's financial position and of its results for the financial year concerned; or
  - j. the licence holder has been declared insolvent, or the debt rescheduling arrangement for natural persons has been declared applicable to the licence holder, if a court has appointed an administrator as referred to in Sections 380, 409 or 431 of Book 1 of the Dutch Civil Code over one or more of the licence holder's assets, or if the licence holder has been placed under guardianship.
2. The supervisor shall withdraw the licence granted if:

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

- a. an authorisation as referred to in Section 3:163(1), opening words and under (b) has been granted, at the time when this authorisation was granted or as soon as possible thereafter, insofar as the enterprise still held a licence immediately prior to that time;
  - b. an authorisation as referred to in Section 3:163(1), opening words and under (c) has been granted, at the time when, during the emergency regulations, assets of the enterprise were converted into cash for the first time with a view to distributing the proceeds among the creditors, shareholders or members, or as soon as possible after the said time, insofar as the enterprise still held a licence immediately prior to the first time assets were converted into cash; or
  - c. it has agreed to a portfolio transfer as referred to in Sections 3:112, 3:113 and 3:114.
3. In the decision to withdraw a licence, the supervisor may also stipulate that the financial enterprise must wind up its business, either fully or in part, within a period to be specified by the supervisor. During the winding-up, whether or not stipulated by the supervisor, the financial enterprise or the bankruptcy liquidator of the financial enterprise shall be classified as a licensed enterprise.

### **Section 1:105**

1. The provisions laid down by or pursuant to this part with regard to a licence shall apply mutatis mutandis to:
  - a. a supervisory status certificate as referred to in Section 3:110;
  - b. a declaration of no objection as referred to in Sections 3:95, 3:96 and 5:32;
  - c. a dispensation from the prohibitions referred to in Sections 2:23, 2:55, 2:60, 2:75, 2:80, 2:86, 2:92, 3:5, 4:3, 5:26(1) and 5:71(6), on the understanding that the dispensation may be granted either fully or in part; and
  - d. an approval as referred to in Section 3:116, on the understanding that if a supervisory authority of another Member State gives its opinion or grants approval in relation to the proposed transfer, the decision period shall be suspended by a maximum of the period available to that supervisory authority under Section 3:118(5).
2. Section 1:102(1) shall apply mutatis mutandis to a dispensation other than that referred to in Subsection (1)(d). Rules may be laid down by ministerial regulation with regard to the conditions that may be attached to this dispensation. This dispensation may be withdrawn.

### **Section 1:106**

1. For the purpose of implementing a binding decision to that effect of the Commission of the European Communities or the Council of the European Union with regard to a non-Member State, the supervisor and our Minister respectively shall, in derogation from Section 1:102, suspend either fully or in part:
  - a. the consideration of applications for a licence to conduct the business of a credit institution, life insurer or non-life insurer, or to provide financial services as a management company or investment firm, which were filed directly or indirectly by financial enterprises governed by the law of a non-Member State;
  - b. the consideration of applications for a declaration of no objection as referred to in Section 3:95 which were filed directly or indirectly by financial enterprises governed by the law of a non-Member State;
  - c. the consideration of notifications as referred to in Section 3:103 which were filed directly or indirectly by financial enterprises governed by the law of a non-Member State.
2. Subsection (1) shall not apply to:
  - a. applications for a licence to incorporate subsidiaries that are also subsidiaries of a financial enterprise licensed in a Member State to conduct the business of a credit institution, life insurer or non-life insurer, or to provide financial services as a management company or investment firm;
  - b. applications for a declaration of no objection relating to qualifying holdings that are also qualifying holdings of a financial enterprise licensed in a Member State to conduct the business of a credit institution, life insurer or non-life insurer, or to provide financial services as a management company or investment firm;
  - c. notifications of an intention relating to qualifying holdings in an electronic money institution that are also qualifying holdings of a financial enterprise licensed in a Member State to conduct the business of a credit institution, life insurer or non-life insurer, or to provide financial services as a management company or

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

investment firm.

3. If the market access and competition opportunities in a non-Member State are more limited for financial enterprises having their registered office in a Member State than for financial enterprises having their registered office in a non-Member State, the supervisor shall, upon request, notify the Commission of the European Communities of:
  - a. applications for a licence to conduct the business of a credit institution, life insurer or non-life insurer, or to provide financial services as a management company or investment firm, which were filed directly or indirectly by financial enterprises governed by the law of the non-Member State;
  - b. applications for a declaration of no objection relating to qualifying holdings in a bank, management company or investment firm, life insurer or non-life insurer, which were filed directly or indirectly by financial enterprises governed by the law of the non-Member State, as a result of which that bank, investment firm, life insurer or non-life insurer would become a subsidiary of the applicant.

## **Part 1.6.2. Registration**

### **Section 1:107**

1. The register holder shall keep a public register. The register holder shall ensure the proper operation of the register and shall perform the registration in and removal from the register in such a manner that the register shows from what moment the registered financial enterprises may perform what activities, including any limitations attached, as well as the State in which they have their registered office.
2. The register holder shall, without delay, see to the registration of:
  - a. financial enterprises:
    - 1°. which have been granted a licence under this Act or a dispensation as referred to in Sections 2:23, 2:55, 2:60, 2:65(3), 2:75, 2:80, 2:86, 2:92, 2:96(2), 3:5, 3:7, 4:3 or 5:71(6);
    - 2°. to which an exemption applies, if they have informed the supervisor of their intention to provide the services concerned pursuant to a condition attached to that exemption;
    - 3°. which are otherwise permitted under this Act to conduct their business or perform financial services from a branch office situated in the Netherlands or by providing services to the Netherlands;
    - 4°. which have been granted a supervisory status certificate;
    - 5°. on which a prohibition has been imposed pursuant to Sections 1:58, 1:58a, 1:58b, 1:59, 1:67 or 4:4;
    - 6°. which are affiliated enterprises as referred to in Section 2:105;
    - 7°. to which the guarantee scheme referred to in Part 3.5.6 applies;
    - 8°. which are managed by licensed management companies; these financial enterprises shall be listed in the register together with the management company managing them;
    - 9°. which have reported as an investment company with variable capital;
    - 10°. which have been reported in accordance with Section 2:81(2)(b); these shall be listed in the register together with the provider or providers concerned;
    - 11°. which have notified the Authority for the Financial Markets pursuant to Sections 2:99 or 4:26 of their intention to conduct the business of an investment firm operating as a systematic internaliser;
    - 12°. which have been reported in accordance with Section 2:97(5), opening words and under (b); these shall be listed in the register together with the investment firm concerned;
    - 13°. which wind up their business in accordance with Section 1:104(3); and
    - 14°. to which the rules arising from this Act do not apply in accordance with Section 1:10(a);
  - b. market operators which have been granted a licence or dispensation under this Act;
  - c. credit rating agencies which have been granted recognised status under Section 3:57(2).
3. Without prejudice to Subsection (1), the register holder shall, without delay, see to the registration of:
  - a. the name and place of residence of the representative in the Netherlands of an insurer operating from a branch office in the Netherlands or providing services to the Netherlands;
  - b. the nature of the risks for non-life insurers which conduct their business in the Netherlands by providing services, or the nature of the life insurance contract where it concerns insurers which conduct their business in the Netherlands by providing services;
  - c. the data that must be reported pursuant to:



Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

1°. Chapter 5.3, on the understanding that such data must be registered within one working day following the working day on which the register holder received the report concerned, and with the exception of address data of natural persons with a duty to disclose;

2°. Section 5:59(1) or (5), including the time at which the issuer disclosed the information; and

3°. Section 5:60, with the exception of the address data of the parties with a duty to disclose;

- d. prospectuses approved under Section 5:9;
- e. the names of the States which our Minister has designated under Sections 2:60, 2:50 and 2:66;
- f. the Member States in which a registered insurance broker is authorised to provide brokerage services and the names of the natural persons who determine the policy of the broker;
- g. the name of the insurer to which the authorisation of a registered authorised agent or authorised sub-agent applies, and the names of the natural persons who determine the policy of the authorised agent or the authorised sub-agent; and
- h. the financial products in respect of which a registered financial service provider may perform services under this Act, as well as the nature of the services concerned;
- i. the market operator or the investment firm that is not permitted, pursuant to a decision as referred to in Section 1:58c(3), to make its facilities in the Netherlands available to long-distance members or unit holders based in the Netherlands.

4. Where applicable, it shall be stated upon removal that the decision concerned is not yet final and conclusive.

#### **Section 1:108**

1. The register holder shall keep the data referred to in Section 1:107 available in the register for public inspection free of charge for a minimum period of five years. On request, the register holder shall issue extracts from the register to any party on payment of the cost price.
2. Rules may be laid down by ministerial regulation with regard to the arrangement and operation of the register.

#### **Section 1:109**

1. The Authority for the Financial Markets shall keep a register of the persons who have applied, with due observance of the Decree referred to in the definition of qualified investor in Section 1:1, to be registered as qualified investors.
2. Inspection of the register shall be granted or an extract from the register shall be issued, on request and on payment of a fee not exceeding the cost price, to management companies, collective investment schemes, issuers, parties intending to attract or make available callable funds in the pursuit of a business, or parties performing activities as referred to in Section 4:3(1).
3. The Authority for the Financial Markets shall see to it without delay that an entry is removed from the register where such is requested by a registered party, legal successor or heir.
4. The Authority for the Financial Markets may remove an entry from the register with a view to the adequate operation of the financial markets.

#### **Section 1:109a**

The Authority for the Financial Markets shall keep a list of regulated markets for which Our Minister has granted a licence as referred to in Section 5:26(1), and shall send this list to the other Member States and to the Commission of the European Communities.

### **Part 1.6.3. Appeal**

#### **Section 1:110**

1. If an appeal is lodged against a decision under this Act or if preliminary relief is sought pursuant to this Act, the District Court of Rotterdam shall be competent, in derogation from Section 8:7 of the General Administrative Law Act.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

2. Section 7:1 of the General Administrative Law Act shall not apply with regard to a decision under Section 5:9a(1), 5:23(2), 5:77(1), 5:81(2), or in respect of the provisions arising from Section 5:76(2)(c), with the exception of a decision to impose an administrative fine as referred to in Section 1:80.
3. In derogation from Subsection (1), the Trade and Industry Appeals Tribunal (*College van Beroep voor het bedrijfsleven*) shall be competent in respect of appeals against decisions as referred to in Subsection (2), with the exception of decisions to impose an administrative fine.

## **2. Market Access of Financial Enterprises**

### **Chapter 2.1. Introductory provisions**

#### **Section 2:1**

Licences and dispensations granted under this Act shall be personal and non-transferable.

#### **Section 2:2**

If the supervisor, in licensing a financial enterprise, grants a dispensation as referred to in Sections 2:5(3), 2:7(3), 2:12(6), 2:13(3), 2:17(3), 2:22(3), 2:31(3), 2:32(3), 2:37(3), 2:41(3), 2:42(3), 2:51(2), 2:58(3), 2:63(3), 2:67(5), 2:68(4), 2:78(3), 2:83(3), 2:89(3), 2:94(3) or 2:99(6), that dispensation shall also classify as a dispensation from the corresponding rules under Part 3, Prudential Supervision of Financial Enterprises, and Part 4, Conduct of Business Supervision of Financial Enterprises.

#### **Section 2:3**

1. If, without prejudice to Section 2.2, the Authority for the Financial Markets, in licensing a financial enterprise whereby it has asked the Dutch Central Bank for advice pursuant to Section 1:48, also grants a dispensation as referred to in Sections 2:58(3), 2:63(3), 2:67(5), 2:68(4), 2:78(3), 2:83(3), 2:89(3), 2:94(3) or 2:99(6), the Authority for the Financial Markets may simultaneously grant a dispensation from the corresponding rules under Part 3, Prudential Supervision of Financial Enterprises, if the advice so necessitates. In such cases, any conditions recommended by the Dutch Central Bank shall be attached to that dispensation. This dispensation shall be deemed to have been granted by the Dutch Central Bank where it relates to rules under Part 3, Prudential Supervision of Financial Enterprises.
2. If, without prejudice to Section 2.2, the Dutch Central Bank, in licensing a financial enterprise whereby it has asked the Authority for the Financial Markets for advice pursuant to Section 1:48, also grants a dispensation as referred to in Sections 2:5(3), 2:7(3), 2:12(6), 2:13(3), 2:17(3), 2:22(3), 2:31(3), 2:32(3), 2:37(3), 2:41(3), 2:42(3) or 2:51(2), the Dutch Central Bank may simultaneously grant a dispensation from the corresponding rules under Part 4, Conduct of Business Supervision of Financial Enterprises, if the advice so necessitates. In such cases, any conditions recommended by the Authority for the Financial Markets shall be attached to that dispensation. This dispensation shall be deemed to have been granted by the Authority for the Financial Markets where it relates to rules under Part 4, Conduct of Business Supervision of Financial Enterprises.

### **Chapter 2.2. Access to the financial markets of the Netherlands**

#### **Part 2.2.1. Conducting the business of a clearing institution**

##### **2.2.1.1. Licensing obligation and requirements for clearing institutions having their registered office in the Netherlands**

#### **Section 2:4**

1. No party having its registered office in the Netherlands may conduct the business of a clearing institution

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

without a licence granted for that purpose by the Dutch Central Bank.

2. Subsection (1) shall not apply to financial enterprises having their registered office in the Netherlands that have been licensed by the Dutch Central Bank under this part to conduct the business of a bank.

## **Section 2:5**

1. On application, the Dutch Central Bank shall grant a licence as referred to in Section 2:4(1) if the applicant demonstrates that it will comply with the provisions arising from:
  - a. Section 3:8 with regard to the expertise of the persons referred to in that section;
  - b. Section 3:9 with regard to the properness of the persons referred to in that section;
  - c. Section 3:10(1) and (2) with regard to the policy on the sound conduct of business;
  - d. Section 3:15(1) and (2) with regard to the minimum number of persons determining the day-to-day policy and the place from which they perform their activities;
  - e. Section 3:16 with regard to the control structure;
  - f. Section 3:17(1) and (2) with regard to the operational structure;
  - g. Section 3:19(1) and (2) with regard to the minimum number of members of the Supervisory Board or the comparable body as referred to in Section 3:19(2);
  - h. Section 3:53(1) and (3) with regard to the minimum equity capital;
  - i. Section 3:57(1) and (2) with regard to solvency; and
  - j. Section 3:63(1) and (2) with regard to liquidity.
2. The licence application shall contain the data to be specified by or pursuant to a Decree.
3. On application, the Dutch Central Bank may grant a full or partial dispensation from Subsection (1), opening words and under (c), (d), (f), (g), (h), (i) or (j), if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which the sections listed in Subsection (1) seek to achieve are achieved in other ways.

### **2.2.1.2. Branch office and provision of services by clearing institutions having their registered office outside the Netherlands**

## **Section 2:6**

1. No party having its registered office outside the Netherlands may conduct the business of a clearing institution from a branch office situated in the Netherlands without a licence granted for that purpose by the Dutch Central Bank.
2. Subsection (1) shall not apply to clearing institutions having their registered office in a State to be designated by Our Minister in which the supervision of the conduct of the business of a clearing institution provides sufficient safeguards with regard to the interests which this Act seeks to protect. Further rules may be laid down by Decree as regards the designation of States. Our Minister may revoke the designation order.
3. An order to designate a State as referred to in Subsection (2) and the revocation of such an order shall be published in the Government Gazette.
4. Subsection (1) shall not apply to financial enterprises having their registered office in another Member State that have been licensed by the supervisory authority of that Member State to conduct the business of a bank, unless the licence provides otherwise. Section 2:15 shall apply *mutatis mutandis*.

## **Section 2:7**

1. On application, the Dutch Central Bank shall grant a licence as referred to in Section 2:6(1) if the applicant demonstrates that it will comply with the provisions arising from:
  - a. Section 3:8 with regard to the expertise of the persons referred to in that section;
  - b. Section 3:9 with regard to the properness of the persons referred to in that section;

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

- c. Section 3:10(1) and (2) with regard to the policy on the sound conduct of business;
- d. Section 3:17(1) and (2) with regard to the operational structure;
- e. Section 3:21 with regard to the minimum number of persons determining the day-to-day policy of the branch office and the place from which they perform their activities;
- f. Section 3:53(1) and (3) with regard to the minimum equity capital;
- g. Section 3:57(1) and (2) with regard to solvency; and
- h. Section 3:63(1) and (2) with regard to liquidity,

on the understanding that, for the purposes of (a) to (d) and (f) to (h), the phrase «a clearing institution having its registered office in the Netherlands» in the aforementioned sections must be read as: «the branch office in the Netherlands of a clearing institution having its registered office in a non-designated State», and that, for the purposes of (e), the phrase «credit institution having its registered office in a non-Member State» in the aforementioned section must be read as: «clearing institution having its registered office in a non-designated State».

2. The licence application shall contain the data to be specified by or pursuant to a Decree.
3. On application, the Dutch Central Bank may grant a full or partial dispensation from Subsection (1), opening words and under (c), (d), (f), (g) or (h), if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which the sections listed in Subsection (1) seek to achieve are achieved in other ways.

#### **Section 2:8**

1. No party having its registered office outside the Netherlands may conduct the business of a clearing institution by providing services to the Netherlands, unless it has informed the Dutch Central Bank of its intention to do so and ensures and demonstrates that it will comply with the provisions arising from Section 3:57.
2. Subsection (1) shall not apply to clearing institutions having their registered office in a State to be designated by Our Minister under Section 2:6(2).
3. Subsection (1) shall not apply to clearing institutions having their registered office in another Member State that have been licensed by the supervisory authority of that Member State to conduct the business of a bank, unless the licence provides otherwise. Section 2:18 shall apply *mutatis mutandis*.
4. For the purposes of Subsection (1), clearing institutions having their registered office outside the Netherlands shall conduct the business of a clearing institution by providing services to the Netherlands if they do so via a regulated market licensed under Section 5:26(1), a multilateral trading facility licensed under Section 2:96 or an investment firm operating as a systematic internaliser.
5. Having received a notification as referred to in Subsection (1), the Dutch Central Bank shall, without delay, confirm the receipt of this notification to the financial enterprise that made the notification.

#### **Section 2:9**

1. The notification referred to in Section 2:8(1) shall contain the data to be specified by or pursuant to a Decree.
2. The financial enterprise referred to in Section 2:8(1) may start providing services after receiving the confirmation referred to in Section 2:8(5) from the Dutch Central Bank.

#### **Section 2:10**

1. A clearing institution as referred to in Section 2:6(2) or Section 2:8(2) that intends to conduct the business of a clearing institution from a branch office situated in the Netherlands or by providing services to the Netherlands, shall notify the Dutch Central Bank of such intention.
2. Following the notification, the clearing institution may start conducting the intended business by providing services to the Netherlands, unless the Dutch Central Bank announces that such intention or the proposed

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

manner of conducting the business is contrary to this Act.

3. Having received a notification as referred to in Subsection (1), the Dutch Central Bank shall, without delay, confirm the receipt of this notification to the clearing institution concerned.
4. Within two months of receiving the notification, the Dutch Central Bank may inform the clearing institution of the conditions which the clearing institution must observe for reasons of public interest in conducting its business from the branch office situated in the Netherlands.

## **Part 2.2.2. Conducting the business of a credit institution and financial institution**

### **2.2.2.1. Licensing obligation and requirements for credit institutions having their registered office in the Netherlands**

#### **Section 2:11**

1. No party having its registered office in the Netherlands may conduct the business of a bank or electronic money institution without a licence granted for that purpose by the Dutch Central Bank.
2. Where conducting the business of an electronic money institution is concerned, Subsection (1) shall not apply to financial enterprises having their registered office in the Netherlands that have been licensed by the Dutch Central Bank under this part to conduct the business of a bank.
3. Subsection (1) shall not apply to parties that obtain the disposal of funds as referred to in Section 3:2.

#### **Section 2:12**

1. On application, the Dutch Central Bank shall grant a licence as referred to in Section 2:11(1) if the applicant demonstrates that it will comply with the provisions arising from:
  - a. Section 3:8 with regard to the expertise of the persons referred to in that section;
  - b. Section 3:9 with regard to the properness of the persons referred to in that section;
  - c. Section 3:10(1) and (2) with regard to the policy on the sound conduct of business;
  - d. Section 3:15(1) and (2) with regard to the minimum number of persons determining the day-to-day policy and the place from which they perform their activities;
  - e. Section 3:16 with regard to the control structure;
  - f. Section 3:17(1) and (2) with regard to the operational structure;
  - g. Section 3:19(1) and (2) with regard to the minimum number of members of the Supervisory Board or a comparable body as referred to in Section 3:19(2);
  - h. Section 3:31 with regard to consolidated supervision;
  - i. Section 3:53(1) and (3) with regard to the minimum equity capital;
  - j. Section 3:57(1) and (2) with regard to solvency; and
  - k. Section 3:63(1) and (2) with regard to liquidity.
2. If the application relates to a bank having its registered office in the Netherlands in which a qualified shareholding is owned, the Dutch Central Bank, without prejudice to Subsection (1), shall grant a licence if the owner of the qualified shareholding has applied for a declaration of no objection in accordance with Section 3:95(2), and the Dutch Central Bank is of the opinion that the provisions arising from Sections 3:99 to 3:101 regarding the declaration of no objection are complied with.
3. If the application relates to a bank having its registered office in the Netherlands in which a qualified shareholding is owned which is subject to Section 3:97, the Dutch Central Bank, without prejudice to Subsection (1) and in derogation from Subsection (2), shall grant a licence unless the holding might or would lead to an undesirable development in the financial sector, or the Dutch Central Bank is of the opinion that one of the considerations referred to in Sections 3:100, opening words and under (a) or (b), or 3:101, opening words and under (a) or (b), forms an obstacle to the granting of a declaration of no objection.
4. If the application relates to an electronic money institution having its registered office in the Netherlands in which

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

a qualified shareholding is owned, the Dutch Central Bank, without prejudice to Subsection (1), shall grant a licence unless the intention referred to in Section 3:108(1) might or would lead to an influence on the electronic money institution concerned that jeopardised the financial soundness of the electronic money institution.

5. The licence application shall contain the data to be specified by or pursuant to a Decree.
6. On application, the Dutch Central Bank may grant a full or partial dispensation from Subsection (1), opening words and under (c), (f), (g), (i), (j) or (k), if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which the sections listed in Subsection (1) seek to achieve are achieved in other ways.

### **Section 2:13**

1. On application, the Dutch Central Bank shall grant a licence as referred to in Section 2:11 to a credit institution which, in addition to conducting the business of a bank, intends also to provide investment services or perform investment activities in the Netherlands, if the applicant, without prejudice to Section 2:12, demonstrates that it will comply with the provisions arising from:
  - a. Section 4:14(2)(c) under 1° to 6° with regard to the operational structure;
  - b. Section 4:87 with regard to taking adequate measures to protect clients' rights; and
  - c. Section 4:91a with regard to the rules applicable to the trading process and the settlement of transactions in a multilateral trading facility, if the applicant intends to operate a multilateral trading facility.
2. The licence application shall contain the data to be specified by or pursuant to a Decree.

### **2.2.2.2. Branch office and provision of services by credit institutions having their registered office in another Member State**

### **Section 2:14**

1. If the Dutch Central Bank receives a notification from a supervisory authority of another Member State of the intention of a credit institution having its registered office in another Member State to conduct its business from a branch office situated in the Netherlands, it shall, without delay, inform the credit institution involved of the receipt of this notification.
2. Within two months of receiving the notification, the Dutch Central Bank may inform the supervisory authority of the other Member State of the conditions which the credit institution must observe for reasons of public interest in conducting its business from a branch office situated in the Netherlands. The Dutch Central Bank shall send a copy of this to the credit institution.

### **Section 2:15**

1. A credit institution having its registered office in another Member State that has been licensed to conduct its business by the supervisory authority of that Member State and intends to conduct its business from a branch office situated in the Netherlands, may start doing so two months after receiving the notification referred to in Section 2:14(1) or immediately after receiving the notification referred to in Section 2:14(2).
2. The credit institution shall be permitted to perform the activities listed in Annex I to the Recast Banking Directive, unless the notification referred to in Section 2:14(1) expressly provides otherwise or does not specify the performance of those activities.

### **Section 2:16**

1. No party having its registered office in another Member State which, under the law of the Member State where it has its registered office, does not require a licence granted by the supervisory authority of that Member State to conduct the business of a credit institution and has not obtained such a licence on a voluntary basis, may conduct the business of a credit institution from a branch office situated in the Netherlands without a licence

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

granted for that purpose by the Dutch Central Bank.

2. Where conducting the business of an electronic money institution is concerned, Subsection (1) shall not apply to financial enterprises having their registered office in another Member State that have been licensed by the supervisory authority of that Member State to conduct the business of a bank, unless the licence provides otherwise.
3. No party having its registered office in another Member State which, under the law of the Member State where it has its registered office, does not require a licence granted by the supervisory authority of that Member State to conduct the business of a credit institution and has not obtained such a licence on a voluntary basis, may conduct the business of a bank by providing services to the Netherlands, unless it notifies the Dutch Central Bank of this and demonstrates that it will comply with the provisions arising from Section 3:57. If rules have been laid down by or pursuant to a Decree under Section 3:57(2), the applicant shall also demonstrate that it will comply with those rules, insofar as that Decree provides this.

### **Section 2:17**

1. On application, the Dutch Central Bank shall grant a licence as referred to in Section 2:16(1) if the applicant demonstrates that it will comply with the provisions arising from:
  - a. Section 3:8 with regard to the expertise of the persons referred to in that section;
  - b. Section 3:9 with regard to the properness of the persons referred to in that section;
  - c. Section 3:10(1) and (2) with regard to the policy on the sound conduct of business;
  - d. Section 3:17(1) and (2) with regard to the operational structure;
  - e. Section 3:21 with regard to the minimum number of persons determining the day-to-day policy of the branch office and the place from which they perform their activities;
  - f. Section 3:46 with regard to consolidated supervision;
  - g. Section 3:53(1) and (3) with regard to the minimum equity capital;
  - h. Section 3:57(1) and (2) with regard to solvency;
  - i. Section 3:63(1) and (2) with regard to liquidity; and
  - j. Section 3:75 with regard to separate accounts,

on the understanding that, for the purposes of (a) to (d) and (g) to (i), the phrase «a credit institution in the Netherlands» in the aforementioned sections must be read as: «the branch office in the Netherlands of a credit institution having its registered office in another Member State».

2. The licence application shall contain the data to be specified by or pursuant to a Decree.
3. On application, the Dutch Central Bank may grant a full or partial dispensation from Subsection (1), opening words and under (c), (d), (g), (h) or (i), if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which the sections listed in Subsection (1) seek to achieve are achieved in other ways.

### **Section 2:18**

1. A bank having its registered office in another Member State that has been licensed to conduct its business by the supervisory authority of that Member State and intends for the first time to conduct its business by providing services to the Netherlands, may start doing so after it has notified the supervisory authority of the Member State where it has its registered office of this intention.
2. The bank shall be permitted to perform the activities listed in Annex I to the Recast Banking Directive, unless the Dutch Central Bank has received a notification from the supervisory authority of the Member State where the bank concerned has its registered office that expressly provides otherwise or does not specify the performance of those activities.

### **Section 2:19**

An electronic money institution having its registered office in another Member State that has been licensed to

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

conduct its business by the supervisory authority of that Member State and intends for the first time to conduct its business by providing services to the Netherlands, may start doing so after it has notified the supervisory authority of the Member State where it has its registered office of this intention.

### **2.2.2.3. Licensing obligation and requirements for credit institutions having their registered office in a non-Member State**

#### **Section 2:20**

1. No party having its registered office in a non-Member State may conduct the business of a bank or electronic money institution from a branch office situated in the Netherlands without a licence granted for that purpose by the Dutch Central Bank.
2. Where conducting the business of an electronic money institution is concerned, Subsection (1) shall not apply to financial enterprises having their registered office in a non-Member State that have been licensed by the Dutch Central Bank under this part to conduct the business of a bank from a branch office situated in the Netherlands.

#### **Section 2:21**

1. On application, the Dutch Central Bank shall grant a licence as referred to in Section 2:20(1) if the applicant demonstrates that it will comply with the provisions arising from:
  - a. Section 3:8 with regard to the expertise of the persons referred to in that section;
  - b. Section 3:9 with regard to the properness of the persons referred to in that section;
  - c. Section 3:10(1) and (2) with regard to the policy on the sound conduct of business;
  - d. Section 3:17(1) and (2) with regard to the operational structure;
  - e. Section 3:21 with regard to the minimum number of persons determining the day-to-day policy of the branch office and the place from which they perform their activities;
  - f. Section 3:46 with regard to consolidated supervision;
  - g. Section 3:53(1) and (3) with regard to the minimum equity capital;
  - h. Section 3:57(1) and (2) with regard to solvency;
  - i. Section 3:63(1) and (2) with regard to liquidity; and
  - j. Section 3:75 with regard to separate accounts,

on the understanding that, for the purposes of (a) to (d) and (g) to (i), the phrase «a credit institution in the Netherlands» in the aforementioned sections must be read as: «the branch office in the Netherlands of a credit institution having its registered office in a non-Member State».

2. The licence application shall contain the data to be specified by or pursuant to a Decree.
3. On application, the Dutch Central Bank may grant a full or partial dispensation from Subsection (1), opening words and under (b), (d), (g), (h) or (i), if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which the sections listed in Subsection (1) seek to achieve are achieved in other ways.

#### **Section 2:22**

1. On application, the Dutch Central Bank shall grant a licence as referred to in Section 2:20 to a credit institution which, in addition to conducting the business of a credit institution, intends also to provide investment services or perform investment activities, if the applicant, without prejudice to Section 2:21, demonstrates that it will comply with the provisions arising from:
  - a. Section 4:14(2)(c) under 1° to 6° with regard to the operational structure;
  - b. Section 4:87 with regard to taking adequate measures to protect clients' rights; and
  - c. Section 4:91a with regard to the rules applicable to the trading process and the settlement of transactions in a multilateral trading facility, if the applicant intends to operate a multilateral trading facility.
2. The licence application shall contain the data to be specified by or pursuant to a Decree.



Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

#### **Section 2:23**

1. An electronic money institution having its registered in a non-Member State may not conduct the business of an electronic money institution by providing services to the Netherlands from a place of business in a non-Member State.
2. On application, the Dutch Central Bank may grant a dispensation from Subsection (1) if the applicant demonstrates that the interests which this part and Part 3, Prudential Supervision of Financial Enterprises, seek to protect are sufficiently protected in other ways.

#### **2.2.2.4. Branch office and provision of services by financial institutions having their registered office in another Member State**

##### **Section 2:24**

1. If the Dutch Central Bank receives a notification from a supervisory authority of another Member State of the intention of a financial institution having its registered office in another Member State to conduct its business from a branch office situated in the Netherlands or by providing services to the Netherlands, it shall, without delay, inform the financial institution involved of the receipt of this notification.
2. Within two months of receiving the notification regarding the intention to conduct the business from a branch office situated in the Netherlands, the Dutch Central Bank may inform the supervisory authority of the other Member State of the conditions which the financial institution must observe for reasons of public interest in conducting its business or performing financial services in the Netherlands. The Dutch Central Bank shall send a copy of this to the financial institution.

##### **Section 2:25**

1. A financial institution having its registered office in another Member State which has been issued by the supervisory authority of that Member State with a declaration on conducting its business that corresponds to the supervisory status certificate referred to in Section 3:110, and which intends to conduct its business from a branch office situated in the Netherlands, may start doing so two months after the date on which Dutch Central Bank received the notification referred to in Section 2:24(1) or immediately after receipt of the notification referred to in Section 2:24(2).
2. The financial institution shall be permitted to perform the activities listed in Annex I, sections 2 to 14, to the Recast Banking Directive, unless the declaration referred to in Subsection (1) expressly provides otherwise or the notification referred to in Section 2:24(1) does not specify the performance of those activities.

##### **Section 2:26**

A financial institution having its registered office in another Member State which has been issued by the supervisory authority of that Member State with a declaration on conducting its business that corresponds to the supervisory status certificate referred to in Section 3:110, and which conducts its business by providing services to the Netherlands, shall be permitted to perform the activities listed in Annex I, sections 2 to 14, to the Recast Banking Directive, unless the declaration issued in that Member State that corresponds to the supervisory status certificate referred to in Section 3:110 expressly provides otherwise, or it has failed to notify the supervisory authority of the Member State where it has its registered office of the activities which it intends to perform by providing services to the Netherlands.

#### **Part 2.2.3. Conducting the business of a life insurer and non-life insurer**

##### **2.2.3.1. Licensing obligation and requirements for life insurers and non-life insurers having their registered office in the Netherlands**

##### **Section 2:27**

1. No party having its registered office in the Netherlands may conduct the business of a life insurer or non-life

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

insurer without a licence granted for that purpose by the Dutch Central Bank.

2. Within the business of a life insurer and the business of a non-life insurer, a distinction shall be made between the sectors listed in the Sectors Annex pertaining to this Act.
3. Where the prohibition on conducting the business of a life insurer is concerned, Subsection (1) shall not apply to financial enterprises that conduct only the business of a funeral expenses and benefits in kind insurer under a licence as referred to in Section 2:48(1).
4. Subsection (1) shall not apply to guarantee funds as referred to in Section 3(6).

#### **Section 2:28**

1. A party licensed to conduct the business of a life insurer shall not be licensed to conduct the business of a non-life insurer.
2. A party licensed to conduct the business of a non-life insurer shall not be licensed to conduct the business of a life insurer.

#### **Section 2:29**

1. A life insurer licensed to conduct the business of a life insurer in the Permanent Health Insurance sector shall not be eligible for a licence to conduct the business of a life insurer in another sector.
2. A life insurer licensed to conduct the business of a life insurer in a sector other than the Permanent Health Insurance sector shall not be eligible for a licence to conduct the business of a life insurer in the Permanent Health Insurance sector.

#### **Section 2:30**

Without prejudice to Section 2:31, the Dutch Central Bank shall only license a life insurer having its registered office in the Netherlands in respect of the Capitalisation Activities sector or the Group Pension Funds Management sector if the applicant is licensed in respect of the General Life Insurance sector and ensures and demonstrates that:

- a. it will perform the activities in the aforementioned Capitalisation Activities sector or the Group Pension Funds Management sector respectively to such an extent that these activities are of subordinate importance to its business as a whole; and
- b. in case of an application relating to the Group Pension Funds Management sector, it will comply with any other rules to be laid down by or pursuant to a Decree.

#### **Section 2:31**

1. On application, the Dutch Central Bank shall grant a licence as referred to in Section 2:27(1) if the applicant demonstrates that it will comply with the provisions arising from:
  - a. Section 3:8 with regard to the expertise of the persons referred to in that section;
  - b. Section 3:9 with regard to the properness of the persons referred to in that section;
  - c. Section 3:10(1) and (2) with regard to the policy on the sound conduct of business;
  - d. Section 3:15(1) and (2) with regard to the minimum number of persons determining the day-to-day policy and the place from which they perform their activities;
  - e. Section 3:16(1) and (2) with regard to the control structure;
  - f. Section 3:17(1) and (2) with regard to the operational structure;
  - g. Section 3:20 with regard to the legal form;
  - h. Section 3:53(1) to (4) with regard to the minimum equity capital;
  - i. Section 3:57(1) to (4) with regard to solvency; and
  - j. Section 3:70 with regard to the financial year.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

2. If the application relates to an insurer having its registered office in the Netherlands in which a qualified shareholding is owned, the Dutch Central Bank, without prejudice to Subsection (1), shall grant a licence if the owner of the qualified shareholding has applied for a declaration of no objection in accordance with Section 3:95(2), and the Dutch Central Bank is of the opinion that the provisions arising from Sections 3:99 to 3:101 regarding the declaration of no objection are complied with.
3. If the application relates to an insurer having its registered office in the Netherlands in which a qualified shareholding is owned which is subject to Section 3:97, the Dutch Central Bank, without prejudice to Subsection (1) and in derogation from Subsection (2), shall grant a licence unless the holding might or would lead to an undesirable development in the financial sector, or the Dutch Central Bank is of the opinion that one of the considerations referred to in Sections 3:100, opening words and under (a) or (b), or 3:101, opening words and under (a) or (b), forms an obstacle to the granting of a declaration of no objection.
4. The licence application shall state the sector or sectors for which the licence is requested and contain the data to be specified by or pursuant to a Decree.
5. On application, the Dutch Central Bank may grant a full or partial dispensation from Subsection (1), opening words and under (c), (d), (f), (j) or (h), if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which the sections listed in Subsection (1) seek to achieve are achieved in other ways.

#### **Section 2:32**

1. On application, the Dutch Central Bank shall grant a licence to conduct the business of a non-life insurer in the Motor Vehicle Liability sector if the applicant, without prejudice to Section 2:31, demonstrates that it will comply with the provisions arising from:
  - a. Section 4:70(1)(a) and (b) with regard to the obligations ensuing from the Motor Insurance Liability Act (*Wet aansprakelijkheidsverzekering motorrijtuigen*); and
  - b. Section 4:70(2) with regard to the claims adjuster.
2. The licence application shall contain the data to be specified by or pursuant to a Decree.
3. On application, the Dutch Central Bank may grant a full or partial dispensation from Subsection (1), opening words and under (a) or (b), if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which Section 4:70(1)(a) and (b) and (2) seeks to achieve are achieved in other ways.

#### **Section 2:33**

1. On application, the Dutch Central Bank shall grant a licence to conduct the business of a non-life insurer in the Legal Assistance sector if the applicant, without prejudice to Section 2:31, demonstrates that it will comply with the provisions of Section 4:65 relating to the preclusion of conflicts of interest.
2. The licence application shall contain the data to be specified by or pursuant to a Decree.

#### **2.2.3.2. Branch office and provision of services by life insurers and non-life insurers having their registered office in another Member State**

#### **Section 2:34**

1. If the Dutch Central Bank receives a notification from a supervisory authority of another Member State of the intention of a life insurer or non-life insurer having its registered office in another Member State to conduct its business from a branch office situated in the Netherlands or by providing services to the Netherlands, it shall, without delay, inform the life insurer or non-life insurer involved of the receipt of this notification.
2. Within two months of receiving the notification regarding the intention to conduct the business from a branch office, the Dutch Central Bank may inform the supervisory authority of the other Member State of the conditions which the life insurer or non-life insurer must observe for reasons of public interest in conducting its business in

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

the Netherlands. The Dutch Central Bank shall send a copy of this to the life insurer or non-life insurer.

### **Section 2:35**

A life insurer or non-life insurer having its registered office in another Member State that has been licensed to conduct its business by the supervisory authority of that Member State and intends to conduct its business from a branch office situated in the Netherlands, may start doing so two months after receiving the notification referred to in Section 2:34(1) or immediately after receiving the notification referred to in Section 2:34(2).

### **Section 2:36**

1. No party having its registered office in another Member State which, under the law of the Member State where it has its registered office, does not require a licence granted by the supervisory authority of that Member State to conduct the business of a life insurer or non-life insurer and has not obtained such a licence on a voluntary basis, may conduct the business of a life insurer or non-life insurer respectively from a branch office situated in the Netherlands without a licence granted for that purpose by the Dutch Central Bank.
2. No party having its registered office in another Member State which, under the law of the Member State where it has its registered office, does not require a licence granted by the supervisory authority of that Member State to conduct the business of a life insurer or non-life insurer and has not obtained such a licence on a voluntary basis, may conduct the business of a life insurer or non-life insurer respectively by providing services to the Netherlands without a licence granted for that purpose by the Dutch Central Bank, unless it has informed the Dutch Central Bank of its intention to do so and demonstrates that it will comply with the provisions arising from:
  - a. Section 3:24 with regard to the legal personality, the authority to conduct the business of a life insurer or non-life insurer respectively and the exercise of that authority; and
  - b. Section 3:57(1) to (4) with regard to solvency, on the understanding that, for the purposes of the present subsection, the phrase «an insurer having its registered office in the Netherlands» in that section must be read as: «an insurer having its registered office in a non-Member State».

If rules have been laid down by or pursuant to a Decree under Section 3:57(2), the applicant shall also demonstrate that it will comply with those rules, insofar as that Decree provides this.

3. The notification referred to in Subsection (2) shall contain the details to be specified by or pursuant to a Decree.
4. The insurer may start conducting its business from the branch office situated in the Netherlands two months after receiving the notification referred to in Section 2:34(1).
5. The insurer shall conduct its business by providing services to the Netherlands only in the sectors regarding which it is authorised to do so in the State where it has its registered office.

### **Section 2:37**

1. On application, the Dutch Central Bank shall grant a licence as referred to in Section 2:36(1) if the applicant demonstrates that it will comply with the provisions arising from:
  - a. Section 3:8 with regard to the expertise of the persons referred to in that section;
  - b. Section 3:9 with regard to the properness of the persons referred to in that section;
  - c. Section 3:10(1) and (2) with regard to the policy on the sound conduct of business;
  - d. Section 3:15(1) and (2) with regard to the minimum number of persons determining the day-to-day policy and the place from which they perform their activities;
  - e. Section 3:16(1) and (2) with regard to the control structure;
  - f. Section 3:17(1) and (2) with regard to the operational structure;
  - g. Section 3:24 with regard to the legal personality, the authority to conduct the business of a life insurer or non-life insurer respectively and the exercise of that authority;
  - h. Section 3:47 with regard to the insurer's representative;
  - i. Section 3:53(1) to (4) with regard to the minimum equity capital;
  - j. Section 3:57(1) to (4) with regard to solvency; and

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

k. Section 3:70 with regard to the financial year,

on the understanding that, for the purposes of (a) to (k), the phrases «an insurer» and «life insurer or non-life insurer respectively» in the sections referred to in those subsections must be read as: «the branch office in the Netherlands of an insurer having its registered office in another Member State» and «the branch office in the Netherlands of a life insurer or non-life insurer respectively having its registered office in another Member State».

2. The licence application shall contain the data to be specified by or pursuant to a Decree.
3. On application, the Dutch Central Bank may grant a full or partial dispensation from Subsection (1), opening words and under (c), (d), (f) or (h) to (k), if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which the sections listed in Subsection (1) seek to achieve are achieved in other ways.

#### **Section 2:38**

1. A life insurer or non-life insurer having its registered office in another Member State that has been licensed to conduct its business by the supervisory authority of that Member State and intends for the first time to conduct its business by providing services to the Netherlands from a place of business in another Member State, may start doing so after receiving the notification referred to in Section 2:34(1).
2. The insurer shall conduct its business by providing services to the Netherlands only in the sectors regarding which it is authorised to do so in the Member State where it has its registered office.
3. In the case of Community co-insurance, Subsections (1) and (2) shall apply only to non-life insurers acting as the first non-life insurer.

#### **Section 2:39**

1. A life insurer or non-life insurer having its registered office in another Member State that has been licensed to conduct its business by the supervisory authority of that Member State and intends for the first time to conduct its business by providing services to the Netherlands from a branch office situated in a non-Member State, shall, before commencing the provision of services, notify the Dutch Central Bank of such intention and provide the data to be specified by or pursuant to a Decree.
2. Having received a notification as referred to in Subsection (1), the Dutch Central Bank shall, without delay, confirm the receipt of this notification to the insurer that made the notification. The insurer may start conducting its business by providing services to the Netherlands after receiving the confirmation.
3. In the case of Community co-insurance, Subsections (1) and (2) shall apply only to non-life insurers acting as the first non-life insurer.

#### **2.2.3.3. Branch office and provision of services by life insurers and non-life insurers having their registered office in a non-Member State**

#### **Section 2:40**

1. No party having its registered office in a non-Member State may conduct the business of a life insurer or non-life insurer from a branch office in the Netherlands without a licence granted for that purpose by the Dutch Central Bank.
2. Within the business of a life insurer and the business of a non-life insurer, a distinction shall be made between the sectors listed in the Sectors Annex pertaining to this Act.

#### **Section 2:41**

1. On application, the Dutch Central Bank shall grant a licence as referred to in Section 2:40 if the applicant

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

demonstrates that it will comply with the provisions arising from:

- a. Section 3:8 with regard to the expertise of the persons referred to in that section;
- b. Section 3:9 with regard to the properness of the persons referred to in that section;
- c. Section 3:10(1) and (2) with regard to the policy on the sound conduct of business;
- d. Section 3:15(1) and (2) with regard to the minimum number of persons determining the day-to-day policy and the place from which they perform their activities;
- e. Section 3:16(1) and (2) with regard to the control structure;
- f. Section 3:17(1) and (2) with regard to the operational structure;
- g. Section 3:24 with regard to the legal personality, the authority to conduct the business of a life insurer or non-life insurer respectively and the exercise of that authority;
- h. Section 3:47 with regard to the insurer's representative;
- i. Section 3:53(1) to (4) with regard to the minimum equity capital;
- j. Section 3:57(1) to (4) with regard to solvency; and
- k. Section 3:70 with regard to the financial year,

on the understanding that, for the purposes of (a) to (k), the phrases «an insurer» and «life insurer or non-life insurer respectively» in the sections referred to in those subsections must be read as: «the branch office in the Netherlands of an insurer having its registered office in a non-Member State» and «the branch office in the Netherlands of a life insurer or non-life insurer respectively having its registered office in a non-Member State».

2. The licence application shall contain the data to be specified by or pursuant to a Decree.
3. On application, the Dutch Central Bank may grant a full or partial dispensation from Subsection (1), opening words and under (c), (d), (f), (h) or (k), if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which the sections listed in Subsection (1) seek to achieve are achieved in other ways.

#### **Section 2:42**

1. On application, the Dutch Central Bank shall grant a licence as referred to in Section 2:40 to an applicant that wishes to conduct its business in the Motor Vehicle Liability sector if the applicant, without prejudice to Section 2:41, demonstrates that it will comply with the provisions arising from:
  - a. Section 4:70(1)(a) and (b) with regard to the obligations ensuing from the Motor Insurance Liability Act; and
  - b. Section 4:70(2) with regard to the claims adjuster.
2. The licence application shall contain the data to be specified by or pursuant to a Decree.
3. On application, the Dutch Central Bank may grant a full or partial dispensation from Subsection (1), opening words and under (a) or (b), if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which Section 4:70(1)(a) and (b) and (2) seeks to achieve are achieved in other ways.

#### **Section 2:43**

1. On application, the Dutch Central Bank shall grant a licence as referred to in Section 2:40 to an applicant that wishes to conduct its business in the Legal Assistance sector if the applicant, without prejudice to Section 2:41, demonstrates that it will comply with the provisions of Section 4:65 relating to the preclusion of conflicts of interest.
2. The licence application shall contain the data to be specified by or pursuant to a Decree.

#### **Section 2:44**

1. A party conducting both the business of a non-life insurer and the business of a life insurer in a non-Member State shall only be eligible for a licence to conduct the business of a non-life insurer.
2. Subsection (1) shall not apply to insurers that conduct only the business of a life insurer from branch offices

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

situated in the Netherlands since 15 March 1979.

#### **Section 2:45**

1. A life insurer or non-life insurer having its registered office in a non-Member State may not conduct its business by providing services to the Netherlands from a place of business in a non-Member State, unless it has notified the Dutch Central Bank of its intention to do so and demonstrates that it will comply with the provisions arising from:
  - a. Section 3:24 with regard to the legal personality, the authority to conduct the business of a life insurer or non-life insurer respectively and the exercise of that authority; and
  - b. Section 3:57(1) to (4) with regard to solvency, on the understanding that, for the purposes of the present subsection, the phrase «an insurer having its registered office in the Netherlands» in that section must be read as: «an insurer having its registered office in a non-Member State».
2. The notification shall contain the data to be specified by or pursuant to a Decree.
3. The life insurer or non-life insurer may start conducting its business by providing services to the Netherlands after receiving the confirmation referred to in Section 2:47.
4. The life insurer or non-life insurer referred to in Subsection (1) shall conduct its business by providing services to the Netherlands only in the sectors regarding which it is authorised to do so in the State where it has its registered office.

#### **Section 2:46**

1. A life insurer or non-life insurer having its registered office in a non-Member State may not conduct its business by providing services to the Netherlands from a branch office in another Member State, unless it has notified the Dutch Central Bank of its intention to do so.
2. The notification shall contain the data to be specified by or pursuant to a Decree.
3. The life insurer or non-life insurer may start conducting its business by providing services to the Netherlands from the branch office after receiving the confirmation referred to in Section 2:47.
4. In the case of Community co-insurance, Subsections (1) and (2) shall apply only to non-life insurers acting as the first non-life insurer.

#### **Article 2:47**

Having received a notification as referred to in Section 2:45(1) or Section 2:46(1), the Dutch Central Bank shall, without delay, confirm the receipt of this notification to the life insurer or non-life insurer that made the notification.

### **Part 2.2.4. Conducting the business of a funeral expenses and benefits in kind insurer**

#### **2.2.4.1. Licensing obligation and requirements for funeral expenses and benefits in kind insurers having their registered office in the Netherlands**

#### **Section 2:48**

1. No party having its registered office in the Netherlands may conduct the business of a funeral expenses and benefits in kind insurer without a licence granted for that purpose by the Dutch Central Bank.
2. Subsection (1) shall not apply to financial enterprises having their registered office in the Netherlands that have been licensed by the Dutch Central Bank under this part to conduct the business of a life insurer.

#### **Section 2:49**

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

1. On application, the Dutch Central Bank shall grant a licence as referred to in Section 2:48 if the applicant demonstrates that it will comply with the provisions arising from:
  - a. Section 3:8 with regard to the expertise of the persons referred to in that section;
  - b. Section 3:9 with regard to the properness of the persons referred to in that section;
  - c. Section 3:10(1) and (2) with regard to the policy on the sound conduct of business;
  - d. Section 3:15(1) and (2) with regard to the minimum number of persons determining the day-to-day policy and the place from which they perform their activities;
  - e. Section 3:16(3) with regard to the control structure;
  - f. Section 3:17(1) and (2) with regard to the operational structure;
  - g. Section 3:20 with regard to the legal form;
  - h. Section 3:53(1) to (4) with regard to the minimum equity capital;
  - i. Section 3:57(1) to (4) with regard to solvency; and
  - j. Section 3:70 with regard to the financial year.
2. The licence application shall contain the data to be specified by or pursuant to a Decree.
3. On application, the Dutch Central Bank may grant a full or partial dispensation from Subsection (1), opening words and under (c), (d) or (h) to (j), if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which the sections listed in Subsection (1) seek to achieve are achieved in other ways.

#### **2.2.4.2. Licensing obligation and requirements for funeral expenses and benefits in kind insurers having their registered office outside the Netherlands**

##### **Section 2:50**

1. No party having its registered office outside the Netherlands may conduct the business of a funeral expenses and benefits in kind insurer from a branch office situated in the Netherlands without a licence granted for that purpose by the Dutch Central Bank.
2. Subsection (1) shall not apply to funeral expenses and benefits in kind insurers having their registered office in a State to be designated by Our Minister in which the supervision of the conduct of the funeral expenses and benefits in kind insurance business provides sufficient safeguards with regard to the interests which this Act seeks to protect. Further rules may be laid down by Decree as regards the designation of States. Our Minister may revoke the designation order.
3. Subsection (1) shall not apply to life insurers holding a licence as referred to in Sections 2:36 or 2:40 in respect of the General Life Insurance sector.

##### **Section 2:51**

1. On application, the Dutch Central Bank shall grant a licence as referred to in Section 2:50 if the applicant demonstrates that it will comply with the provisions arising from:
  - a. Section 3:8 with regard to the expertise of the persons referred to in that section;
  - b. Section 3:9 with regard to the properness of the persons referred to in that section;
  - c. Section 3:10(1) and (2) with regard to the policy on the sound conduct of business;
  - d. Section 3:15(1) and (2) with regard to the minimum number of persons determining the day-to-day policy and the place from which they perform their activities;
  - e. Section 3:16(3) with regard to the control structure;
  - f. Section 3:17(1) and (2) with regard to the operational structure;
  - g. Section 3:24 with regard to the legal personality, the authority to conduct the business of a life insurer or non-life insurer respectively and the exercise of that authority;
  - h. Section 3:47 with regard to the insurer's representative;
  - i. Section 3:53(1) to (4) with regard to the minimum equity capital;
  - j. Section 3:57(1) to (4) with regard to solvency; and
  - k. Section 3:70 with regard to the financial year,



Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

on the understanding that the phrases «an insurer» and «a funeral expenses and benefits in kind insurer» must be read as: «the branch office in the Netherlands of a funeral expenses and benefits in kind insurer having its registered office in a non-designated State».

2. The licence application shall contain the data to be specified by or pursuant to a Decree.
3. On application, the Dutch Central Bank may grant a full or partial dispensation from Subsection (1), opening words and under (c), (d), (f), (h) or (k), if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which the sections listed in Subsection (1) seek to achieve are achieved in other ways.

#### **Section 2:52**

1. No party having its registered office outside the Netherlands may conduct the business of a funeral expenses and benefits in kind insurer by providing services to the Netherlands, unless it has notified the Dutch Central Bank of its intention to do so.
2. Subsection (1) shall not apply to funeral expenses and benefits in kind insurers having their registered office in a State to be designated by Our Minister under Section 2:50.
3. Subsection (1) shall not apply to funeral expenses and benefits in kind insurers having their registered office in another Member State that have been licensed by the supervisory authority of that Member State to conduct the business of a funeral expenses and benefits in kind insurer.
4. Having received a notification as referred to in Subsection (1), the Dutch Central Bank shall, without delay, confirm the receipt of this notification to the financial enterprise that made the notification.

#### **Section 2:53**

1. The notification referred to in Article 2:52(1) shall contain the data to be specified by or pursuant to a Decree.
2. The person referred to in Section 2:52(1) may start providing services after receiving the confirmation referred to in Section 2:52(4) from the Dutch Central Bank.

#### **Section 2:54**

1. A funeral expenses and benefits in kind insurer as referred to in Section 2:50(2) or Section 2:52(2) that intends to conduct the business of a funeral expenses and benefits in kind insurer from a branch office situated in the Netherlands or by providing services to the Netherlands, shall notify the Dutch Central Bank of such intention.
2. Following the notification, the funeral expenses and benefits in kind insurer may start conducting the intended business by providing services to the Netherlands, unless the Dutch Central Bank announces that such intention is contrary to this Act.
3. Having received a notification as referred to in Subsection (1), the Dutch Central Bank shall, without delay, confirm the receipt of this notification to the funeral expenses and benefits in kind insurer that made the notification.
4. Within two months of receiving the notification from the funeral expenses and benefits in kind insurer, the Dutch Central Bank may inform the funeral expenses and benefits in kind insurer of the conditions which the funeral expenses and benefits in kind insurer must observe for reasons of public interest in conducting its business from the branch office situated in the Netherlands.

### **Part 2.2.5. Offering investment objects**

#### **2.2.5.1. Licensing obligation and requirements**

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

### **Section 2:55**

1. No party may offer investment objects in the Netherlands without a licence granted for that purpose by the Authority for the Financial Markets.
2. On application, the Authority for the Financial Markets may, whether or not for a fixed period, grant a dispensation from Subsection (1) if the applicant demonstrates that the interests which this part and Part 4, Conduct of Business Supervision of Financial Enterprises, seek to protect are sufficiently protected in other ways.

### **Section 2:56**

Section 2:55(1) shall not apply to financial enterprises which:

- a. have been licensed by the Dutch Central Bank under this part to conduct the business of an insurer, insofar as they are permitted under that licence to offer investment objects;
- b. have been issued with a supervisory status certificate by the Dutch Central Bank under Part 3, Prudential Supervision of Financial Enterprises, insofar as they are permitted under that certificate to offer investment objects; or
- c. have been licensed by the Dutch Central Bank under this part to conduct the business of a bank.

### **Section 2:57**

Section 2:55(1) shall not apply to financial enterprises having their registered office in another Member State which:

- a. conduct the business of a bank from a branch office situated in the Netherlands or by providing services to the Netherlands, insofar as they are permitted under Part 2.2.2 to offer investment objects;
- b. conduct the business of a financial institution from a branch office situated in the Netherlands or by providing services to the Netherlands, insofar as they are permitted under Part 2.2.2.4 to offer investment objects;
- c. conduct the business of an insurer from a branch office situated in the Netherlands or by providing services to the Netherlands, insofar as they are permitted under Parts 2.2.3 or Part 2.2.4 to offer investment objects.

### **Section 2:58**

1. On application, the Authority for the Financial Markets shall grant a licence as referred to in Section 2:55(1) if the applicant demonstrates that it will comply with the provisions arising from:
  - a. Section 4:9(1), (2) and (4) with regard to the expertise of the persons referred to in that section;
  - b. Section 4:10 with regard to the properness of the persons referred to in that section;
  - c. Section 4:11(2) and (3) with regard to the policy on the sound conduct of business;
  - d. Section 4:13 with regard to the control structure; and
  - e. Section 4:15(1) and (2) with regard to the operational structure.
2. The licence application shall contain the data to be specified by or pursuant to a Decree.
3. On application, the Authority for the Financial Markets may grant a full or partial dispensation from the provisions referred to in Subsection (1), opening words and under (a), with regard to Section 4:9(2) and (4), (c), with regard to Section 4:11(3), or (e), with regard to Section 4:15(2), if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which the sections listed in Subsection (1) seek to achieve are achieved in other ways.

#### **2.2.5.2. Exemption**

### **Section 2:59**

1. An exemption from Section 2:55(1) may be granted by ministerial regulation.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

2. A full or partial exemption from Section 2:58(1) may be granted by ministerial regulation.

## **Part 2.2.6. Offering credit**

### **2.2.6.1. Licensing obligation and requirements**

#### **Section 2:60**

1. No party may offer credit in the Netherlands without a licence granted for that purpose by the Authority for the Financial Markets.
2. On application, the Authority for the Financial Markets may, whether or not for a fixed period, grant a dispensation from Subsection (1) if the applicant demonstrates that the interests which this part and Part 4, Conduct of Business Supervision of Financial Enterprises, seek to protect are sufficiently protected in other ways.

#### **Section 2:61**

1. Section 2:60(1) shall not apply to financial enterprises which:
  - a. have been licensed by the Dutch Central Bank under this part to conduct the business of an insurer, insofar as they are permitted under that licence to offer credit;
  - b. have been issued with a supervisory status certificate by the Dutch Central Bank under Part 3, Prudential Supervision of Financial Enterprises, insofar as they are permitted under that certificate to offer credit; or
  - c. have been licensed by the Dutch Central Bank under this part to conduct the business of a bank.
2. Section 2:60(1) shall not apply to municipal credit banks regarding which the provisions of Section 4:37(1) and (2) are complied with.

#### **Section 2:62**

Section 2:60(1) shall not apply to financial enterprises having their registered office in another Member State which:

- a. conduct the business of a bank from a branch office situated in the Netherlands or by providing services to the Netherlands, insofar as they are permitted under Part 2.2.2 to offer credit;
- b. conduct the business of a financial institution from a branch office situated in the Netherlands or by providing services to the Netherlands, insofar as they are permitted under Part 2.2.2 to offer credit;
- c. conduct the business of an insurer from a branch office situated in the Netherlands or by providing services to the Netherlands, insofar as they are permitted under Parts 2.2.3 or 2.2.4 to offer credit.

#### **Section 2:63**

1. On application, the Authority for the Financial Markets shall grant a licence as referred to in Section 2:60(1) if the applicant demonstrates that it will comply with the provisions arising from:
  - a. Section 4:9(1), (2) and (4) with regard to the expertise of the persons referred to in that section;
  - b. Section 4:10 with regard to the properness of the persons referred to in that section;
  - c. Section 4:11(2) and (3) with regard to the policy on the sound conduct of business;
  - d. Section 4:13 with regard to the control structure; and
  - e. Section 4:15(1) and (2) with regard to the operational structure.
2. The licence application shall contain the data to be specified by or pursuant to a Decree.
3. On application, the Authority for the Financial Markets may grant a full or partial dispensation from the provisions referred to in Subsection (1), opening words and under (a), with regard to Section 4:9(2) and (4), (c), with regard to Section 4:11(3), or (e), with regard to Section 4:15(2), if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which the sections listed in Subsection (1) seek to achieve are achieved in other ways.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

#### **2.2.6.2. Exemption**

##### **Section 2:64**

1. An exemption from Section 2:60(1) may be granted by ministerial regulation.
2. A full or partial exemption from Section 2:63(1) may be granted by ministerial regulation.

#### **Part 2.2.7. Offering units in collective investment schemes**

##### **2.2.7.1. Licensing obligation and requirements**

##### **Section 2:65**

1. No party may offer units in a collective investment scheme in the Netherlands:
  - a. if the management company of the collective investment scheme has not been licensed by the Authority for the Financial Markets to manage collective investment schemes; or
  - b. where it concerns an investment company without a separate management company, if the investment company has not been licensed by the Authority for the Financial Markets.
2. Without prejudice to Subsection (1), opening words and (a), no party may offer in the Netherlands units in an enterprise for collective investment in transferable securities that is an investment company if the management company has not been licensed in respect of that investment company by the Authority for the Financial Markets.
3. On application, the Authority for the Financial Markets may, whether or not for a fixed period, grant a full or partial dispensation from Subsection (1) if the applicant demonstrates that the interests which this part and Part 4, Conduct of Business Supervision of Financial Enterprises, seek to protect are sufficiently protected in other ways.

##### **Section 2:66**

1. Section 2:65(1) shall not apply to offering units in a collective investment scheme having its registered office in a State to be designated by Our Minister in which the supervision of collective investment schemes provides sufficient safeguards with regard to the interests which this Act seeks to protect, provided that Section 2:73 is complied with. Further rules may be laid down by Decree as regards the designation of States. Our Minister may revoke the designation order.
2. An order to designate a State as referred to in Subsection (1) and the revocation of such an order shall be published in the Government Gazette.
3. Section 2:65(1) and (2) shall not apply to offering units in an enterprise for collective investment in transferable securities having its registered office in another Member State, provided that Sections 2:71 and 2:72 respectively are complied with.

##### **Section 2:67**

1. On application, the Authority for the Financial Markets shall grant a licence as referred to in Section 2:65(1), opening words and under (a) if the applicant demonstrates that, with regard to the management company and, where applicable, the depositaries associated with the collective investment schemes which the management company intends to manage, it will comply with the provisions arising from:
  - a. Section 4:9(1) with regard to the expertise of the persons referred to in that section;
  - b. Section 4:10 with regard to the probeness of the persons referred to in that section;

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

- c. Section 4:11(1) and (3) with regard to the policy on the sound conduct of business;
  - d. Section 4:13 with regard to the control structure;
  - e. Section 4:14(1) and (2) with regard to the operational structure;
  - f. Section 4:39 with regard to the minimum number of persons determining the day-to-day policy and Section 4:40 with regard to the place from which they perform their activities;
  - g. Section 4:42 with regard to the management company taking measures to protect unit holders' rights;
  - h. Section 4:43 with regard to the contracts to be concluded between the management company and the depositaries;
  - i. Section 4:44(1) with regard to the legal form and the object of the depositaries according to their articles of association;
  - j. Section 4:44(2) with regard to the safekeeping of the assets of a common fund by a depositary that acts as depositary exclusively for the common fund concerned;
  - k. Section 4:48 with regard to the registration document referred to in that section; and
  - l. Section 3:53(1) and (3) with regard to the minimum equity capital.
2. An applicant for a licence as referred to in Subsection (1) which intends to manage enterprises for collective investment in transferable securities shall, in addition to Subsection (1), also demonstrate that it will comply with the provisions arising from:
    - a. Section 4:43 with regard to the contracts to be concluded between the management company and depositaries;
    - b. Section 4:56 with regard to the safekeeping of the assets by depositaries;
    - c. Section 4:57 with regard to the depositaries' registered office;
    - d. Section 4:59(1) with regard to the management company's registered office;
    - e. Section 4:59(2) with regard to the management company's activities;
    - f. Section 3:53(1) and (3) with regard to the minimum equity capital; and
    - g. Section 3:57(1) and (2) with regard to solvency.
  3. If a qualifying holding as referred to in Section 3:95 is owned in the management company, the Authority for the Financial Markets, without prejudice to Subsections (1) and (2), shall grant a licence if the owner of the qualifying holding in the management company complies with Section 3:95(2), and the Dutch Central Bank is of the opinion that the provisions arising from Sections 3:99 to 3:101 regarding the declaration of no objection are complied with.
  4. The licence application shall contain the data to be specified by or pursuant to a Decree.
  5. On application, the Authority for the Financial Markets may grant a full or partial dispensation from the provisions referred to in Subsection (1), opening words and under (c), with regard to Section 4:11(3), (e), with regard to Section 4:14(2), (j) or (l), if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which the sections listed in Subsection (1) seek to achieve are achieved in other ways.

## **Section 2:68**

1. On application, the Authority for the Financial Markets shall grant a licence as referred to in Section 2:65(1), opening words and under (b) if the applicant demonstrates that, with regard to the investment company and, where applicable, the depositary associated with that investment company, it will comply with the provisions arising from:
  - a. Section 4:9(1) with regard to the expertise of the persons referred to in that section;
  - b. Section 4:10 with regard to the properness of the persons referred to in that section;
  - c. Section 4:11(1) and (3) with regard to the policy on the sound conduct of business;
  - d. Section 4:13 with regard to the control structure;
  - e. Section 4:14(1) and (2) with regard to the operational structure;
  - f. Section 4:39 with regard to the minimum number of persons determining the day-to-day policy and Section 4:40 with regard to the place from which they perform their activities;
  - g. Section 4:43 with regard to the contract to be concluded between the investment company and the

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

- depository;
  - h. Section 4:44(1) with regard to the legal form and the object of the depository according to its articles of association;
  - i. Section 4:48 with regard to the registration document referred to in that section; and
  - j. Section 3:53(1) and (3) with regard to the minimum equity capital.
2. An applicant for a licence as referred to in Subsection (1) in respect of an enterprise for collective investment in transferable securities shall, in addition to Subsection (1), also demonstrate that, with regard to the investment company and, where applicable, the depository associated with that investment company it will comply with the provisions arising from:
- a. Section 4:43 with regard to the contract to be concluded between the investment company and the depository;
  - b. Section 4:56 with regard to the safekeeping of the assets by a depository;
  - c. Section 4:57 with regard to the depository's registered office;
  - d. Section 4:59(1) with regard to the investment company's object according to its articles of association;
  - e. Section 4:60(2) with regard to the unrestricted offering of the units in the Netherlands and the repurchase of or repayment on those units at a unit holder's request;
  - f. Section 4:60(3) with regard to the investment company's registered office;
  - g. Section 4:60(4) with regard to the investment company's activities; and
  - h. Section 3:53(1) and (3) with regard to the minimum equity capital.
3. The licence application shall contain the data to be specified by or pursuant to a Decree.
4. On application, the Authority for the Financial Markets may grant a full or partial dispensation from the provisions referred to in Subsection (1), opening words and under (c), with regard to Section 4:11(3), (e) or (j), if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which the sections listed in Subsection (1) seek to achieve are achieved in other ways.

### **Section 2:69**

1. On application, the Authority for the Financial Markets shall grant a licence as referred to in Section 2:65(2) if the applicant demonstrates that, with regard to the investment company and, where applicable, the depository associated with that investment company, it will comply with the provisions arising from:
- a. Section 4:13 with regard to the control structure;
  - b. Section 4:40 with regard to the place from which the persons determining the day-to-day policy of the investment company perform their activities;
  - c. Section 4:44(1) with regard to the legal form and the object of the depository according to its articles of association;
  - d. Section 4:56 with regard to the safekeeping of the assets by the depository;
  - e. Section 4:57 with regard to the depository's registered office;
  - f. Section 4:60(1) with regard to the investment company's object according to its articles of association;
  - g. Section 4:60(2) with regard to the unrestricted offering of the units in the Netherlands and the repurchase of or repayment on those units at a unit holder's request;
  - h. Section 4:60(3) with regard to the investment company's registered office; and
  - i. Section 4:60(4) with regard to the investment company's activities.
2. The licence application shall contain the data to be specified by or pursuant to a Decree.

#### **2.2.7.2. Branch office and provision of services**

### **Section 2:70**

1. If the Authority for the Financial Markets receives a notification from a supervisory authority of another Member State of the intention of a management company to offer units in an enterprise for collective investment in transferable securities under its management that has its registered office in another Member State from a branch office situated in the Netherlands, it shall, without delay, inform the management company involved of

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

the receipt of this notification.

2. Within two months of receiving the notification referred to in Subsection (1), the Authority for the Financial Markets may inform the supervisory authority of the other Member State of the conditions which the management company must observe for reasons of public interest in performing services in the Netherlands. The Authority for the Financial Markets shall send a copy of this to the management company.

#### **Section 2:71**

1. A management company may start offering units in an enterprise for collective investment in transferable securities under its management that has its registered office in another Member State for the first time from a branch office situated in the Netherlands, two months after the notification from the supervisory authority referred to in Section 2:70(1), or immediately after receiving the notification referred to in Section 2:70(2) if Section 2:72 is also complied with.
2. Subsection (1) shall not apply to management companies that comply with Section 2:101(1).

#### **Section 2:72**

1. A management company that intends to offer in the Netherlands units in an enterprise for collective investment in transferable securities under its management that has its registered office in another Member State shall notify the Authority for the Financial Markets of this intention.
2. Together with the notification, the management company shall submit:
  - a. a statement from the supervisory authority of the other Member State to the effect that the collective investment scheme satisfies the conditions of the UCITS Directive;
  - b. the articles or regulations of the collective investment scheme;
  - c. the prospectus of the collective investment scheme;
  - d. the simplified prospectus of the collective investment scheme;
  - e. data regarding the proposed methods of providing information and trading, and regarding payments on as well as the repurchase of or repayment on units in the Netherlands; and
  - f. where appropriate, the latest annual accounts and half-yearly figures of the collective investment scheme.
3. The management company may start offering the units in the Netherlands two months after the notification referred to in Subsection (1), unless the Authority for the Financial Markets has informed the management company before the expiry of those two months that:
  - a. the intention referred to in Subsection (1) is inconsistent with applicable Dutch statutory provisions; or
  - b. the proposed trading method is contrary to statutory regulations relating to the area not covered by the UCITS Directive.

#### **Section 2:73**

1. A collective investment scheme having its registered office in a designated State as referred to in Section 2:66(1) that intends to offer units in the Netherlands shall notify the Authority for the Financial Markets of this intention and thereby submit a supervisory status certificate issued by the supervisory authority of that designated State.
2. The collective investment scheme may start offering the units in the Netherlands, unless the Authority for the Financial Markets has announced before the expiry of those eight weeks that the intention or the proposed trading method referred to in Subsection (1) is inconsistent with applicable Dutch statutory provisions.

#### **2.2.7.3. Exemption**

#### **Section 2:74**

An exemption from Section 2:65(1) may be granted by ministerial regulation.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

## **Part 2.2.8. Performing advisory services in respect of financial products other than financial instruments**

### **2.2.8.1. Licensing obligation and requirements**

#### **Section 2:75**

1. No party may perform advisory services in the Netherlands in respect of financial products other than financial instruments without a licence granted for that purpose by the Authority for the Financial Markets.
2. On application, the Authority for the Financial Markets may, whether or not for a fixed period, grant a dispensation from Subsection (1) if the applicant demonstrates that the interests which this part and Part 4, Conduct of Business Supervision of Financial Enterprises, seek to protect are sufficiently protected in other ways.

#### **Section 2:76**

1. Section 2:75(1) shall not apply to financial enterprises which:
  - a. have been licensed by the Dutch Central Bank under this part to conduct the business of an insurer, insofar as they are permitted under that licence to perform advisory services;
  - b. have been issued with a supervisory status certificate by the Dutch Central Bank under Part 3, Prudential Supervision of Financial Enterprises, to conduct the business of a financial institution, insofar as they are permitted under that certificate to perform advisory services;
  - c. have been licensed by the Dutch Central Bank under this part to conduct the business of a bank; or
  - d. have been licensed by the Dutch Central Bank under this part to conduct the business of an electronic money institution, insofar as they are permitted under that licence to perform advisory services.
2. Section 2:75(1) shall not apply to financial enterprises which have been licensed by the Netherlands Authority for the Financial Markets to perform financial services other than advisory services as referred to in this part, where it concerns advice on a financial product covered by that licence.
3. Section 2:75(1) shall not apply to municipal credit banks regarding which the provisions of Section 4:37(1) and (2) are complied with, where it concerns advice on the credit provided by the municipal credit bank itself.
4. Section 2:75(1) shall not apply to intermediaries as referred to in Section 2:81(2), where it concerns advice on financial products for which they act as tied intermediaries.
5. Section 2:75(1) shall not apply to intermediaries holding a dispensation as referred to in Section 2:80(1), where it concerns advice on a financial product covered by that dispensation.

#### **Section 2:77**

1. Section 2:75(1) shall not apply to financial enterprises having their registered office in another Member State which:
  - a. conduct the business of a bank from a branch office situated in the Netherlands or by providing services to the Netherlands, insofar as they are permitted under Part 2.2.2 to perform advisory services;
  - b. conduct the business of a financial institution from a branch office situated in the Netherlands or by providing services to the Netherlands, insofar as they are permitted under Part 2.2.2 to perform advisory services;
  - c. conduct the business of an insurer from a branch office situated in the Netherlands or by providing services to the Netherlands, insofar as they are permitted under Parts 2.2.3 or 2.2.4 to perform advisory services; or
  - d. conduct the business of an electronic money institution from a branch office situated in the Netherlands or by providing services to the Netherlands, insofar as they are permitted under Part 2.2.2 to perform advisory services.
2. Section 2:75(1) shall not apply to insurance intermediaries or reinsurance intermediaries that are registered in another Member State within the meaning of Article 3 of the Insurance Mediation Directive and that are



Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

permitted under Article 3(5) of that directive to provide their financial services in the Netherlands, insofar as Section 2:84(2) and Section 2:90(2) are complied with.

## **Section 2:78**

1. On application, the Authority for the Financial Markets shall grant a licence as referred to in Section 2:75(1) if the applicant demonstrates that it will comply with the provisions arising from:
  - a. Section 4:9(1), (2) and (4) with regard to the expertise of the persons referred to in that section;
  - b. Section 4:10 with regard to the properness of the persons referred to in that section;
  - c. Section 4:11(2) and (3) with regard to the policy on the sound conduct of business;
  - d. Section 4:13 with regard to the control structure; and
  - e. Section 4:15(1) and (2) with regard to the operational structure.
2. The licence application shall contain the data to be specified by or pursuant to a Decree.
3. On application, the Authority for the Financial Markets may grant a full or partial dispensation from the provisions referred to in Subsection (1), opening words and under (a), with regard to Section 4:9(2) and (4), (c), with regard to Section 4:11(3), or (e), with regard to Section 4:15(2), if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which the sections listed in Subsection (1) seek to achieve are achieved in other ways.

### **2.2.8.2. Exemption**

#### **Section 2:79**

1. An exemption from Section 2:75(1) may be granted by ministerial regulation.
2. A full or partial exemption from Section 2:78(1) may be granted by ministerial regulation.

### **Part 2.2.9. Performing brokerage services**

#### **2.2.9.1. Licensing obligation and requirements**

#### **Section 2:80**

1. No party may perform brokerage services in the Netherlands without a licence granted for that purpose by the Authority for the Financial Markets.
2. On application, the Authority for the Financial Markets may, whether or not for a fixed period, grant a dispensation from Subsection (1) if the applicant demonstrates that the interests which this part and Part 4, Conduct of Business Supervision of Financial Enterprises, seek to protect are sufficiently protected in other ways.
3. On application, the Authority for the Financial Markets may grant a dispensation from Subsection (1) to:
  - a. a person who ran a joint household on a long-term basis with a deceased broker until the latter's death; or
  - b. a child of a deceased broker not forming part of the household,if the business of the deceased broker is continued and the interests which this part and Part 4, Conduct of Business Supervision of Financial Enterprises, seek to protect are sufficiently protected in other ways.
4. The dispensation referred to in Subsection (3) may be granted with retroactive effect to the date of death. The dispensation shall be granted for no more than one year and may be extended no more than twice by a period of one year.

#### **Section 2:81**

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

1. Section 2:80(1) shall not apply to financial enterprises which:
  - a. have been licensed by the Dutch Central Bank under this part to conduct the business of an insurer, insofar as they are permitted under that licence to perform brokerage services; or
  - b. have been issued with a supervisory status certificate by the Dutch Central Bank under Part 3, Prudential Supervision of Financial Enterprises, to conduct the business of a financial institution, insofar as they are permitted under that certificate to perform brokerage services;
  - c. have been licensed by the Dutch Central Bank under this part to conduct the business of a bank.
2. Section 2:80(1) shall not apply to brokerage services provided by intermediaries that perform brokerage services for an offeror, or, where it does not concern mutually competitive financial products, various offerors and that, where it concerns the provision of insurance brokerage services, perform these services in the name and for the account of the offeror or offerors without thereby collecting premiums or amounts intended for the client, if the offerors for which the intermediaries provide brokerage services:
  - a. are fully responsible for the intermediaries, in the sense that they ensure that the intermediaries comply with this Act; and
  - b. have reported the intermediaries concerned as tied intermediaries to the Authority for the Financial Markets.
3. An offeror that is no longer responsible for a broker as referred to in Subsection 1(a) shall notify the Authority for the Financial Markets and the broker concerned of this.
4. Rules shall be laid down by or pursuant to a Decree as regards the manner in which the broker will be reported as referred to in Subsection (2)(b) and the data to be provided and documents to be submitted on that occasion.

#### **Section 2:82**

1. Section 2:80(1) shall not apply to financial enterprises having their registered office in another Member State which:
  - a. conduct the business of a bank from a branch office situated in the Netherlands or by providing services to the Netherlands, insofar as they are permitted under Part 2.2.2 to perform brokerage services;
  - b. conduct the business of a financial institution from a branch office situated in the Netherlands or by providing services to the Netherlands, insofar as they are permitted under Part 2.2.2 to perform brokerage services;
  - c. conduct the business of an insurer from a branch office situated in the Netherlands or by providing services to the Netherlands, insofar as they are permitted under Parts 2.2.3 or 2.2.4 to perform brokerage services.
2. Section 2:80(1) shall not apply to insurance intermediaries that are registered in another Member State within the meaning of Article 3 of the Insurance Mediation Directive, insofar as Section 2:84(2) is complied with.

#### **Section 2:83**

1. On application, the Authority for the Financial Markets shall grant a licence as referred to in Section 2:80(1) if the applicant demonstrates that it will comply with the provisions arising from:
  - a. Section 4:9(1), (2) and (4) with regard to the expertise of the persons referred to in that section;
  - b. Section 4:10 with regard to the properness of the persons referred to in that section;
  - c. Section 4:11(2) and (3) with regard to the policy on the sound conduct of business;
  - d. Section 4:13 with regard to the control structure;
  - e. Section 4:15(1) and (2) with regard to the operational structure; and
  - f. where it concerns the provision of insurance brokerage services, Section 4:75(1) to (3) with regard to having professional liability insurance or comparable insurance.
2. The licence application shall contain the data to be specified by or pursuant to a Decree.
3. On application, the Authority for the Financial Markets may grant a full or partial dispensation from the provisions referred to in Subsection (1), opening words and under (a), with regard to Section 4:9(2) and (4), (c), with regard to Section 4:11(3), (e), with regard to Section 4:15(2), or (f), with regard to Section 4:75(2), if the

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which the sections listed in Subsection (1) seek to achieve are achieved in other ways.

#### **2.2.9.2. Branch office and provision of services**

##### **Section 2:84**

1. If the Authority for the Financial Markets receives a notification from a supervisory authority of another Member State regarding the provision of insurance brokerage services by an insurance broker having its registered office in that other Member State from a branch office situated in the Netherlands or by providing services to the Netherlands, the supervisor may inform the broker concerned within one month of receiving the notification of the conditions which the broker must observe for reasons of public interest in performing its financial services in the Netherlands.
2. An insurance broker having its registered office in another Member State may start performing services, either from a branch office situated in the Netherlands or by providing services to the Netherlands, one month after the notification referred to in Subsection (1) from the supervisory authority of the other Member State to the Authority for the Financial Markets.

#### **2.2.9.3. Exemption**

##### **Section 2:85**

1. An exemption from Section 2:80(1) may be granted by ministerial regulation.
2. A full or partial exemption from Section 2:83(1) may be granted by ministerial regulation.

#### **Part 2.2.10. Performing reinsurance brokerage services**

##### **2.2.10.1. Licensing obligation and requirements**

##### **Section 2:86**

1. No party may perform reinsurance brokerage services in the Netherlands without a licence granted for that purpose by the Authority for the Financial Markets.
2. On application, the Authority for the Financial Markets may, whether or not for a fixed period, grant a dispensation from Subsection (1) if the applicant demonstrates that the interests which this part and Part 4, Conduct of Business Supervision of Financial Enterprises, seek to protect are sufficiently protected in other ways.

##### **Section 2:87**

Section 2:86(1) shall not apply to financial enterprises which:

- a. have been licensed by the Dutch Central Bank under this part to conduct the business of an insurer, insofar as they are permitted under that licence to perform reinsurance brokerage services;
- b. have been issued with a supervisory status certificate by the Dutch Central Bank under Part 3, Prudential Supervision of Financial Enterprises, to conduct the business of a financial institution, insofar as they are permitted under that certificate to perform reinsurance brokerage services; or
- c. have been licensed by the Dutch Central Bank under this part to conduct the business of a bank.

##### **Section 2:88**

Section 2:86(1) shall not apply to reinsurance intermediaries that are registered in another Member State within the meaning of Article 3 of the Insurance Mediation Directive, insofar as Section 2:90(2) is complied with.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

#### **Section 2:89**

1. On application, the Authority for the Financial Markets shall grant a licence as referred to in Section 2:86(1) if the applicant demonstrates that it will comply with the provisions arising from:
  - a. Section 4:9(1), (2) and (4) with regard to the expertise of the persons referred to in that section;
  - b. Section 4:10 with regard to the properness of the persons referred to in that section;
  - c. Section 4:11(2) and (3) with regard to the policy on the sound conduct of business;
  - d. Section 4:13 with regard to the control structure;
  - e. Section 4:15(1) and (2) with regard to the operational structure; and
  - f. Section 4:76(1) to (3) with regard to having professional liability insurance or comparable insurance.
2. The licence application shall contain the data to be specified by or pursuant to a Decree.
3. On application, the Authority for the Financial Markets may grant a full or partial dispensation from the provisions referred to in Subsection (1), opening words and under (a), with regard to Section 4:9(2) and (4), (c), with regard to Section 4:11(3), or (e), with regard to Section 4:15(2), if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which the sections listed in Subsection (1) seek to achieve are achieved in other ways.

#### **2.2.10.2. Branch office and provision of services**

##### **Section 2:90**

1. If the Authority for the Financial Markets receives a notification from a supervisory authority of another Member State regarding the provision of reinsurance brokerage services by a reinsurance broker having its registered office in that other Member State from a branch office situated in the Netherlands or by providing services to the Netherlands, the supervisor may inform the reinsurance broker concerned within one month of receiving the notification of the conditions which the reinsurance broker must observe for reasons of public interest in performing its financial services in the Netherlands.
2. A reinsurance broker having its registered office in another Member State may start performing services, either from a branch office situated in the Netherlands or by providing services to the Netherlands, one month after the notification referred to in Subsection (1) from the supervisory authority of the other Member State to the Authority for the Financial Markets.

#### **2.2.10.3. Exemption**

##### **Section 2:91**

1. An exemption from Section 2:86(1) may be granted by ministerial regulation.
2. A full or partial exemption from Section 2:89(1) may be granted by ministerial regulation.

#### **Part 2.2.11. Acting an authorised agent or authorised sub-agent**

##### **2.2.11.1. Licensing obligation and requirements**

##### **Section 2:92**

1. No party may act as an authorised agent or authorised sub-agent in the Netherlands without a licence granted for that purpose by the Authority for the Financial Markets.
2. On application, the Authority for the Financial Markets may, whether or not for a fixed period, grant a dispensation from Subsection (1) if the applicant demonstrates that the interests which this part and Part 4, Conduct of Business Supervision of Financial Enterprises, seek to protect are sufficiently protected in other ways.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

#### **Section 2:93**

Section 2:92(1) shall not apply to financial enterprises which:

- a. have been licensed by the Dutch Central Bank under this part to conduct the business of an insurer, insofar as they are permitted under that licence to act as an authorised agent or authorised sub-agent;
- b. have been issued with a supervisory status certificate by the Dutch Central Bank under Part 3, Prudential Supervision of Financial Enterprises, to conduct the business of a financial institution, insofar as they are permitted under that certificate to act as an authorised agent or authorised sub-agent; or
- c. have been licensed by the Dutch Central Bank under this part to conduct the business of a bank.

#### **Section 2:94**

1. On application, the Authority for the Financial Markets shall grant a licence as referred to in Section 2:92(1) if the applicant demonstrates that it will comply with the provisions arising from:
  - a. Section 4:9(1), (2) and (4) with regard to the expertise of the persons referred to in that section;
  - b. Section 4:10 with regard to the properness of the persons referred to in that section;
  - c. Section 4:11(2) and (3) with regard to the policy on the sound conduct of business;
  - d. Section 4:13(1) and (2) with regard to the control structure; and
  - e. Section 4:15(1) and (2) with regard to the operational structure.
2. The licence application shall contain the data to be specified by or pursuant to a Decree.
3. On application, the Authority for the Financial Markets may grant a full or partial dispensation from the provisions referred to in Subsection (1), opening words and under (a), with regard to Section 4:9(2) and (4), (c), with regard to Section 4:11(3), or (e), with regard to Section 4:15(2), if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which the sections listed in Subsection (1) seek to achieve are achieved in other ways.

#### **2.2.11.2. Exemption**

#### **Section 2:95**

1. An exemption from Section 2:92(1) may be granted by ministerial regulation.
2. A full or partial exemption from Section 2:94(1) may be granted by ministerial regulation.

#### **Part 2.2.12. Providing investment services, performing investment activities and systematic internalisation**

##### **2.2.12.1. Licensing obligation and requirements**

#### **Section 2:96**

1. No party may provide investment services or perform investment activities without a licence granted for that purpose by the Authority for the Financial Markets.
2. On application, the Authority for the Financial Markets may, whether or not for a fixed period, grant a full or partial dispensation from Subsection (1) if the applicant demonstrates that the interests which this part, Part 3, Prudential Supervision of Financial Enterprises and Part 4, Conduct of Business Supervision of Financial Enterprises, seek to protect are sufficiently protected in other ways.

#### **Section 2:97**

1. Section 2:96 shall not apply to financial enterprises which:

- a. have been issued with a supervisory status certificate granted by the Dutch Central Bank under Part 3, Prudential Supervision of Financial Enterprises, to conduct the business of a financial institution, insofar as

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

they are permitted under that certificate to provide investment services or perform investment activities;

- b. have been licensed by the Dutch Central Bank under this part to conduct the business of a bank, insofar as they are permitted under that licence to provide investment services or perform investment activities.

2. Where portfolio management is concerned, Section 2:96 shall not apply to municipal credit banks regarding which the provisions of Section 4:37(1) and (2) are complied with.
3. Where portfolio management and the provision of advisory services in respect of financial instruments are concerned, Section 2:96 shall not apply to financial enterprises having their registered office in the Netherlands that hold a licence as referred to in Section 2:65(1)(a) to manage an enterprise for collective investment in transferable securities.
4. Section 2:96 shall not apply to financial enterprises, with the exception of enterprises for collective investment in transferable securities that are an investment company, which have been licensed by the Authority for the Financial Markets to manage collective investment schemes, where it concerns providing advice on the units in the collective investment scheme managed by those management companies.
5. Section 2:96 shall not apply to tied agents that provide investment services as referred to under (a), (d) or (e) of the definition of providing an investment service in Section 1:1 for the account of the investment firms, if the investment firms for which the tied agents provide these investment services:
  - a. are fully responsible for them, in the sense that they ensure that the tied agents comply with this Act; and
  - b. have reported the agents concerned as tied agents to the Authority for the Financial Markets.
6. An investment firm that is no longer responsible for a tied agent as referred to in Subsection 5(a) shall notify the Authority for the Financial Markets and the tied agent concerned of this.
7. The Authority for the Financial Markets shall only enter the tied agent in the register as referred to in Section 1:107(2)(a)(12°) if the investment firm reporting the tied agent concerned to the Authority for the Financial Markets demonstrates that, with regard to that tied agent, it will comply with the provisions arising from Sections 4:9(1) and 4:10.
8. Rules shall be laid down by or pursuant to a Decree as regards the manner in which the tied agent will be reported as referred to in Subsection (5)(b) and the data to be provided and documents to be submitted on that occasion.

## **Section 2:98**

1. Section 2:96 shall not apply to financial enterprises having their registered office in another Member State which:
  - a. conduct the business of a bank from a branch office situated in the Netherlands or by providing services to the Netherlands, insofar as they are permitted under Part 2.2.2 to provide investment services or perform investment activities;
  - b. conduct the business of a financial institution from a branch office situated in the Netherlands or by providing services to the Netherlands, insofar as they are permitted under Part 2.2.2 to provide investment services or perform investment activities; or
  - c. conduct the business of an insurer from a branch office situated in the Netherlands or by providing services to the Netherlands, insofar as they are permitted under Parts 2.2.3 or 2.2.4 to provide investment services or perform investment activities.
2. Section 2:96 shall not apply to investment firms having their registered office in another Member State which:
  - a. provide investment services or perform investment activities from a branch office in the Netherlands, insofar as Section 2:101 is complied with; or
  - b. provide investment services or perform investment activities by providing services to the Netherlands, insofar as Section 2:102 is complied with;
  - c. provide investment services or perform investment activities as referred to under (a), (d) or (e) of the

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

definition of providing investment services in Section 1:1 through a tied agent, insofar as Sections 2:101 or 2:102 are complied with and the investment firm has reported the agent concerned as a tied agent to the Authority for the Financial Markets for entry in the register. The provisions of Section 2:97(7) shall apply *mutatis mutandis*.

## **Section 2:99**

1. On application, the Authority for the Financial Markets shall grant a licence as referred to in Section 2:96 if the applicant demonstrates that it will comply with the provisions arising from:
  - a. Section 4:9(1) with regard to the expertise of the persons referred to in that section;
  - b. Section 4:10 with regard to the properness of the persons referred to in that section;
  - c. Section 4:11(1) and (3) with regard to the policy on the sound conduct of business;
  - d. Section 4:83(1) with regard to the minimum number of persons determining the day-to-day policy and Section 4:84 with regard to the place from which they perform their activities;
  - e. Section 4:13(1) and (2) with regard to the control structure;
  - f. Section 4:14(1) and (2) with regard to the operational structure;
  - g. Section 4:87 with regard to taking adequate measures to protect clients' rights;
  - h. Section 4:88 with regard to pursuing an adequate policy in order to preclude the conflicts of interests referred to in that section;
  - i. Section 3:53(1) and (3) with regard to the minimum equity capital;
  - j. Section 4:91a with regard to the rules applicable to the trading process and the settlement of transactions in a multilateral trading facility, if the applicant intends to operate a multilateral trading facility.

If the application relates to the provision of brokerage services or portfolio management by a branch office situated in the Netherlands of an investment firm having its registered office in a non-Member State, the applicant shall also demonstrate that the investment firm is authorised to provide investment services in the State where it has its registered office and is authorised to open a branch office in the Netherlands.

2. If a qualifying holding as referred to in Section 3:95 is owned in the investment firm, the Authority for the Financial Markets, without prejudice to Subsection (1), shall grant a licence if the owner of the qualifying holding in the investment firm complies with Section 3:95(2), and the Dutch Central Bank is of the opinion that the provisions arising from Sections 3:99 to 3:101 regarding the declaration of no objection are complied with.
3. The licence application shall contain the data to be specified by or pursuant to a Decree.
4. If the application relates to the provision of the investment service referred to under (b) of the definition of providing an investment service in Section 1:1 and to the performance of the investment activity referred to under (a) of the definition of performing an investment activity in that section, and the applicant also intends to conduct the business of an investment firm operating as a systematic internaliser with regard to transactions in shares admitted to trading on a regulated market, it shall state this intention when making the application.
5. If the investment firm intends to provide ancillary services, it shall state this intention when making the application.
6. On application, the Authority for the Financial Markets may grant a full or partial dispensation from the provisions referred to in Subsection (1), opening words and under (c), with regard to Section 4:11(3), (d), with regard to Section 4:83(1), (f), with regard to Section 4:14(2), (h), with regard to Section 4:88(3), or (i), if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which the sections listed in Subsection (1) seek to achieve are achieved in other ways.

### **2.2.12.2. Branch office and provision of services**

## **Section 2:100**

1. If the Authority for the Financial Markets receives a notification from a supervisory authority of another Member State of the intention of an investment firm having its registered office in another Member State to provide investment services or perform investment activities from a branch office situated in the Netherlands or by

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

providing services to the Netherlands, it shall, without delay, inform the investment firm involved of the receipt of this notification.

2. Immediately after receiving this notification, or, where it concerns providing investment services or performing investment activities from a branch office, within two months of receiving the notification, the Authority for the Financial Markets may inform the supervisory authority of the other Member State of the conditions which the investment firm must observe for reasons of public interest in providing investment services or performing investment activities in the Netherlands. The Authority for the Financial Markets shall send a copy of this to the investment firm.
3. Where applicable, the Authority for the Financial Markets may request the supervisory authority of the other Member State to inform it within a reasonable term of the identity details of the tied agents that will act under the responsibility and for the account of the investment firm concerned, and publish these details.
4. If an investment firm as referred to in Subsection (1) intends to provide investment services from a branch office situated in the Netherlands through a tied agent acting under its responsibility and for its account, the provisions of this Act with regard to a branch office of an investment firm shall apply mutatis mutandis to the tied agent.

#### **Section 2:101**

1. An investment firm having its registered office in another Member State may start providing investment services or performing investment activities from a branch office situated in the Netherlands two months after the notification from the supervisory authority of the other Member State referred to in Section 2:100(1) or immediately after receiving the notification referred to in Section 2:100(2).
2. Subsection (1) shall not apply to investment firms having their registered office in another Member State, insofar as they are permitted under Parts 2.2.2 or 3.4.1 to provide investment services or perform investment activities from a branch office situated in the Netherlands.
3. Subsection (1) shall not apply to investment firms that comply with Section 2:71(1).

#### **Section 2:102**

1. An investment firm having its registered office in another Member State may start providing investment services or performing investment activities by providing services to the Netherlands after the notification from the supervisory authority of the other Member State referred to in Section 2:100(1).
2. Subsection (1) shall not apply to investment firms having their registered office in another Member State, insofar as they are permitted under Parts 2.2.2 or 3.4.1 to provide investment services or perform investment activities by providing services to the Netherlands.

#### **Section 2:103**

An investment firm as referred to in Section 2:98(2) may not provide investment services or perform investment activities if these financial services are not specified in the notification referred to in Section 2:100(1).

#### **Section 2:103a**

1. An investment firm holding a licence as referred to in Section 2:96 to operate a multilateral trading facility which intends to take measures in another Member State that will enable its members or unit holders based in that Member State to access and trade on that multilateral trading facility, shall inform the Authority for the Financial Markets of such intention. The Authority for the Financial Markets shall supply this information to the relevant supervisory authority of the Member State involved within one month of receiving it.
2. At the request of the supervisory authority of the Member State referred to in Subsection (1), the Authority for the Financial Markets shall inform the latter within a reasonable term of the identity details of the members of or unit holders on the multilateral trading facility.



Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

### **2.2.12.3. Exemption**

#### **Section 2:104**

1. An exemption from Section 2:96 may be granted by Ministerial regulation.
2. A full or partial exemption from Section 2:99(1) may be granted by Ministerial regulation.

### **Part 2.2.13. Special provisions**

#### **Section 2:105**

1. On application, the Authority for the Financial Markets shall grant a licence as referred to in Sections 2:55, 2:60, 2:75, 2:80, 2:86, 2:92 and 2:96 to a legal person with full legal competence that also extends to enterprises affiliated to that legal person, if that legal person, without prejudice to Sections 2:58, 2:63, 2:78, 2:83, 2:89, 2:94 and 2:99, demonstrates that it:
  - a. by virtue of its articles of association and those of its affiliated enterprises, or by virtue of a contract with the affiliated enterprises, has sufficient powers vis-à-vis the affiliated enterprises to counteract any acts or omissions of such an enterprise in violation of the provisions arising from Part 4, Conduct of Business Supervision of Financial Enterprises, with regard to providing financial services, with the exception of offering units in a collective investment scheme, and to have them adhere to any instructions issued by the Authority for the Financial Markets;
  - b. has sufficient possibilities to provide the affiliated enterprises with expert support; and
  - c. is authorised to represent those enterprises in the licence application and otherwise for the purposes of Parts 2.2.5, 2.2.6, 2.2.8, 2.2.9, 2.2.10, 2.2.11, 2.2.12, 2.3.6, 2.3.7 and 2.3.8 and for the purposes of the provisions arising from Part 4, Conduct of Business Supervision of Financial Enterprises, with regard to providing financial services, with the exception of offering units in a collective investment scheme.
2. If an enterprise affiliates to the legal person after a licence as referred to in Subsection (1) has been granted, the licence shall also apply to that enterprise if the legal person satisfies the conditions referred to in Subsection (1) in respect of this enterprise.
3. For the purposes of Parts 2.2.5, 2.2.6, 2.2.8, 2.2.9, 2.2.10, 2.2.11, 2.2.12, 2.3.6, 2.3.7 and 2.3.8, the acts or omissions of the affiliated enterprise shall be regarded as the acts or omissions of the legal person.
4. After consulting the Authority for the Financial Markets, Our Minister may designate enterprises that are deemed to hold a licence as referred to in Subsection (1) for the purposes of Subsections (2) and (3), if these enterprises have been licensed by the Dutch Central Bank under this part and satisfy the conditions referred to in Subsection (1). Our Minister may revoke the designation order.
5. Rules may be laid down by or pursuant to a Decree in respect of Subsection (1), opening words and under (a) and (b).

### **Chapter 2.3. Access to the foreign financial markets**

#### **Section 2:106**

The provisions of this Chapter, with the exception of Sections 2:117 and 2:118, shall not apply to the provision of financial services that may be classified as a service of the information society as referred to in Section 15d(3) of Book 3 of the Dutch Civil Code to another Member State by a financial enterprise having its registered office in the Netherlands.

### **Part 2.3.1. Conducting the business of a clearing institution**

#### **2.3.1.1. Branch office outside the Netherlands**

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

## **Section 2:107**

1. A clearing institution having its registered office in the Netherlands that holds a licence as referred to in Section 2:4(1) and intends to conduct the business of a clearing institution from a branch office situated outside the Netherlands, shall only start doing so after the Dutch Central Bank has approved of this intention.
2. The application for approval shall contain the data to be specified by or pursuant to a Decree.
3. The Dutch Central Bank shall approve of an intention as referred to in Subsection (1) if the clearing institution complies with the provisions arising from Subsection (2), unless the clearing institution's operations or financial position are inadequate in view of its intention.
4. The Dutch Central Bank shall render a decision within three months of receiving the application.

## **Part 2.3.2. Conducting the business of a credit institution and financial institution**

### **2.3.2.1. Branch office and provision of services by a credit institution to another Member State**

## **Section 2:108**

1. A credit institution having its registered office in the Netherlands that holds a licence as referred to in Section 2:11(1) and intends to conduct the business of a credit institution from a branch office situated in another Member State, shall only start doing so after the Dutch Central Bank has approved of this intention.
2. The application for approval shall contain the data to be specified by or pursuant to a Decree.

## **Section 2:109**

1. The Dutch Central Bank shall approve of an intention as referred to in Section 2:108(1), unless the credit institution's operations or financial position are inadequate in view of its intention.
2. The Dutch Central Bank shall render a decision within three months of receiving the application.
3. Within one working day of rendering the decision, the Dutch Central Bank shall notify the supervisory authority of the Member State in which the credit institution intends to conduct its business from a branch office. The Dutch Central Bank shall send a copy of the notification to the credit institution.
4. The notification referred to in Subsection (3) shall also contain data regarding the size of the equity capital and the solvency ratio and, where applicable, data regarding the applicability of a guarantee scheme in respect of the obligations of the credit institution's branch office.
5. Within two months of the notification referred to in Subsection (3), the Dutch Central Bank shall inform the credit institution of the conditions which the supervisory authority of the other Member State has attached to the performance of the activities in the Member State concerned.

## **Section 2:110**

1. A credit institution having its registered office in the Netherlands that holds a licence as referred to in Section 2:11(1) and intends for the first time to conduct its business by providing services to another Member State, shall only start doing so after it has notified the Dutch Central Bank of its intention, specifying the Member State to which it intends to perform services and describing the proposed activities.
2. Within one month of receiving the notification of the intention, the Dutch Central Bank shall notify the supervisory authority of the Member State to which the credit institution intends to perform services. The Dutch Central Bank shall send a copy of the notification to the credit institution.

### **2.3.2.2. Branch office and provision of services by a credit institution to a non-Member State**

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

#### **Section 2:111**

1. A credit institution having its registered office in the Netherlands that holds a licence as referred to in Section 2:11(1) and intends to conduct the business of a credit institution from a branch office in a non-Member State, shall only start doing so after the Dutch Central Bank has approved of this intention.
2. The application for approval shall contain the data to be specified by or pursuant to a Decree.
3. The Dutch Central Bank shall approve of the intention if the credit institution complies with the provisions arising from Subsection (1), unless the credit institution's operations or financial position are inadequate in view of its intention.
4. The Dutch Central Bank shall render a decision within three months of receiving the application.

#### **2.3.2.3. Branch office and provision of services by a financial institution to another Member State**

##### **Section 2:112**

1. A financial institution having its registered office in the Netherlands that holds a supervisory status certificate as referred to in Section 3:110 and intends to conduct its business from a branch office situated in another Member State, shall only start doing so after the Dutch Central Bank has approved of this intention.
2. The application for approval shall contain the data to be specified by or pursuant to a Decree.

##### **Section 2:113**

1. The Dutch Central Bank shall approve of an intention as referred to in Section 2:112(1), unless the credit institution's operations or financial position are inadequate in view of its intention.
2. The Dutch Central Bank shall render a decision within three months of receiving the application.
3. Within one working day of rendering the decision, the Dutch Central Bank shall notify the supervisory authority of the Member State in which the financial institution intends to conduct its business from a branch office. The Dutch Central Bank shall send a copy of the notification to the financial institution.
4. The notification referred to in Subsection (3) shall also contain data regarding the size of the equity capital and the solvency ratio and, where applicable, data regarding the applicability of a guarantee scheme in respect of the obligations of the financial institution's branch office.
5. Within two months of the notification referred to in Subsection (3), the Dutch Central Bank shall inform the financial institution of the conditions which the supervisory authority of the other Member State has attached to the performance of the activities in the Member State concerned.

##### **Section 2:114**

1. A financial institution having its registered office in the Netherlands that holds a supervisory status certificate as referred to in Section 3:110 and intends for the first time to conduct its business by providing services to another Member State, shall only start doing so after it has notified the Dutch Central Bank of its intention, specifying the Member State to which it intends to perform services and describing the proposed activities.
2. Within one month of receiving the notification of the intention, the Dutch Central Bank shall notify the supervisory authority of the Member State to which the financial institution intends to perform services. The Dutch Central Bank shall send a copy of the notification to the financial institution.

#### **Part 2.3.3. Conducting the business of a life insurer and non-life insurer**

##### **2.3.3.1. Branch office and provision of services to another Member State**

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

#### **Section 2:115**

1. A life insurer or non-life insurer having its registered office in the Netherlands that holds a licence as referred to in Section 2:27 and intends to conduct the business of a life insurer or a non-life insurer respectively from a branch office situated in another Member State, shall only start doing so after the Dutch Central Bank has approved of this intention.
2. The application for approval shall contain the data to be specified by or pursuant to a Decree.

#### **Section 2:116**

1. The Dutch Central Bank shall approve of an intention as referred to in Section 2:115(1), unless the insurer's operations or financial position are inadequate in view of its intention, or the properness or expertise of a person determining the day-to-day policy or of the insurer's representative is not beyond doubt.
2. The Dutch Central Bank shall render a decision within three months of receiving the application.
3. Within one working day of rendering the decision, the Dutch Central Bank shall notify the supervisory authority of the Member State in which the insurer intends to conduct its business from a branch office. The Dutch Central Bank shall send a copy of the notification to the insurer.
4. The notification referred to in Subsection (3) shall also contain data regarding the size of the equity capital and the solvency margin.
5. Within two months of the notification referred to in Subsection (3), the Dutch Central Bank shall inform the insurer of the conditions which the supervisory authority of the other Member State has attached to the performance of the activities in the Member State concerned.

#### **Section 2:117**

1. A life insurer or non-life insurer having its registered office in the Netherlands that holds a licence as referred to in Section 2:27(1) and intends for the first time to conduct its business from a place of business in a Member State by providing services to another Member State, shall only start doing so after the Dutch Central Bank has approved of this intention in accordance with Section 2:116(1).
2. In the case of Community co-insurance, Subsection (1) shall apply only to the non-life insurer acting as the first non-life insurer.
3. The application for approval shall contain the data to be specified by or pursuant to a Decree.

#### **Section 2:118**

1. A life insurer or non-life insurer having its registered office in a non-Member State that holds a licence as referred to in Section 2:40(1) and intends for the first time to conduct the business of a life insurer or non-life insurer from the Netherlands by providing services to another Member State, shall only start doing so after the Dutch Central Bank has approved of this intention.
2. The application for approval shall contain the data to be specified by or pursuant to a Decree.

#### **Section 2:119**

1. The Dutch Central Bank shall approve of an intention as referred to in Sections 2:117(1) or 2:118(1), unless the insurer's operations or financial position are inadequate in view of its intention.
2. The Dutch Central Bank shall render a decision within one month of receiving the application.
3. Within one working day of rendering the decision, the Dutch Central Bank shall notify the supervisory authority

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

of the Member State to which the insurer intends to perform services. The Dutch Central Bank shall send a copy of the notification to the insurer.

4. The notification referred to in Subsection (3) shall contain data regarding the insurer's solvency margin, the nature of the obligations which the insurer intends to assume in the other Member State by providing services and the sectors in which it may conduct the business of an insurer.

#### **2.3.3.2. Branch office in a non-Member State**

##### **Section 2:120**

1. A life insurer or non-life insurer having its registered office in the Netherlands that holds a licence as referred to in Section 2:27(1) and intends to conduct the business of a life insurer or non-life insurer from a branch office situated in a non-Member State, shall only start doing so after the Dutch Central Bank has approved of this intention.
2. The application for approval shall contain the data to be specified by or pursuant to a Decree.
3. The Dutch Central Bank shall approve of the intention if the insurer complies with the provisions arising from Subsection (2), unless the insurer's operations or financial position are inadequate in view of its intention, or the properness or expertise of a person determining the day-to-day management or the insurer's representative is not beyond doubt.
4. The Dutch Central Bank shall render a decision within three months of receiving the application.

#### **Part 2.3.4. Conducting the business of a funeral expenses and benefits in kind insurer**

##### **2.3.4.1. Branch office outside the Netherlands**

##### **Section 2:121**

1. A funeral expenses and benefits in kind insurer having its registered office in the Netherlands that holds a licence as referred to in Section 2:48(1) and intends to conduct the business of a funeral expenses and benefits in kind insurer from a branch office situated outside the Netherlands, shall only start doing so after the Dutch Central Bank has approved of this intention.
2. The application for approval shall contain the data to be specified by or pursuant to a Decree.
3. The Dutch Central Bank shall approve of the intention if the insurer complies with the provisions laid down by or pursuant to Subsection (2), unless the insurer's operations or financial position are inadequate in view of its intention, or the properness or expertise of a person determining the day-to-day management or the insurer's representative is not beyond doubt.
4. The Dutch Central Bank shall render a decision within three months of receiving the application.

#### **Part 2.3.5. Offering units in enterprises for collective investment in transferable securities**

##### **2.3.5.1. Branch office and provision of services to a Member State**

##### **Section 2:122**

1. A management company that holds a licence as referred to in Section 2:65((1), opening words and under (a) or (2) and intends for the first time to offer units in enterprises for collective investment in transferable securities under its management that have their registered office in the Netherlands from a branch office situated in another Member State, shall only start doing so after the Authority for the Financial Markets has approved of this intention.
2. The application for approval shall contain the data to be specified by or pursuant to a Decree.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

3. Subsection (1) shall not apply to management companies that comply with Section 2:127(1).

#### **Section 2:123**

1. A management company that holds a licence as referred to in Section 2:65(1), opening words and under (a) or (2) and intends for the first time to offer in another Member State units in enterprises for collective investment in transferable securities under its management that have their registered office in the Netherlands, shall only start doing so after it has notified the supervisory authority of that Member State and the Authority for the Financial Markets of this intention.
2. On application, the Authority for the Financial Markets shall provide a management company that intends to offer in another Member State units in an enterprise for collective investment in transferable securities under its management that has its registered office in the Netherlands with a statement to the effect that this enterprise for collective investment in transferable securities complies with the UCITS Directive.

#### **Section 2:124**

1. The Authority for the Financial Markets shall approve of an intention as referred to in Section 2:122, unless the management company's operations or financial position are inadequate in view of its intention.
2. The Authority for the Financial Markets shall render a decision within two months of receiving the application.
3. Within one working day of rendering the decision, the Authority for the Financial Markets shall notify the supervisory authority of the Member State in which the management company intends to offer units in enterprises for collective investment in transferable securities under its management that have their registered office in the Netherlands. The Authority for the Financial Markets shall send a copy of the notification to the management company.
4. The notification referred to in Subsection (3) shall also contain data regarding the applicability of the investor-compensation scheme.
5. Within two months of the notification referred to in Subsection (3), the Authority for the Financial Markets shall inform the management company of the conditions which the supervisory authority of the other Member State has attached to the performance of the activities in the Member State concerned.

### **Part 2.3.6. Performing insurance brokerage services**

#### **2.3.6.1. Branch office and provision of services to another Member State**

#### **Section 2:125**

1. An insurance broker having its registered office in the Netherlands that holds a licence as referred to in Section 2:80(1) and intends to provide insurance brokerage services from a branch office situated in another Member State or by providing services to another Member State, shall only start doing so if it has notified the Authority for the Financial Markets of its intention, specifying the Member State in which it intends to open a branch office or to which it intends to perform services.
2. Within one month of receiving the notification of the intention referred to in Subsection (1), the Authority for the Financial Markets shall notify the supervisory authority of the Member State in which the insurance broker intends to provide financial services, if the Commission of the European Communities has communicated that this Member State considers such a notification desirable. The Authority for the Financial Markets shall send a copy of the notification to the insurance broker concerned.
3. If the Commission of the European Communities has issued no communication that the Member State concerned considers such a notification desirable, the Authority for the Financial Markets shall inform the insurance broker concerned of this immediately after receiving the notification of the intention referred to in Subsection (1).

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

### **Part 2.3.7. Performing reinsurance brokerage services**

#### **2.3.7.1. Branch office and provision of services to another Member State**

##### **Section 2:126**

1. A reinsurance broker having its registered office in the Netherlands that holds a licence as referred to in Section 2:86(1) and intends to provide reinsurance brokerage services from a branch office situated in another Member State or by providing services to another Member State, shall only start doing so if it has notified the Authority for the Financial Markets of its intention, specifying the Member State in which it intends to open a branch office or to which it intends to perform services.
2. Within one month of receiving the notification of the intention, the Authority for the Financial Markets shall notify the supervisory authority of the Member State in which the reinsurance broker intends to provide reinsurance brokerage services, if the Commission of the European Communities has communicated that this Member State considers such a notification desirable. The supervisor shall send a copy of the notification to the reinsurance broker concerned.
3. If the Commission of the European Communities has issued no communication that the Member State concerned considers such a notification desirable, the Authority for the Financial Markets shall inform the reinsurance broker concerned of this immediately after receiving the notification of the intention referred to in Subsection (1).

### **Part 2.3.8. Providing investment services and performing investment activities**

#### **2.3.8.1. Branch office and provision of services to another Member State**

##### **Section 2:127**

1. An investment firm having its registered office in the Netherlands that holds a licence as referred to in Sections 2:96 or 2:65(1), opening words and under (a), and intends to provide investment services or perform investment activities from a branch office situated in another Member State, shall only start doing so after the Authority for the Financial Markets has approved of this intention.
2. The application for approval shall contain the data to be specified by or pursuant to a Decree.
3. Subsections (1) and (2) shall not apply to investment firms that comply with Section 2:122(1).

##### **Section 2:128**

1. The Authority for the Financial Markets shall approve of an intention as referred to in Section 2:127, unless the investment firm's operations or financial position are inadequate in view of its intention.
2. Within three months of receiving the application, the Authority for the Financial Markets shall communicate its decision and the data referred to in Section 2:127(2) to the supervisory authority that has been designated in the Member State concerned as a contact point as referred to in Article 56(1) of the Markets in Financial Instruments Directive. The Authority for the Financial Markets shall send a copy of the notification to the investment firm.
3. The notification referred to in the preceding subsection shall also contain data regarding the applicability of the investor-compensation scheme.
4. Within two months of the notification referred to in Subsection (3), the Authority for the Financial Markets shall inform the investment firm of the conditions which the supervisory authority of the other Member State has attached to the performance of the activities in the Member State concerned.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

5. An investment firm shall notify the Authority for the Financial Markets of changes with regard to subjects on which data must be provided pursuant to Section 2:127(2). Provisions shall be laid down by or pursuant to a Decree, specifying the procedures to be followed, with regard to the changes to be reported, the data to be provided on that occasion and, where applicable, the conditions on which the changes may be implemented.
6. The Authority for the Financial Markets shall inform the supervisory authority of the Member State concerned of the changes referred to in Subsection (5) and of changes regarding the investor-compensation scheme as referred to in Subsection (3).

#### **Section 2:129**

1. An investment firm having its registered office in the Netherlands that holds a licence as referred to in Sections 2:65(1), opening words and under (a) or 2:96 and intends for the first time to provide investment services or perform investment activities by providing services to another Member State or that intends to provide investment services or perform investment activities other than those regarding which the notification referred to in this subsection was made, shall only start doing so after:
  - a. it has notified the Authority for the Financial Markets of its intention, stating the following data:
    - 1°. the Member State concerned;
    - 2°. the proposed investment services or investment activities;
    - 3°. the identity of the tied agent, if the investment firm intends to provide the proposed investment services or perform the proposed investment activities through a tied agent; and
  - b. the Authority for the Financial Markets has notified the supervisory authority of the Member State concerned of the intention.
2. Within one month of receiving the notification, the Authority for the Financial Markets shall communicate the intention and the data referred to in Subsection (1)(a) to the supervisory authority that has been designated in the Member State concerned as a contact point as referred to in Article 56(1) of the Markets in Financial Instruments Directive. The Authority for the Financial Markets shall send a copy of the notification to the investment firm.
3. An investment firm shall notify the Authority for the Financial Markets of changes with regard to subjects on which data must be provided pursuant to Subsection (1). Provisions shall be laid down by or pursuant to a Decree with regard to the changes to be reported, the data to be provided and the procedures to be followed on that occasion and, where applicable, the conditions on which the changes may be implemented.
4. The Authority for the Financial Markets shall notify the supervisory authority of the Member State concerned of the changes referred to in Subsection (3).

#### **2.3.8.2. Branch office in a non-Member State**

#### **Section 2:130**

1. An investment firm having its registered office in the Netherlands that holds a licence as referred to in Sections 2:96 or 2:65(1) and intends to provide investment services or perform investment activities from a branch office situated in a non-Member State, shall only start doing so after the Authority for the Financial Markets has approved of this intention. The application for approval shall contain the details to be specified by or pursuant to a Decree.
2. The Authority for the Financial Markets shall approve of the intention, unless the investment firm's operations or financial position are inadequate in view of its intention.
3. The Authority for the Financial Markets shall render a decision within three months of receiving the application.

### **Prudential Supervision of Financial Enterprises**



Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

### **Chapter 3.1. Introductory provisions**

#### **Section 3:1**

For the purposes of this part and the ensuing provisions:

- a. an insurance contract intended to accrue a fund to pay for the provision of the funeral of a natural person shall be deemed to have been concluded in the conduct of the business of a funeral expenses and benefits in kind insurer, if the insurance contract is concluded by a funeral expenses and benefits in kind insurer and does not entail an investment risk for the latter;
- b. the management of a group pension fund shall be regarded as the pursuit of the business of a life insurer where such management is pursued by a life insurer.

#### **Section 3:2**

1. Without a license granted by the Dutch Central Bank or by a supervisory authority of another Member State to conduct the business of a bank, the provisions of this part relating to conducting the business of a bank shall not apply to obtaining the disposal of callable funds from others than professional market parties beyond a restricted circle as a result of offering securities in accordance with the provisions arising from Chapter 5.1, insofar as the party obtaining disposal of the funds arranges for:
  - a. an unconditional guarantee regarding all liabilities entailed by obtaining the disposal of those funds, which unconditional guarantee was issued by an enterprise with a consolidated equity capital that is positive throughout the term of the guarantee, of which enterprise the party obtaining the disposal of the funds is a subsidiary;
  - b. an agreement concluded with an enterprise of which the party obtaining the disposal of the funds is a subsidiary and which has a consolidated equity capital that is positive throughout the duration of the agreement, which agreement includes the unconditional commitment on the part of that enterprise always to provide the party obtaining the disposal of the funds with sufficient resources to meet its obligations; or
  - c. a guarantee for all liabilities entailed by obtaining the disposal of those funds that was issued by:
    - 1°. a bank licensed by the Dutch Central Bank or by a supervisory authority in another Member State; or
    - 2°. a bank having its registered office in a non-Member State to be designated by Our Minister in which the supervision of the pursuit of the business of a bank provides sufficient safeguards with regard to the interests which this Act seeks to protect.
2. Subsection (1) shall only apply insofar as the party obtaining the disposal of the funds extends at least 95 percent of its balance sheet total as credit within the group of which it forms part. A group shall be understood to mean the legal person and its subsidiaries collectively.
3. On application, the Dutch Central Bank may, whether or not for a fixed period, grant a full or partial dispensation from this section, if the applicant demonstrates that it cannot reasonably comply with these provisions and that the objectives which this section seeks to achieve are achieved in other ways.

#### **Section 3:3**

An exemption may be granted by ministerial regulation from the provisions arising from this part for management companies, collective investment schemes, investment firms and depositaries.

#### **Section 3:4**

1. Any party having its registered office in the Netherlands, not being a bank, that has as its business:
  - a. to obtain the disposal of callable funds from professional market parties or within a restricted circle, and to extend loans at its own expense; or
  - b. to obtain the disposal of callable funds and to make investments, not being loans, at its own expense,

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

may apply to the Dutch Central Bank for a licence to pursue that business; in applying Sections 2:12 and 2:13, the Dutch Central Bank shall classify the applicant's activities as pursuing the business of a bank.

2. The provisions arising from this Act as regards conducting the business of a bank, with the exception of Part 3.5.5, shall apply mutatis mutandis to the party that obtained a licence from the Dutch Central Bank pursuant to an application as referred to in Subsection (1).

## **Chapter 3.2. Attracting callable funds**

### **Section 3:5**

1. No party may attract, obtain or have the disposal of callable funds beyond a restricted circle in the Netherlands in the pursuit of a business from others than professional market parties.
2. Subsection (1) shall not apply to:
  - a. banks that have been licensed by the Dutch Central Bank as referred to in Sections 2:11(1) or 2:20(1), and banks having their registered office in another Member State that conduct their business from a branch office situated in the Netherlands or by providing services to the Netherlands and that comply with the provisions of Sections 2:15 or 2:16 as regards the performance of the activities referred to under 1 in Annex I to the Recast Banking Directive;
  - b. banks having their registered office in another Member State that have been licensed to conduct their business by the supervisory authority of that Member State and that satisfy the conditions applicable in that other Member State for providing services to another Member State;
  - c. the Member States, as well as the regional or local government bodies of the Member States; and
  - d. the parties attracting, obtaining or having the disposal of callable funds as a result of offering securities in accordance with the provisions arising from Chapter 5.1.
3. An exemption from Subsection (1) may be granted by ministerial regulation.
4. On application, the Dutch Central Bank may, whether or not for a fixed period, grant a dispensation from Subsection (1) if the applicant demonstrates that the interests which this part seeks to protect are sufficiently protected in other ways. Rules may be laid down by or pursuant to a Decree which the holder of the dispensation should observe and with regard to granting a dispensation.

### **Section 3:6**

1. No party may act as a guarantee fund in the Netherlands without a licence from the Dutch Central Bank or a supervisory authority of another Member State to pursue the business of a non-life insurer.
2. Subsection (1) and the other provisions arising from this part as regards pursuing the business of a non-life insurer shall not apply to guarantee funds which:
  - a. are under government control or may invoke a guarantee issued by the government; or
  - b. offer only guarantees for the benefit of natural persons within a restricted circle:
    - 1°. that is exactly defined;
    - 2°. whose joining criteria have been defined beforehand, are verifiable and do not make joining easy for natural persons not belonging to the circle; and
    - 3°. in which the members of the circle already have a legal relationship with the guarantee fund at the time when the guarantees are offered, based on which they may in all reasonableness be aware of its financial position.
3. An exemption may be granted by ministerial regulation from Subsection (1) and the provisions arising from this part as regards guarantee funds conducting the business of a non-life insurer.
4. On application, the Dutch Central Bank may, whether or not for a fixed period, grant a dispensation from Subsection (1) and the provisions arising from this part with regard to guarantee funds pursuing the business of a non-life insurer, if the applicant demonstrates that the interests which this part seeks to protect are sufficiently protected in other ways. Rules may be laid down by or pursuant to a Decree which the holder of the

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

dispensation should observe and with regard to granting a dispensation.

### **Chapter 3.3. Rules on operating in the financial markets**

#### **Part 3.3.1. Prohibition on using the word «bank»**

##### **Section 3:7**

1. No party other than a licensed credit institution may use the word «bank» or translations or forms thereof in its name or in the conduct of its business, unless this is done in a context which clearly shows that it does not operate in the financial markets.
2. Subsection (1) shall not apply to:
  - a. financial institutions that hold a supervisory status certificate as referred to in Section 3:110 or that comply with the provisions of Section 2:25 or 2:26 as regards the performance of activities referred to in Annex I to the Recast Banking Directive, either from a branch office or by providing services; and
  - b. representative organisations of supervised credit institutions or financial institutions.
3. An exemption from Subsection (1) may be granted by ministerial regulation.
4. On application, the Dutch Central Bank may, whether or not for a fixed period, grant a dispensation from Subsection (1) if the objectives which this section seeks to achieve are achieved in other ways. Rules may be laid down by or pursuant to a Decree which the holder of the dispensation should observe and with regard to granting a dispensation.

#### **Part 3.3.2. Expertise, properness and integrity**

##### **3.3.2.1. Financial enterprises having their registered office in the Netherlands**

##### **Section 3:8**

The day-to-day policy of a clearing institution, credit institution or insurer having its registered office in the Netherlands shall be determined by persons expert in pursuing the business operations of the financial enterprise.

##### **Section 3:9**

1. The policy of a clearing institution, credit institution or insurer having its registered office in the Netherlands shall be determined or co-determined by persons whose properness is beyond doubt. If a body within the financial enterprise is responsible for supervising the policy and the general affairs of the financial enterprise, the properness of the persons exercising this supervision shall be beyond doubt.
2. The properness of a person as referred to in Subsection (1) shall be beyond doubt once this has been established for the purposes of this Act by a supervisor, as long as a change in the relevant facts or circumstances has not given reasonable cause for a reassessment.
3. Rules shall be laid down by or pursuant to a Decree as regards the manner in which to establish whether the properness of a person as referred to in Subsection (1) is beyond doubt and which facts and circumstances must be considered in that respect.

##### **Section 3:10**

1. A clearing institution, credit institution or insurer having its registered office in the Netherlands shall pursue an adequate policy that safeguards controlled and sound business operations. This shall mean that:
  - a. measures are taken to prevent conflicts of interest;
  - b. measures are taken to prevent the financial enterprise or its employees from committing offences or other transgressions of the law that could damage confidence in the financial enterprise or in the financial

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

markets;

- c. measures are taken to prevent confidence in the financial enterprise or in the financial markets from being damaged because of its clients; and
  - d. measures are taken to prevent the financial enterprise or its employees from performing other acts that are so contrary to generally accepted standards as to seriously damage confidence in the financial enterprise or in the financial markets.
2. Rules may be laid down by or pursuant to a Decree as regards the minimum requirements to be satisfied by the policy referred to in Subsection (1).
  3. A financial enterprise as referred to in Subsection (1) shall supply the Dutch Central Bank with information to be specified by Decree about incidents relating to the matters referred to in Subsection (1).
  4. On application, the Dutch Central Bank may, whether or not for a fixed period, grant a dispensation from the provisions arising from Subsection (2), if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which this section seeks to achieve are achieved in other ways.

### **3.3.2.2. Financial enterprises having their registered office in a non-Member State**

#### **Section 3:11**

Sections 3:8, 3:9 and 3:10 shall apply mutatis mutandis to branch offices situated in the Netherlands of credit institutions having their registered office in a non-Member State.

#### **Section 3:12**

Section 3:10 shall apply mutatis mutandis to branch offices situated in the Netherlands of life insurers or non-life insurers having their registered office in a non-Member State.

### **3.3.2.3. Financial enterprises having their registered office in a non-designated State**

#### **Section 3:13**

Sections 3:8, 3:9 and 3:10 shall apply mutatis mutandis to branch offices situated in the Netherlands of clearing institutions having their registered office in a non-designated State.

#### **Section 3:14**

Section 3:10 shall apply mutatis mutandis to funeral expenses and benefits in kind insurers having their registered office in a non-designated State that pursue their business from branch offices situated in the Netherlands.

## **Part 3.3.3. Structuring and organisation**

### **3.3.3.1. Financial enterprises having their registered office in the Netherlands**

#### **Section 3:15**

1. At least two natural persons shall determine the day-to-day policy of a clearing institution, credit institution or insurer having its registered office the Netherlands.
2. The persons determining the day-to-day policy of a financial enterprise as referred to in Subsection (1) shall perform their activities in this respect from the Netherlands.
3. On application, the Dutch Central Bank may, whether or not for a fixed period, grant a dispensation from Subsection (1) to a clearing institution or insurer if the applicant demonstrates that it cannot reasonably comply with that subsection and that the objectives which Subsection (1) seeks to achieved are achieved in other ways.

#### **Section 3:16**

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

1. A clearing institution, credit institution or insurer having its registered office in the Netherlands shall not be affiliated to persons in a formal or actual control structure which is so lacking in transparency that it constitutes or may constitute an impediment to the adequate exercise of supervision of that financial enterprise.
2. The credit institution, life insurer or non-life insurer shall not be affiliated to persons in a formal or actual control structure if the law of a non-Member State, applicable to those persons, constitutes or may constitute an impediment to the adequate exercise of supervision of that financial enterprise.
3. The clearing institution or funeral expenses and benefits in kind insurer shall not be affiliated to persons in a formal or actual control structure if the law of another State, applicable to those persons, constitutes or may constitute an impediment to the adequate exercise of supervision of that financial enterprise.

### **Section 3:17**

1. A clearing institution, credit institution or insurer having its registered office in the Netherlands shall organise its operations in such a way as to safeguard controlled and sound business operations.
  2. Rules shall be laid down by or pursuant to a Decree with regard to Subsection (1). These rules shall concern:
    - a. control of business processes and business risks;
    - b. integrity, which is understood to mean the prevention of:
      - 1°. conflicts of interest;
      - 2°. offences or other transgressions of the law committed by the financial enterprise or its employees that could damage confidence in the financial enterprise or in the financial markets;
      - 3°. relations with clients that could damage confidence in the financial enterprise or in the financial markets;and
    - 4°. other acts performed by the financial enterprise or its employees that are so contrary to generally accepted standards as to seriously damage confidence in the financial enterprise or in the financial markets;
  - c. the soundness of the financial enterprise, which shall be understood to mean:
    - 1°. control of financial risks;
    - 2°. control of other risks that may affect the soundness of the financial enterprise;
    - 3°. ensuring the maintenance of the required financial safeguards; and
    - 4°. other matters, to be specified by Decree.
3. Without prejudice to Section 4:14, Subsection (2), opening words and under (c) shall apply mutatis mutandis to management companies of a collective investment scheme having its registered office in the Netherlands that offers units in the Netherlands, collective investment schemes having their registered office in the Netherlands that offer units in the Netherlands, investment firms having their registered office in the Netherlands that provide investment services or perform investment activities in the Netherlands, and depositaries associated with a collective investment scheme having its registered office in the Netherlands that offers units in the Netherlands.
4. On application, the Dutch Central Bank may, whether or not for a fixed period, grant a full or partial dispensation from the provisions arising from Subsection (2), if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which this section seeks to achieve are achieved in other ways, unless the provisions arising from Subsection (2) relate to providing an investment service or performing an investment activity or ancillary service.

### **Section 3:18**

1. If a financial enterprise having its registered office in the Netherlands delegates activities to a third party, the financial enterprise shall ensure that such third party complies with the rules applicable under this part to the delegating financial enterprise with regard to those activities.
2. A clearing institution, credit institution or insurer shall not delegate activities to be designated by Decree.
3. By or pursuant to a Decree:
  - a. rules shall be laid down, for the purpose of supervision of compliance with the provisions arising from this part, with regard to the delegation of activities by financial enterprises;

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

- b. rules shall be laid down with regard to the control of risks entailed by the delegation of activities by clearing institutions, credit institutions and insurers; and
- c. rules shall be laid down with regard to the agreement to be concluded between a clearing institution, credit institution or insurer and the third party relating to the delegation of activities.

#### **Section 3:18a**

1. The Dutch Central Bank shall periodically assess, in accordance with rules to be laid down by or pursuant to a Decree, the strategies, procedures and measures pursuant to Section 3:17 and the qualifying capital of a bank or investment firm having its registered office in the Netherlands in view of the size and nature of its current and potential future risks.
2. Based on the assessment referred to in Subsection (1), the Dutch Central Bank shall decide whether the strategies, procedures and measures and the qualifying capital maintained by the bank or investment firm safeguard proper management and adequate cover of the risks.
3. The Dutch Central Bank shall gear the frequency and scope of its assessment to the nature, size and complexity of the bank or investment firm and the importance of the activities of the financial enterprise concerned to the financial system.
4. The Dutch Central Bank shall update the assessment at least once a year.

#### **Section 3:19**

1. A clearing institution or credit institution having its registered office in the Netherlands that is a public limited company or a private limited liability company, or an insurer having its registered office in the Netherlands that is a public limited company or a European company, shall have a supervisory board as referred to in Sections 140 and 250 respectively of Book 2 of the Dutch Civil Code, composed of at least three members.
2. A clearing institution or credit institution having its registered office in the Netherlands that is not a public limited company or a private limited liability company shall have a body composed of at least three members whose duties shall be equivalent to those of a supervisory board.
3. On application, the Dutch Central Bank may, whether or not for a fixed period, grant a full or partial dispensation from Subsections (1) or (2) if the applicant demonstrates that it cannot reasonably comply with those subsections and that the objectives which this section seeks to achieve are achieved in other ways.

#### **Section 3:20**

An insurer having its registered office in the Netherlands shall have the legal form of a public limited company, mutual association or European company.

#### **3.3.3.2. Financial enterprises having their registered office in a non-Member State**

#### **Section 3:21**

1. At least two natural persons shall determine the day-to-day policy of a branch office situated in the Netherlands of a credit institution having its registered office in a non-Member State.
2. The persons determining the day-to-day policy of a branch office as referred to in Subsection (1) shall perform their activities in this respect from the Netherlands.

#### **Section 3:22**

Sections 3:17(2), opening words and under (c), (3) and 3:18(1) and (3), opening words and under (a) shall apply *mutatis mutandis* to investment firms having their registered office in a non-Member State that provide investment services or perform investment activities in the Netherlands.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

#### **Section 3:23**

1. Sections 3:17 and 3:18 shall apply mutatis mutandis to branch offices situated in the Netherlands of life insurers or non-life insurers having their registered office in a non-Member State.
2. Sections 3:17 and 3:18 shall apply mutatis mutandis to branch offices situated in the Netherlands of credit institutions having their registered office in a non-Member State.

#### **Section 3:24**

A life insurer or non-life insurer having its registered office in a non-Member State that pursues its business from a branch office situated in the Netherlands or by providing services to the Netherlands:

- a. shall be a legal person under the law of the State where it has its registered office;
- b. shall be authorised to pursue the business of a life insurer or non-life insurer respectively in the State where it has its registered office; and
- c. shall effectively pursue this business from a place of business in that State.

#### **3.3.3.3. Financial enterprises having their registered office in a non-designated State**

#### **Section 3:25**

Sections 3:17(2), opening words and under (c), (3) and (4), and 3:18(1) and (3), opening words and under (a) shall apply mutatis mutandis to management companies of a collective investment scheme having its registered office in a non-designated State that offers units in the Netherlands, collective investment schemes having their registered office in a non-designated State that offer units in the Netherlands, and depositaries associated with a collective investment scheme having its registered office in a non-designated State that offer units in the Netherlands.

#### **Section 3:26**

Sections 3:17 and 3:18 shall apply mutatis mutandis to funeral expenses and benefits in kind insurers having their registered office in a non-designated State that pursue their business from branch offices situated in the Netherlands.

#### **Section 3:27**

Sections 3:17, 3:18 and 3:21 shall apply mutatis mutandis to clearing institutions having their registered office in a non-designated State.

#### **Section 3:28**

Section 3:24 shall apply mutatis mutandis to funeral expenses and benefits in kind insurers having their registered office in a non-designated State that conduct their business from branch offices situated in the Netherlands or by providing services to the Netherlands.

### **Part 3.3.4. Other provisions**

#### **3.3.4.1. Financial enterprises having their registered office in the Netherlands**

#### **Section 3:29**

1. A clearing institution, financial institution, credit institution or insurer having its registered office in the Netherlands shall notify the Dutch Central Bank of changes with regard to subjects on which data must be provided under Sections 2:5(2), 2:12(3), 2:31(2), 2:49(2), 2:107(2), 2:108(2), 2:111(1), 2:112(2), 2:115(2), 2:117(3), 2:118(2), 2:120(1) or 2:121(2).
2. A clearing institution, financial institution, credit institution or insurer having its registered office in the Netherlands shall, without prejudice to Subsection (1), notify the supervisory authority of the Member State in

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

which the financial enterprise pursues its business from a branch office of changes with regard to subjects on which data must be provided pursuant to Sections 2:108(2), 2:112(2) or 2:115(2).

3. Provisions shall be laid down by or pursuant to a Decree, specifying the procedures to be followed, with regard to the changes to be reported, the data to be supplied on that occasion and, where applicable, the conditions on which the changes may be implemented.

### **Section 3:30**

1. A credit institution or an insurer having its registered office in the Netherlands that has decided to dissolve or wind up its business, either fully or in part, shall consult the Dutch Central Bank on the manner in which the dissolution or winding-up will be effectuated at least 13 weeks before the decision is implemented.
2. The Dutch Central Bank may reduce the term referred to in Subsection (1).
3. The Dutch Central Bank shall be classified as an interested party within the meaning of Section 23(2) of Book 2 of the Dutch Civil Code.
4. If a financial enterprise as referred to in Subsection (1) decides to dissolve its business and has no legal personality, the provisions of Sections 19(4), 23(1) and (2), 23a(1) and 23c of Book 2 of the Dutch Civil Code shall apply mutatis mutandis. For the purposes of Sections 23(1) and 23a(1) of Book 2 of the Dutch Civil Code, the managing partners shall classify as directors and the partnership agreement shall classify as the articles of association.

### **Section 3:31**

A credit institution having its registered office in the Netherlands that is a subsidiary of a credit institution having its registered office in a non-Member State, shall be under sufficient consolidated supervision in the State where the latter credit institution has its registered office.

### **Section 3:32**

A bank having its registered office in the Netherlands that has been licensed to pursue the business of a bank may perform at least the activities listed in Annex I to the Recast Banking Directive, unless the licence expressly provides otherwise.

### **Section 3:33**

If a financial enterprise has been licensed to conduct the business of a bank and this licence does not include the provision of investment services or performance of investment activities, it may apply for an extension of the licence to these activities if it ensures and demonstrates that it complies with the provisions arising from Sections 4:91a, as regards the requirements applicable to the trading process and the settlement of transactions in a multilateral trading facility if the applicant intends to operate a multilateral trading facility, 4:14(2)(c) under 1° to 6° and 4:87 as regards the licence application.

### **Section 3:34**

1. An electronic money institution having its registered office in the Netherlands that is licensed to pursue the business of an electronic money institution may not, in addition to obtaining the disposal of funds in exchange for electronic money, perform any activities other than the following:
  - a. to provide services relating to the issuance of electronic money;
  - b. to issue and manage other means of payment, excluding the activities referred to under 2 in Annex I to the Recast Banking Directive;
  - c. to store information on an electronic device for the benefit of other enterprises.
2. An electronic money institution as referred to in Subsection (1) shall only own a holding in another enterprise if that enterprise performs activities relating to the business of that electronic money institution.



Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

3. A holding as referred to in Subsection (2) shall be understood to mean a direct or indirect interest of 20 percent or more in the issued share capital of an enterprise, or the ability to exercise directly or indirectly 20 percent or more of the voting rights in an enterprise.

### **Section 3:35**

A credit institution shall only issue electronic money against a value not exceeding the value of the funds received in exchange for the issuance.

### **Section 3:36**

1. An insurer having its registered office in the Netherlands that has been licensed to pursue the business of a life insurer, non-life insurer or funeral expenses and benefits in kind insurer, may not pursue a business other than the business for which the licence was granted. In derogation from the foregoing, insurers having their registered office in the Netherlands shall be permitted to perform trading activities arising from their insurance business, and life insurers licensed to pursue the business of a life insurer shall be permitted to pursue the business of a funeral expenses and benefits in kind insurer without holding a licence to pursue the business of a funeral expenses and benefits in kind insurer.
2. A life insurer or non-life insurer licensed to pursue the business of a life insurer or non-life insurer respectively may not pursue this business in a sector other than the sector or sectors for which the licence was granted.
3. The provisions as regards pursuing the business of a life insurer shall apply to a life insurer having its registered office in the Netherlands that has been licensed in respect of the General Life Insurance sector and that conducts only the business of a funeral expenses and benefits in kind insurer.
4. In derogation from Subsection (2), provisions shall be laid down by or pursuant to a Decree that specify which of the risks pertaining to a sector other than the sectors for which a licence to pursue the business of a non-life insurer was granted may be insured as ancillary risks, and which risks may not be combined as ancillary risks with other sectors.

### **Section 3:37**

1. An insurer having its registered office in the Netherlands that intends to pursue its business from a branch office situated in another Member State, or a life insurer or non-life insurer that intends to pursue its business from a branch office situated in a non-Member State, shall appoint a person as its representative.
2. The representative shall, by operation of law, have the same powers as the insurer referred to in Subsection (1) as regards pursuing the business of a life insurer or non-life insurer from the branch offices. The representative shall exercise these powers in any case if the Dutch Central Bank so requests with a view to compliance with the provisions arising from this part.
3. If the representative is a legal person, it shall in turn appoint a natural person who may exclusively represent the legal person in exercising its powers and performing its obligations.
4. Sections 3:8 and 3:9 shall apply *mutatis mutandis* to the person appointed as an insurer's representative and to the natural person referred to in Subsection (3).

### **Section 3:38**

A non-life insurer having its registered office in the Netherlands may not underwrite risks caused by or arising from armed conflict, civil war, insurrection, civil commotion, riot or mutiny. However, they may underwrite risks of acts of war in sea, transport, aircraft and travel insurance contracts in the generally accepted acts of war clauses, provided the Dutch Central Bank raises no objections.

#### **3.3.4.2. Financial enterprises having their registered office in another Member State**

### **Section 3:39**

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

1. A bank having its registered office in another Member State that pursues its business from a branch office situated in the Netherlands may perform at least the activities listed in Annex I to the Recast Banking Directive, unless the licence granted in that Member State expressly provides otherwise or the notification referred to in Section 2:14(1) does not specify the performance of those activities.
2. A bank having its registered office in another Member State that pursues its business by providing services to the Netherlands may perform at least the activities listed in Annex I to the Recast Banking Directive, unless the licence granted in that Member State expressly provides otherwise or it has failed to notify the supervisory authority of the Member State where it has its registered office of the activities which it intends to perform by providing services to the Netherlands.
3. Section 3:34 shall apply mutatis mutandis to electronic money institutions having their registered office in another Member State that pursue their business either from a branch office or by providing services to the Netherlands.

#### **Section 3:40**

Rules shall be laid down by or pursuant to a Decree as regards the address of the representative appointed by a life insurer or non-life insurer having its registered office in another Member State to which information may be supplied in a legally valid manner, as well as regulations on the circumstances under which the representative will cease to be a representative.

#### **Section 3:41**

Rules shall be laid down by or pursuant to a Decree as regards the conditions on which changes with regard to subjects on which the Dutch Central Bank received data under Section 2:17(2) may be implemented.

#### **Section 3:42**

A life insurer or non-life insurer having its registered office in another Member State shall notify the Dutch Central Bank of changes with regard to subjects on which data must be provided pursuant to Section 2:39(1). Provisions shall be laid down by or pursuant to a Decree, specifying the procedures to be followed, with regard to the data to be supplied on that occasion and, where applicable, the conditions on which the changes may be implemented.

#### **3.3.4.3. Financial enterprises having their registered office in a non-Member State**

#### **Section 3:43**

1. Sections 3:32, 3:34, 3:36 and 3:38 shall apply mutatis mutandis to a bank, life insurer or non-life insurer having its registered office in a non-Member State that pursues its business from a branch office situated in the Netherlands, insofar as these sections relate to the financial enterprises concerned.
2. A credit institution or a life insurer or non-life insurer having its registered office in a non-Member State that pursues its business from a branch office situated in the Netherlands shall notify the Dutch Central Bank of changes with regard to subjects on which data must be provided pursuant to Section 2:21(2), 2:41(2), 2:45(2), 2:46(2) or 2:51(3). Provisions shall be laid down by or pursuant to a Decree, specifying the procedures to be followed, with regard to the data to be supplied on that occasion and, where applicable, the conditions on which the changes may be implemented.

#### **Section 3:44**

1. A credit institution, life insurer or non-life insurer having its registered office in a non-Member State that has decided to dissolve or wind up its branch office situated in the Netherlands, either fully or in part, shall consult the Dutch Central Bank on the manner in which the dissolution or winding-up will be effectuated at least 13 weeks before the decision is implemented.
2. Section 3:30(2) to (4) shall apply mutatis mutandis.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

#### **Section 3:45**

If a financial enterprise has been licensed to pursue the business of a bank and this licence does not include the provision of investment services or performance of investment activities, it may apply for an extension of the licence to these activities if it ensures and demonstrates that it complies with the provisions arising from Sections 4:91a, as regards the requirements applicable to the trading process and the settlement of transactions in a multilateral trading facility if the applicant intends to operate a multilateral trading facility, 4:14(2)(c) under 1° to 6° and 4:87 as regards the licence application.

#### **Section 3:46**

A credit institution having its registered office in a non-Member State that pursues its business from a branch office situated in the Netherlands and that is a subsidiary of a credit institution having its registered office in a non-Member State, shall be under sufficient consolidated supervision in the State where the latter credit institution has its registered office.

#### **Section 3:47**

1. A life insurer or non-life insurer having its registered office in a non-Member State that intends to pursue its business from a branch office situated in the Netherlands, shall appoint a person residing in the Netherlands as its representative.
2. The insurer's representative shall, by operation of law, have the same powers as the life insurer or non-life insurer as regards pursuing the business of a life insurer or non-life insurer respectively from the branch offices situated in the Netherlands. The representative shall exercise these powers insofar as the Dutch Central Bank so requests with a view to compliance with the provisions arising from this part.
3. The insurer's representative shall comply with the rules arising from this Act on the insurer's behalf. The lack of a representative or a default on its part shall not release the life insurer or non-life insurer from the obligation to comply with such rules.
4. On application, the Dutch Central Bank may, whether or not for a fixed period, grant a full or partial dispensation from Subsection (3), first sentence if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which this section seeks to achieve are achieved in other ways.
5. If the insurer's representative is a legal person, it shall in turn appoint a natural person residing in the Netherlands who may exclusively represent the legal person in exercising its powers and performing its obligations under this Act.
6. Rules shall be laid down by or pursuant to a Decree as regards the address of the representative appointed by a life insurer or non-life insurer having its registered office in a non-Member State to which information may be supplied in a legally valid manner, as well as regulations on the circumstances under which the representative will cease to be a representative and on the representative's succession.
7. The representative's place of residence shall be classified as the insurer's domicile in the Netherlands, on the understanding that, if the representative is a natural person with a place of business, this place of business shall be regarded as the insurer's domicile.
8. Sections 3:8 and 3:9 shall apply *mutatis mutandis* to the person that has been appointed as an insurer's representative and is a natural person, and to the natural person referred to in Subsection (5).

#### **Section 3:48**

A life insurer or non-life insurer having its registered office in a non-Member State that conducts its business by providing services to the Netherlands from a place of business in a non-Member State, shall notify the Dutch Central Bank of changes with regard to subjects on which data must be provided pursuant to Section 2:45. Provisions shall be laid down by or pursuant to a Decree, specifying the procedures to be followed, with regard to the changes to be reported, the data to be supplied on that occasion and, where applicable, the conditions on which

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*  
the changes may be implemented.

#### **3.3.4.4. Financial enterprises having their registered office outside the Netherlands**

##### **Section 3:49**

Section 3:29 shall apply mutatis mutandis to clearing institutions and funeral expenses and benefits in kind insurers having their registered office in a non-designated State that pursue their business from branch offices situated in the Netherlands.

##### **Section 3:50**

1. Section 3:44 shall apply mutatis mutandis to funeral expenses and benefits in kind insurers having their registered office in a non-designated State.
2. Section 3:47 shall apply mutatis mutandis to funeral expenses and benefits in kind insurers having their registered office outside the Netherlands.

##### **Section 3:51**

A funeral expenses and benefits in kind insurer having its registered office in a non-designated State may not conduct a business other than the business of a funeral expenses and benefits in kind insurer from a branch office situated in the Netherlands.

##### **Section 3:52**

A funeral expenses and benefits in kind insurer having its registered office in a non-designated State that pursues its business by providing services to the Netherlands shall notify the Dutch Central Bank of changes with regard to subjects on which data must be provided pursuant to Section 2:52. Provisions shall be laid down by or pursuant to a Decree, specifying the procedures to be followed, with regard to the changes to be reported, the data to be supplied on that occasion and, where applicable, the conditions on which the changes may be implemented.

#### **Part 3.3.5. Minimum equity capital**

##### **3.3.5.1. Financial enterprises having their registered office in the Netherlands**

##### **Section 3:53**

1. A management company of a collective investment scheme having its registered office in the Netherlands that offers units in the Netherlands, an investment firm having its registered office in the Netherlands that provides investment services or performs investment activities in the Netherlands, a depositary associated with a collective investment scheme having its registered office in the Netherlands of which units are offered in the Netherlands, a clearing institution, credit institution or insurer having its registered office in the Netherlands shall have a minimum amount of equity capital at its disposal.
2. Without prejudice to Subsection (1), an insurer as referred to in Subsection (1) shall have sufficient financial resources at its disposal to cover the costs of administrative procedures and the production network.
3. Rules shall be laid down by or pursuant to a Decree as regards the size and composition of the minimum amount of equity capital. In determining the minimum amount of equity capital, the term 'equity capital' shall be defined for the respective legal forms.
4. The minimum amount of equity capital for an insurer as referred to in Subsection (1) shall be expressed as the minimum amount of the guarantee fund.
5. If a management company, not being a management company of an enterprise for collective investment in transferable securities or a depositary as referred to in Subsection (1), expects or may reasonably expect that the minimum amount of its equity capital does not or will not comply with the rules referred to in Subsection (3),

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

it shall, without delay, notify the Dutch Central Bank of this.

6. On application, the Dutch Central Bank may, whether or not for a fixed period, grant a full or partial dispensation from Subsections (1) or (3) to a management company, investment firm, depositary, clearing institution or credit institution as referred to in Subsection (1), if the applicant demonstrates that it cannot reasonably comply with those subsections and that the objectives which this section seeks to achieve are achieved in other ways.

### **3.3.5.2. Financial enterprises having their registered office in a non-Member State**

#### **Section 3:54**

1. Section 3:53(1), (3), (4) and (6) shall apply mutatis mutandis to investment firms having their registered office in a non-Member State that provide investment services or perform investment activities in the Netherlands, and to credit institutions, life insurers and non-life insurers having their registered office in a non-Member State that pursue their business from branch offices situated in the Netherlands.
2. Section 3:53(2) shall apply mutatis mutandis to funeral expenses and benefits in kind insurers and non-life insurers having their registered office in a non-designated State that conduct their business from branch offices situated in the Netherlands.
3. Rules shall be laid down by or pursuant to a Decree as regards the minimum amount of the guarantee fund and the localisation of the assets representing the solvency margin of the branch office of the life insurer or non-life insurer. It may thereby be determined that certain acts of the life insurer or non-life insurer shall require the Dutch Central Bank's permission.

### **3.3.5.3. Financial enterprises having their registered office in a non-designated State**

#### **Section 3:55**

1. Section 3:53(1), (3), (4) and (6) shall apply mutatis mutandis to management companies of a collective investment scheme having its registered office in a non-designated State that offers units in the Netherlands, depositaries associated with a collective investment scheme having its registered office in a non-designated State of which units are offered in the Netherlands, and to clearing institutions and funeral expenses and benefits in kind insurers having their registered office in a non-designated State that pursue their business from branch offices situated in the Netherlands. Section 3:53(5) shall apply mutatis mutandis to management companies and depositaries as referred to in the preceding sentence.
2. Rules shall be laid down by or pursuant to a Decree as regards the minimum amount of the guarantee fund and the localisation of the assets representing the solvency margin of the branch office of the funeral expenses and benefits in kind insurer. It may thereby be determined that certain acts of the funeral expenses and benefits in kind insurer shall require the Dutch Central Bank's permission.

#### **Section 3:56**

Section 3:53(2) shall apply mutatis mutandis to funeral expenses and benefits in kind insurers having their registered office in a non-designated State that pursue their business from branch offices situated in the Netherlands.

### **Part 3.3.6. Solvency**

#### **3.3.6.1. Financial enterprises having their registered office in the Netherlands**

##### **Section 3:57**

1. A management company of an enterprise for collective investment in transferable securities having its registered office in the Netherlands that offers units in the Netherlands, an investment firm having its registered office in the Netherlands that provides investment services or performs investment activities in the Netherlands, a clearing institution, credit institution or insurer having its registered office in the Netherlands shall be

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*  
sufficiently solvent.

2. Rules shall be laid down by or pursuant to a Decree as regards the calculation of the minimum level of solvency, the composition of the solvency and the valuation of the assets included in the solvency. Rules shall also be laid down with regard to the guarantee fund referred to in Subsection (4).
3. The solvency to be maintained by a management company, investment firm, clearing institution or credit institution as referred to in Subsection (1) shall be expressed in terms of qualifying capital. The solvency to be maintained by an insurer as referred to in Subsection (1) shall be expressed as a solvency margin.
4. The guarantee fund shall constitute one third part of the minimum solvency margin calculated in accordance with Subsection (2) of an insurer as referred to in Subsection (1).
5. If a financial enterprise as referred to in Subsection (1) expects or may reasonably expect that its solvency does not or will not comply with the rules referred to in Subsection (2), it shall, without delay, notify the Dutch Central Bank of this.
6. On application, the Dutch Central Bank may, whether or not for a fixed period, grant a full or partial dispensation from Subsections (1) or (2) to a management company of an enterprise for collective investment in transferable securities, investment firm, clearing institution or credit institution as referred to in Subsection (1), if the applicant demonstrates that it cannot reasonably comply with those subsections and that the objectives which this section seeks to achieve are achieved in other ways.
7. Without prejudice to Subsection (1), the management company, investment firm, clearing institution or credit institution, the enterprise for collective investment in transferable securities that is an investment company having its registered office in the Netherlands, or the depositary associated with an enterprise for collective investment in transferable securities having its registered office in the Netherlands shall comply with rules to be laid down by or pursuant to a Decree as regards maintaining balance sheet items and off-balance sheet items.

### **3.3.6.2. Financial enterprises having their registered office in a non-Member State**

#### **Section 3:58**

1. Section 3:57 shall apply mutatis mutandis to investment firms having their registered office in a non-Member State that provide investment services or perform investment activities in the Netherlands, and to credit institutions, life insurers and non-life insurers having their registered office in a non-Member State that pursue their business from branch offices situated in the Netherlands.
2. Section 3:57 shall apply mutatis mutandis to life insurers and non-life insurers having their registered office in a non-Member State that conduct their business by providing services to the Netherlands from a place of business in a non-Member State.

#### **Section 3:59**

1. Section 3:57 shall apply mutatis mutandis to branch offices situated in the Netherlands of life insurers or non-life insurers having their registered office in a non-Member State.
2. Rules shall be laid down by or pursuant to a Decree as regards the guarantee fund and the localisation of the assets representing the solvency margin of the branch office of a financial enterprise as referred to in Subsection (1).

#### **Section 3:60**

1. On application, a life insurer or non-life insurer having its registered office in a non-Member State that pursues or intends to pursue its business from a branch office situated in the Netherlands and from a branch office situated in another Member State, may be granted a dispensation from the provisions arising from Sections 3:54(1) and (3) and 3:59, with the effect that:

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

- a. the solvency margin is calculated based on the entire business of the life insurer or non-life insurer which the life insurer or non-life insurer pursues from the branch offices situated in the Member States;
  - b. the assets representing the guarantee fund are situated in the Member State from which the solvency margin of the branch office is supervised; and
  - c. at least half of the minimum guarantee fund is kept in assets in accordance with the applicable regulations in the Member State from which the solvency margin of the branch office is supervised.
2. The application for the dispensation shall state the reasons for choosing the supervisory authority that will be responsible for supervising the solvency margin referred to in Subsection (1)(a).

### **3.3.6.3. Financial enterprises having their registered office in a non-designated State**

#### **Section 3:61**

1. Section 3:57 shall apply mutatis mutandis to clearing institutions and funeral expenses and benefits in kind insurers having their registered office in a non-designated State that pursue their business from branch offices situated in the Netherlands.
2. Section 3:57 shall apply mutatis mutandis to funeral expenses and benefits in kind insurers having their registered office in a non-designated State that pursue their business by providing services to the Netherlands from a place of business in a non-designated State.

#### **Section 3:62**

1. Section 3:57 shall apply mutatis mutandis to branch offices situated in the Netherlands of funeral expenses and benefits in kind insurers having their registered office in a non-designated State.
2. Rules shall be laid down by or pursuant to a Decree as regards the localisation of the assets representing the solvency margin of the branch office.

### **Part 3.3.7. Liquidity**

#### **3.3.7.1. Financial enterprises having their registered office in the Netherlands**

##### **Section 3:63**

1. A collective investment scheme having its registered office in the Netherlands whose units are repurchased or repaid in the Netherlands, either directly or indirectly, out of the assets at the unit holders' request, a clearing institution or credit institution having its registered office in the Netherlands shall be sufficiently liquid.
2. Rules shall be laid down by or pursuant to a Decree as regards the minimum level, the composition and the calculation of the liquidity of a financial enterprise as referred to in Subsection (1).
3. If a financial enterprise as referred to in Subsection (1) expects or may reasonably expect that its liquidity does not or will not comply with the rules referred to in Subsection (2), it shall, without delay, notify the Dutch Central Bank of this.
4. On application, the Dutch Central Bank may, whether or not for a fixed period, grant a full or partial dispensation from Subsections (1) or (2) if the applicant demonstrates that it cannot reasonably comply with those subsections and that the objectives which this section seeks to achieve are achieved in other ways.

#### **3.3.7.2. Financial enterprises having their registered office in another Member State**

##### **Section 3:64**

Section 3:63 shall apply mutatis mutandis to banks having their registered office in another Member State that pursue their business from branch offices situated in the Netherlands.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

### **3.3.7.3. Financial enterprises having their registered office in a non-Member State**

#### **Section 3:65**

Section 3:63 shall apply mutatis mutandis to credit institutions having their registered office in a non-Member State that pursue their business from branch offices situated in the Netherlands.

### **3.3.7.4. Financial enterprises having their registered office in a non-designated State**

#### **Section 3:66**

Section 3:63 shall apply mutatis mutandis to collective investment schemes having their registered office in a non-designated State whose units are repurchased or repaid in the Netherlands, either directly or indirectly, out of the assets at the unit holders' request, and to clearing institutions having their registered office in a non-designated State that pursue their business from branch offices situated in the Netherlands.

### **Part 3.3.8. Technical facilities**

#### **3.3.8.1. Insurers having their registered office in the Netherlands**

##### **Section 3:67**

1. An insurer having its registered office in the Netherlands shall maintain adequate technical facilities. The technical facilities shall be fully covered by assets.
2. A life insurer having its registered office in the Netherlands shall determine the premiums for life insurance contracts in an adequate manner, with due regard for all the financial aspects of its enterprise.
3. The insurer shall fully cover the liabilities arising from claims as referred to in Section 3:198(2)(b), (c), and (d), (3)(a), (b) and (c), or (4)(a), (b) and (c) by assets.
4. Rules shall be laid down by or pursuant to a Decree as regards:
  - a. the provisions of Subsections (1) and (3); and
  - b. the localisation of the assets referred to in Subsections (1) and (3), and the currency in which those assets are denominated.
5. On application, the Dutch Central Bank may, whether or not for a fixed period, grant a full or partial dispensation from the provisions arising from Subsection (4)(a), where it concerns rules relating to the cover by assets of the technical facilities and the liabilities referred to in Subsection (3), or from Subsection (4)(b), if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which this section seeks to achieve are achieved in other ways.

#### **3.3.8.2. Life insurers and non-life insurers having their registered office in a non-Member State**

##### **Section 3:68**

1. A life insurer or non-life insurer having its registered office in a non-Member State shall maintain adequate technical facilities for liabilities assumed from a branch office situated in the Netherlands under life insurance contracts and non-life insurance contracts respectively. The technical facilities shall be fully covered by assets.
2. Section 3:67(2), first sentence shall apply mutatis mutandis to life insurers as referred to in Subsection (1).
3. The life insurer or non-life insurer shall fully cover the liabilities arising from claims as referred to in Section 3:198(2)(b), (c) and (d), or (3)(a), (b) and (c), by assets.
4. Section 3:67(4) and (5) shall apply mutatis mutandis to life insurers and non-life insurers.



Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

### **3.3.8.3. Funeral expenses and benefits in kind insurers having their registered office in a non-designated State**

#### **Section 3:69**

1. A funeral expenses and benefits in kind insurer having its registered office in a non-designated State shall maintain adequate technical facilities for liabilities assumed from a branch office situated in the Netherlands under funeral expenses and benefits in kind insurance contracts. The technical facilities shall be fully covered by assets.
2. The funeral expenses and benefits in kind insurer shall fully cover the liabilities arising from claims as referred to in Section 3:198(4)(a), (b) and (c) by assets.
3. Section 3:67(4) and (5) shall apply mutatis mutandis to funeral expenses and benefits in kind insurers.

#### **4. Part 3.3.9. Accounting and reporting**

##### **3.3.9.1. Financial enterprises having their registered office in the Netherlands**

#### **Section 3:70**

1. The financial year of an insurer having its registered office in the Netherlands shall coincide with the calendar year.
2. On application, the Dutch Central Bank may, whether or not for a fixed period, grant a dispensation from Subsection (1) if the applicant demonstrates that it cannot reasonably comply with that subsection and that the objectives which this section seeks to achieve are achieved in other ways.

#### **Section 3:71**

1. A clearing institution, reinsurer, credit institution or insurer having its registered office in the Netherlands shall provide the Dutch Central Bank within six months of the end of the financial year with the annual accounts, the annual report and the other information referred to in Sections 361(1) and 391(1) and 392(1)(a) to (h) respectively of Book 2 of the Dutch Civil Code.
2. Rules shall be laid down by or pursuant to a Decree as regards the manner in which the annual accounts, the annual report and the other information will be provided.
3. Without prejudice to the provisions of Title 9 of Book 2 of the Dutch Civil Code, the Dutch Central Bank may, on application, whether or not for a fixed period, grant a full or partial dispensation from Subsection (1) if the applicant demonstrates that it cannot reasonably comply with that subsection and that the objectives which this section seeks to achieve are achieved in other ways.

#### **Section 3:72**

1. An investment firm having its registered office in the Netherlands that provides investment services or performs investment activities in the Netherlands, a clearing institution or credit institution having its registered office in the Netherlands shall periodically provide the Dutch Central Bank, within the terms specified for that purpose, with the statements, which may include consolidated statements, required by the latter in order to supervise compliance with the provisions laid down by or pursuant to this part.
2. Subsection (1) shall not apply to financial enterprises as referred to in Subsection (1) that have been granted a dispensation as referred to in Section 3:57(6) or 3:63(4).
3. An insurer having its registered office in the Netherlands shall periodically provide the Dutch Central Bank, within the terms specified for that purpose, with the statements required by the latter in order to supervise compliance with the provisions laid down by or pursuant to this part.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

4. If a life insurer or funeral expenses and benefits in kind insurer having its registered office in the Netherlands has concluded a new type of life insurance or funeral expenses and benefits in kind insurance contract, it shall enclose with the statements a summary of the technical principles for the calculation of the rate concerned and of the technical facilities concerned. With the statements, the life insurer or funeral expenses and benefits in kind insurer shall also enclose a summary of the changes in the technical principles for the calculation of its rates and of the technical facilities.
5. Rules shall be laid down by or pursuant to a Decree as regards the content and models of the statements and the manner, periodicity and terms of their submission, which rules shall also stipulate which statements will be submitted and which statements will be made public.
6. If an event occurs or has occurred which seriously affects or may seriously affect the financial position of a financial enterprise as referred to in Subsections (1) or (3), the Dutch Central Bank may prescribe that one or more statements must temporarily be submitted with a higher frequency or within a shorter period than would be required pursuant to Subsection (5). These statements shall not be made public.
7. Statements submitted by a clearing institution, credit institution or insurer shall periodically be accompanied by a statement issued by an auditor regarding the fair presentation. The Dutch Central Bank may stipulate that statements submitted by an investment firm must be accompanied by a statement as referred to in the first sentence. The auditor shall certify the statements concerned. Rules shall be laid down by or pursuant to a Decree as regards the audit and the certification of the statements.
8. On application, the Dutch Central Bank may, whether or not for a fixed period, grant a full or partial dispensation from Subsections (1) or (3) if the applicant demonstrates that it cannot reasonably comply with those subsections and that the objectives which this section seeks to achieve are achieved in other ways.
9. An insurer shall make the statements to be made public pursuant to Subsection (5) available for public inspection at all its offices in the Netherlands up to 18 months following the end of the financial year. During that period, it shall, on request, issue copies on payment of a fee not exceeding the cost price.
10. The Dutch Central Bank shall periodically publish the most important aggregated data based on the statements it has received pursuant to Subsection (1) from credit institutions having their registered office in the Netherlands.

### **Section 3:73**

One of the statements referred to in Section 3:72(3) shall include the actuarial report. The actuarial report shall be accompanied by an actuary's statement to the effect that the latter ascertained that the provisions listed in the actuarial report were adequately established. The actuary shall certify the statements concerned. The actuary may provide explanatory notes to its statement or make reservations on any point. Rules shall be laid down by or pursuant to a Decree as regards the audit of the actuarial report.

### **Section 3:74**

1. Within six months of the end of the financial year, a life insurer or non-life insurer having its registered office in the Netherlands shall provide the Dutch Central Bank with a summary of the life insurance contracts and non-life insurance contracts concluded from places of business situated in the Netherlands or other Member States, separately listing the insurance contracts concluded as a result of the provision of services to other Member States.
2. Rules shall be laid down by or pursuant to a Decree as regards the content and models of the summaries and the manner in which these will be submitted.
3. Subsection (1) shall not apply to the life insurance or non-life insurance contracts concluded from the places of business in the Netherlands that do not involve any provision of services.
4. The Dutch Central Bank shall supply the data referred to in Subsection (1) with regard to a Member State in

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

aggregated form to the supervisory authority of that Member State where the latter so requests.

### **Section 3:74a**

1. A bank or investment firm having its registered office in the Netherlands shall disclose at least once a year the information referred to in Annex XII, sections 2 and 3, to the Recast Banking Directive that influences or may influence the opinion or decision of any party taking decisions of a financial nature on the basis of that information. The financial enterprise shall disclose some or all of that information with a higher frequency if this should be necessary with a view to the nature of its activities.
2. The financial enterprise may refrain from disclosing this information if such disclosure were to affect its competitive position or reduce the value of its investments, or if the information relates to obligations towards customers or to relations with other counterparties that are subject to a duty of secrecy. In that case, the financial enterprise shall state in the information disclosed pursuant to Subsection (1) that certain information is missing, and why this information is missing. In the place of the missing information, it shall disclose aggregated information in respect of the substance of the missing information.
3. The financial enterprise shall describe how it will disclose the information referred to in Subsection (1) and how and with what frequency it will verify the accuracy of this information. It shall provide this description to the Dutch Central Bank before the end of the financial year to which the information relates. If the information is not disclosed in the documents referred to in Section 3:71(1) or 4:85(1), the financial enterprise shall indicate in those documents in what manner the information will be disclosed.
4. Where the exercise of prudential supervision requires this, the Dutch Central Bank may decide that a financial enterprise:
  - a. must disclose certain information as referred to in Subsection (1);
  - b. must disclose information as referred to in Subsection (1) with a particular frequency or by a particular deadline;
  - c. must disclose information as referred to in Subsection (1) in a particular manner; or
  - d. must verify in a particular manner the accuracy of information as referred to in Subsection (1) for which there is no statutory verification requirement.

### **3.3.9.2. Financial enterprises having their registered office in another Member State**

#### **Section 3:75**

A bank having its registered office in another Member State that pursues its business from a branch office situated in the Netherlands shall keep at least one set of separate accounts relating to the branch office situated in the Netherlands, in such a way as to enable the Dutch Central Bank to supervise compliance with the provisions arising from Section 3:63 in conjunction with Section 3:64.

#### **Section 3:76**

1. A bank having its registered office in another Member State that pursues its business from a branch office situated in the Netherlands shall provide the Dutch Central Bank within six months of the end of the financial year with the annual accounts, the consolidated accounts and the annual report.
2. The annual accounts shall be accompanied by a statement regarding the fair presentation, issued by an auditor or by an expert competent to audit the annual accounts under the law of the Member State where the bank has its registered office.

#### **Section 3:77**

Where the Dutch Central Bank requests this, a branch office situated in the Netherlands of a bank having its registered office in another Member State shall provide the Dutch Central Bank, whether or not periodically, with statements as referred to in Section 3:72(1) which the latter requires in order to supervise compliance with the provisions arising from Section 3:63 in conjunction with Section 3:64. Section 3:72(5) to (8) and (10) shall apply

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*  
mutatis mutandis.

### **Section 3:78**

1. A life insurer or non-life insurer having its registered office in another Member State that pursues its business from a branch office situated in a non-Member State by providing services to the Netherlands shall, within six months of the end of the financial year, provide the Dutch Central Bank with a summary of the life insurance or non-life insurance contracts concluded from the branch offices as a result of the provision of services to the Netherlands.
2. Rules shall be laid down by or pursuant to a Decree as regards the content and models of the summaries and the manner in which these will be submitted.

### **3.3.9.3. Financial enterprises having their registered office in a non-Member State**

#### **Section 3:79**

Section 3:70 shall apply mutatis mutandis to life insurers and non-life insurers having their registered office in a non-Member State that pursue their business from branch offices situated in the Netherlands.

#### **Section 3:80**

Section 3:75 shall apply mutatis mutandis to credit institutions, life insurers and non-life insurers having their registered office in a non-Member State that pursue their business from branch offices situated in the Netherlands.

#### **Section 3:81**

1. A credit institution, life insurer or non-life insurer having its registered office in a non-Member State that pursues its business from a branch office situated in the Netherlands shall, within six months of the end of the financial year, provide the Dutch Central Bank with the annual accounts, the consolidated accounts and the annual report.
2. Rules shall be laid down by or pursuant to a Decree as regards the manner in which the annual accounts, the consolidated accounts and the annual report will be submitted.
3. The annual accounts shall be accompanied by a statement regarding the fair presentation, or by a statement equivalent to the statement regarding the fair presentation, issued by an auditor or by an expert competent to audit the annual accounts under the law of the State where the financial enterprise referred to in Subsection (1) has its registered office.

#### **Section 3:82**

1. Section 3:72(1) and (5) to (8) shall apply mutatis mutandis to investment firms having their registered office in a non-Member State that provide investment services or perform investment activities in the Netherlands, and to branch offices situated in the Netherlands of credit institutions having their registered office in a non-Member State, on the understanding that the statements shall be accompanied by a statement regarding the fair presentation, or by a statement equivalent to the statement regarding the fair presentation, issued by an auditor or by an expert competent to audit the statements under the law of the State where the investment firm has its registered office. Section 3:72(10) shall apply mutatis mutandis to branch offices situated in the Netherlands of credit institutions having their registered office in a non-Member State.
2. Sections 3:72(3) and (5) to (9) and 3:73 shall apply mutatis mutandis to branch offices in the Netherlands of life insurers or non-life insurers having their registered office in a non-Member State, on the understanding that the statements shall be accompanied by a statement regarding the fair presentation, or by a statement equivalent to the statement regarding the fair presentation, issued by an auditor or by an expert competent to audit the statements under the law of the State where the life insurer or non-life insurer has its registered office. Section 3:72(4) shall apply mutatis mutandis to branch offices situated in the Netherlands of life insurers having their registered office in a non-Member State.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

#### **Section 3:83**

1. A life insurer or non-life insurer having its registered office in a non-Member State shall, within six months of the end of the financial year, provide the Dutch Central Bank with a summary of the life insurance contracts and non-life insurance contracts concluded from the branch offices situated in the Netherlands as a result of the provision of services to other Member States.
2. Rules shall be laid down by or pursuant to a Decree as regards the content and models of the summaries and the manner in which these will be submitted.
3. Section 3:74(4) shall apply mutatis mutandis.
4. Section 3:78 shall apply mutatis mutandis to life insurers and non-life insurers having their registered office in a non-Member State that provide services to the Netherlands.

#### **3.3.9.4. Financial enterprises having their registered office outside the Netherlands**

##### **Section 3:84**

Section 3:70 shall apply mutatis mutandis to funeral expenses and benefits in kind insurers having their registered office in a non-designated State that pursue their business from branch offices situated in the Netherlands.

##### **Section 3:85**

1. Sections 3:75 and 3:81 shall apply mutatis mutandis to clearing institutions and funeral expenses and benefits in kind insurers having their registered office in a non-designated State that conduct their business from branch offices situated in the Netherlands.
2. Section 3:81 shall apply mutatis mutandis to reinsurers having their registered office outside the Netherlands that pursue their business from branch offices situated in the Netherlands.

##### **Section 3:86**

1. Section 3:72(1) and (5) to (8) shall apply mutatis mutandis to branch offices situated in the Netherlands of clearing institutions having their registered office in a non-designated State, on the understanding that the statements shall be accompanied by a statement regarding the fair presentation, or by a statement equivalent to the statement regarding the fair presentation, issued by an auditor or by an expert competent to audit the statements under the law of the State where the clearing institution has its registered office.
2. Sections 3:72 (3) to (9) and 3:73 shall apply mutatis mutandis to branch offices situated in the Netherlands of funeral expenses and benefits in kind insurers having their registered office in a non-designated State, on the understanding that the statements shall be accompanied by a statement regarding the fair presentation, or by a statement equivalent to the statement regarding the fair presentation, issued by an auditor or by an expert competent to audit the statements under the law of the State where the funeral expenses and benefits in kind insurer has its registered office.

##### **Section 3:87**

1. A funeral expenses and benefits in kind insurer having its registered office in a non-designated State that pursues its business by providing services to the Netherlands shall, within six months of the end of the financial year, provide the Dutch Central Bank with a summary of the funeral expenses and benefits in kind insurance contracts concluded as a result of the provision of services to the Netherlands.
2. Rules shall be laid down by or pursuant to a Decree as regards the content and models of the summaries referred to in Subsection (1) and the manner in which these will be submitted.

#### **Part 3.3.10. Notification obligations of the auditor and the actuary**

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

### **3.3.10.1. Financial enterprises having their registered office in the Netherlands**

#### **Section 3:88**

1. An auditor auditing the annual accounts of a management company of a collective investment scheme having its registered office in the Netherlands of which units are offered in the Netherlands, a collective investment scheme of which units are offered in the Netherlands, an investment firm having its registered office in the Netherlands that provides investment services or performs investment activities in the Netherlands, a clearing institution, credit institution or insurer having its registered office in the Netherlands, or auditing the statements of a financial enterprise having its registered office in the Netherlands as referred to in Section 3:72(1) or (3), shall notify the Dutch Central Bank as soon as possible of any circumstance which came to its attention during the audit and which:
  - a. is contrary to the obligations imposed pursuant to this part; or
  - b. threatens the continuity of the financial enterprise.
2. An auditor auditing the annual accounts of a clearing institution, credit institution or insurer having its registered office in the Netherlands, or auditing the statements of a financial enterprise having its registered office in the Netherlands as referred to in Section 3:72(1) or (3), shall notify the Dutch Central Bank as soon as possible of any circumstance which came to its attention during the audit and which causes it to withhold a statement regarding the fair presentation or to make reservations.
3. Subsections (1) and (2) shall apply mutatis mutandis to an auditor that, apart from auditing the annual accounts or the statements referred to in Subsection (1) and (2), also audits the annual accounts or the statements of a person to which a financial enterprise as referred to in Subsections (1) or (2) is affiliated in a formal or actual control structure.
4. The auditor referred to in Subsection (2) shall provide the Dutch Central Bank as soon as possible with information to be specified by Decree for the purpose of the supervision of the financial enterprise. Rules shall be laid down by Decree as regards the procedures to be observed.
5. The Dutch Central Bank shall provide the financial enterprise with the opportunity to be present when the auditor makes the notification referred to in Subsections (1) or (2) and when the auditor supplies the information referred to in Subsection (4).
6. The auditor that has made a notification pursuant to Subsections (1), (2) or (3) or has supplied information to the Dutch Central Bank pursuant to Subsection (4) shall not be liable for subsequent third-party losses, unless it is demonstrated that, in view of all the facts and circumstances, it should not within reason have made the notification or supplied the information.

#### **Section 3:89**

1. The actuary auditing the actuarial report of an insurer as referred to in Section 3:73 shall provide the Dutch Central Bank as soon as possible with information to be specified by Decree for the purpose of the supervision of the insurer. Rules shall be laid down by Decree as regards the procedures to be observed.
2. The Dutch Central Bank shall provide the insurer with the opportunity to be present when the actuary supplies the information.
3. Section 3:88(6) shall apply mutatis mutandis to actuaries that have supplied information to the Dutch Central Bank pursuant to Subsection (1).

### **3.3.10.2. Financial enterprises having their registered office in another Member State**

#### **Section 3:90**

Section 3:88 shall apply mutatis mutandis to auditors auditing the statements, as referred to in Section 3:77, of a branch office situated in the Netherlands of a bank having its registered office in another Member State.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

### **3.3.10.3. Financial enterprises having their registered office in a non-Member State**

#### **Section 3:91**

Section 3:88 shall apply mutatis mutandis to auditors or other experts auditing the statements, as referred to in Section 3:82(1) or (2), of a branch office situated in the Netherlands of an investment firm, credit institution, life insurer or non-life insurer having its registered office in a non-Member State, or of an investment firm having its registered office in a non-Member State that provides services to the Netherlands.

#### **Section 3:92**

Section 3:89 shall apply mutatis mutandis to actuaries auditing the actuarial report, as referred to in Section 3:82(2), of a branch office situated in the Netherlands of a life insurer or non-life insurer having its registered office in a non-Member State.

### **3.3.10.4. Financial enterprises having their registered office outside the Netherlands**

#### **Section 3:93**

Section 3:88 shall apply mutatis mutandis to auditors or other experts auditing the statements, as referred to in Section 3:86(1) or (2), of a branch office situated in the Netherlands of a clearing institution or funeral expenses or benefits in kind insurer having its registered office in a non-designated State.

#### **Section 3:94**

Section 3:89 shall apply mutatis mutandis to actuaries auditing the actuarial report, as referred to in Section 3:86(2), of a branch office situated in the Netherlands of a funeral expenses and benefits in kind insurer having its registered office in a non-designated State.

### **Part 3.3.11. Qualifying holdings in and by financial enterprises**

#### **3.3.11.1. Financial enterprises having their registered office in the Netherlands**

##### **Section 3:95**

1. No party may, except after obtaining a declaration of no objection from the Dutch Central Bank or, in the cases referred to in Section 3:97, from Our Minister, own, acquire or increase a qualifying holding or exercise any control attached to a qualifying holding in a:
  - a. bank having its registered office in the Netherlands;
  - b. management company of an enterprise for collective investment in transferable securities having its registered office in the Netherlands;
  - c. investment firm having its registered office in the Netherlands; or
  - d. insurer having its registered office in the Netherlands.
2. The applicant for a declaration of no objection shall file an application with the Dutch Central Bank that contains the data to be specified by or pursuant to a Decree. However, the application for a declaration of no objection in respect of a qualifying holding in a financial enterprise as referred to in Subsection (1)(b) or (c) may be filed with the Authority for the Financial Markets if that financial enterprise does not hold a licence when applying for the declaration of no objection.
3. The Dutch Central Bank shall forward an application for a declaration of no objection in respect of an act as referred to in Section 3:97(1) to Our Minister, accompanied by its recommendation.

##### **Section 3:96**

1. No bank having its registered office in the Netherlands may, except after obtaining a declaration of no objection from the Dutch Central Bank or, in the cases referred to in Section 3:97(1), from Our Minister:

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

- a. reduce its equity capital through a repayment of capital or a distribution of reserves, or make a distribution from the provision for general banking risks referred to in Section 424 of Book 2 of the Dutch Civil Code;
  - b. acquire or increase a qualifying holding in a bank, an investment firm, a financial institution or an insurer, if the balance sheet total of that bank, investment firm, financial institution or insurer at the time of the acquisition or increase exceeds one percent of the consolidated balance sheet total of the bank referred to in the opening words;
  - c. acquire or increase a qualifying holding in an enterprise, not being a financial enterprise as referred to under (b), if the amount paid for the acquisition or increase of that qualifying holding, together with the amounts paid for the acquisition and previous increases of that holding, exceeds one percent of the consolidated available equity capital of the bank referred to in the opening words;
  - d. take over all or a major part of the assets and liabilities of another enterprise or institution, directly or indirectly, if the total amount of the assets or the liabilities to be taken over exceeds one percent of the consolidated balance sheet total of the bank referred to in the opening words;
  - e. merge with another enterprise or institution, if the balance sheet total of the enterprise or institution involved in the merger exceeds one percent of the consolidated balance sheet total of the bank referred to in the opening words;
  - f. carry out a financial or corporate reorganisation;
  - g. have a managing partner join the bank.
2. The applicant for a declaration of no objection shall file an application with the Dutch Central Bank that contains the data to be specified by or pursuant to a Decree. The Dutch Central Bank shall forward an application for a declaration of no objection in respect of an act as referred to in Section 3:97(1) to Our Minister, accompanied by its recommendation.
  3. Subsection (1) shall not apply to qualifying holdings in companies whose assets consist of liquid resources for more than 90 percent at the moment when the bank acquires the qualifying holding. Provisions shall be laid down by or pursuant to a Decree as regards the assets that may be classified as liquid resources.
  4. Further rules shall be laid down by or pursuant to a Decree in respect of Subsection (1)(c).
  5. A qualifying holding as referred to in Subsection (1)(b)(c) shall not include the voting rights attached to shares which a bank may exercise because of a pledge acquired on the shares, and the voting rights attached to shares which depositaries of shares cannot exercise at their own discretion.

### **Section 3:97**

1. Our Minister shall decide on an application for a declaration of no objection in respect of:
  - a. owning, acquiring or increasing a qualifying holding as referred to in Section 3:95(1), opening words and under (a), or exercising any control attached to a qualifying holding, in a bank having its registered office in the Netherlands which, based on its balance sheet total as at the end of the year preceding the application, was one of the five largest banks having their registered office in the Netherlands, by:
    - 1°. a bank having its registered office in the Netherlands which, based on its balance sheet total as at the end of the year preceding the application, was one of the five largest banks having their registered office in the Netherlands;
    - 2°. an insurer having its registered office in the Netherlands which, based on its gross premium revenue in the year preceding the application, was one of the five largest insurers having their registered office in the Netherlands; or
    - 3°. any party not belonging to the categories referred to under 1° and 2°, in the event of a proposed interest of more than 20 percent;
  - b. owning, acquiring or increasing a qualifying holding as referred to in Section 3:95(1), opening words and under (d), or exercising any control attached to a qualifying holding, in an insurer having its registered office in the Netherlands which, based on its gross premium revenue in the year preceding the application, was one of the five largest insurers having their registered office in the Netherlands, by:
    - 1°. a bank having its registered office in the Netherlands which, based on its balance sheet total as at the end of the year preceding the application, was one of the five largest banks having their registered office in the Netherlands;
    - 2°. an insurer having its registered office in the Netherlands which, based on its gross premium revenue in



Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

- the year preceding the application, was one of the five largest insurers having their registered office in the Netherlands; or
- 3°. any party not belonging to the categories referred to under 1° and 2°, in the event of a proposed interest of more than 20 percent;
- c. acquiring or increasing a qualifying holding as referred to in Section 3:96(1), opening words and under (b), by a bank having its registered office in the Netherlands which, based on its balance sheet total as at the end of the year preceding the application, was one of the five largest banks having their registered office in the Netherlands, in:
- 1°. a bank having its registered office in the Netherlands which, based on its balance sheet total as at the end of the year preceding the application, was one of the five largest banks having their registered office in the Netherlands;
- 2°. a bank having its registered office in another Member State or in a non-Member State, if the balance sheet total of that bank as at the end of the year preceding the application exceeded 5 percent of the balance sheet total of the acquiring bank as at the end of the year preceding the application; or
- 3°. an insurer having its registered office in the Netherlands which, based on its gross premium revenue for the year preceding the application, was one of the five largest insurers having their registered office in the Netherlands; and
- d. a merger as referred to in Section 3:96(1)(e) by a bank having its registered office in the Netherlands which, based on its balance sheet total as at the end of the year preceding the application, was one of the five largest banks having their registered office in the Netherlands, with:
- 1°. a bank having its registered office in the Netherlands which, based on its balance sheet total as at the end of the year preceding the application, was one of the five largest banks having their registered office in the Netherlands; or
- 2°. a bank having its registered office in another Member State or in a non-Member State, if the balance sheet total of that bank as at the end of the year preceding the application exceeded 5 percent of the balance sheet total of the acquiring bank as at the end of the year preceding the application.
2. Our Minister shall issue a declaration of no objection in respect an act as referred to in Subsection (1), unless such act might or would lead to an undesirable development in the financial sector, or the Dutch Central Bank is of the opinion that one of the considerations referred to in Sections 3:100, opening words and under (a) or (b), or 3:101, opening words and under (a) or (b), forms an obstacle to the granting of a declaration of no objection.
3. If Our Minister renders a decision under Subsection (1) on an application for a declaration of no objection, he may, by operation of law, exercise all the powers conferred on the Dutch Central Bank under Parts 1.4.1 and 1.4.2 as well as all the powers conferred on the Dutch Central Bank under this part in respect of compliance with the provisions arising from this part.

### **Section 3:98**

1. Section 3:95(1), opening words and under (c) shall not apply to acts regarding which a declaration of no objection was issued pursuant to Sections 3:95(1), opening words and under (a), or 3:96(1).
2. Furthermore, Section 3:95(1), opening words and under (c) shall not apply to acts regarding which a declaration of no objection is not required pursuant to Section 3:96(1), opening words and under (b) or (c).

### **Section 3:99**

1. The properness of the applicant and holder of a declaration of no objection that, based on its qualifying holding, might determine or co-determine or would determine or co-determine the policy of the enterprise concerned, shall be beyond doubt.
2. Properness shall be beyond doubt once this has been established for the purposes of this Act by a supervisor, as long as a change in the relevant facts or circumstances has not given reasonable cause for a reassessment.
3. Rules shall be laid down by or pursuant to a Decree as regards the manner in which to establish whether the properness of a person as referred to in Subsection (1) is beyond doubt and which facts and circumstances must be considered in that respect.

### **Section 3:100**

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

The Dutch Central Bank shall issue a declaration of no objection in respect of an act as referred to in Section 3:95(1), unless:

- a. the act might or would lead to an influence on the financial enterprise concerned that would jeopardise the sound and prudent operations of that enterprise;
- b. in the case of an act as referred to in Section 3:95(a) or (d), the act might or would have the effect that the financial enterprise concerned becomes affiliated to persons in a formal or actual control structure that is so lacking in transparency that it would constitute an impediment to the adequate exercise of supervision of that financial enterprise; or
- c. in the case of an act as referred to in Section 3:95(a) or (d), the act might or would lead to an undesirable development in the financial sector.

### **Section 3:101**

The Dutch Central Bank shall issue a declaration of no objection in respect of an act as referred to in Section 3:96(1), unless:

- a. the act might or would be contrary the solvency provisions regarding the bank concerned under Section 3:57(1) and (2);
- b. the act might or would be contrary in other ways to sound and prudent operations; or
- c. the act might or would lead to an undesirable development in the financial sector.

### **Section 3:102**

1. Where a declaration of no objection is issued, the applicant may, on application, also be granted permission to increase its qualifying holding, whereby the upper limit may be 20, 33, 50 or 100 percent.
2. Where a declaration of no objection is issued in respect of a qualifying holding as referred to in Section 3:95(1), such declaration of no objection may, on application, be declared applicable to all the group companies collectively.
3. Where a declaration of no objection as referred to in Section 3:96(1) is issued, it may concern:
  - a. indirect holdings acquired or to be acquired by the applicant through a subsidiary; or
  - b. indirect holdings acquired or to be acquired by the applicant, not being holding as referred to under (a), insofar as these holdings were or will be acquired outside the applicant's sphere of influence.

### **Section 3:103**

1. The Dutch Central Bank shall be notified beforehand of any change in a qualifying holding in a financial enterprise as referred to in Section 3:95(1):
  - a. as a result of which the size of this holding increases beyond 20, 33, 50 or 95 percent or becomes 100 percent, or as a result of which the financial enterprise concerned becomes a subsidiary; or
  - b. as a result of which the size of this holding falls below 10, 20, 33, 50, 95 or 100 percent, or as a result of which the financial enterprise concerned ceases to be a subsidiary.
2. A financial enterprise as referred to in Section 3:95(1) shall inform the Dutch Central Bank in July of each year of the identity of every person owning a qualifying holding in this financial enterprise, insofar as it is aware of this identity. Furthermore, the financial enterprise shall inform the Dutch Central Bank, as soon as it becomes aware of this, of every acquisition of, disposal of or change in a qualifying holding in this financial enterprise:
  - a. as a result of which the size of this holding increases beyond 20, 33, 50 or 95 percent or becomes 100 percent, or as a result of which the financial enterprise concerned becomes a subsidiary; or
  - b. as a result of which the size of this holding falls below 10, 20, 33, 50, 95 or 100 percent, or as a result of which the financial enterprise concerned ceases to be a subsidiary.
3. If the size of a holding regarding which a declaration of no objection was issued falls below 10 percent, the

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

declaration of no objection shall lapse by operation of law.

### **Section 3:104**

1. Without prejudice to Sections 1:102(2) and 1:105(1), opening words and under (c), the Dutch Central Bank may attach limitations or conditions to a declaration of no objections as referred to in Section 3:95(1) or 3:96(1), based on the considerations referred to in Section 3:100 or 3:101.
2. If any party exercises control relating to a qualifying holding in a financial enterprise as referred to in Section 3:95(1) without having obtained a declaration of no objection or without observing the limitations attached to the declaration of no objection, a decision adopted owing in part to the control exercised shall be capable of annulment. The decision may be declared null and void on the demand of the Dutch Central Bank. In that event, the decision shall be declared null and void by the court within whose jurisdiction the financial enterprise has its registered office if, but for the exercise of the control concerned, the decision would have been different or would not have been adopted, unless a declaration of no objection is issued or the non-observed limitations are revoked before the date of the judgment. Where necessary, the court shall make arrangements for the consequences of the annulment.
3. The Dutch Central Bank may, by issuing an instruction, order any party failing to comply with Section 3:95(1) to adhere to a particular line of conduct within a term specified by the Dutch Central Bank with regard to the points set out in the instruction order.

### **Section 3:105**

1. The Dutch Central Bank shall inform the financial enterprise in which the qualifying holding is owned, acquired or increased of the issuance of the declaration of no objection referred to in Section 3:95(1). If the application for a declaration of no objection was filed with the Authority for the Financial Markets in accordance with Section 3:95(2), second sentence, the Dutch Central Bank shall send the declaration of no objection issued to the Authority for the Financial Markets. The Authority for the Financial Markets shall inform the financial enterprise concerned of the declaration of no objection issued.
2. The Dutch Central Bank shall publish a notification of the issuance of a declaration of no objection in the Government Gazette, unless the publication would or might lead to a disproportionate advantage or disadvantage for interested parties.
3. Without prejudice to Sections 1:104 and 1:105(1), opening words and under (c), the Dutch Central Bank may withdraw the declaration of no objection, either fully or in part:
  - a. if a new declaration of no objection is issued to the holder which concerns or also concerns acts regarding which the declaration of no objection to be withdrawn was issued; or
  - b. if the holder of a declaration of no objection fails to adhere to the line of conduct prescribed to that holder by the Dutch Central Bank pursuant to Section 1:75.
4. Without prejudice to Sections 1:104 and 1:105(1), opening words and under (c), the Dutch Central Bank may attach further limitations or conditions to a declaration of no objection or withdraw such declaration if circumstances occur or facts become known in respect of the act regarding which the declaration of no objection was issued which:
  - a. in the case of an act, might or would lead to an influence on the financial enterprise concerned that would jeopardise the sound and prudent operations of that enterprise;
  - b. in the case of an act as referred to in Section 3:95(a) or (d), might or would have the effect that the financial enterprise concerned becomes affiliated to persons in a formal or actual control structure that is so lacking in transparency that it would constitute an impediment to the adequate exercise of supervision of that financial enterprise; or
  - c. in the case of an act as referred to in Section 3:95(1)(a) or (d), or an act as referred to in Section 3:96(1), might or would lead to an undesirable development in the financial sector.
5. The Dutch Central Bank shall inform the financial enterprise concerned of the amendment or withdrawal of a

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

declaration of no objection.

6. The Dutch Central Bank shall publish a notification of the amendment or withdrawal of a declaration of no objection in the Government Gazette, unless the publication would or might lead to a disproportionate advantage or disadvantage for interested parties.

### **Section 3:106**

1. Rules may be laid down by or pursuant to a Decree as regards holders of a declaration of no objection of which at least one subsidiary is an investment firm holding a licence as referred to in Section 2:96, so as to preclude that the act regarding which the declaration of no objection is issued might or would lead to an influence on the investment firm that is contrary to the financial soundness of that investment firm.
2. The rules referred to in Subsection (1) may solely relate to financial safeguards, to data and information to be supplied and to the form in which such data and information will be supplied.
3. On application, the Dutch Central Bank shall, whether or not for a fixed period, grant a full or partial dispensation from Subsection (1) if the holder of the declaration of no objection demonstrate that it cannot reasonably comply with those rules and that the objectives which these rules seek to achieve are achieved in other ways.

### **Section 3:107**

Once a year, the Dutch Central Bank shall provide Our Minister with the data at its disposal pursuant to Section 3:103(1) and (2).

### **Section 3:108**

1. Any party intending to own, acquire or increase a qualifying holding in an electronic money institution having its registered office in the Netherlands, to such an extent that the size of this holding increases beyond 20, 33 or 50 percent or the electronic money institution becomes a subsidiary, or to exercise any control attached to a qualifying holding in that electronic money institution, shall inform the Dutch Central Bank of its intention in writing prior to doing so. No party may implement such intention before the notification referred to in Subsection (4) has been made.
2. Any party whose qualifying holding in an electronic money institution as referred to in Subsection (1) changes to such an extent that the size of the holding falls below 10, 20, 33 or 50 percent, or the electronic money institution referred to in Subsection (1) ceases to be a subsidiary, shall inform the Dutch Central Bank of this.
3. The electronic money institution shall inform the Dutch Central Bank in July of each year of the identity of every person owning a qualifying holding in this electronic money institution, insofar as it is aware of this identity. Furthermore, the electronic money institution shall inform the Dutch Central Bank, as soon as it becomes aware of this, of every acquisition of, disposal of or change in a qualifying holding in this electronic money institution as a result of which the size of this holding increases beyond or falls below 10, 20, 33 or 50 percent, or as a result of which the electronic money institution becomes a subsidiary or ceases to be a subsidiary.
4. If the intention referred to in Subsection (1) could not or would not lead to an influence on the electronic money institution concerned that jeopardises the financial soundness of the electronic money institution, the Dutch Central Bank shall inform the party that made the notification referred to in Subsection (1) that no objections will be raised against such intention.
5. If any party exercises control relating to a qualifying holding in an electronic money institution as referred to in Subsection (1) without having made the notification referred to in Subsection (1) in respect of owning, acquiring or increasing the qualifying holding, a decision adopted owing in part to the control exercised shall be capable of annulment. The decision may be declared null and void on the demand of the Dutch Central Bank. In that event, the decision shall be declared null and void by the court within whose jurisdiction the electronic money institution has its registered office if, but for the exercise of the control concerned, the decision would have been different or would not have been adopted. Where necessary, the court shall make arrangements for the consequences of the annulment.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

### **3.3.11.2. Banks having their registered office in a non-Member State**

#### **Section 3:109**

Sections 3:96, 3:97(1), opening words and under (c) and (d), (2) and (3), 3:99, 3:101, 3:102(1) and (3), 3:104(1), 3:105(2), (3) and (4), opening words and under (a) and (c), and (6), shall apply mutatis mutandis to branch offices situated in the Netherlands of banks having their registered office in a non-Member State that hold a licence as referred to in Section 2:20.

## **Chapter 3.4. Rules for specific enterprises operating in the financial markets**

### **Part 3.4.1. Supervisory status of financial institutions**

#### **3.4.1.1. Financial institutions having their registered office in the Netherlands**

##### **Section 3:110**

1. A financial institution having its registered office in the Netherlands that is the subsidiary of one or more banks holding a licence as referred to in Section 2:11(1) and that intends to pursue the business which it pursues in the Netherlands from a branch office situated in another Member State or by providing services to another Member State, may obtain a supervisory status certificate from the Dutch Central Bank.
2. The application shall contain the details to be specified by or pursuant to a Decree.
3. The Dutch Central Bank shall issue the supervisory status certificate if:
  - a. the applicant is permitted to perform these activities, insofar as other statutory provisions apply to its activities;
  - b. the bank or banks referred to in Subsection (1) hold at least 90 percent of the voting rights in the applicant;
  - c. the bank or banks referred to in Subsection (1) guarantee the applicant's commitments, and the Dutch Central Bank has consented to such guarantee;
  - d. the bank or banks referred to in Subsection (1) ensure that the financial institution's operational structure will be such as to safeguard controlled and sound business operations.
4. The applicant for a supervisory status certificate that intends to provide investment services or perform investment activities shall notify the Dutch Central Bank of this and demonstrate that it will comply with the provisions arising from:
  - a. Section 3:8 with regard to the expertise of the persons referred to in that section;
  - b. Section 3:9 with regard to the properness of the persons referred to in that section;
  - c. Section 3:15(1) and (2) with regard to the minimum number of persons determining the day-to-day policy and the location from which they perform their activities;
  - d. Section 3:16 with regard to the control structure;
  - e. Section 3:53(1) and (3) with regard to the minimum equity capital;
  - f. Section 4:14(2)(c) under 1° to 6° with regard to the operational structure;
  - g. Section 4:87 with regard to taking adequate measures to protect clients' rights; and
  - h. Section 4:91a with regard to the rules applicable to the trading process and the settlement of transactions in a multilateral trading facility, if the applicant intends to operate a multilateral trading facility.
5. A financial institution that has obtained a supervisory status certificate pursuant to Subsection (3) and intends to provide investment services or perform investment activities, shall notify the Dutch Central Bank of such intention and demonstrate that it will comply with the provisions arising from:
  - a. Section 3:8 with regard to the expertise of the persons referred to in that section;
  - b. Section 3:9 with regard to the properness of the persons referred to in that section;
  - c. Section 3:15(1) and (2) with regard to the minimum number of persons determining the day-to-day policy and the place from which they perform their activities;

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

- d. Section 3:16 with regard to the control structure;
  - e. Section 3:53(1) and (3) with regard to the minimum equity capital;
  - f. Section 4:14(2)(c) under 1° to 6° with regard to the operational structure;
  - g. Section 4:87 with regard to taking adequate measures to protect clients' rights; and
  - h. Section 4:91a with regard to the rules applicable to the trading process and the settlement of transactions in a multilateral trading facility, if the applicant intends to operate a multilateral trading facility.
6. Sections 3:8, 3:9, 3:10, 3:15, 3:16, 3:17, 3:18, 3:33, 3:53, 3:57, 3:95(1), opening words and under (a), (2), first sentence, (3), 3:99, 3:100, 3:102(1) and (2), 3:103 and 3:105 shall apply mutatis mutandis to financial institutions that hold a supervisory status certificate.
7. Section 1:48 shall apply mutatis mutandis.

### **Part 3.4.2. Regime for banks associated with a central credit institution**

#### **Section 3:111**

1. A group of banks which on 15 December 1977 was permanently associated with a central credit institution monitoring the operations, delegation, solvency and liquidity of those banks, may be exempted by ministerial regulation from the supervision exercised by the Dutch Central Bank of compliance with the provisions arising from Sections 3:10, 3:17, 3:18, 3:57 and 3:63, if:
  - a. the central credit institution and the associated banks are jointly and severally liable for their mutual commitments, or the central credit institution guarantees the commitments of the associated banks;
  - b. the central credit institution is adequately authorised to issue instructions to the associated banks for the purpose of compliance with this Act; and
  - c. the supervision of the central credit institution and the associated banks under Sections 3:57 and 3:63 is exercised on a consolidated basis.
2. The Dutch Central Bank may provide in respect of a bank forming part of a group exempted under Subsection (1) that Sections 1:75, 1:104, 2:12(1) and (3), 2:13(1) and (2), 3:8, 3:9, 3:15, 3:16, 3:19, 3:29, 3:53, 3:71, 3:72, 3:88, 4:14, 4:87 and 4:88 shall not apply, either fully or in part.
3. The central credit institution shall supervise the associated banks by virtue of its articles of association and the articles of association of the associated banks, or by virtue of an agreement with the associated banks. Such supervision shall include:
  - a. issuing instructions which correspond, in terms of substance and intent, to the rules laid down for the associated banks pursuant to Sections 3:10, 3:17, 3:18, 3:57 and 3:63;
  - b. assessing whether the associated banks comply with the instructions referred to under (a);
  - c. determining, for the associated banks, the format in which the statements referred to in Section 3:72 are drawn up, the designation and description of the items included in those statements, the subsequent periods to which those statements relate, the terms within which those statements must be filed and the valuation principles applied;
  - d. the submission by the associated banks of the statements referred to in Section 3:72 to the central credit institution; and
  - e. obtaining information from the associated banks for the purpose of monitoring compliance with the instructions issued by the central credit institution under this section.

### **Chapter 3.5. Special rules and measures relating to financial enterprises operating in the financial markets**

#### **Part 3.5.1. Special measures relating to banks and investment firms**

##### **Section 3:111a**

1. If a bank or investment firm does not satisfy the requirements laid down by or pursuant to this Act with regard to the business operations and the qualifying capital, the Dutch Central Bank may take the following measures against that bank or investment firm:

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

- a. require it to maintain a higher amount in qualifying capital than that laid down pursuant to Section 5:57;
  - b. require it, in connection with the solvency requirements, to pursue a specific policy with regard to provisions or to treat its assets in a specific manner; or
  - c. require the bank or investment firm to limit the risk to which it is exposed.
2. If, based on the assessment referred to in Section 3:18a, the Dutch Central Bank is of the opinion that the strategies, procedures and measures pursuant to Section 3:17 or the qualifying capital of that financial enterprise do not guarantee a controlled and lasting cover of its risks, the Dutch Central Bank shall require the bank or investment firm to maintain a higher amount in qualifying capital if other measures cannot within reason ensure that the provisions arising from Section 3:17 will be satisfied within a reasonable period.
  3. The Dutch Central Bank shall lift the measures referred to in Subsections (1) and (2) as soon as the bank or investment firm again satisfies the requirements laid down by or pursuant to this Act with regard to the business operations and the qualifying capital.

### **Part 3.5.1a. Portfolio transfer**

#### **3.5.1.a.1. Insurers having their registered office in the Netherlands**

##### **Section 3:112**

1. A life insurer having its registered office in the Netherlands that wishes to transfer rights and obligations under a life insurance contract shall require the Dutch Central Bank's consent where it concerns:
  - a. the transfer of rights and obligations under a life insurance contract, concluded from a place of business in a Member State, to another life insurer having its registered office in a Member State in the context of that insurer's operations from a place of business in a Member State;
  - b. the transfer of rights and obligations under a life insurance contract, concluded from a place of business in the Netherlands, to another life insurer having its registered office in a non-Member State in the context of that insurer's operations from a branch office situated in the Netherlands;
  - c. the transfer of rights and obligations under a life insurance contract, concluded from a branch office situated in another Member State, to another life insurer having its registered office in a non-Member State in the context of that insurer's operations from a branch office situated in a Member State.
2. In the case referred to in Subsection (1)(c), the Dutch Central Bank shall only consent to the transfer if the relevant supervisory authorities have also consented to this at the Dutch Central Bank's request.
3. In derogation from Subsection (1), life insurers having their registered office in the Netherlands shall not require the Dutch Central Bank's consent for a transfer of their rights and obligations under an individual life insurance contract at the policyholder's request.

##### **Section 3:113**

1. A funeral expenses and benefits in kind insurer having its registered office in the Netherlands that wishes to transfer rights and obligations under a funeral expenses and benefits in kind insurance contract shall require the Dutch Central Bank's consent where it concerns:
  - a. the transfer of rights and obligations under a funeral expenses and benefits in kind insurance contract, concluded from a place of business in the Netherlands, to another funeral expenses and benefits in kind insurer or to a life insurer with a place of business in the Netherlands in the context of that insurer's operations from a place of business in the Netherlands;
  - b. the transfer of rights and obligations under a funeral expenses and benefits in kind insurance contract, concluded from a branch office situated outside the Netherlands, to another funeral expenses and benefits in kind insurer or to a life insurer in the context of that insurer's operations from a place of business in the Netherlands.
2. A life insurer having its registered office in the Netherlands that wishes to transfer rights and obligations under a funeral expenses and benefits in kind insurance contract shall require the Dutch Central Bank's consent where

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

it concerns:

- a. the transfer of rights and obligations under a funeral expenses and benefits in kind insurance contract, concluded from a place of business in the Netherlands, to another funeral expenses and benefits in kind insurer with a place of business in the Netherlands in the context of that insurer's operations from a place of business in the Netherlands;
  - b. the transfer of rights and obligations under a funeral expenses and benefits in kind insurance contract, concluded from a branch office situated outside the Netherlands, to another funeral expenses and benefits in kind insurer in the context of that insurer's operations from a place of business in the Netherlands.
3. In the case referred to in Subsection (1)(b) and (2)(b), the Dutch Central Bank shall only consent to the transfer if the relevant supervisory authorities of that State, where present, have also consented to this at the Dutch Central Bank's request.
  4. In derogation from Subsection (1), a funeral expenses and benefits in kind insurer having its registered office in the Netherlands may transfer its rights and obligations under an individual funeral expenses and benefits in kind insurance contract at the policyholder's request.

### **Section 3:114**

1. A non-life insurer having its registered office in the Netherlands that wishes to transfer rights and obligations under a non-life insurance contract, may carry out this transfer subject to the Dutch Central Bank's consent without the cooperation or permission of those parties that may derive rights from non-life insurance contracts where it concerns:
  - a. the transfer of rights and obligations under a non-life insurance contract, concluded from a place of business in a Member State, to another non-life insurer having its registered office in a Member State in the context of that insurer's operations from a place of business in a Member State;
  - b. the transfer of rights and obligations under a non-life insurance contract, concluded from a place of business in the Netherlands, to another non-life insurer having its registered office in a non-Member State in the context of that insurer's operations from a branch office situated in the Netherlands;
  - c. the transfer of rights and obligations under a non-life insurance contract, concluded from a branch office situated in another Member State, to another non-life insurer having its registered office in a non-Member State in the context of that insurer's operations from a branch office situated in a Member State.
2. In the case referred to in Subsection (1)(c), the Dutch Central Bank shall only consent to the transfer if the relevant supervisory authorities have also consented to this at the Dutch Central Bank's request.

### **Section 3:115**

1. The transfer of the rights and obligations under all life insurance contracts, all funeral expenses and benefits in kind insurance contracts or all non-life insurance contracts shall be equivalent to the transfer of these rights and obligations in the event of a merger as referred to in Section 309 of Book 2 of the Dutch Civil Code or a section as referred to in Section 334a of Book 2 of the Dutch Civil Code.
2. Sections 3:112(1), opening words and under (a), and (2), 3:116, 3:117(1), 3:118(1)(a), (4) and (5), 3:119 and 3:120(1) to (4) shall apply mutatis mutandis to a transfer as referred to in Subsection (1) with regard to a life insurer having its registered office in the Netherlands, insofar as those sections relate to a transfer by a life insurer.
3. Sections 3:113(1), opening words and under (a), 3:116, 3:118(6), 3:119 and 3:120(1) to (3) shall apply mutatis mutandis to a transfer as referred to in Subsection (1) with regard to a funeral expenses and benefits in kind insurer having its registered office in the Netherlands, insofar as those sections relate to a transfer by a funeral expenses and benefits in kind insurer.
4. Sections 3:114(1), opening words and under (a), 3:116, 3:117(2), 3:118, with the exception of Subsection (6), and 3:120(1) to (3) and (5) to (9) shall apply mutatis mutandis to a transfer as referred to in Subsection (1) with



Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

regard to a non-life insurer having its registered office in the Netherlands, insofar as those sections relate to a transfer by a non-life insurer.

### **Section 3:116**

The application for consent in respect of a transfer as referred to in Sections 3:112(1), 3:113(1) and (2) or 3:114(1) shall contain the data to be specified by or pursuant to a Decree.

### **Section 3:117**

1. If a proposed transfer as referred to in Section 3:112(1)(a) relates to life insurance contracts concluded from a branch office situated in another Member State, and in the event of a transfer as referred to in Section 3:112(1)(c), the Dutch Central Bank, having received the data referred to in Section 3:116, shall submit this data for an opinion to the supervisory authority of every Member State concerned.
2. If a proposed transfer as referred to in Section 3:114(1)(a) relates to non-life insurance contracts concluded from a branch office situated in another Member State, and in the event of a transfer as referred to in Section 3:114(1)(c), the Dutch Central Bank, having received the data referred to in Section 3:116, shall submit this data for an opinion to the supervisory authority of every Member State concerned.

### **Section 3:118**

1. The Dutch Central Bank shall only consent to a transfer as referred to in Section 3:112(1) or Section 3:114(1) to:
  - a. a life insurer or non-life insurer having its registered office in the Netherlands, if this life insurer or non-life insurer possesses the minimum amount of solvency margin, especially in view of the proposed transfer, and the Dutch Central Bank has required no recovery scheme pursuant to Section 3:132 from that life insurer or non-life insurer;
  - b. a life insurer or non-life insurer having its registered office in another Member State, if the supervisory authority of that Member State has declared, at the Dutch Central Bank's request, that this life insurer or non-life insurer possesses the minimum amount of solvency margin, especially in view of the proposed transfer; and
  - c. a life insurer or non-life insurer having its registered office in a non-Member State in the context of that insurer's operations from a branch office situated in the Netherlands, if the branch office concerned possesses the minimum amount of solvency margin, especially in view of the proposed transfer, and the Dutch Central Bank has required no recovery scheme pursuant to Section 3:132 from that life insurer or non-life insurer.
2. If a supervisory authority of a Member State is responsible for supervising the solvency margin of the branch office referred to in Subsection (1)(c), the Dutch Central Bank shall only grant its consent after that supervisory authority has declared, at the Dutch Central Bank's request, that the branch office possesses the minimum amount of solvency margin, especially in view of the proposed transfer, and that, where applicable, no scheme equivalent to a recovery scheme as referred to in Section 3:132 has been required from the branch office.
3. The Dutch Central Bank shall only consent to a transfer as referred to in Section 3:114(1) to a non-life insurer having its registered office in a non-Member State in the context of that insurer's operations from a branch office situated in another Member State, if:
  - a. the supervisory authority of that Member State or, if another supervisory authority of a Member State is responsible for supervising the solvency margin of the branch office concerned, the latter authority, has declared, at the Dutch Central Bank's request, that the branch office possesses the minimum amount of solvency margin, especially in view of the proposed transfer;
  - b. the supervisory authority of that Member State has not required a scheme equivalent to a recovery scheme as referred to in Section 3:132 from the branch office; and
  - c. the supervisory authority concerned consents to the transfer at the Dutch Central Bank's request.
4. Where a transfer relates to non-life insurance contracts whose conclusion involved the underwriting of risks

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

situated in another Member State, or to life insurance contracts concluded by performing services to another Member State, the Dutch Central Bank shall only grant its consent after the supervisory authority of that Member State has declared, at the Dutch Central Bank's request, that it consents to the transfer.

5. If the supervisory authority referred to in Subsection (4) or in Section 3:117 has not responded within three months of receiving such request from the Dutch Central Bank, the absence of any response shall be considered equivalent to a favourable opinion or tacit consent.
6. The Dutch Central Bank shall only consent to a transfer as referred to in Section 3:113(1) or (2) to:
  - a. a life insurer having its registered office in the Netherlands, in another Member State or in a non-Member State, if this life insurer possesses the minimum amount of solvency margin, especially in view of the proposed transfer, and, where it concerns a life insurer having its registered office in a Member State, the Dutch Central Bank or a supervisory authority of a Member State has not required a recovery scheme pursuant to Section 3:132, or a recovery scheme equivalent to the recovery scheme referred to in Section 3:132, from that life insurer;
  - b. a funeral expenses and benefits in kind insurer having its registered office in the Netherlands, if this funeral expenses and benefits in kind insurer possesses the minimum amount of solvency margin, especially in view of the proposed transfer, and the Dutch Central Bank has required no recovery scheme pursuant to Section 3:132 from that funeral expenses and benefits in kind insurer; and
  - c. a funeral expenses and benefits in kind insurer having its registered office outside the Netherlands in the context of that insurer's operations from a branch office situated in the Netherlands, if the branch office concerned possesses the minimum amount of solvency margin, especially in view of the proposed transfer, and the Dutch Central Bank has required no recovery scheme pursuant to Section 3:132 from that funeral expenses and benefits in kind insurer.

### **Section 3:119**

1. If the data referred to in Section 3:116 is sufficient for the preparation of the order, the Dutch Central Bank shall instruct the life insurer or funeral expenses and benefits in kind insurer to publish a notification of its intention to transfer rights and obligations in the Government Gazette and in any other way to be specified by the Dutch Central Bank. On that occasion, the Dutch Central Bank shall communicate the term within which the policyholders concerned may file a written objection against the transfer with the Dutch Central Bank.
2. If one fourth or more of the policyholders file an objection against the proposed transfer by a life insurer or funeral expenses and benefits in kind insurer within the term specified by the Dutch Central Bank as referred to in Subsection (1), the Dutch Central Bank shall withhold its consent.
3. If the Dutch Central Bank has reservations about the transfer, it shall communicate such reservations to the life insurer or funeral expenses and benefits in kind insurer after the end of the specified term.
4. If not at least one fourth or more of the policyholders has filed an objection against the proposed transfer within the term specified by the Dutch Central Bank as referred to in Subsection (1), and the Dutch Central Bank has no reservations about the transfer, the Dutch Central Bank shall grant the life insurer or funeral expenses and benefits in kind insurer its consent in respect of the transfer. The transfer may then be carried out and shall take effect towards all the parties involved.
5. For the purposes of this section, the policyholder shall be understood to mean the policyholder or its legal successor, but where an insurance payment is due and demandable, the party entitled to the payment. Where, in the event of a transfer by a life insurer, a policyholder is absent from an implementation agreement with an insurer as referred to in Section 1 of the Pensions Act, the policyholder shall be understood to mean the person who has obtained a paid-up claim to payments on account of terminating the ties with his employer's enterprise. In the case of a group life insurance contract, the number of insured persons shall be taken into account for the purposes of Subsection (2), which is in derogation from the first and second sentences.

### **Section 3:120**

1. The insurer that has transferred rights and obligations with the Dutch Central Bank's consent shall publish a

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

notification of the transfer in the Government Gazette.

2. A life insurer or funeral expenses and benefits in kind insurer shall state the date of the transfer in the notification referred to in Subsection (1). A non-life insurer shall also publish a notification of the transfer in any other way to be specified by the Dutch Central Bank.
3. The content of the notifications referred to in Subsections (1) and (2) shall require the Dutch Central Bank's prior approval.
4. If the transfer involves life insurance contracts that were concluded by performing services to another Member State, the life insurer shall also publish a notification of the transfer in that Member State. In that case, Subsection (3) shall apply *mutatis mutandis*.
5. If the transfer involves non-life insurance contracts underwriting risks situated in another Member State, the non-life insurer shall also publish a notification of the transfer in that Member State. In that case, Subsection (3) shall apply *mutatis mutandis*.
6. The transfer by a non-life insurer shall take effect towards all the parties involved, other than the non-life insurers concerned, on the second day following the publication date of the Government Gazette in which the notification was published.
7. The policyholders involved in the transfer by a non-life insurer may cancel their non-life insurance contract in writing within three months of the publication date of the Government Gazette in which the notification was published, with effect from the day following the end of this term. In that case, the non-life insurer shall refund the prepaid premium and the premium tax paid in proportion to the part of the term regarding which the premium and premium tax were paid that had not yet expired by the aforesaid day.
8. If a policyholder that is a member of a mutual association having its registered office in the Netherlands, or of a mutual enterprise having its registered office in a non-Member State, no longer has an insurance contract with that insurer as a result of the transfer, its membership shall end for that reason by operation of law with effect from the second day following the publication date of the Government Gazette in which the notification was published.
9. If the membership of a mutual association having its registered office in the Netherlands or of a mutual enterprise having its registered office outside the Netherlands was acquired on the occasion of the transfer, this membership and the ensuing liability for a deficit shall, where the insurance contract is cancelled in accordance with Subsection (7), end by operation of law with effect from the day following the end of the term referred to in that subsection.

### **Section 3:121**

Where this section relates to a transfer by a life insurer or non-life insurer, it shall not apply to the transfer of rights and obligations under a reinsurance contract.

#### **3.5.1a.2. Life insurers and non-life insurers having their registered office in another Member State**

### **Section 3:122**

1. If the legislation of another Member State does not provide for an approval procedure for a life insurer having its registered office in that Member State regarding the transfer of rights and obligations under a life insurance contract, concluded from a branch office situated in the Netherlands, to another life insurer having its registered office in a non-Member State in the context of that insurer's operations from a branch office situated in the Netherlands, the transfer may be carried out subject to the Dutch Central Bank's consent.
2. If the legislation of another Member State does not provide for an approval procedure for a non-life insurer having its registered office in that Member State regarding the transfer of rights and obligations under a non-life insurance contract, concluded from a branch office situated in the Netherlands, to another non-life insurer having its registered office in a non-Member State in the context of that insurer's operations from a branch office

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

situated in the Netherlands, the transfer may be carried out subject to the Dutch Central Bank's consent, without the cooperation or permission of those parties which may derive rights from those non-life insurance contracts.

3. The Dutch Central Bank shall not grant its consent before the supervisory authority of the Member State where the transferring insurer has its registered office has declared, at the Dutch Central Bank's requests, that it consents to the transfer.

### **Section 3:123**

1. If a supervisory authority of another Member State asks the Dutch Central Bank for its advice or consent in respect of a proposed transfer of rights and obligations under a life insurance or non-life insurance contract, the latter shall give its advice or grant its consent within three months of receiving the request to that effect.
2. If the transfer is made to a life insurer or non-life insurer having its registered office in another Member State in the context of that insurer's operations from a place of business in another Member State, the Dutch Central Bank shall not consent to:
  - a. a transfer by a life insurer to a life insurer having its registered office in another Member State, if the transfer relates to a life insurance contract concluded from a branch office situated in the Netherlands whereby no services are provided and the transfer is not in the interest of the parties that may derive rights from that life insurance contract; and
  - b. a transfer by a non-life insurer to a non-life insurer having its registered office in another Member State, if the transfer relates to a non-life insurance contract concluded from a branch office situated in the Netherlands whereby the risks are situated in the Netherlands and the transfer is not in the interest of the parties that may derive rights from that non-life insurance contract.
3. If the transfer is made to a life insurer or non-life insurer having its registered office in a non-Member State in the context of that insurer's operations from a place of business in another Member State, the Dutch Central Bank shall not consent to:
  - a. a transfer by a life insurer to a life insurer having its registered office in a non-Member State, if the transfer relates to a life insurance contract concluded from a branch office situated in the Netherlands whereby no services are provided, unless the transfer is in the interest of the parties that may derive rights from that life insurance contract;
  - b. a transfer by a non-life insurer to a non-life insurer having its registered office in a non-Member State, if the transfer relates to a non-life insurance contract concluded from a branch office situated in the Netherlands whereby the risks are situated in the Netherlands, unless the transfer is in the interest of the parties that may derive rights from that non-life insurance contract.

### **Section 3:124**

1. The consent granted by a supervisory authority of another Member State to a life insurer or non-life insurer having its registered office in that Member State in respect of a transfer of rights and obligations under a life insurance or non-life insurance contract, in the context of that insurer's operations from a branch office situated in the Netherlands or in the context of the provision of services to the Netherlands from a place of business in a Member State, shall replace the cooperation or permission of those parties that may derive rights from those life insurance or non-life insurance contracts.
2. The life insurer or non-life insurer that has transferred rights and obligations pursuant to Subsection (1) shall publish a notification of the transfer in the Government Gazette and in any other way to be specified by the Dutch Central Bank. The content of these publications shall require the Dutch Central Bank's prior approval.
3. The transfer shall take effect towards all the parties involved, other than the life insurers or non-life insurers concerned, at a time to be determined in accordance with the law of the Member State concerned, or, in the absence of regulations to that effect in that Member State, on the second day following the publication date of the Government Gazette in which the notification was published.
4. In the event of a transfer by a non-life insurer, the policyholders involved in the transfer may cancel their non-life

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

insurance contract in the manner provided by the law of the Member State concerned. In the absence of regulations to that effect in that Member State, Section 3:120(7) shall apply mutatis mutandis.

5. If the membership of a mutual association having its registered office in the Netherlands or of a mutual enterprise having its registered office outside the Netherlands was acquired on the occasion of the transfer by a non-life insurer, this membership and the ensuing liability for a deficit shall, where the insurance contract is cancelled in accordance with Subsection (4), end by operation of law in the manner provided by the law of the Member State concerned, or, in the absence of regulations to that effect in that Member State, with effect from the day following the end of the term referred to in Section 3:120(7).
6. If a policyholder that is a member of a mutual enterprise no longer has any life insurance contracts with the life insurer as a result of the transfer, its membership shall end by operation of law in the manner provided by the law of the Member State concerned, or, in the absence of regulations to that effect in that Member State, with effect from the second day following the publication date of the Government Gazette in which the notification was published.

### **Section 3:125**

1. If a life insurer having its registered office in another Member State requests the consent of the supervisory authority of the Member State where it has its registered office to transfer its rights and obligations under a life insurance contract to another life insurer, in the context of that insurer's operations from a branch office situated in the Netherlands, it shall, without delay, publish a notification of the proposed transfer in the Government Gazette and in any other way to be specified by the Dutch Central Bank. The notification shall state the term specified by the Dutch Central Bank within which the policyholders concerned may file a written objection against the transfer with the Dutch Central Bank.
2. If one fourth or more of the policyholders file an objection against the transfer within the specified term, the Dutch Central Bank shall withhold its consent.
3. Section 3:119(5) shall apply mutatis mutandis.

### **3.5.1a.3. Life insurers and non-life insurers having their registered office in a non-Member State**

#### **Section 3:126**

1. A life insurer having its registered office in a non-Member State that wishes to transfer rights and obligations under a life insurance contract shall require the Dutch Central Bank's consent where it concerns:
  - a. the transfer of rights and obligations under a life insurance contract, concluded from a branch office situated in the Netherlands, to another life insurer having its registered office in a Member State in the context of that insurer's operations from a place of business in a Member State;
  - b. the transfer of rights and obligations under a life insurance contract, concluded from a branch office situated in the Netherlands, to another life insurer having its registered office in a non-Member State in the context of that insurer's operations from a branch office situated in the Netherlands.
2. Where life insurance contracts as referred to in Subsection (1) were concluded by performing services to another Member State, the life insurer may also transfer rights and obligations, subject to the conditions stated in Subsection (1), opening words, to another life insurer having its registered office in a non-Member State in the context of that insurer's operations from a branch office situated in that Member State.
3. In derogation from Subsections (1) and (2), life insurers having their registered office in a non-Member State may transfer their rights and obligations under an individual life insurance contract at the policyholder's written request.

#### **Section 3:127**

1. A non-life insurer having its registered office in a non-Member State that wishes to transfer rights and obligations under a non-life insurance contract, may carry out this transfer subject to the Dutch Central Bank's

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

consent without the cooperation or permission of those parties that may derive rights from non-life insurance contracts where it concerns:

- a. the transfer to another non-life insurer having its registered office in a Member State in the context of that insurer's operations from a place of business in a Member State;
  - b. the transfer to another non-life insurer having its registered office in a non-Member State in the context of that insurer's operations from a branch office situated in the Netherlands.
2. Where the conclusion of the non-life insurance contracts referred to in Subsection (1) involved the underwriting of risks situated in another Member State, the non-life insurer may also transfer rights and obligations, subject to the conditions stated in Subsection (1), opening words, to another non-life insurer having its registered office in a non-Member State in the context of that insurer's operations from a branch office situated in the Member State where the risk is situated.

### **Section 3:128**

1. The Dutch Central Bank shall only consent to a transfer as referred to in Sections 3:126(1) and (2) or 3:127(1) to:
  - a. a life insurer or non-life insurer having its registered office in the Netherlands, if this life insurer or non-life insurer possesses the minimum amount of solvency margin, especially in view of the proposed transfer, and the Dutch Central Bank has required no recovery scheme pursuant to Section 3:132 from that insurer;
  - b. a life insurer or non-life insurer having its registered office in another Member State, if the supervisory authority of that Member State has declared, at the Dutch Central Bank's request, that this life insurer or non-life insurer possesses the minimum amount of solvency margin, especially in view of the proposed transfer;
  - c. a life insurer or non-life insurer having its registered office in a non-Member State in the context of that insurer's operations from a branch office situated in the Netherlands, if the branch office concerned possesses the minimum amount of solvency margin, especially in view of the proposed transfer, and the Dutch Central Bank has required no recovery scheme pursuant to Section 3:132 from that life insurer or non-life insurer.
2. If another supervisory authority of a Member State is responsible for supervising the solvency margin of the branch office concerned, as referred to in Subsection (1)(c), the Dutch Central Bank shall only grant its consent after that supervisory authority has declared, at the Dutch Central Bank's request, that the branch office possesses the minimum amount of solvency margin, especially in view of the proposed transfer, and that, where applicable, no scheme equivalent to a recovery scheme as referred to in Section 3:132 has been required from the branch office.

### **Section 3:129**

1. A life insurer or non-life insurer having its registered office in a non-Member State that has transferred rights and obligations under a life insurance contract or rights and obligations under a non-life insurance contract, concluded by performing services to the Netherlands, to another life insurer or non-life insurer with the consent of the competent supervisory authority, shall publish a notification of the transfer in the Netherlands in the manner to be specified by the Dutch Central Bank.
2. The content of the notification referred to in Subsection (1) shall require the Dutch Central Bank's prior approval.

### **Section 3:130**

Where this section relates to a transfer by a life insurer or non-life insurer in a non-Member State, it shall not apply to the transfer of rights and obligations under a reinsurance contract.

#### **3.5.1a.4. Funeral expenses and benefits in kind insurers having their registered office in a non-designated State**

### **Section 3:131**

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

1. A funeral expenses and benefits in kind insurer having its registered office in a non-designated State that wishes to transfer rights and obligations under a funeral expenses and benefits in kind insurance contract shall require the Dutch Central Bank's consent where it concerns the transfer of rights and obligations under a funeral expenses and benefits in kind insurance contract concluded from a branch office situated in the Netherlands, to another funeral expenses and benefits in kind insurer or to a life insurer in the context of that insurer's operations from a place of business in the Netherlands.
2. If the legislation of another Member State does not provide for an approval procedure for a funeral expenses and benefits in kind insurer having its registered office in that Member State regarding the transfer of its rights and obligations under a funeral expenses and benefits in kind insurance contract, concluded from a branch office situated in the Netherlands, to another funeral expenses and benefits in kind insurer or to a life insurer in the context of that insurer's operations from a branch office situated in the Netherlands, the transfer may be carried out subject to the Dutch Central Bank's consent.
3. The Dutch Central Bank shall only consent to a transfer as referred to in Subsection (1) to:
  - a. a funeral expenses and benefits in kind insurer in the context of that insurer's operations from a place of business in the Netherlands, if this funeral expenses and benefits in kind insurer maintains the required solvency margin, especially in view of the proposed transfer, and the Dutch Central Bank has required no recovery scheme pursuant to Sections 3:132 or 3:134 from that funeral expenses and benefits in kind insurer;
  - b. a life insurer in the context of that insurer's operations from a place of business in the Netherlands, if this life insurer maintains the required solvency margin, especially in view of the proposed transfer, and, where it concerns a life insurer having its registered office in a Member State, the Dutch Central Bank or a supervisory authority of a Member State has not required a recovery scheme pursuant to Section 3:132, or a recovery scheme equivalent to the recovery scheme referred to in Section 3:132, from that life insurer.
4. The Dutch Central Bank shall consent to a transfer as referred to in Subsection (1) after the supervisory authority, where present, in the State where the transferring funeral expenses and benefits in kind insurer has its registered office has declared that it consents to this transfer.
5. In derogation from Subsections (2) and (4), a funeral expenses and benefits in kind insurer having its registered office in a non-designated State may transfer its rights and obligations under an individual funeral expenses and benefits in kind insurance contract at the policyholder's request.

## **Part 3.5.2. Recovery scheme**

### **3.5.2.1. Insurers having their registered office in the Netherlands**

#### **Section 3:132**

1. Where the rights of the parties involved as policyholders, insured parties or parties entitled to payments in insurance contracts concluded by an insurer having its registered office in the Netherlands, are threatened, the Dutch Central Bank may require a recovery scheme from the insurer that shall be submitted for its approval within eight weeks, or however much earlier as determined by the Dutch Central Bank, unless Section 3:136 applies.
2. Rules shall be laid down by or pursuant to a Decree in respect of the recovery scheme.
3. Where the Dutch Central Bank has required a recovery scheme and the insurer's financial position deteriorates, the Dutch Central Bank may instruct that insurer to have a higher minimum amount of solvency margin than prescribed by or pursuant to a Decree, in order to ensure that this insurer will continue in the near future to fulfil the minimum solvency margin requirements prescribed by or pursuant to a Decree. The level of the higher minimum solvency margin shall be based on the recovery scheme referred to in Subsection (1), and a term may be specified within which the higher minimum amount must be attained.

### **3.5.2.2. Life insurers and non-life insurers having their registered office in a non-Member State**

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

### **Section 3:133**

Section 3:132 shall apply mutatis mutandis to life insurers and non-life insurers having their registered office in a non-Member State.

### **3.5.2.3. Funeral expenses and benefits in kind insurers having their registered office in a non-designated State**

#### **Section 3:134**

Section 3:132 shall apply mutatis mutandis to funeral expenses and benefits in kind insurers having their registered office in a non-designated State.

### **Part 3.5.3. Restriction of the power of disposal, restructuring scheme and financing scheme**

#### **3.5.3.1. Insurers having their registered office in the Netherlands**

#### **Section 3:135**

1. If an insurer having its registered office in the Netherlands does not comply with the provisions laid down by or pursuant to Section 3:67 with regard to the technical facilities, the Dutch Central Bank may restrict the power of the insurer to dispose freely of its assets, irrespective of where they are situated, or prohibit the insurer from disposal of these assets otherwise than with the authorisation of the Dutch Central Bank.
2. Before taking a decision as referred to in Subsection (1), the Dutch Central Bank shall communicate its intention to the supervisory authorities of the other Member States in which the life insurer or non-life insurer has a branch office or to which it provides services from its places of business in a Member State.
3. If it has taken a decision as referred to in Subsection (1), the Dutch Central Bank may request the supervisory authorities referred to in Subsection (2) to take measures accordingly with regard to the assets situated in the Member States concerned, with reference to such assets.
4. The insurer may invoke the invalidity of a legal act performed in breach of the restriction or prohibition, if the other party knew of the measure or could not have been unaware of it.
5. The Dutch Central Bank shall lift the restriction or repeal the prohibition as soon as the insurer once again complies with the provisions laid down by or pursuant to Section 3:67.
6. The Dutch Central Bank shall communicate the decision referred to in Subsections (1) and (5) to the supervisory authorities referred to in Subsection (2).

#### **Section 3:136**

1. If an insurer having its registered office in the Netherlands no longer complies with the provisions laid down by or pursuant to Section 3:57(1) to (3) with regard to the minimum amount of solvency margin, it shall, at the Dutch Central Bank's request, submit a restructuring scheme for approval to the Dutch Central Bank within eight weeks, or however much earlier as determined by the Dutch Central Bank, unless Subsection (2) applies.
2. If the solvency margin has fallen below the guarantee fund referred to in Section 3:57(4), the insurer, at the Dutch Central Bank's request, shall submit a financing scheme for approval to the Dutch Central Bank within eight weeks, or however much earlier as determined by the Dutch Central Bank.
3. Rules shall be laid down by or pursuant to a Decree as regards the content of the restructuring scheme and the financing scheme referred to in Subsections (1) and (2) respectively.
4. The Dutch Central Bank may, on the insurer's request, permit changes in a scheme for which approval was granted. The Dutch Central Bank may also require changes in the plan or withdraw its approval in the event of a



Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*  
change in circumstances.

5. If Subsections (1) or (2) are applied and the Dutch Central Bank sees cause to do so, it shall communicate this to the supervisory authorities of other Member States in which the life insurer or non-life insurer has a branch office or to which it provides services from its places of business in a Member State.

### **Section 3:137**

An insurer having its registered office in the Netherlands whose solvency margin does not comply with the provisions laid down by or pursuant to Section 3:57 shall provide the Dutch Central Bank with a list of the assets referred to in Section 3:67 and of any changes in such assets within the term and in the manner specified by the Dutch Central Bank.

### **Section 3:138**

1. In the event of exceptional circumstances as referred to in Section 3:136(1) on the basis of which the financial position of the insurer is expected to deteriorate further, and in the case referred to in Section 3:136(2), the Dutch Central Bank may restrict the power of the insurer to dispose freely of its assets, irrespective of where they are situated, or prohibit the insurer from disposal of these assets otherwise than with the authorisation of the Dutch Central Bank.
2. Where it concerns a life insurer or non-life insurer, the Dutch Central Bank shall communicate its decision, where possible before this decision takes effect, to the supervisory authority of another Member State in which the insurer has a branch office or to which it provides services from its places of business in a Member State. It may request this supervisory authority to take measures accordingly with regard to the assets situated in the Member States concerned, with reference to those assets.
3. Section 3:135(4) shall apply *mutatis mutandis*.
4. The Dutch Central Bank shall lift the restriction or repeal the prohibition as soon as the insurer once again complies with the provisions laid down by or pursuant to this Act with regard to the solvency margin. The Dutch Central Bank shall communicate this decision to the supervisory authorities referred to in Subsection (2).

### **Section 3:139**

1. Where a higher minimum solvency margin is required from an insurer pursuant to Section 3:132(3) and that insurer does not or no longer possess this minimum amount of solvency margin, the Dutch Central Bank may, in exceptional circumstances on the basis of which the financial position of the insurer is expected to deteriorate further, restrict the power of the insurer to dispose freely of its assets, irrespective of where they are situated, or prohibit the insurer from disposal of these assets otherwise than with the authorisation of the Dutch Central Bank.
2. Sections 3:135(4) and 3:138(2) and (4) shall apply *mutatis mutandis*.

## **3. 3.5.3.2. Life insurers and non-life insurers having their registered office in another Member State**

### **Section 3:140**

1. The Dutch Central Bank shall take a decision as referred to in Section 3:135(1) or 3:138(1) if the supervisory authority of another Member State where a life insurer or non-life insurer has its registered office so requests.
2. In urgent cases, the Dutch Central Bank may take the measures referred to in Subsection (1) without a request to that effect from the supervisory authority referred to in that subsection, if the life insurer or non-life insurer violates provisions laid down by or pursuant to this Act.
3. The restriction or prohibition shall concern the assets situated in the Netherlands. If the measure is taken at the request of the supervisory authority of the Member State where the insurer has its registered office and that

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

authority has listed those assets, the Dutch Central Bank shall take this into consideration.

4. Section 3:135(4) shall apply mutatis mutandis.
5. The Dutch Central Bank shall lift the restriction or repeal the prohibition as soon as the supervisory authority referred to in Subsection (1) so requests or if there is reason to do so.
6. The Dutch Central Bank shall communicate the decision regarding the restriction or prohibition and the decision referred to in Subsection (5) to the supervisory authority referred to in Subsection (1).
7. If a life insurer or non-life insurer having its registered office in another Member State has a branch office in the Netherlands or performs services to the Netherlands, and the supervisory authority of that Member State has informed the Dutch Central Bank of the withdrawal of the licence granted to that insurer, the Dutch Central Bank shall publish a notification of this in the Government Gazette. This notification shall also state the restriction or prohibition imposed pursuant to Subsection (1).

### **3.5.3.3. Life insurers and non-life insurers having their registered office in a non-Member State**

#### **Section 3:141**

1. If a life insurer or non-life insurer having its registered office in a non-Member State does not comply with the provisions laid down by or pursuant to Section 3:68 with regard to the technical facilities, the Dutch Central Bank may restrict the power of the life insurer or non-life insurer to dispose freely of the assets relating to its business as a life insurer or non-life insurer conducted from the Netherlands, or prohibit the insurer from disposal of these assets otherwise than with the authorisation of the Dutch Central Bank.
2. Before taking a decision as referred to in Subsection (1), the Dutch Central Bank shall communicate its intention to the supervisory authority of another Member State that is responsible for supervising the solvency margin of the life insurer or non-life insurer referred to in Section 3:60(2).
3. Section 3:135(4) shall apply mutatis mutandis.
4. The Dutch Central Bank shall lift the restriction or repeal the prohibition as soon as the life insurer or non-life insurer referred to in Subsection (1) once again fulfils the requirements referred to in Subsection (1).
5. The Dutch Central Bank shall communicate the decision regarding the restriction or prohibition and the lifting or repeal of such restriction or prohibition to the supervisory authority referred to in Subsection (2), and to the supervisory authorities of the Member States to which the life insurer or non-life insurer referred to in Subsection (1) provides services from the Netherlands.

#### **Section 3:142**

Section 3:136 shall apply mutatis mutandis to life insurers and non-life insurers having their registered office in a non-Member State.

#### **Section 3:143**

A life insurer or non-life insurer having its registered office in a non-Member State whose solvency margin does not comply with the provisions laid down by or pursuant to this Act, or the requirements laid down in another Member State if a dispensation was granted in accordance with Section 3:60, shall provide the Dutch Central Bank with a list of the assets referred to in Section 3:68 and of any changes in such assets within the term and in the manner specified by the Dutch Central Bank.

#### **Section 3:144**

1. In the event of exceptional circumstances as referred to in Section 3:136(1) on the basis of which the financial position of the life insurer or non-life insurer having its registered office in a non-Member State is expected to deteriorate further, and in the case referred to in Section 3:136(2), the Dutch Central Bank may restrict the

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

power of the life insurer or non-life insurer to dispose freely of the assets relating to its business as a life insurer or non-life insurer conducted from the Netherlands, or prohibit the insurer from disposal of these assets otherwise than with the authorisation of the Dutch Central Bank.

2. The Dutch Central Bank shall communicate its decision, where possible before this decision takes effect, to the supervisory authority of another Member State in which the life insurer or non-life insurer has a branch office or to which it performs services from its branch office in a Member State. It may request this supervisory authority to take measures accordingly with regard to the assets situated in the Member State concerned.
3. As regards a life insurer or non-life insurer whose solvency margin is supervised by the supervisory authority of another Member State under Section 3:60(2), the Dutch Central Bank shall take a decision as referred to in Subsection (2) with regard to the assets situated in the Netherlands, if that supervisory authority so requests based on the fact that the life insurer or non-life insurer faces circumstances similar to those referred to in Subsection (1).
4. Section 3:135(4) shall apply *mutatis mutandis*.
5. The Dutch Central Bank shall lift the restriction or repeal the prohibition as soon as the life insurer or non-life insurer once again complies with the provisions laid down by or pursuant to this Act with regard to the solvency margin, or, if the decision is based exclusively on Subsection (3), as soon as the supervisory authority referred to in that subsection so requests. The Dutch Central Bank shall communicate the decision to lift the restriction or prohibition to the supervisory authority referred to in Subsection (2).

#### **Section 3:145**

1. Where a higher minimum solvency margin is required pursuant to Section 3:132(3) from a life insurer or non-life insurer having its registered office in a non-Member State, and the life insurer or non-life insurer does not or no longer possess this minimum amount of solvency margin, the Dutch Central Bank may, in exceptional circumstances on the basis of which the financial position of the life insurer or non-life insurer is expected to deteriorate further, restrict the power of the life insurer or non-life insurer to dispose freely of its assets, irrespective of where they are situated, or prohibit the insurer from disposal of these assets otherwise than with the authorisation of the Dutch Central Bank.
2. Section 3:144(2) to (5) shall apply *mutatis mutandis*.

#### **3.5.3.4. Funeral expenses and benefits in kind insurers having their registered office in a non-designated State**

#### **Section 3:146**

1. If a funeral expenses and benefits in kind insurer having its registered office in a non-designated State does not comply with the provisions laid down by or pursuant to Section 3:69 with regard to the technical facilities, the Dutch Central Bank may restrict the power of the funeral expenses and benefits in kind insurer to dispose freely of the assets relating to its business conducted from the Netherlands, or prohibit the insurer from disposal of these assets otherwise than with the authorisation of the Dutch Central Bank.
2. Section 3:135(4) shall apply *mutatis mutandis*.
3. The Dutch Central Bank shall lift the restriction or repeal the prohibition as soon as the funeral expenses and benefits in kind insurer once again complies with the provisions laid down by or pursuant to Section 3:69.

#### **Section 3:147**

Sections 3:136, 3:137 and 3:138(1) and (4), first sentence, shall apply *mutatis mutandis* to funeral expenses and benefits in kind insurers having their registered office in a non-designated State.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

**Section 3:148**

1. In the event of exceptional circumstances as referred to in Section 3:136(1) on the basis of which the financial position of the funeral expenses and benefits in kind insurer having its registered office in a non-designated State is expected to deteriorate further, and in the case referred to in Section 3:136(2), the Dutch Central Bank may restrict the power of the funeral expenses and benefits in kind insurer to dispose freely of the assets relating to its business conducted from the Netherlands, or prohibit the insurer from disposal of these assets otherwise than with the authorisation of the Dutch Central Bank.
2. Section 3:135(4) shall apply mutatis mutandis.
3. The Dutch Central Bank shall lift the restriction or repeal the prohibition as soon as the funeral expenses and benefits in kind insurer once again complies with the provisions laid down by or pursuant to this Act with regard to the solvency margin.

**Part 3.5.4. Relief scheme for life insurers**

**3.5.4.1. Life insurers having their registered office in the Netherlands**

**Section 3:149**

1. This section shall apply to life insurers having their registered office in the Netherlands that hold a licence as referred to in Section 2:27(1).
2. This section and Sections 3:8, 3:9, 3:15, 3:17, 3:18, 3:70, 3:71, 3:95, 3:97, 3:99 and 1:79 to 1:88 shall apply mutatis mutandis to relief institutions that conduct the business of a life insurer exclusively as reinsurers within the meaning of Section 3:152(2).

**Section 3:150**

1. There shall be a confidential advisory committee composed of a chair and a minimum of two and a maximum of four other members, who shall:
  - a. advise the Dutch Central Bank in cases where such is prescribed by this section;
  - b. on request, advise the Dutch Central Bank on decisions to be taken by the latter pursuant to this section; and
  - c. on request, assist the Dutch Central Bank in examining opportunities of cooperation between a life insurer to which relief may be provided and another insurer, or a takeover by the latter.
2. Our Minister shall appoint, suspend and dismiss the chair and the other members of the confidential advisory committee in accordance with a procedure to be specified by ministerial regulation, which shall provide at least for a right of recommendation by the Dutch Central Bank and the representative organisations of life insurers together.
3. Rules shall be laid down by ministerial regulation as regards the confidential advisory committee's working method.

**Section 3:151**

1. Having consulted the confidential advisory committee, the Dutch Central Bank may decide to provide relief if:
  - a. Section 3:136(2) applies;
  - b. approval has been withheld in respect of the life insurer's financing scheme referred to in Section 3:136(2); and
  - c. the life insurer's portfolio has a chance of survival.
2. Withholding approval in respect of the financing scheme referred to in Subsection (1)(b) shall, for the purposes

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

of this section, be considered equivalent to the withdrawal of approval granted in respect of a financing scheme, failure to submit a financing scheme within the term specified by the Dutch Central Bank, or failure to change an approved financing scheme in the manner indicated by the Dutch Central Bank within the term specified by the latter.

3. Relief shall be provided on the basis of a relief plan to be drawn up by the Dutch Central Bank after consultation with the confidential advisory committee. The life insurer and the relief institution shall act in accordance with the relief plan.
4. The Dutch Central Bank shall communicate the commencement of the relief and the corresponding relief plan to the life insurer and the relief institution.
5. Having consulted the confidential advisory committee, the Dutch Central Bank may amend the relief plan.

### **Section 3:152**

1. The relief regulated in the relief plan may consist of reinsurance by a relief institution or a transfer of the portfolio to a relief institution.
2. In the event of reinsurance of the portfolio, the life insurer's commitments under direct insurance contracts shall be reinsured, either fully or in part, with a relief institution to be designated by the Dutch Central Bank. The conditions of reinsurance shall be drawn up by the relief institution and shall require the Dutch Central Bank's approval.
3. In the event of a portfolio transfer, the life insurer's rights and obligations under direct insurance contracts shall be transferred to a relief institution to be designated by the Dutch Central Bank. On that occasion, the relief institution shall increase the solvency margin to the level required under Section 3:57.
4. The relief institution's articles of association, including any amendments, shall require the Dutch Central Bank's prior approval.

### **Section 3:153**

The Dutch Central Bank may issue instructions to the life insurer and the relief institution in the interest of the proper operation of the relief instrument. The life insurer and the relief institution shall follow the instructions of the Dutch Central Bank. The instructions shall not concern the reinsurance conditions referred to in Section 3:152(2), last sentence.

### **Section 3:154**

1. A transfer of the life insurer's portfolio under the relief plan shall only take place after the court within whose jurisdiction the life insurer has its registered office has authorised the transfer at the Dutch Central Bank's request.
2. The Dutch Central Bank may file an application to grant or withdraw an authorisation with the court without the intervention of a local counsel.
3. The court shall authorise the transfer, unless the Dutch Central Bank in all reasonableness has been unable to conclude that the life insurer's portfolio has any chance of survival.
4. The Dutch Central Bank shall send a copy of its application for authorisation to the insurer.
5. The court shall hear the Dutch Central Bank's application for authorisation with the utmost despatch in a session behind closed doors in accordance with procedures in civil matters, insofar as not otherwise provided by this Act. Judgment shall not be delivered in public.
6. The court may inspect the life insurer's commercial data and documents, or arrange for these to be inspected.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

7. The court shall issue no order before the life insurer and the Dutch Central Bank have been heard, or at least properly summoned.
8. The order shall be immediately enforceable, with retroactive effect to the start of the day on which it was pronounced, notwithstanding any provision against it.
9. The court may withdraw the authorisation at the Dutch Central Bank's request.
10. The Dutch Central Bank shall inform the life insurer and the relief institution that the transfer has been authorised.
11. The order shall be open only to an appeal in cassation. Apart from the Dutch Central Bank, the life insurer, regardless of whether it appeared before the court, may lodge an appeal in cassation against the court order issued pursuant to this section.
12. An appeal in cassation against the order shall be lodged within 14 days of the date of the court order. The appeal in cassation shall be heard in chambers and with the utmost despatch. Judgment shall not be delivered in public.

### **Section 3:155**

1. In implementing the relief plan, the life insurer shall transfer to the relief institution the assets serving to cover the technical facilities, insofar as these facilities concern the commitments that will be reinsured or transferred.
2. The life insurer shall transfer no more than the assets required for the reinsurance or transfer of the portfolio.
3. If more assets are required for the relief than those referred to in Subsection (1), the life insurer shall also transfer supplementary assets to the relief institution, up to the required amount.
4. Sections 3:112, 3:117(1), 3:118, 3:119, 3:120, 3:126 and 3:128 shall not apply to the portfolio transfer by the life insurer to the relief institution.

### **Section 3:156**

1. The amount made available at any time for providing relief shall not exceed € 213,610,176 [Ed.: € 241,168,866 as at 1 January 2007], on the understanding that:
  - a. a maximum amount of € 106,805,088 [Ed.: € 120,584,433 as at 1 January 2007] may be made available per relief situation; and
  - b. the available amount regarding which, in the opinion of the Dutch Central Bank at the time when the relief is commenced, after consulting the confidential advisory committee, there is a significant risk that it will not be redeemed, may at no time exceed € 106,805,088 [Ed.: € 120,584,433 as at 1 January 2007].
2. Each year, Our Minister shall adjust the amounts referred to in Subsection (1) to the development in terms of percentage of the total sum of the life insurers' minimum amounts of solvency margin, as referred to in Sections 3:149(1) and 3:159, as evidenced by the most recent annual financial reporting of the Dutch Central Bank.
3. Our Minister shall publish the amounts referred to in Subsection (1) in the Government Gazette in January of the year to which they refer.
4. If, as a result of the application of the relief instrument, the maximum amounts referred to in Subsection (1) are no longer available for subsequent relief, the Dutch Central Bank shall determine the maximum amounts that will be available in that case.
5. Having consulted the confidential advisory committee, the Dutch Central Bank shall determine the amount to be made available for providing relief as the occasion arises. The Dutch Central Bank shall determine for each life insurer to what extent this amount will be issued by subscribing for shares in the relief institution and to what extent this amount will be issued to the relief institution in the form of a subordinated loan. The life insurers to

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

which this section applies shall subscribe for the shares and extend the subordinated loan. No declaration of no objection as referred to in Section 3:95, opening words and (1)(d) shall be required in respect of subscribing for the shares, owning the shares and exercising the control attached to the shares. The Dutch Central Bank shall determine the conditions of the subordinated loan.

6. The life insurers to which this section applies shall provide the amount determined pursuant to Subsection (5). To this end, the Dutch Central Bank shall impose an assessment on the life insurers.
7. Subsection (6) shall not apply to relief institutions and to life insurers to which relief is or has been provided and which still have commitments on that account.
8. The Dutch Central Bank may grant a life insurer a dispensation from Subsection (6), first sentence, if, as a result of the contribution, that life insurer's solvency margin will fall below the level required under Section 3:57, and the life insurer seems unable to increase the solvency margin to the required level within a reasonable period.
9. If a life insurer fails to fulfil its obligations ensuing from Subsection (6), the Dutch Central Bank may issue a writ of execution that may be declared enforceable by the preliminary relief judge of the court within whose jurisdiction the Dutch Central Bank is based and thus constitute an enforceable order, which may then be enforced by the Dutch Central Bank in compliance with the provisions of the Code of Civil Procedure.
10. Further rules shall be laid down by or pursuant to a Decree as regards relief provided pursuant to this section.

#### **Section 3:157**

1. Section 3:119(1) to (4), first sentence shall not apply if the relief institution transfers the portfolio to another life insurer.
2. If the Dutch Central Bank has no reservations about the transfer, it shall grant the relief institution its consent in respect of the transfer.

#### **Section 3:158**

1. Having consulted the confidential advisory committee, the Dutch Central Bank shall determine when the provision of relief will be terminated.
2. The Dutch Central Bank shall inform the life insurer and the relief institution of the termination of the provision of relief.
3. If the relief institution is left with a credit balance after the termination of the provision of relief that involved a portfolio transfer, the relief institution shall pay this balance to the life insurer to which the relief was provided.
4. After the termination of the provision of relief, the relief institution shall in any event cancel the shares that do not represent the minimum capital referred to in Section 67(2) of Book 2 of the Dutch Civil Code. The shareholders shall cooperate in this respect.

#### **3.5.4.2. Life insurers having their registered office in a non-Member State**

##### **Section 3:159**

Section 3.5.4.1 shall apply *mutatis mutandis* to life insurers having their registered office in a non-Member State that conduct the business of a life insurer from branch offices situated in the Netherlands, where it concerns direct insurance contracts concluded from a branch office in the Netherlands, unless a dispensation has been granted in respect of the branch office within the meaning of Section 3:60.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

### **Part 3.5.5. Emergency regulations, rationalisation measures and winding-up procedures under foreign law**

#### **3.5.5.1. Financial enterprises having their registered office in the Netherlands**

##### **Section 3:160**

1. If the solvency or the liquidity of a credit institution having its registered office in the Netherlands that holds a licence as referred to in Section 2:11(1) shows signs of a dangerous development and no improvement of that development may be expected within reason, the court within whose jurisdiction the credit institution has its registered office may, at the Dutch Central Bank's request, declare emergency regulations applicable in respect of the credit institution in the interest of the combined creditors.
2. If the solvency or the liquidity of a credit institution is such that it may be expected within reason that the credit institution will be unable to honour all or part of its obligations in respect of the funds it has obtained, the court within whose jurisdiction the credit institution has its registered office may, at the Dutch Central Bank's request, declare emergency regulations applicable in respect of the credit institution in the interest of the combined creditors.

##### **Section 3:161**

If special measures are required in the interest of the combined creditors in winding up the business of an insurer having its registered office in the Netherlands, the court within whose jurisdiction the insurer has its registered office may, at the Dutch Central Bank's request, declare emergency regulations applicable.

##### **Section 3:162**

1. The Dutch Central Bank shall send a copy of the application to the credit institution or insurer having its registered office in the Netherlands and shall communicate its substance to the supervisory authorities of the other Member States in which the branch office of the credit institution or insurer is situated or to which it performs services from its places of business in another Member State.
2. The court shall hear the Dutch Central Bank's application to declare emergency regulations applicable with the utmost despatch in a session behind closed doors in accordance with procedures in civil matters, insofar as not otherwise provided by this Act.
3. The court shall issue no order as referred to in Sections 3:160(1) or 3:161 before the financial enterprise referred to in Subsection (1) and the Dutch Central Bank have been heard, or at least properly summoned.
4. On declaring the emergency regulations applicable, the court shall appoint one of its members or one of the members of another court as delegated judge and appoint one or more administrators. The Dutch Central Bank may nominate candidates for the appointment of the administrator or administrators.
5. If the application is granted, the order shall be pronounced in open court and an extract shall, without delay, be published by the administrators in the Government Gazette, the Official Journal of the European Union and in at least two Dutch daily newspapers to be designated by the court and at least two national daily newspapers, to be designated by the court, of each Member State in which the enterprise concerned has a branch office or to which it provides services. The extracts shall state the name and registered office of the financial enterprise referred to in Subsection (1), the place of residence or business address of the administrators and the date of the order. The publication in the national daily newspapers shall be made in the official language or languages of the Member State concerned. Furthermore, the publication in the Official Journal of the European Union and the national daily newspapers of each Member State in which the enterprise concerned has a branch office or to which it provides services shall state that, barring exceptions, the emergency regulations will be governed by Dutch law, the legal basis, that the Dutch Central Bank is the competent supervisor, and the final date by which an appeal may be lodged against the decision, stating the full address of the Court of Appeal, the subject of the decision and the legal basis.

##### **Section 3:163**

1. On declaring the emergency regulations applicable or afterwards, the court may authorise the administrators to:



Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

- a. transfer all or part of the obligations of the credit institution, which it assumed in conducting the business of a credit institution in order to obtain the disposal of funds, or all or part of the obligations of the insurer under insurance contracts;
  - b. wind up, in full or in part, the credit institution's business or the insurer's portfolio; or
  - c. carry out both the transfer referred to under (a) and the winding up referred to under (b).
2. In the case of an authorisation with regard to an insurer, the authorisation referred to under (b) and (c) shall also cover the winding-up of the equity capital of the insurer's business, as long as it has not appeared that the insurer's equity capital is negative.
  3. The Dutch Central Bank may state in the application referred to in Sections 3:160(1) or (2) and 3:161 which of the authorisations referred to in Subsection (1) is most appropriate in its opinion.

### **Section 3:164**

1. If the authorisation covers a transfer as referred to in Section 3:163(1), opening words and under (a), it may, on the recommendation of the delegated judge or at the request of the administrators, be extended to an authorisation as referred to in Section 3:163(1), opening words and under (c).
2. The court registrar shall send a copy of the recommendation or the application to the credit institution or the insurer having its registered office in the Netherlands and, where it concerns a recommendation, also to the Dutch Central Bank.
3. Before rendering a decision on a recommendation or application as referred to in Subsection (1), the court shall provide the Dutch Central Bank with the opportunity to express its view in that respect. The Dutch Central Bank shall express its view with the utmost despatch.
4. After the Dutch Central Bank has expressed its view pursuant to Subsection (3), or, where it has not availed itself of the opportunity referred to in Subsection (3), the court shall hear the recommendation or the application referred to in Subsection (3) with the utmost despatch in a session behind closed doors in accordance with procedures in civil matters, insofar as not otherwise provided by this Act.

### **Section 3:165**

1. The court shall be competent to inspect commercial data and documents of the credit institution or insurer concerned, or to designate experts to do so.
2. The party holding the data shall supply the data or information within a term to be specified by the court.

### **Section 3:166**

The Dutch Central Bank shall send a copy of the recommendation or the application referred to in Section 3:164(1) to the credit institution or insurer having its registered office in the Netherlands and shall communicate its substance to the supervisory authorities of the other Member States in which the financial enterprise concerned has a branch office or to which it provides services from its places of business in other Member States.

### **Section 3:167**

The orders referred to in Sections 3:160(1) and (2), 3:161 and 3:164(1) shall state the grounds on which they are based.

### **Section 3:168**

Where the court grants an authorisation as referred to in Section 3:163(1), it shall determine the period of validity at 18 months at most. If an authorisation to transfer is extended to an authorisation to transfer and wind up, the court shall set the period of validity of the authorisation to transfer and wind up at the remaining period of validity of the authorisation to transfer. Prior to the expiry of that term, the administrators may request, once or several times, that the period of validity be extended by 18 months at most. The application shall be heard in the same manner as an

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

application to declare emergency regulations applicable. As long as no decision has been rendered on an application for extension upon expiry of the period of validity, the authorisation shall remain in full force and effect.

### **Section 3:169**

1. The court registrar shall, without delay, inform the Dutch Central Bank of an order as referred to in Section 3:160(1) or (2), 3:161 or 3:164(1).
2. Having been informed of the order, the Dutch Central Bank shall, without delay, notify the supervisory authorities of all the other Member States of the order and of the possible consequences in the case concerned. The Dutch Central Bank shall also, without delay, communicate the order to the systems designated by Our Minister pursuant to Section 212d of the Bankruptcy Act.

### **Section 3:170**

1. The administrators shall, without delay, inform all known creditors in writing of an authorisation as referred to in Section 3:163(1), opening words and under (b) or (c).
2. The notification to creditors with insurance-related claims shall also state the most important consequences of the authorisation for the insurance contracts and the rights and obligations of the creditor with an insurance-related claim.
3. Each creditor may present its claim and written comments concerning its claim to the administrators.

### **Section 3:171**

1. The notification referred to in Section 3:170(1) to a known creditor having its habitual residence or address in a Member State that has an insurance-related claim shall be made in the official language or languages of that Member State.
2. The notification referred to in Section 3:170(1) to a known creditor having its habitual residence or address in a Member State that has a claim other than the claim referred to in Subsection (1), shall be made in Dutch by means of a form bearing the heading «Notification to present comments on claims. Deadlines» in all the official languages of the Member States.
3. Each creditor having its habitual residence or address in a Member State may present its claim and written comments on its claim in an official language of that Member State, together with explanatory notes, bearing the Dutch headings «*Indiening van een vordering*» ('Presentation of a claim') and «*Indiening van opmerkingen betreffende een vordering*» ('Presentation of comments on a claim') respectively.
4. In the event of emergency regulations with regard to a credit institution, the administrators may demand the translation into Dutch of the presentation of the claim and the accompanying comments.

### **Section 3:172**

If an authorisation has been granted as referred to in Section 3:163(1), opening words and under (b) or (c):

- a. the administrators shall, on a regular basis and in appropriate manner, inform all known creditors in any event of the progress of the emergency regulations; and
- b. the Dutch Central Bank shall inform the supervisory authorities of the other Member States that so request of the progress of the emergency regulations.

### **Section 3:173**

1. The delegated judge shall supervise the transfer or the winding-up as referred to in Section 3:163(1) and the administration of the assets.
2. Sections 66 and 67(1) of the Bankruptcy Act shall apply *mutatis mutandis* to the orders of the delegated judge,

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

issued in the implementation of the provisions of Subsection (1). Section 67(2) of the Bankruptcy Act shall apply mutatis mutandis insofar as the sections listed therein have been declared applicable mutatis mutandis under Section 3:180(2). The provisions of those sections with regard to the liquidator and the party in liquidation shall apply mutatis mutandis to the administrators and the insurer respectively.

### **Section 3:174**

1. An order as referred to in Sections 3:160(1) or (2), 3:161, 3:163(1) or 3:164(1) shall be immediately enforceable. An order as referred to in Sections 3:160(1) or (2) or 3:161 shall have retroactive effect to the start of the day on which it was pronounced. The enforceability and retroactive effect referred to in this subsection shall apply notwithstanding any provision against it.
2. In derogation from Subsection (1), an order as referred to in Subsection (1) shall have no retroactive effect in respect of:
  - a. a transfer instruction or settlement instruction issued by a credit institution or insurer having its registered office in the Netherlands, or any payment, delivery, settlement or other legal act ensuing from such instruction which is required for the full execution of the instruction in a system as referred to in Section 212a(b) of the Bankruptcy Act; or
  - b. a financial security contract as referred to in Section 51 of Book 7 of the Dutch Civil Code concluded by a credit institution or insurer having its registered office in the Netherlands, or a transfer or creation of a right of pledge based on such contract, or any payment, delivery or other legal act ensuing from such contract which is required for the full performance of that contract,where this transfer instruction or financial security contract was issued or concluded prior to the time at which the court issued the order.
3. Subsection (1) and Section 3:175(1) may not be invoked against third parties in respect of:
  - a. a transfer instruction or settlement instruction issued by a financial enterprise as referred to in Subsection (2), or any payment, delivery, settlement or legal act ensuing from such instruction which is required for the full execution of the instruction, where the transfer instruction was issued after the time at which the court issued an order as referred to in Subsection (1), if the instruction is executed in a system as referred to in Section 212a(b) of the Bankruptcy Act on the day on which the district court issued the order, and the central counterparty, the settlement agent or the settlement institute referred to in Section 212a of the Bankruptcy Act can demonstrate that it was unaware or was not required to be aware of the order issued by the court at the time when the instruction was executed; or
  - b. a financial security contract as referred to in Section 51 of Book 7 of the Dutch Civil Code concluded by a financial enterprise as referred to in Subsection (2), or any payment, delivery or other legal act ensuing from such contract which is required for the full performance of that contract, if the financial security contract was concluded after the time at which the court issued an order as referred to in Subsection (1), where the party being granted security can demonstrate that it was unaware or was not required to be aware of the order issued by the court at the time when that contract was concluded.
4. Subsections (2) and (3) shall apply mutatis mutandis to security rights under the law of property granted by financial enterprises as referred to in Subsection (2) in relation to participation in a system as referred to in Section 212a(b) of the Bankruptcy Act for the benefit of a central bank as referred to in Section 212a(h) of the Bankruptcy Act or for the benefit of a financial enterprise participating in the system.
5. In derogation from Subsection (1), the order referred to in that subsection shall have no retroactive effect in respect of a financial security contract as referred to in Section 51 of Book 7 of the Dutch Civil Code concluded by financial enterprises as referred to in Subsection (2) prior to the time at which the court issued the order, or a transfer or creation of a right of pledge based on such contract, or any payment, delivery or other legal act ensuing from such contract which is required for the full performance of that contract.
6. Subsection (1) may not be invoked against third parties in respect of a financial security contract as referred to in Section 51 of Book 7 of the Dutch Civil Code concluded by a financial enterprise as referred to in Subsection

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

(2) after the time at which the court issued an order as referred to in Subsection (1), or any payment, delivery or other legal act ensuing from such contract which is required for the full performance of that contract, where the party being granted security can demonstrate that it was unaware or was not required to be aware of the order issued by the court.

7. The order shall state, to the nearest minute, the time at which it was issued.

### **Section 3:175**

1. The administrators shall, solely and exclusively, exercise all powers of the managing and supervisory directors of the credit institution or insurer having its registered office in the Netherlands, or, in the case of an insurer having its registered office in the Netherlands, of representatives of the insurer.
2. The administrators shall safeguard the interests of the combined creditors.
3. The managing and supervisory directors of the credit institution or insurer, or the insurer's representatives, shall provide all the assistance requested by the administrators.
4. If more than one administrator has been appointed, their acts, in order to be valid, shall require the consent of the majority, or, in the event of a tie, an order from the President of the court. An administrator who has been assigned a particular range of duties, by means of an authorisation as referred to in Section 3:163(1), shall have the power to act independently within the limits of such range.
5. The court may at any time dismiss and replace an administrator, or add one or more associate administrators to that administrator, having heard or in any event having properly summoned this administrator and the Dutch Central Bank, all this at the request of the administrator concerned, the other administrators, the Dutch Central Bank or one or more creditors, or ex officio.
6. The administrators may authorise the managing directors of a credit institution or insurer, or the insurer's representative, to perform certain acts.
7. A decision of shareholders or members of the financial enterprise referred to in Subsection (1) shall only be valid subject to the administrators' approval.
8. The administrators may adopt a decision if a decision of shareholders or members that is required for an act under the articles of association or regulations of the financial enterprise referred to in Subsection (1) is not adopted or approved as required by the articles of association or regulations.
9. The administrators may authorise persons to exercise all or part of the powers conferred on them under Subsection (1). The administrators may request the court to determine the remuneration for the authorised persons. The administrators shall publish a notification of the name and place of residence of the authorised person and of the withdrawal of an authorisation in the Government Gazette.
10. The court shall determine the fees of the persons designated pursuant to Section 3:165(1), the fees and disbursements of the administrators and the other costs of the emergency regulations, which shall constitute a claim against the assets.
11. The administrators may dismiss the managing directors, supervisory directors and representatives on behalf of the financial enterprise referred to in Subsection (1). The agreed or statutory notice periods shall be observed for this dismissal, on the understanding, however, that a period of six weeks will in any event suffice.
12. The administrators may appoint persons to represent them or otherwise assist them.
13. Section 69 of the Bankruptcy Act shall apply mutatis mutandis.

### **Section 3:176**

1. Declaring emergency regulations applicable shall mean that the credit institution or insurer having its registered

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

office in the Netherlands cannot be required to fulfil its obligations existing prior to the emergency declarations being declared applicable.

2. Executions that commenced prior to the emergency regulations being declared applicable shall be suspended.
3. Attachments made prior to the emergency regulations being declared applicable shall lapse.
4. Section 36 of the Bankruptcy Act shall apply mutatis mutandis to the obligations referred to in Subsection (1).
5. The provisions of Subsection (1) shall not apply to:
  - a. claims covered by a pledge or mortgage on property of the financial enterprise referred to in Subsection (1);
  - b. instalments of hire-purchase; and
  - c. claims regarding the performance of financial security contracts as referred to in Section 51 of Book 7 of the Dutch Civil Code.
6. Where claims covered by a pledge or mortgage cannot be recovered from the property subject to those rights, the order shall be valid against those claims.

### **Section 3:177**

1. Sections 52 and 234 to 241a of the Bankruptcy Act shall apply mutatis mutandis.
2. In derogation from Subsection (1), a payment made against the assets after the publication of the adoption of emergency regulations in respect of a credit institution not being a natural person shall release the latter from its obligations if, in the event that an authorisation was granted as referred to in Section 3:163(1), opening words and under (b), the party that made the payment demonstrates that it was not aware of the adoption of the emergency regulations, or, in the event that an authorisation was granted as referred to in Section 3:163(1), opening words and under (c), from the moment when assets of the financial enterprise concerned were converted into cash with a view to distributing the proceeds among the creditors, shareholders or members of the financial enterprise concerned.

### **Section 3:178**

1. The administrators may make payments in respect of claims not ensuing from transactions with the credit institution or insurer having its registered office in the Netherlands after the emergency regulations were declared applicable, insofar as this can be deemed justified in view of the liquidity position of the financial enterprise concerned, if the provisions of Subsection (2) and Sections 3:179 to 2:184 are complied with.
2. Section 3:171 shall apply mutatis mutandis, on the understanding that the reference to the notification referred to in Section 3:170 must be read as: the notification referred to in Section 3:179(2), second sentence.

### **Section 3:179**

1. The administrators shall draw up a statement showing the nature and the amounts of the assets and liabilities of the financial enterprise, the names and addresses of the creditors and the amount of the claims of each creditor. A copy of this statement, certified by the administrators, shall be deposited at the court registry for free public inspection.
2. At the administrators' request, the delegated judge shall specify the day by which the claims must have been presented, as well as the date, time and place of the first creditors' meeting. Once the delegated judge has rendered a decision on the request referred to in the first sentence, the administrators shall, without delay, inform all known creditors of this in writing. This notification shall in any event also include the consequences of presenting a claim after the expiry of the term referred to in the first sentence, the statement that the claim must be submitted to the administrators and, where appropriate, the statement that a claim is laid to a right of priority or a property right. In respect of creditors with insurance-related claims, the notification shall also state the most important consequences of the emergency regulations for the insurance contracts, as well as the rights and obligations of the insured person and other parties in connection with the insurance contracts.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

3. In the case of a credit institution, non-life insurer or life insurer having its registered office in the Netherlands, the administrators shall also publish a notification of the orders in the Government Gazette, the Official Journal of the European Union and in at least two Dutch daily newspapers to be designated by the court and at least two national daily newspapers of each member state in which the enterprise concerned has a branch office or to which it provides services, and, in the case of a funeral expenses and benefits in kind insurer having its registered office in the Netherlands, in the Government Gazette and in at least two Dutch daily newspapers to be designated by the court.
4. Sections 110 to 113 and 213l(e) of the Bankruptcy Act shall apply mutatis mutandis.

### **Section 3:180**

1. The administrators shall deposit a copy of the list of provisionally recognised claims and of the list of disputed claims at the court registry, where they shall be available for free public inspection for a period of 14 days prior to the first creditors' meeting. Before the commencement of this period, the administrators shall inform all known creditors in writing of this deposition, accompanied by an invitation to the first creditors' meeting. The administrators shall also publish a notification of the deposition in one or more daily newspapers to be designated by the delegated judge.
2. Sections 59, 119 to 122, 123 to 127, 129, 132 to 137, 260(1), 261 and 262(1) and (3) of the Bankruptcy Act shall apply mutatis mutandis in respect of validations. Thereby the provisions relating to the liquidator and the party in liquidation shall apply to the administrators and the financial enterprise referred to in Subsection (1) respectively. In derogation from the period referred to in Section 127(1) of the Bankruptcy Act, the period for presenting claims as determined under Section 3:179(2) shall apply. The claims that become due and demandable on or after the date of the order referred to in Sections 3:160(1) and (2) and 3:161 shall be validated at the value which they represent at the time when these claims become due and demandable, on the understanding that in respect of claims which are subject to Section 3:195(1) this shall apply only where said provision has not already been applied to these claims.

### **Section 3:181**

1. The managing directors of the financial enterprise referred to in Section 3:178 shall attend the first creditors' meeting in order to furnish any and all information regarding the reasons for the situation referred to in Sections 3:160 or 3:161 and the condition of the assets which the delegated judge asks them to provide. Each of the creditors may request the delegated judge to ask the managing directors for information in respect of certain points to be specified by them.
2. The questions put to the managing directors and the answers given by them shall be recorded in the minutes.
3. In derogation from the provisions of Section 121(4) of the Bankruptcy Act, the minutes of the first creditors' meeting shall, with regard to the commitments of the financial enterprise referred to in Subsection (1) that are transferred pursuant to Sections 3:194(1) and 3:195(1) respectively, only be final and conclusive where the relevant stipulations remain unchanged.

### **Section 3:182**

1. After the validation of the claims, the administrators shall draw up a list of liquidating dividends. They shall submit this list to the delegated judge for approval. The list shall contain a statement of receipts and expenditure, including the fees of the administrators, the names of the creditors, and also the validated amount of each creditor's claim and the dividend to be received in respect of that claim. Sections 180(2), 181 and 182(1) of the Bankruptcy Act shall apply mutatis mutandis. Without prejudice to Section 3:184, Section 233 of that Act shall also apply mutatis mutandis.
2. In drawing up the list of liquidating dividends, an amount of liquid resources shall be set aside in respect of the claims which are disputed or whose priority is contested, or which have been allowed conditionally, which amount shall at least be equal to the total of the amounts which may be paid in respect of these claims in compliance with this section, or, alternatively, these dividends shall be secured in another manner.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

### **Section 3:183**

1. The administrators shall deposit the list of liquidating dividends approved by the delegated judge at the court registry, where it shall be available for free inspection by the creditors for a period of 14 days. The administrators shall publish a notification of the deposition in one or more daily newspapers to be designated by the delegated judge, and, where it concerns a credit institution, life insurer or non-life insurer having its registered office in the Netherlands, in the Official Journal of the European Union. The administrators shall also inform each of the recognised and conditionally admitted creditors in writing of the deposition, stating the amounts reserved for them.
2. Sections 184 to 186, 187(1), (2) and (3), 189 and 191 of the Bankruptcy Act shall apply mutatis mutandis, on the understanding that the provisions of these sections relating to the liquidator shall apply to the administrators and that, in derogation from the period referred to in Section 184 of the Bankruptcy Act, the period referred to in Subsection (1), first sentence of the present section shall apply.
3. Where a validation dispute arises as a result of the objections raised pursuant to Section 184 or Section 186 of the Bankruptcy Act, Section 3:182 shall apply mutatis mutandis to the claims relating to those objections, and the dividends may subsequently be paid, with due observance of the other provisions of Sections 3:178 to 3:184, after the other amounts of dividend included in the list deposited for inspection have been modified accordingly where necessary. Where the objections raised do not lead to a validation dispute, the dividends may be paid, with due observance of the provisions of the order issued in respect of the objections, as soon as that order has become final and conclusive.

### **Section 3:184**

In derogation from Section 3:182(2), last sentence, dividends may only be paid in respect of validated claims which become due or demandable on or after the date of the order referred to in Sections 3:160(1) and (2) and 3:161, insofar as Section 3:163(1) has not already been applied to these claims, when these claims have become due and demandable. Until that time, an amount of liquid resources shall be set aside which shall at least equal the total of the amounts which may be paid in respect of these claims in compliance with this section, or, alternatively, these dividends shall be secured in a different manner.

### **Section 3:185**

By virtue of their authorisation referred to in Section 3:163(1), the administrators, irrespective of any stipulations on this point in the articles of association of the relevant credit institution or insurer having its registered office in the Netherlands, may:

- a. make and collect calls not yet made on the shares in the issued share capital of the credit institution or insurer having its registered office in the Netherlands, and the guarantee capital of an insurer having its registered office in the Netherlands;
- b. impose and collect additional assessments up to the maximum amount stipulated in the articles of association of an insurer having its registered office in the Netherlands that is a mutual association having its registered office in the Netherlands.

### **Section 3:186**

During the period of the emergency regulations, the administrators shall, without delay, report on their activities to the court at the end of every three months, and on termination of the emergency regulations. The administrators shall send a copy of this report to Our Minister and to the Dutch Central Bank.

### **Section 3:187**

For the purposes of Sections 194, 342 and 343 of the Criminal Code, involuntary liquidation shall be considered equivalent to the legal position of a credit institution or insurer having its registered office in the Netherlands as long as the emergency regulations are in force with regard to this financial enterprise.

### **Section 3:188 [Cancelled from 1 January 2007]**

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

**Section 3:189**

1. The court may terminate the emergency regulations at the administrators' request or ex officio.
2. The administrators may file an application to terminate the emergency regulations with the court without the intervention of a local counsel.
3. The court shall issue no order before the credit institution or insurer having its registered office in the Netherlands and the Dutch Central Bank have been heard, or at least properly summoned.
4. The administrators shall publish a notification of the termination of the emergency regulations in the Government Gazette and, where it concerns a credit institution, life insurer or non-life insurer having its registered office in the Netherlands, in the Official Journal of the European Union and in one or more daily newspapers to be designated by the court.
5. The Dutch Central Bank shall communicate the termination of the emergency regulations to the supervisory authorities of other Member States in which the financial enterprise referred to in Subsection (1) has a branch office or to which it provides services from its places of business in other Member States.

**Section 3:190**

Where the notification referred to in Sections 3:189(4), 3:194(3) or 212o(1) of the Bankruptcy Act concerns all the commitments of the credit institution or insurer having its registered office in the Netherlands, the powers conferred on the administrators pursuant to the emergency regulations being declared applicable shall lapse by operation of law as a result of this notification.

**Section 3:191**

1. If the application to declare emergency regulations applicable is dismissed, the Dutch Central Bank may lodge an appeal against orders of the court pursuant to Sections 3:160(1) or (2), 3:161, 3:163(1) and 3:194 within eight days of the date of the dismissal.
2. If the application to declare emergency regulations applicable is granted, the credit institution or insurer having its registered office in the Netherlands may, where it has been heard in respect of the application to declare emergency regulations applicable, lodge an appeal within eight days of the date on which the application was granted or, where it has not been heard, file an objection against orders of the court pursuant to Sections 3:160(1) or (2), 3:161, 3:163(1), 3:194 and 3:195(1).
3. The hearing shall take place in chambers and with the utmost despatch.
4. If the application is granted, the order shall be pronounced in open court and an extract shall, without delay, be published by the administrators in the Government Gazette, the Official Journal of the European Union and in at least two Dutch daily newspapers to be designated by the Court of Appeal and at least two national daily newspapers, to be designated by the Court of Appeal, of each Member State in which the enterprise concerned has a branch office or to which it provides services. The extracts shall state the name and registered office of the financial enterprise concerned, the place of residence or business address of the administrators and the date of the order. The publication in the national daily newspapers shall be made in the official language or languages of the Member State concerned. Furthermore, the publication in the Official Journal of the European Union and the national daily newspapers of each Member State in which the enterprise concerned has a branch office or to which it performs services shall state that, barring exceptions, the emergency regulations will be governed by Dutch law, the legal basis, that the Dutch Central Bank is the competent supervisor, and the final date by which an appeal in cassation may be lodged against the decision, stating the full address of the Supreme Court, the subject of the decision and the legal basis.
5. An appeal in cassation against this decision on appeal or objection must be lodged within 14 days of the date of the judgment. Subsection (3) shall apply mutatis mutandis.
6. Where the order to declare emergency regulations applicable is set aside by the judgment on objection, appeal



Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

or appeal in cassation, the acts performed by the administrators prior to or on the day on which the requirement of publication in the Government Gazette in accordance with Section 3:192(1) is satisfied shall nevertheless be valid and binding with regard to the credit institution or insurer.

### **Section 3:192**

1. As soon as an order to declare emergency regulations applicable has been set aside by a judgment on objection, appeal or appeal in cassation, and, in the first two cases, the period within which to lodge an appeal or appeal in cassation has expired without such legal remedy having been used, the registrar of the court that set aside the order shall communicate that judgment to the administrators. The administrators shall publish a notification of this in the publications referred to in Section 3:162(5).
2. Section 15(2) and (3) of the Bankruptcy Act shall apply mutatis mutandis.

### **Section 3:193**

1. An association of which at least 35 percent of:
  - a. the creditors with a claim against the credit institution having its registered office in the Netherlands under a contract concluded by the credit institution in the pursuit of its business in order to obtain the disposal of funds; or
  - b. the creditors with an insurance-related claim;are members, may present claims to the administrators.
2. The administrators shall hear the association before exercising the powers referred to in Sections 3:194 or 3:195 if the association has demonstrated to the administrators' satisfaction, at a time to be specified by the administrators, that it fulfils the requirements laid down in Subsection (1).

### **Section 3:194**

1. The court, upon granting an authorisation as referred to in Section 3:163(1) or thereafter, may, upon request, grant a special authorisation to the administrators enabling them, upon the transfer of rights and obligations under contracts concluded by the credit institution having its registered office in the Netherlands in the pursuit of its business as a credit institution in order to obtain the disposal of funds, to change those contracts, on the understanding that the clauses in the contracts from which claims ensue as referred to in Section 3:176(5), claims covered by a pledge or mortgage on property of the credit institution or instalments of hire-purchase cannot be changed.
2. As regards the special authorisations referred to in Subsection (1), Sections 3:162(1) to (3) and (5), first sentence, 3:165, 3:168, 3:169(1) and (2), first sentence and 3:174(1) shall apply mutatis mutandis.
3. As soon as the commitments have been transferred, the administrators shall publish a notification of the transfer and, where clauses in the contracts have been changed, of those changes, in the Government Gazette, in the Official Journal of the European Union and in at least three daily newspapers to be designated by the court.
4. The transfer and the change shall take effect towards all the parties involved, other than the credit institutions concerned, on the second day following the publication date of the Government Gazette in which the notification was published.
5. The Dutch Central Bank shall communicate the transfer to the supervisory authorities of the other Member States in which the credit institution has a branch office or to which it performs services from its places of business in other Member States.
6. Changes as referred to in Subsection (1) shall not affect the payments made in accordance with Section 3:178 prior to the day on which the application for the authorisation referred to in Subsection (1) was submitted.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

7. During the winding-up referred to in Section 3:163(1), opening words and under (b) or (c), the court shall arrange, where required, the particulars and consequences of the winding-up, including a reduction of the period of validity of current contracts, after obtaining the opinion of the administrators and the Dutch Central Bank.

### **Section 3:195**

1. The court, upon granting an authorisation as referred to in Section 3:163(1) or thereafter, may, upon request, grant a special authorisation to the administrators enabling them:
  - a. upon the transfer of rights and obligations under an insurance contract concluded by the insurer having its registered office in the Netherlands, to change that insurance contract; or
  - b. to reduce the period of validity of the insurance contract.
2. As regards the special authorisation referred to in Subsection (1), Sections 3:162(1) to (3) and (5), first sentence, 3:165, 3:168, 3:169(1) and (2), first sentence and 3:174(1) shall apply mutatis mutandis.
3. As soon as the rights and obligations have been transferred under the authorisation referred to in Section 3:163(1), the administrators shall publish a notification of this transfer and, where they have performed acts under the special authorisation referred to in Subsection (1), of those acts, in the Government Gazette, in at least two daily newspapers to be designated by the court and, where it concerns a life or non-life insurer having its registered office in the Netherlands, in the Official Journal of the European Union. The administrators may, where they deem this to be in the interest of policyholders, insured persons or persons entitled to payments, also publish the said transfer and acts in another manner.
4. The transfer and the change referred to in Subsection (1)(a) shall take effect towards all the parties involved, other than the insurer concerned, on the second day following the publication date of the Government Gazette in which the notification was published. Sections 3:112 to 3:114, 3:116 and 3:120 shall not apply to transfers.
5. Where it concerns a life insurer or non-life insurer, the Dutch Central Bank shall communicate the transfer and the acts to the supervisory authorities of the other Member States in which the financial enterprise concerned has a branch office or to which it provides services from its places of business in other Member States.
6. Changes as referred to in Subsection (1)(a) shall not affect the payments made in accordance with Section 3:178 prior to the day on which the application for the authorisation referred to in Subsection (1) was submitted.
7. Changes as referred to in Subsection (1)(a) that concern a life insurance contract may not result in additional obligations on the part of policyholders.

### **Section 3:196**

Where rights and obligations are transferred pursuant to an authorisation as referred to in Section 3:163(1) or a special authorisation as referred to in Section 3:195(1), the insurer having its registered office in the Netherlands shall transfer the assets serving to cover the technical facilities, insofar as these facilities concern the commitments that are transferred.

### **Section 3:197**

A transfer of rights and obligations pursuant to an authorisation as referred to in Section 3:163(1), opening words and under (a) or (c) may not prejudice the rights of the remaining creditors.

### **Section 3:198**

1. Where the emergency regulations are applied under this chapter, the claims against the assets, in accordance with the provisions of the Bankruptcy Act, shall, depending on the nature of the claim concerned, either be apportioned among all the assets or offset exclusively against one particular asset. Claims against the assets shall in any event include the costs of entry in a public register in another Member State.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

2. Without prejudice to the provisions of Subsection (1) and except for claims covered by a pledge or mortgage, in the event of emergency regulations in respect of a non-life insurer having its registered office in the Netherlands the following claims shall be recovered from the assets in the following order:
  - a. the insurance-related claims with regard to periodic payments relating to illness, injury or the death of natural persons, arising from a non-life insurance contract, with the exception of payments owed to another insurer under a reinsurance contract, and of payments relating to pensions awarded to employees or former employees of the insurer or to their surviving dependants;
  - b. the claims of employees and former employees and the claims of their surviving dependants with regard to pension instalments that have already matured, insofar as the claim is not older than one year;
  - c. the claims of employees, other than managing directors of the insurer that employs them, and former employees as well as the claims of their surviving dependants with regard to awarded pension instalments maturing in the future;
  - d. the claims of employees with regard to the wages for the preceding year and all they are owed for the current year, as well as the amount of the increase in those wages pursuant to Section 625 of Book 7 of the Dutch Civil Code, and the amount of the expenses incurred by the employee on behalf of the insurer as employer, and the amounts owed by the insurer to the employee pursuant to Title 10 of Book 7 of the Dutch Civil Code in connection with the termination of the employment contract;
  - e. the insurance-related claims with regard to non-periodic payments relating to illness, injury or the death of natural persons, arising from a non-life insurance contract, with the exception of payments owed to another insurer under a reinsurance contract;
  - f. the insurance-related claims with regard to payments relating to claims other than those referred to under (a) and (e), arising from non-life insurance contracts;
  - g. the claims to a refund of amounts that were paid without a legal basis, or whose payment lost its legal basis, which payment was made on the supposition that it constituted a payment of premiums.
3. Without prejudice to the provisions of Subsection (1) and except for claims covered by a pledge or mortgage, in the event of emergency regulations in respect of a life insurer having its registered office in the Netherlands the following claims shall be recovered from the assets in the following order:
  - a. the claims of employees and former employees and the claims of their surviving dependants with regard to pension instalments that have already matured, insofar as the claim is not older than one year;
  - b. the claims of employees, other than managing directors of the insurer that employs them, and former employees as well as the claims of their surviving dependants with regard to awarded pension instalments maturing in the future;
  - c. the claims of employees with regard to the wages for the preceding year and all they are owed for the current year, as well as the amount of the increase in those wages pursuant to Section 625 of Book 7 of the Dutch Civil Code, and the amount of the expenses incurred by the employee on behalf of the insurer, and the amounts owed by the insurer to the employee pursuant to Title 10 of Book 7 of the Dutch Civil Code in connection with the termination of the employment contract;
  - d. the insurance-related claims and rights relating to payments that have arisen or will arise under a life insurance contract;
  - e. the claims to a refund of amounts that were paid without a legal basis, or whose payment lost its legal basis, which payment was made on the supposition that it constituted a payment of premiums.
4. Without prejudice to the provisions of Subsection (1) and except for claims covered by a pledge or mortgage, in the event of emergency regulations in respect of a funeral expenses and benefits in kind insurer having its registered office in the Netherlands the following claims shall be recovered from the assets in the following order:
  - a. the claims of employees and former employees and the claims of their surviving dependants with regard to pension instalments that have already matured, insofar as the claim is not older than one year;
  - b. the claims of employees, other than managing directors of the insurer that employs them, and former employees as well as the claims of their surviving dependants with regard to awarded pension instalments maturing in the future;
  - c. the claims of employees with regard to the wages for the preceding year and all they are owed for the current year, as well as the amount of the increase in those wages pursuant to Section 625 of Book 7 of the

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

Dutch Civil Code, and the amount of the expenses incurred by the employee on behalf of the insurer as employer, and the amounts owed by the insurer to the employee pursuant to Title 10 of Book 7 of the Dutch Civil Code in connection with the termination of the employment contract;

- d. the claims and rights relating to performances that have arisen or will arise under a funeral expenses and benefits in kind insurance concluded from a place of business in the Netherlands.
5. Any claims not listed in Subsections (2), (3) and (4) shall only be paid after the claims referred to in Subsections (2), (3) and (4) have been paid and, in the case of claims as referred to in Subsections (2) and (3), where it is established that such claims will not arise in the future, in proportion to every claim, subject to the rules of priority recognised by law.
6. The rules of priority referred to in Subsection (5) shall apply both to claims of creditors with their habitual residence, address or registered office in the Netherlands and to similar claims of creditors with their habitual residence, address or registered office in another Member State.

### **Section 3:199**

1. Where the relief referred to in Section 3:152(1) has already commenced when the emergency regulations are declared applicable, the Dutch Central Bank may continue to provide the relief in the form referred to in Section 3:152(3).
2. The administrators shall provide assistance in this respect.

### **Section 3:200**

1. Having consulted the confidential advisory committee, the Dutch Central Bank may commence the relief referred to in Section 3:152(1) during the emergency regulations, provided that the life insurer's portfolio has a chance of survival.
2. The administrators shall provide assistance in this respect.
3. In the case referred to in Subsection (1), the relief shall be restricted to the mandatory portfolio transfer referred to in Section 3:152(3).
4. Section 3:151(1) and (2) shall not apply.

### **Section 3:201**

1. The Dutch Central Bank shall notify the administrators if the mandatory portfolio transfer cannot be realised after the relief has commenced in accordance with Sections 3:151(2) or 3:200.
2. As long as the Dutch Central Bank has not made this notification, the court shall not grant a special authorisation to the administrators as referred to in Section 3:195(1).
3. The court shall also refrain from granting the special authorisation as long as the Dutch Central Bank has not commenced the relief, unless the Dutch Central Bank has informed the administrators of the circumstance that there is no reason to commence such relief.

#### **3.5.5.2. Financial enterprises having their registered office in another Member State**

### **Section 3:202**

If the solvency or the liquidity of a branch office situated in the Netherlands of an unlicensed credit institution having its registered office in another Member State is such that it may be expected within reason that the credit institution or the branch office will be unable to honour all or part of its obligations in respect of the funds it has obtained, the court within whose jurisdiction the credit institution has its registered office or the branch office is situated may, at the Dutch Central Bank's request, declare emergency regulations applicable in respect of the credit institution in the interest of the combined creditors.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

### **Section 3:203**

If special measures are required in the interest of the creditors with an insurance-related claim in winding up the business of a branch office situated in the Netherlands of an unlicensed life insurer or non-life insurer having its registered office in another Member State, the court within whose jurisdiction that insurer has its registered office may, at the Dutch Central Bank's request, declare emergency regulations applicable.

### **Section 3:204**

Sections 3:162 to 3:201 shall apply mutatis mutandis to credit institutions as referred to in Section 3:202 and insurers as referred to in Section 3:203 insofar as these sections relate to the financial enterprises concerned.

### **Section 3:205**

1. The court registrar shall inform the Dutch Central Bank where the court deems it necessary to adopt a rationalisation measure in relation to a branch office situated in the Netherlands of a credit institution having its registered office in another Member State that may pursue the business of a credit institution in the Netherlands pursuant to Section 2:15.
2. Having been informed in accordance with Subsection (1), the Dutch Central Bank shall notify the supervisory authorities of all the other Member States.

### **3.5.5.3. Financial enterprises having their registered office in a non-Member State with a branch office situated in the Netherlands**

#### **Section 3:206**

1. If the solvency or the liquidity of a credit institution having its registered office in a non-Member State with a branch office in the Netherlands that holds a licence as referred to in Section 2:20(1), or the solvency or the liquidity of a branch office situated in the Netherlands of a credit institution having its registered office in a non-Member State that holds a licence as referred to in Section 2:20(1), shows signs of a dangerous development and no improvement of that development may be expected within reason, the court within whose jurisdiction the branch office is situated may, at the Dutch Central Bank's request, declare emergency regulations applicable in respect of the credit institution in the interest of the combined creditors.
2. If the solvency or the liquidity of a credit institution having its registered office in a non-Member State with a branch office situated in the Netherlands, or of a branch office situated in the Netherlands of a credit institution having its registered office in a non-Member State, is such that it is may expected that the credit institution or the branch office will be unable to honour all or part of its obligations in respect of the funds it has obtained, the court within whose jurisdiction the branch office is situated may, at the Dutch Central Bank's request, declare emergency regulations applicable in respect of the credit institution in the interest of the combined creditors.

#### **Section 3:207**

If special measures are required in the interest of the combined creditors in winding up the business of a life insurer or non-life insurer to which Section 2:40 applies, or of the combined creditors whose claim is the result of an obligation ensuing from the operation of the branch office situated in the Netherlands, the court within whose jurisdiction the life insurer or non-life insurer has its registered office may, at the Dutch Central Bank's request, declare emergency regulations applicable.

#### **Section 3:208**

1. The Dutch Central Bank shall send a copy of the application to the credit institution referred to in Section 3:206(1) and (2), the life insurer and non-life insurer referred to in Section 3:207 and to the branch office, and shall communicate the substance of the application to:
  - a. the supervisory authorities of the other Member States to which it provides services from a branch office situated in the Netherlands; and

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

- b. where it concerns a life insurer or non-life insurer and a supervisory authority of another Member State is responsible for supervising of the solvency margin of the insurer concerned, that supervisory authority.
2. Section 3:162(2) to (4) shall apply mutatis mutandis.
3. The court registrar shall send a copy of the summons referred to in Section 3:162(3) to a financial enterprise as referred to in Subsection (1) and to the branch office.
4. If the application is granted, the order shall be pronounced in open court and an extract shall, without delay, be published by the administrators in the Government Gazette and in at least two Dutch daily newspapers to be designated by the court. The extract shall state the name and registered office and the branch office of the financial enterprise, the registered office and place of residence or business address of the administrators and the date of the order.

### **Section 3:209**

If an authorisation has been granted as referred to in Section 3:163(1), opening words and under (b) or (c), the administrators shall, on a regular basis and in appropriate manner, inform all known creditors whose claim is the result of an obligation ensuing from the operation of a branch office situated in the Netherlands in any event of the progress of the emergency regulations.

### **Section 3:210**

1. As regards a credit institution, life insurer or non-life insurer having its registered office in a non-Member State with a branch office situated in the Netherlands, the authorisations shall concern the business conducted from the branch office situated in the Netherlands.
2. For the purposes of Subsection (1), provisions may be laid down by or pursuant to a Decree as regards the assets and liabilities that must be regarded as part of that business.

### **Section 3:211**

1. Sections 3:163 to 3:168, 3:171, 3:173, 3:174, 3:175(1) to (6) and (9) to (13), and 3:176 to 3:201 shall apply mutatis mutandis to emergency regulations declared applicable in accordance with Sections 3:206 or 3:207, on the understanding that «creditors» must be read as «creditors whose claim is the result of an obligation ensuing from the operation of the branch office situated in the Netherlands».
2. In derogation from Subsection (1), no publication of a notification in the Official Journal of the European Union shall be required in respect of the orders referred to in Section 3:179(3) and the deposition referred to in Section 3:183(1).

### **Section 3:212**

1. If an authorisation has been granted as referred to in Section 3:163(1), opening words and under (b), the court registrar shall, without delay, inform the Dutch Central Bank of the substance of the order and of its possible consequences in the case concerned. Thereupon the Dutch Central Bank shall, without delay, inform the supervisory authorities of the other Member States in which the credit institution referred to in Section 3:206(1) or (2) or the insurer referred to in Section 3:207 has a branch office, of the order and of its possible consequences in the case concerned. The Dutch Central Bank shall inform the supervisory authorities of the other Member States of the order.
2. If an authorisation has been granted as referred to in Section 3:163(1), opening words and under (c), and the administrator starts the winding-up procedure, the administrator shall, without delay, inform the Dutch Central Bank of the substance of the order and of its possible consequences in the case concerned. Thereupon the Dutch Central Bank shall, without delay, inform the supervisory authorities of the other Member States in which the credit institution referred to in Section 3:206(1) or (2) or the insurer referred to in Section 3:207 has a branch office, of the order and of its possible consequences in the case concerned. The Dutch Central Bank shall inform the supervisory authorities of the other Member States of the order.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

3. The court shall seek to coordinate any joint actions with the judicial or administrative bodies of the other Member States.

### **Section 3:213**

1. If a credit institution, life insurer or non-life insurer having its registered office in a non-Member State has a branch office situated in the Netherlands and one or more branch offices situated in other Member States, the court and the Dutch Central Bank shall seek to coordinate their actions with the administrative or judicial bodies competent to take rationalisation measures and the supervisory authorities of those other Member States.
2. In the case referred to in Subsection (1), the administrators appointed in the Netherlands shall seek to coordinate their actions with the administrators in the other Member States in which the credit institution holds a licence.

### **Section 3:214**

Without prejudice to Section 3:166, the Dutch Central Bank shall also send a copy as referred to in that section to the branch office situated in the Netherlands.

### **Section 3:215**

1. The administrators shall, without delay, inform the creditors referred to in Section 3:209 in writing of an authorisation as referred to in Section 3:163(1), opening words and under (b) and (c).
2. The notification referred to in Section 3:209 to creditors with an insurance-related claim shall also state the most important consequences of the authorisation for the insurance contracts and the rights and obligations of the creditor with an insurance-related claim.
3. Each of the creditors referred to in Section 3:209 may present its claim and written comments relating to its claim to the administrators.

### **Section 3:216**

If an authorisation has been granted as referred to in Section 3:163(1), opening words and under (b) or (c), the administrators shall, on a regular basis and in appropriate manner, inform the creditors referred to in Section 3:209 in any event of the progress of the emergency regulations, and the Dutch Central Bank shall inform the supervisory authorities of the other Member States that so request of the progress of the emergency regulations.

### **Section 3:217**

By virtue of their authorisation referred to in Section 3:163(1), the administrators, irrespective of any stipulations on this point in the articles of association of the credit institution, life insurer or non-life insurer having its registered office in a non-Member State, may:

- a. make and collect calls not yet made on the shares in the issued share capital of the credit institution, life insurer or non-life insurer and the guarantee capital of a life insurer or non-life insurer; and
- b. impose and collect additional assessments up to the maximum amount stipulated in the articles of association of the life insurer or non-life insurer that is a mutual association having its registered office in the Netherlands.

### **Section 3:218**

The assessment of the size of the equity capital of a credit institution, life insurer or non-life insurer having its registered office in a non-Member State shall be based exclusively on the assets and liabilities that must be regarded as part of the business conducted from its branch offices situated in the Netherlands.

### **Section 3:219**

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

The Dutch Central Bank shall communicate the termination of the emergency regulations to:

- a. the supervisory authorities of the other Member States to which a credit institution, life insurer or non-life insurer having its registered office in a non-Member State provides services from a branch office situated in the Netherlands; and
- b. where it concerns a life insurer or non-life insurer and another supervisory authority of another Member State is responsible for supervising the solvency margin of the insurer concerned: that supervisory authority.

### **Section 3:220**

1. The court, upon granting an authorisation as referred to in Section 3:163(1) or thereafter, may, upon request, grant a special authorisation to the administrators enabling them, upon the transfer of rights and obligations under contracts concluded by the credit institution having its registered office in a non-Member State from a branch office situated in the Netherlands, in the course of its business as a credit institution in order to obtain the disposal of funds, to change those contracts, on the understanding that the clauses in the contracts from which claims ensue as referred to in Section 3:176(5), claims covered by a pledge or mortgage on property of the credit institution or instalments of hire-purchase cannot be changed.
2. As regards the special authorisations referred to in Subsection (1), Sections 3:162(1) to (3) and (5), first sentence, 3:165, 3:168, 3:169(1) and (2), first sentence and 3:174(1) shall apply mutatis mutandis.
3. As soon as the commitments have been transferred, the administrators shall publish a notification of the transfer and, where clauses in the contracts have been changed, of those changes, in the Government Gazette and in at least two daily newspapers to be designated by the court.
4. Section 3:194(4) to (7) shall apply mutatis mutandis.

### **Section 3:221**

1. The court, upon granting an authorisation as referred to in Section 3:163(1) or thereafter, may, upon request, grant a special authorisation to the administrators enabling them:
  - a. upon the transfer of rights and obligations under an insurance contract concluded by the insurer having its registered office in the Netherlands, to change that insurance contract; or
  - b. to reduce the period of validity of that insurance contract.
2. As regards the special authorisations referred to in Subsection (1), Sections 3:162(1) to (3) and (5), first sentence, 3:165, 3:168, 3:169(1) and (2), first sentence and 3:174(1) shall apply mutatis mutandis.
3. As soon as the rights and obligations have been transferred under the authorisation referred to in Section 3:163(1), the administrators shall publish a notification of this transfer and, where they have performed acts under the special authorisation referred to in Subsection (1), of those acts, in the Government Gazette and in at least two daily newspapers to be designated by the court. The administrators may, where they deem this to be in the interest of policyholders, insured persons or persons entitled to payments, also publish the said transfer and acts in another manner.
4. Section 3:195(4) to (7) shall apply mutatis mutandis.

#### **3.5.5.4. Funeral expenses and benefits in kind insurers having their registered office outside the Netherlands with a branch office situated in the Netherlands**

### **Section 3:222**

1. If special measures are required in the interest of the combined creditors in winding up the business of a funeral expenses and benefits in kind insurer, or of the combined creditors whose claim is the result of an obligation ensuing from the operation of such an insurer's branch office situated in the Netherlands, the court within whose jurisdiction the branch office of the funeral expenses and benefits in kind insurer is situated may, at the Dutch Central Bank's request, declare emergency regulations applicable.



Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

2. If the application is granted, the order shall be pronounced in open court and an extract shall, without delay, be published by the administrators in the Government Gazette and in at least two Dutch daily newspapers to be designated by the court. The extract shall state the name and registered office of the funeral expenses and benefits in kind insurer and the branch office and the registered office and the place of residence or business address of the administrators, as well as the date of the order.

### **Section 3:223**

1. The Dutch Central Bank shall send a copy of the application to the funeral expenses and benefits in kind insurer referred to in Section 3:222(1) and to the branch office.
2. Section 3:162(2) to (4) shall apply mutatis mutandis.
3. The court registrar shall send a copy of the summons referred to in Section 3:162(3) to the branch office.
4. If the application is granted, the order shall be pronounced in open court and an extract shall, without delay, be published by the administrators in the Government Gazette and in at least two Dutch daily newspapers to be designated by the court. The extract shall state the name and registered office of the funeral expenses and benefit in kind insurer and the branch office and the registered office and the place of residence or business address of the administrators, as well as the date of the order.

### **Section 3:224**

1. Sections 3:163 to 3:168, 3:171, 3:173, 3:174, 3:175(1) to (6) and (9) to (11), and 3:176 to 3:198(1) shall apply mutatis mutandis to emergency regulations declared applicable pursuant to Section 3:222, on the understanding that «creditors» must be read as «creditors whose claim is the result of an obligation ensuing from the operation of the branch office situated in the Netherlands».
2. In derogation from Subsection (1), no publication of a notification in the Official Journal of the European Union shall be required in respect of the orders referred to in Section 3:179(3) and the deposition referred to in Section 3:183(1).

### **Section 3:225**

1. As regards a funeral expenses and benefits in kind insurer having its registered office outside the Netherlands with a branch office situated in the Netherlands, the authorisations referred to in Sections 3:163(1) and 3:194(1) shall relate to the business conducted from a branch office situated in the Netherlands.
2. For the purposes of Subsection (1), provisions may be laid down by or pursuant to a Decree as regards the assets and liabilities that must be regarded as part of that business.

### **Section 3:226**

The assessment of the size of the equity capital of a funeral expenses and benefits in kind insurer having its registered office outside the Netherlands with a branch office situated in the Netherlands shall be based exclusively on the assets and liabilities that must be regarded as part of the business conducted from its branch offices situated in the Netherlands.

### **Section 3:227**

Without prejudice to Section 3:166, the Dutch Central Bank shall also send a copy as referred to in that section to the branch office situated in the Netherlands and, where it is known to the Dutch Central Bank that the funeral expenses and benefits in kind insurer is subject to supervision in the State where it has its registered office, it shall communicate the substance of the application to the supervisory authorities of that State.

### **Section 3:228**

1. The administrators shall, without delay, notify all known creditors whose claim is the result of an obligation

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

ensuing from the operation of the branch office situated in the Netherlands, in writing of an authorisation as referred to in Section 3:163(1), opening words and under (b) or (c).

2. The notification to creditors as referred to in Subsection (1) with a claim relating to funeral expenses and benefits in kind insurance shall also state the most important consequences of the authorisation for the funeral expenses and benefits in kind insurance contracts and the rights and obligations of the creditor with a claim relating to funeral expenses and benefit in kind insurance.
3. Each of the creditors referred to in Subsection (1) may present its claim and written comments relating to its claim to the administrators.

### **Section 3:229**

1. The administrators may make payments in respect of claims not ensuing from transactions with the funeral expenses and benefits in kind insurer having its registered office outside the Netherlands after the emergency regulations were declared applicable, insofar as this can be deemed justified in view of the liquidity position of the funeral expenses and benefits in kind insurer, and provided the provisions of Subsection (2) and Sections 3:230 to 3:235 are fulfilled.
2. Section 3:171 shall apply *mutatis mutandis*, on the understanding that the reference to the notification referred to in Section 3:170 must be read as: the notification referred to in Section 3:230(2), second sentence.

### **Section 3:230**

1. The administrators shall draw up a statement showing the nature and the amounts of the assets and liabilities of the funeral expenses and benefits in kind insurer, the names and addresses of the creditors referred to in Section 3:228, as well as the amounts of the claims of each of those creditors. A copy of this statement, certified by the administrators, shall be deposited at the court registry for free public inspection.
2. At the administrators' request, the delegated judge shall specify the day by which the claims must have been presented, as well as the date, time and place of the first creditors' meeting. Once the delegated judge has rendered a decision on the request referred to in the first sentence, the administrators shall, without delay, inform all known creditors as referred to in Section 3:228 of this in writing. This notification shall in any event also include the consequences of presenting a claim after the expiry of the term referred to in the first sentence, the statement that the claim must be presented to the administrators and, where appropriate, the statement that a claim is laid to a right of priority or a property right. In respect of each of the creditors referred to in Section 3:228 with a claim relating to funeral expenses and benefits in kind insurance, the notification shall also state the most important consequences of the emergency regulations for the insurance contracts, as well as the rights and obligations of the insured person and other parties in connection with the funeral expenses and benefits in kind insurance contracts.
3. The administrators shall also publish a notification of the orders in the Government Gazette and in at least two Dutch daily newspapers to be designated by the court.
4. Sections 110 to 113 of the Bankruptcy Act shall apply *mutatis mutandis*, on the understanding that the provisions relating to the liquidator and the party in liquidation shall apply to the administrators and the funeral expenses and benefits in kind insurer respectively. Section 213l(1)(e) of the Bankruptcy Act shall apply *mutatis mutandis*.

### **Section 3:231**

1. The administrators shall deposit a copy of the list of provisionally recognised claims and of the list of disputed claims at the court registry, where they shall be available for free public inspection for a period of 14 days prior to the first creditors' meeting. Before the commencement of this period, the administrators shall inform all creditors as referred to in Section 3:228 in writing of this deposition, accompanied by an invitation to the first creditors' meeting. Furthermore, the administrators shall publish the deposition in one or more daily newspapers to be designated by the delegated judge.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

2. Sections 59, 119 to 122, 123 to 127, 129, 132 to 137, 260(1), 261 and 262(1) and (3) of the Bankruptcy Act shall apply mutatis mutandis in respect of the validations. Thereby the provisions relating to the liquidator and the party in liquidation shall apply to the administrators and the funeral expenses and benefits in kind insurer respectively. In derogation from the period referred to in Section 127(1) of the Bankruptcy Act, the period for presenting claims as determined under Section 3:230(2) shall apply. The claims that become due and demandable on or after the date of the order referred to in Section 3:222(1) shall be validated at the value which they represent at the time when these claims become due and demandable, on the understanding that in respect of claims which are subject to Section 3:194 this shall apply only where said provision has not already been applied to these claims.

### **Section 3:232**

1. The managing directors of the funeral expenses and benefits in kind insurer or the de facto managers of the branch office situated in the Netherlands shall attend the first creditors' meeting in order to furnish any and all information regarding the reasons for the situation referred to in Section 3:222(1) and the condition of the assets which the delegated judge asks them to provide. Each of the creditors may request the delegated judge to ask the managing directors or the de facto managers for information in respect of certain points to be specified by them.
2. The questions asked of the managing directors or the de facto managers and the answers given by them shall be recorded in the minutes.
3. In derogation from the provisions of Section 121(4) of the Bankruptcy Act, the minutes of the first creditors' meeting shall, with regard to the commitments of the funeral expenses and benefits in kind insurer that are transferred pursuant to Section 3:195(1), only be final and conclusive where the relevant stipulations remain unchanged.

### **Section 3:233**

1. After the validation of the claims, the administrators shall draw up a list of liquidating dividends. They shall submit this list to the delegated judge for approval. The list shall contain a statement of receipts and expenditure, including the fees of the administrators, the names of the creditors referred to in Section 3:228, and also the validated amount of each creditor's claim and the dividend to be received in respect of that claim. Sections 180(2), 181 and 182(1) of the Bankruptcy Act shall apply mutatis mutandis. Without prejudice to Section 3:235, Section 233 of that Act shall also apply mutatis mutandis.
2. In drawing up the list of liquidating dividends, an amount of liquid resources shall be set aside in respect of the claims which are disputed or whose priority is contested, or which have been allowed conditionally, which amount shall at least be equal to the total of the amounts which may be paid in respect of these claims in compliance with this section, or, alternatively, these dividends shall be secured in another manner.

### **Section 3:234**

1. The administrators shall deposit the list of liquidating dividends approved by the delegated judge at the court registry, where it shall be available for free inspection by the creditors for a period of 14 days. The administrators shall publish a notification of the deposition in one or more daily newspapers to be designated by the delegated judge. The administrators shall also inform each of the recognised and conditionally admitted creditors in writing of the deposition, stating the amounts reserved for them.
2. Sections 184 to 186, 187(1), (2) and (3), 189 and 191 of the Bankruptcy Act shall apply mutatis mutandis, on the understanding that the provisions of these sections relating to the liquidator shall apply to the administrators and that, in derogation from the period referred to in Section 184 of the Bankruptcy Act, the period referred to in Subsection (1), first sentence shall apply.
3. Where a validation dispute arises as a result of the objections raised pursuant to Section 184 or Section 186 of the Bankruptcy Act, Section 3:233 shall apply mutatis mutandis to the claims relating to those objections, and the dividends may subsequently be paid, with due observance of the other provisions of Sections 3:229 to

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

3:235, after the other amounts of dividend included in the list deposited for inspection have been modified accordingly where necessary. Where the objections raised do not lead to a validation dispute, the dividends may be paid, with due observance of the provisions of the order issued in respect of the objections, as soon as that order has become final and conclusive.

### **Section 3:235**

In derogation from Section 3:233(2), last sentence, dividends may only be paid in respect of validated claims which become due or demandable on or after the date of the order referred to in Sections 3:206(1) and (2) and 3:207, insofar as Section 3:194(1) has not already been applied to these claims, when these claims have become due and demandable. Until that time, an amount of liquid resources shall be set aside which shall at least equal the total of the amounts which may be paid in respect of these claims in compliance with this section, or, alternatively, these dividends shall be secured in a different manner.

### **Section 3:236**

If an authorisation has been granted as referred to in Section 3:163(1), opening words and under (b) or (c), the administrators shall, on a regular basis and in appropriate manner, inform each of the creditors referred to in Section 3:228 in any event of the progress of the emergency regulations.

### **Section 3:237**

As soon as the emergency regulations are terminated, the administrators shall publish a notification of this in the Government Gazette.

### **3.5.5.5. Provisions of international private law**

#### **Section 3:238**

The references in this section to a Member State where a financial enterprise has its registered office shall also be regarded as references to a Member State in which a financial enterprise having its registered office in a non-Member State has a branch office.

#### **Section 3:239**

1. A decision taken in a Member State other than the Netherlands to commence insolvency proceedings in respect of a credit institution, life insurer or non-life insurer shall be recognised by operation of law if the credit institution, life insurer or non-life insurer has its registered office in that Member State.
2. The decision shall have legal consequences within the Netherlands from the moment when it has legal consequences in the Member State where the credit institution, life insurer or non-life insurer has its registered office.

#### **Section 3:240**

The decision to adopt a rationalisation measure, the rationalisation measure itself and the legal consequences of the rationalisation measure shall be governed by the law of the Member State in which the rationalisation measure was adopted, unless otherwise provided by law.

#### **Section 3:241**

1. The decision to adopt a rationalisation measure shall not affect the property right of a creditor or a third party to a good or goods, both specific goods and collections of indefinite goods as a whole which change from time to time, which belong to the credit institution or the insurer and which, at the time when the decision to commence the rationalisation proceedings has legal consequences, are situated within the territory of a Member State other than the Member State where the credit institution, life insurer or the non-life insurer has its registered office.
2. For the purposes of Subsection (1), property rights shall in any event be understood to mean:

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

- a. the right to dispose of goods or arrange for their disposal and to obtain satisfaction from the proceeds or the income from those goods, in particular by virtue of a right of pledge or mortgage;
  - b. the exclusive right to recover a claim, in particular a right guaranteed by a right of pledge in respect of the claim or by assignment of the claim as security;
  - c. the right to demand the good from anyone holding it contrary to the wishes of the party so entitled, to demand the surrender of that good or to demand the uninterrupted enjoyment of that good;
  - d. the property right to the beneficial use of goods.
3. For the purposes of Subsection (1), a property right shall be considered equivalent to the right, entered in a public register and enforceable against third parties, under which a property right as referred to in Subsection (1) may be obtained.
4. For the purposes of this section, the Member State in which the good is situated shall be:
- a. with regard to goods subject to registration and rights to such goods: the Member State under whose authority the register concerned is kept;
  - b. with regard to items of property, insofar as not falling under (a): the Member State within whose territory the item of property is situated;
  - c. with regard to claims: the Member State within whose territory the third-party debtor has its registered office.

### **Section 3:242**

1. In the event that a credit institution or insurer has purchased an item of property, the decision to adopt a rationalisation measure shall not affect the seller's rights based on a reservation of title, if, at the moment when the decision to adopt the rationalisation measure has legal consequences, the item of property to which the reservation of title refers is situated within the territory of a Member State other than the Member State where the credit institution, life insurer or non-life insurer has its registered office.
2. In the event that the financial enterprise has sold an item of property, the decision to adopt a rationalisation measure shall not constitute grounds for rescinding or terminating the sale, and the rationalisation measure shall not prevent the purchaser from acquiring the title to the item of property, if, at the moment when the decision to adopt the rationalisation measure has legal consequences, the item of property is situated within the territory of a Member State other than the Member State where the credit institution, life insurer or non-life insurer has its registered office.
3. Section 3:241(4) shall apply *mutatis mutandis*.

### **Section 3:243**

The decision to adopt the rationalisation measure shall not affect the right of a party that is both a creditor and a debtor of the credit institution or insurer to set off its debt with the claim against the credit institution or insurer under the law applicable to the claim of the credit institution or insurer.

### **Section 3:244**

Sections 3:241 to 3:243 shall not preclude an action for the voidness, voidability or unenforceability of a legal act for being detrimental to all the creditors.

### **Section 3:245**

In derogation from Section 3:240, the consequences of a rationalisation measure for employment contracts and other legal relationships relating to labour shall be governed exclusively by the law of the Member State applicable to that contract or legal relationship.

### **Section 3:246**

In derogation from Section 3:240, the consequences of a rationalisation measure for a contract entitling a party to enjoy or obtain immovable property shall be governed exclusively by the law of the Member State within whose

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*  
territory the immovable property is situated.

### **Section 3:247**

In derogation from Section 3:240, the consequences of a rationalisation measure for the rights of the credit institution or insurer to goods subject to registration shall be governed by the law of the Member State under whose authority the register is kept.

### **Section 3:248**

1. In derogation from Section 3:240 and without prejudice to Section 3:241, the consequences of a rationalisation measure for the rights and obligations of participants in a regulated market shall be governed exclusively by the law applicable to that market.
2. Subsection (1) shall not preclude an action for the voidness, voidability or unenforceability of a legal act for being detrimental to all the creditors.

### **Section 3:249**

In derogation from Section 3:240, the legal validity of a legal act performed for consideration by the credit institution or insurer after the adoption of a rationalisation measure through which it obtains the disposal of goods subject to registration, transferable securities or other securities whose existence or transfer presupposes the entry in a register or an account prescribed by law, or which were placed in a central securities deposit system governed by the law of a Member State, shall be governed by the law of the Member State under whose authority the register, the account or the deposit system is kept or, where it concerns immovable property, by the law of the Member State in which the immovable property is situated.

### **Section 3:250**

In derogation from Section 3:240, the consequences of the rationalisation measure for a pending lawsuit relating to a good which is no longer managed by or at the disposal of the credit institution shall be governed exclusively by the law of the Member State in which the lawsuit is pending.

### **Section 3:251**

Section 3:240 shall not apply to rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all the creditors, if the party that has benefited from that legal act proves that:

- a. the said legal act is governed by the law of a Member State other than the Member State where the credit institution, life insurer or non-life insurer has its registered office; and
- b. that law does not allow any means of challenging that legal act in the relevant case.

### **Section 3:252**

In derogation from Section 3:240, the consequences of a rationalisation measure adopted in respect of a credit institution, for the effects of a set-off contract as referred to in Section 212a(m) of the Bankruptcy Act and novation, shall be governed exclusively by the law applicable to that contract.

### **Section 3:253**

In derogation from Section 3:240 and without prejudice to Section 3:254, the consequences of a rationalisation measure adopted in respect of a credit institution, for a contract whereby one party, i.e. the purchaser, commits itself to a subsequent transfer of an equal number of assets of the same type to the seller, shall be governed exclusively by the law of the Member State applicable to that contract.

### **Section 3:254**

In derogation from Section 3:240, the consequences of a rationalisation measure adopted in respect of a credit institution, for exercising rights to financial instruments whose existence or transfer presupposes the entry in a

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

register, an account or a central securities deposit system kept or situated in a Member State, shall be governed exclusively by the law of the Member State in which the register, the account or the central securities deposit system in which such rights are entered is kept or situated.

### **Section 3:255**

1. The administrator from a Member State other than the Netherlands where the credit institution, life insurer or non-life insurer has its registered office shall, in the Netherlands, be entitled to exercise all the powers it has in the Member State where the credit institution, life insurer or non-life insurer has its registered office, except for the power to use a compulsory measure and the power to pass judgement in a legal action or dispute. The manner in which these powers are exercised in the Netherlands shall be governed by Dutch law.
2. Where persons have been appointed to represent or otherwise assist the administrator under the law of the Member State where the credit institution, life insurer or non-life insurer has its registered office, they may exercise the powers conferred on them under the law of that Member State within the territory of the Netherlands.

### **Section 3:256**

1. The appointment of the administrator from another Member State shall be evidenced by a certified copy of the decision appointing the administrator or by any other written certificate issued by the administrative or judicial authorities competent in respect of rationalisation measures of the Member State.
2. The administrator from another Member State shall, on demand of anyone towards whom it wishes to exercise its powers, present a translation of the copy in the Dutch language.

### **Section 3:257**

The registrar of the court of The Hague shall, at the request of an administrator from another Member State, enter the data relating to a rationalisation measure adopted in another Member State in the register referred to in Section 19a(1) of the Bankruptcy Act.

## **Part 3.5.6. Investor-compensation scheme and deposit-guarantee scheme**

### **3.5.6.1. Financial enterprises having their registered office in the Netherlands**

#### **Section 3:258**

1. This section shall apply to:
  - a. banks that hold a licence as referred to in Section 211;
  - b. investment firms that hold a licence as referred to in Section 2:65(1), opening words and under (a) where it concerns portfolio management, or that hold a licence as referred to in Section 2:96 to provide investment services;
  - c. financial institutions that hold a supervisory status certificate as referred to in Section 3:110(1) and may provide investment services.
2. The withdrawal of a licence as referred to in Subsection (1) shall not affect the applicability of this section to claims of investors against the financial enterprise in relation to investment acts that were carried out prior to the withdrawal of the licence, and shall not affect the applicability of this section to claims of creditors against the financial enterprise existing at the time when the licence is withdrawn.

#### **Section 3:259**

1. There is an investor-compensation scheme which seeks to compensate persons that have entrusted money or financial instruments to a bank, investment firm or financial institution by virtue of an investment service as defined in Section 1.1 or a service as listed in Appendix I, part B, section 1 to the Markets in Financial Instruments Directive, in the event that the enterprise concerned is unable to fulfil its obligations ensuing from

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

claims relating to that investment service or ancillary service. Banks to which Section 2:13 or Section 3:33 applies, investment firms and financial institutions shall bear the costs of the investor-compensation scheme.

2. There is a deposit-guarantee scheme which seeks to compensate deposit holders in the event that a bank is unable to fulfil its obligations ensuing from deposit-related claims. Banks shall bear the costs of the deposit-guarantee scheme.
3. Rules shall be laid down by or pursuant to a Decree as regards:
  - a. categories of financial enterprises and persons that fall within the scope of the guarantee scheme or are excluded from this scheme;
  - b. categories of claims that fall within the scope of a guarantee scheme, the manner in which they must be presented and determined, the conditions for compensation of such claims, the amount of the compensation, the payments to investors or creditors and the manner in which financial enterprises provide information in that respect.
4. Further rules shall be laid down by or pursuant to a Decree as regards:
  - a. the publication of a guarantee scheme; and
  - b. the financing of, payment for and distribution of the assets of a guarantee scheme.

### **Section 3:260**

1. The Dutch Central Bank shall decide to apply a guarantee scheme if a financial enterprise as referred to in Section 3:258(1) is unable to make payments. This decision shall be rendered:
  - a. as soon as possible and no later than 21 days after the Dutch Central Bank established for the first time that the financial enterprise failed to repay a deposit that is due and demandable, or to fulfil an obligation that is due and demandable ensuing from a claim of an investor in relation to an investment service or a service as referred to in Section 3:259(1), or;
  - b. as soon as possible after a judicial authority in a Member State, for reasons directly relating to the financial position of the financial enterprise, rendered a decision leading to the suspension of the opportunity for investors or deposit holders to recover their claim from the financial enterprise concerned.
2. A financial enterprise shall be unable to pay if the Dutch Bank establishes that this financial enterprise, for reasons directly relating to its financial position, seems to be unable to repay deposits of deposit holders or to fulfil obligations ensuing from claims of investors in relation to an investment service or a service as referred to in Section 3:259(1), and is not expected to be able to do so within the foreseeable future.
3. The Dutch Central Bank shall publish a notification of the decision in the Government Gazette.

### **Section 3:261**

1. In applying a guarantee scheme, the Dutch Bank shall, with due observance of the provisions arising from Section 3:259(3)(b), determine the size of the claims eligible for compensation, as well as the amount of the claims of investors or deposit holders eligible for compensation.
2. The Dutch Central Bank shall ensure payment of the claims of investor or deposit holders that are eligible for compensation by virtue of this section. Payment shall be effected no later than three months after the moment when an investor or deposit holder presented the Dutch Central Bank with its claims against the financial enterprise unable to pay. In special cases the Dutch Central Bank may extend this term, no more than three times and each time by a maximum of three months.
3. The Dutch Central Bank shall assume the rights which an investor or deposit holder has by virtue of its claim against the financial enterprise unable to pay, insofar as it has paid the claim of that investor or deposit holder.

### **Section 3:262**



Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

The Dutch Central Bank shall, with due observance of the provisions arising from Section 3:259(4)(b), determine the contributions of the financial enterprises referred to in Section 3:258(1) to the guarantee scheme. The financial enterprises obliged to contribute shall make these contributions within a term specified by the Dutch Central Bank.

### **Section 3:263**

1. A financial enterprise as referred to in Section 3:258(1) shall, upon request, make information available about the applicable guarantee scheme. Where a scheme similar to a guarantee scheme is applicable to a branch office situated in another Member State, the financial enterprise shall, upon request, also make information available about that scheme.
2. The information must be such as to enable (potential) investors and deposit holders to check whether a claim is covered by the guarantee scheme or by a similar foreign scheme.
3. The information on the guarantee scheme shall be made available in the Dutch language or, where it concerns a similar scheme applicable to a branch office, in the official language or one of the official languages of the Member State in which the branch office concerned is situated.

### **Section 3:264**

1. A financial enterprise may not use information on a guarantee scheme for advertising purposes.
2. Subsection (1) shall not apply to financial enterprises which state in an advertisement that a guarantee scheme applies to them.

### **Section 3:265**

1. The Dutch Central Bank shall recover the claims against the financial enterprise unable to pay which it assumed under Section 3:261(3) from that financial enterprise.
2. Where a credit balance remains after the application of a guarantee scheme, the Dutch Central Bank shall, with due observance of the provisions arising from Section 3:259(4)(b), make this balance available to the financial enterprises that made a contribution as referred to in Section 3:262.

### **3.5.6.2. Financial enterprises having their registered office in another Member State**

#### **Section 3:266**

1. Section 3.5.6.1 shall apply mutatis mutandis to:
  - a. investment firms having their registered office in another Member State which provide investment services from a branch office situated in the Netherlands and which have opted for additional membership of the investor compensation scheme pursuant to Subsection (2);
  - b. banks having their registered office in another Member State which pursue their business from a branch office situated in the Netherlands and which have opted for additional membership of the deposit-guarantee scheme pursuant to Subsection (3); and
  - c. banks and financial institutions having their registered office in another Member State which pursue their business from a branch office situated in the Netherlands and which have opted for additional membership of the investor-compensation scheme pursuant to Subsection (4).
2. An investment firm having its registered office in another Member State that provides investment services from a branch office situated in the Netherlands may, where the cover of a scheme for compensating investors applicable in that Member State is more limited than the cover of the investor-compensation scheme, opt for membership of the investor-compensation scheme in order to supplement the cover of the scheme applicable in the Member State where it has its registered office.
3. A bank having its registered office in another Member State that pursues its business from a branch office situated in the Netherlands may, if the cover of a scheme for guaranteeing deposits applicable in that Member

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

State is more limited than the cover of the deposit-guarantee scheme, opt for membership of the deposit-guarantee scheme in order to supplement the cover of the scheme applicable in the Member State where it has its registered office.

4. A bank or a financial institution having its registered office in another Member State that pursues its business from a branch office situated in the Netherlands and is permitted to provide investment services pursuant to Sections 2:15 and 2:112 respectively may, if the cover of a scheme for compensating investors applicable in that Member State is more limited than the cover of the investor-compensation scheme, opt for membership of the investor-compensation scheme in order to supplement the cover of the scheme applicable in the Member State where it has its registered office.
5. Further rules shall be laid down by or pursuant to a Decree as regards membership of a guarantee scheme on the part of a bank or investment firm having its registered office in another Member State that has a branch office situated in the Netherlands.

### **3.5.6.3. Financial enterprises having their registered office in a non-Member State**

#### **Section 3:267**

1. The Dutch Central Bank may decide, whether or not on application, that the provisions arising from Section 3.5.6.1 relating to the investor-compensation scheme will apply mutatis mutandis to an investment firm having its registered office in a non-Member State that pursues its business from a branch office situated in the Netherlands and holds a licence as referred to in Section 2:96, or to a bank having its registered office in a non-Member State that pursues its business from a branch office situated in the Netherlands and is permitted to provide investment services pursuant to Section 2:22, where no scheme for compensating investors is applicable to the claims of investors against those investment firms in relation to investment acts whose cover is equivalent to the cover referred to in Article 11(1) of Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes (OJEC L 84).
2. The Dutch Central Bank may decide, whether or not on application, that the provisions arising from Section 3.5.6.1 relating to the deposit-guarantee scheme will apply mutatis mutandis to banks having their registered office in a non-Member State that pursue their business from a branch office situated in the Netherlands, where no scheme for guaranteeing deposits is applicable to the claims of creditors against those banks whose cover is equivalent to the cover referred to in Article 6(1) of Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes (OJEC L 135).
3. A bank or investment firm having its registered office in a non-Member State that pursues its business or provides investment services from a branch office situated in the Netherlands shall, upon request, make information available about the applicable guarantee scheme.
4. The information referred to in Subsection (3) shall be made available in the Dutch language and must be such as to enable (potential) investors and creditors to check whether a claim is covered by the guarantee scheme or by a similar foreign scheme.

## **Chapter 3.6. Additional provisions regarding financial groups**

### **Part 3.6.1. Definitions and general provisions**

#### **Section 3:268**

1. For the purposes of this chapter and the provisions based upon it, the following terms shall have the following meaning:
  - a. participating enterprise: a parent enterprise, an enterprise that owns a holding or an enterprise that is affiliated to another enterprise because it pursues the central management of the latter pursuant to a contract concluded by these enterprise or a provision in the articles of association of one or more of these enterprises, or because the administrative, managing or supervisory bodies of these enterprises are composed for the majority of the same persons during the financial year and until the compilation of the consolidated accounts;

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

- b. holding:
    - 1°. a holding as referred to in Section 24c(1), first sentence, or (2) of Book 2 of the Dutch Civil Code; or
    - 2°. a direct or indirect holding of 20 percent or more in the issued share capital of an enterprise, or the ability to exercise directly or indirectly 20 percent or more of the voting rights in an enterprise;
  - c. subsidiary: a subsidiary as referred to in Articles 1 and 2 of the Consolidated Accounts Directive, or an enterprise over which, in the opinion of the Dutch Central Bank, a parent enterprise exercises a predominant influence;
  - d. financial holding company: a financial holding company all or most of whose subsidiaries are investment firms, credit institutions or financial institutions, which has at least one investment firm or credit institution among its subsidiaries, and which is not a mixed financial holding company;
  - e. mixed-activity holding company: a parent enterprise other than a financial holding company, credit institution or mixed financial holding company which has at least one credit institution among its subsidiaries;
  - f. mixed financial holding company: a parent enterprise which is not a regulated entity as referred to in Section 3:289(d) and which, together with its subsidiaries of which at least one is a regulated entity established in a Member State, and with other enterprises, forms a financial conglomerate as referred to in Section 3:290;
  - g. mixed-activity insurance holding company: a parent enterprise other than a life insurer, non-life insurer, reinsurer, insurance holding company or mixed financial holding company, and which has a subsidiary that is a life insurer or non-life insurer having its registered office in the Netherlands or a life insurer or non-life insurer having its registered office in another Member State;
  - h. enterprise providing ancillary services: an enterprise which performs activities that have the character of supporting activities in relation to the main activities of an investment firm or credit institution;
  - i. affiliated enterprise: a subsidiary, another enterprise in which a holding is owned or an enterprise affiliated to another enterprise because of the central management conducted by that other enterprise pursuant to a contract concluded by these enterprises or a provision in the articles of association of one or more of these enterprises, or because the administrative, managing or supervisory bodies of these enterprises are composed for the majority of the same persons during the financial year and until the compilation of the consolidated accounts;
  - j. insurance holding company: a parent enterprise whose main activity is to acquire and own holdings in subsidiaries all of most of which are life insurers, non-life insurers or reinsurers, and which has a life insurer or non-life insurer having its registered office in the Netherlands or a life insurer or non-life insurer having its registered office in another Member State among its subsidiaries, which parent enterprise is not a mixed financial holding company.
2. For the purposes of this chapter, a subsidiary of a subsidiary shall be regarded as a subsidiary of the parent enterprise.

### **Section 3:269**

1. A Dutch investment firm or Dutch credit institution that is a parent enterprise or subsidiary of another investment firm or credit institution shall satisfy, on a consolidated or sub consolidated basis, the provisions arising from Section 3:17 in such a way, that the procedures and measures for the management of business processes and risks are coherent and well integrated and that it can supply the information referred to in Section 1:52.
2. A life insurer or non-life insurer having its registered office in the Netherlands that is involved in the supplementary supervision of life insurers and non-life insurers in an insurance group shall organise its business operations referred to in Section 3:17 in such a way, that the procedures and measures for the management of business processes and risks are coherent and well integrated and that it can supply the information referred to in Section 1:52.

### **Section 3:270**

1. The Dutch Central Bank may decide not to involve an enterprise in the supervision referred to in Parts 3.6.2 and 3.6.3, if:
  - a. the enterprise has its registered office in a non-Member State in which there are statutory impediments to providing the information required for the supervision;
  - b. the enterprise to be involved in the supervision is only of negligible importance in light of the objectives of that supervision; or
  - c. considering the financial position of that enterprise would be misplaced or misleading in light of the

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*  
objectives of that supervision.

2. Rules shall be laid down by or pursuant to a Decree in respect of Subsection (1)(b).

#### **Section 3:271**

The day-to-day policy of a mixed financial holding company, financial holding company or insurance holding company having its registered office in the Netherlands shall be determined by persons expert in conducting the business operations of the regulated entities as referred to in Section 3:289(d) pertaining to the group concerned as referred to in Section 3:289(e), and of the mixed financial holding company, financial holding company or insurance holding company respectively.

#### **Section 3:272**

1. The policy of a mixed financial holding company, financial holding company or insurance holding company having its registered office in the Netherlands shall be determined or co-determined by persons whose properness is beyond doubt.
2. A person's properness shall be beyond doubt once this has been established for the purposes of this Act by a supervisor, as long as a change in the relevant facts or circumstances has not given reasonable cause for a reassessment.
3. The provisions arising from Section 3:9(3) shall apply mutatis mutandis to persons determining or co-determining the policy of a mixed financial holding company, financial holding company or insurance holding company having its registered office in the Netherlands.

#### **Section 3:273**

1. A mixed financial holding company, financial holding company or insurance holding company having its registered office in the Netherlands shall notify the Dutch Central Bank of changes with regard to subjects on which data must be provided pursuant to Sections 3:271 or 3:272.
2. The provisions arising from Section 3:29(3) shall apply mutatis mutandis to mixed financial holding companies, financial holding companies and insurance holding companies having their registered office in the Netherlands where they concern reporting the changes referred to in Subsection (1).

### **Part 3.6.2. Consolidated supervision of investment firms and credit institutions**

#### **Section 3:274 [Cancelled from 1 January 2007]**

#### **Section 3:275**

1. The Dutch Central Bank shall exercise the supervision of Dutch parent investment firms, Dutch parent credit institutions, Dutch EU parent investment firms and Dutch EU parent credit institutions on a consolidated basis as referred to in Section 3:279.
2. If a Dutch investment firm or Dutch credit institution has as its parent enterprise a financial Dutch parent holding company or a Dutch financial EU parent holding company, the Dutch Central Bank shall exercise the supervision of that investment firm or credit institution on a consolidated basis, without prejudice to Subsections (3), (4) and (5).
3. If a Dutch investment firm or Dutch credit institution has as its parent enterprise a financial Dutch parent holding company or a Dutch financial EU parent holding company, and that holding company has as its subsidiary a European investment firm or European credit institution, the Dutch Central Bank shall exercise the supervision of that Dutch investment firm or Dutch credit institution on a consolidated basis.
4. If a Dutch investment firm or Dutch credit institution has as its parent enterprises both a financial Dutch parent

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

holding company and a financial holding company in another Member State, and a subsidiary is situated in that other Member State that is a European investment firm or European credit institution, the Dutch Central Bank shall exercise the supervision on a consolidated basis if the Dutch investment firm or Dutch credit institution has the highest balance sheet total in comparison with that European investment firm or European credit institution.

5. If a Dutch investment firm or Dutch credit institution has as its parent enterprise a financial holding company having its registered office in another Member State, and that financial holding company has as its subsidiary a European investment firm or European credit institution in a Member State other than the Member State where it has its registered office, the Dutch Central Bank shall exercise the supervision on a consolidated basis if the Dutch investment firm or Dutch credit institution has the highest balance sheet total in comparison with that European investment firm or European credit institution.
6. In derogation from Subsections (3) to (5), the Dutch Central Bank, having consulted the supervisory authorities involved of other Member States, may decide to permit one of those other supervisory authorities to exercise the supervision on a consolidated basis, if the relative importance of conducting the business of the financial enterprise concerned in a particular Member State so necessitates.
7. Before taking a decision as referred to in Subsection (6), the Dutch Central Bank shall provide the Dutch EU parent investment firm, the Dutch EU parent credit institution, the Dutch financial EU parent holding company, the Dutch investment firm or the Dutch credit institution with the highest balance sheet total in comparison with the other subsidiaries, with an opportunity to submit its view.
8. If the Recast Banking Directive provides that the supervision of a Dutch investment firm or Dutch credit institution must be exercised on a consolidated basis by a supervisory authority of another Member State, the Dutch Central Bank, having consulted the supervisory authorities involved of other Member States and having heard the view of the financial enterprise concerned, may permit that supervisory authority to exercise the supervision on a consolidated basis if the relative importance of conducting of the business of the Dutch investment firm or Dutch credit institution so necessitates.
9. If a Dutch financial EU parent holding company has an investment firm and a credit institution as its subsidiaries, and that credit institution has its registered office in the Netherlands, the Dutch Central Bank shall exercise the supervision of all the subsidiaries on a consolidated basis.

### **Section 3:276**

1. The Dutch Central Bank shall exercise the supervision of Dutch parent investment firms and Dutch parent credit institutions, to the extent and in the manner provided in this part, on the basis of the consolidated financial position. This supervision shall include the supervision of compliance with the provisions arising from Sections 3:17(1) and (2)(c), 3:57 and 3:96(1)(c).
2. The Dutch Central Bank shall exercise the supervision of Dutch investment firms or Dutch credit institutions that are subsidiaries of a financial Dutch parent holding company, to the extent and in the manner provided in this part, on the basis of the consolidated financial position of the financial Dutch parent holding company. This supervision shall include the supervision of compliance with the provisions arising from Sections 3:17(1) and (2)(c), 3:57 and 3:96(1)(c).
3. Subsection (2) shall apply mutatis mutandis to Dutch investment firms or Dutch credit institutions that are subsidiaries of a financial Dutch parent holding company if the Dutch Central Bank exercises the supervision of these investment firms or credit institutions on a consolidated basis pursuant to Section 3:275. If a financial Dutch parent holding company has both an investment firm and a credit institution as its subsidiaries, the first sentence shall apply only to the credit institution.
4. Rules shall be laid down by or pursuant to a Decree as regards the calculation of the solvency on a consolidated basis of the investment firms or credit institutions referred to in Subsections (1) and (2).

### **Section 3:277**

1. This part shall apply mutatis mutandis to Dutch investment firms or Dutch credit institutions which have a parent

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

enterprise that is a non-European investment firm or non-European credit institution, or a financial holding company having its registered office in a non-Member State, if:

- a. those investment firms or credit institutions are not already subject to supervision that is equivalent to the supervision on a consolidated basis referred to in Articles 125 and 126 of the Recast Banking Directive; and
  - b. the Dutch Central Bank, based on an analogous application of Section 3:275, would be responsible for the supervision of those investment firms or credit institutions on a consolidated basis.
2. In order to determine whether Subsection (1)(b) applies, the Dutch Central Bank shall consult the supervisory authorities of other Member States that are responsible for supervising regulated entities as referred to in Section 3:289(d) which have the same parent enterprise as referred to in Subsection (1), opening words. It shall consider the general guidelines drawn up under Article 143 of the Recast Banking Directive by the Banking Advisory Committee referred to in Article 151 of that Directive. The Dutch Central Bank shall consult the Committee before determining the result of its investigation.
3. The Dutch Central Bank may, in agreement with the supervisory authorities involved of other Member States, apply different supervisory methods to the Dutch investment firms or Dutch credit institutions referred to in Subsection (1) in order to achieve the objectives of the supervision on a consolidated basis. The Dutch Central Bank shall communicate those methods to the supervisory authorities involved and to the Commission of the European Communities.

#### **Section 3:277a**

1. A Dutch investment firm or Dutch credit institution that is a subsidiary of an investment firm or credit institution, or has a financial holding company as its parent enterprise, shall comply with the provisions arising from Sections 3:17(1) and (2)(c), 3:57 and 3:96(1)(c) on a sub consolidated basis if the Dutch investment firm, Dutch credit institution or the financial holding company:
  - a. has as a subsidiary a management company of an enterprise for collective investment in transferable securities, investment firm, financial institution or credit institution having its registered office in a non-Member State; or
  - b. owns a holding in a management company of an enterprise for collective investment in transferable securities, investment firm, financial institution or credit institution having its registered office in a non-Member State.
2. If the financial holding company has both an investment firm and a credit institution as its subsidiaries, Subsection (1) shall apply only to the credit institution.

#### **Section 3:278**

1. The supervision on an individual basis of compliance with the provisions arising from Sections 3:17(1) and (2)(c) and 3:57 shall not apply to Dutch investment firms or Dutch credit institutions that are subsidiaries of a Dutch parent investment firm or Dutch parent credit institution, if:
  - a. the supervision of that Dutch parent investment firm or Dutch parent credit institution is exercised on a consolidated basis and that supervision includes the subsidiary; and
  - b. the qualifying capital is adequately distributed between the Dutch parent investment firm or Dutch parent credit institution and the subsidiaries in that:
    - 1°. no factual or legal obstacle exists or is to be expected that could prevent an immediate transfer of qualifying capital or repayment of debts by the Dutch parent investment firm or Dutch parent credit institution;
    - 2°. the Dutch parent investment firm or Dutch parent credit institution provides for controlled business operations on the part of the subsidiary and guarantees the subsidiary's obligations with the Dutch Central Bank's consent, or the risks with regard to the subsidiary are negligible;
    - 3°. the risk assessment, measurement and monitoring procedures of the Dutch parent investment firm or Dutch parent credit institution also include the subsidiary; and
    - 4°. the Dutch parent investment firm or Dutch parent credit institution holds more than 50 percent of the voting rights attached to the holdings in the subsidiary's capital, or has the right to appoint or dismiss the

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

majority of the persons determining the subsidiary's day-to-day policy.

2. Subsection (1) shall apply mutatis mutandis to Dutch investment firms and Dutch credit institutions that are subsidiaries of a financial holding company having its registered office in the Netherlands which is subject to supervision of compliance with the provisions arising from Sections 3:17(1) and (2)(c), 3:57 and 3:96(1)(c) similar to the supervision applicable to investment firms or credit institutions.
3. The supervision on an individual basis with regard to Sections 17(1) and (2)(c) and 3:57 shall not apply to Dutch parent investment firms and Dutch parent credit institutions, if:
  - a. the supervision of those Dutch parent investment firms and Dutch parent credit institutions is exercised on a consolidated basis; and
  - b. the qualifying capital is adequately distributed between the Dutch parent investment firms or Dutch parent credit institutions and the subsidiaries in that:
    - 1°. no factual or legal obstacle exists or is to be expected that could prevent an immediate transfer of qualifying capital or repayment of debts by the subsidiary; and
    - 2°. the risk assessment, measurement and monitoring procedures that are relevant to the consolidated supervision also include the Dutch parent investment firms and Dutch parent credit institutions.
4. The Dutch Central Bank shall disclose the following information:
  - a. the criteria it applies in order to determine that no factual or legal obstacle exists or is to be expected that could prevent an immediate transfer of qualifying capital or repayment of debts;
  - b. the number of Dutch parent investment firms and Dutch parent credit institutions subject to the application of Subsection (3), and how many of these parent enterprises involve in this subsidiaries in a non-Member State; and
  - c. if Subsection (3) applies, the aggregated information for the Netherlands with regard to:
    - 1°. the total amount of qualifying capital on a consolidated basis of the Dutch parent investment firms and Dutch parent credit institutions that is maintained in subsidiaries having their registered office in a non-Member State;
    - 2°. the qualifying capital that is maintained by Dutch parent investment firms and Dutch parent credit institutions in subsidiaries having their registered office in a non-Member State as a percentage of the total qualifying capital on a consolidated basis of those parent enterprises;
    - 3°. the qualifying capital that is maintained by Dutch parent investment firms and Dutch parent credit institutions in subsidiaries having their registered office in a non-Member State as a percentage of the total minimum amount of qualifying capital on a consolidated basis of the parent enterprises required pursuant to Section 3:57.

### **Section 3:278a**

1. On application, the Dutch Central Bank may decide, whether or not for a fixed period, that a Dutch parent investment firm or Dutch parent credit institution is permitted, in the context of its supervision on an individual basis, to involve its subsidiaries on a consolidated basis in the business operations as referred to in Section 3:17(1) and (2)(c), in the calculation of its qualifying capital and in maintaining balance sheet items and off-balance sheet items as referred to in Section 3:57, if:
  - 1°. the risk assessment, measurement and monitoring procedures of the Dutch parent investment firm or Dutch parent credit institution also include the subsidiary;
  - 2°. the Dutch parent investment firm or Dutch parent credit institution holds more than 50 percent of the voting rights attached to the holdings in the subsidiary's capital, or has the right to appoint or dismiss the majority of the persons determining the subsidiary's day-to-day policy;
  - 3°. the subsidiary has substantial claims against or obligations to the Dutch parent investment firm or Dutch parent credit institution; and
  - 4°. the Dutch parent investment firm or Dutch parent credit institution demonstrates that, based on the circumstances and contracts, including legal agreements, no factual or legal obstacles exist or are to be expected that could prevent the subsidiary from making an immediate transfer of qualifying capital or repayment of debts to the parent enterprise.
2. At least once a year, the Dutch Central Bank shall notify the supervisory authorities involved of other States of

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

the cases in which Subsection (1) was applied, and of the circumstances and contracts referred to in Subsection (1)(4°).

3. The Dutch Central Bank shall disclose the following information:

- a. the criteria it applies in order to determine that no factual or legal obstacle exists or is to be expected that could prevent an immediate transfer of qualifying capital or repayment of debts;
- b. the number of Dutch parent investment firms and Dutch parent credit institutions that involve subsidiaries on a consolidated basis pursuant to Subsection (1), and how many of these parent enterprises involve in this subsidiaries having their registered office in a non-Member State;
- c. if Subsection (1) applies, the aggregated information for the Netherlands with regard to:
  - 1°. the total amount of qualifying capital of Dutch parent investment firms and Dutch parent credit institutions that is maintained in subsidiaries having their registered office in a non-Member State;
  - 2°. the qualifying capital that is maintained by Dutch parent investment firms and Dutch parent credit institutions in subsidiaries having their registered office in a non-Member State as a percentage of the total qualifying capital of those parent enterprises;
  - 3°. the qualifying capital that is maintained by Dutch parent investment firms and Dutch parent credit institutions in subsidiaries having their registered office in a non-Member State as a percentage of the total minimum amount of qualifying capital of the parent enterprises required pursuant to Section 3:57.

#### **Section 3:278b**

1. If the Dutch Central Bank exercises the supervision on a consolidated basis of a Dutch EU parent investment firm, Dutch EU parent credit institution, Dutch investment firm or Dutch credit institution that is a subsidiary of a Dutch financial EU parent holding company:
  - a. it shall coordinate the collection and dissemination of information to the supervisory authorities involved of other Member States that is relevant or essential in normal circumstances and in emergency situations;
  - b. it shall plan and coordinate that supervisory activities in normal circumstances and in emergency situations, and the cooperation with the supervisory authorities involved of other Member States in the context of Section 3:18a.
2. If the Dutch Central Bank exercises the supervision on a consolidated basis of a Dutch EU parent investment firm, Dutch EU parent credit institution, Dutch investment firm or Dutch credit institution that is a subsidiary of a Dutch financial EU parent holding company, an application shall be submitted to the Dutch Central Bank for consent in respect of the use of the internal models and approaches.
3. The application referred to in Subsection (2) shall be submitted by the Dutch EU parent investment firm, Dutch EU parent credit institution and its combined subsidiaries, or by the combined subsidiaries of a Dutch financial EU parent holding company. The Dutch Central Bank shall, without delay, supply the supervisory authorities involved of other Member States with all the relevant documents with regard to the application for consent.
4. The Dutch Central Bank shall decide on the application and any conditions to be attached to its consent after consultation with the other supervisory authorities involved.
5. Without prejudice to Section 3:47 of the General Administrative Law Act, the decision referred to in Subsection (4) shall contain the standpoints of the supervisory authorities involved.
6. If the consultation has not led to agreement within six months after the receipt of the complete application, the Dutch Central Bank shall take a decision without delay in which it shall give consideration to the standpoints and reservations of the supervisory authorities involved. The Dutch Central Bank shall, without delay, communicate this decision to the supervisory authorities involved.
7. If a Dutch financial EU parent holding company has an investment firm and a credit institution as its subsidiaries, and that credit institution has its registered office in the Netherlands, the Dutch Central Bank shall exercise the supervision of all the subsidiaries on a consolidated basis.

#### **Section 3:279**



Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

1. A Dutch investment firm, Dutch credit institution or financial holding company having its registered office in the Netherlands that is supervised on a consolidated basis pursuant to this part shall ensure the full consolidation of investment firms, credit institutions and financial institutions that are its subsidiaries.
2. The Dutch Central Bank may permit a proportional consolidation if the parent enterprise holding part of the capital demonstrates, where necessary by means of contracts expressly concluded with the other shareholders and partners, that its liability is limited to that part of the capital, based on the liability of those other shareholders or partners and on the latter's adequate solvency.
3. If a Dutch investment firm, Dutch credit institution or financial holding company having its registered office in the Netherlands is affiliated to another enterprise because of a relationship as referred to in Article 12(1) of the Consolidated Accounts Directive, the Dutch Central Bank shall determine for every investment firm, credit institution or financial holding company how the consolidation will be implemented.
4. Holdings in investment firms, credit institutions or financial institutions that are jointly managed by an enterprise involved in the consolidation and an enterprise not included therein, shall be consolidated proportionally if a limitation of the liability of those enterprises ensues from those holdings which depends on the share in the capital they own.
5. In the event of types of capital ties other than those referred to in Subsections (2) and (4), the Dutch Central Bank shall determine whether and in what form consolidation will take place.
6. Where the Dutch Central Bank exercises supervision on a consolidated basis, it shall, without prejudice to Subsections (1) to (5), determine whether in what form consolidation will take place in the following cases:
  - a. an investment firm or credit institution exercises significant influence on one or more credit institutions or financial institutions, without owning a holding in such institutions or having any other types of capital ties with such institutions; and
  - b. two or more investment firms, credit institutions or financial institutions are managed centrally without such having been provided for in a contract or in the articles of association.
7. Where consolidation takes place in a case as referred to in Subsection (6), the Dutch Central Bank shall also determine whether the use of the method referred to in Article 12 of the Consolidated Accounts Directive is permitted or prescribed.
8. Where supervision on a consolidated basis is prescribed under Section 3:276(1) or (2), enterprises providing ancillary services and management companies of enterprises for collective investment in transferable securities shall be involved in the consolidation in the cases and in the ways referred to in Subsections (2) to (5).

### **Section 3:280**

1. If a Dutch investment firm or Dutch credit institution has as its parent enterprise a mixed-activity holding company, the Dutch Central Bank shall supervise the intra-group contracts and positions with the mixed-activity holding company and its subsidiaries.
2. The investment firm or credit institution shall see to the calculation and monitoring of its intra-group contracts and positions with the mixed-activity holding company and its subsidiaries.
3. The investment firm or credit institution shall supply the Dutch Central Bank periodically, within the terms specified for that purpose, with a report documenting significant intra-group contracts and positions with the mixed-activity holding company and its subsidiaries.
4. Rules shall be laid down by or pursuant to a Decree as regards the content, the supply, the models and the periodicity of the reports.
5. Where the intra-group contracts and positions show that the financial position of the investment firm or credit institution is or might be jeopardised, the Dutch Central Bank shall take measures in respect of that credit

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*  
institution.

### **Section 3:280a**

1. A Dutch EU parent investment firm, Dutch EU parent credit institution, Dutch investment firm or Dutch credit institution that is a subsidiary of a financial EU parent holding company shall comply with Section 3:74a on the basis of its consolidated financial position.
2. An important Dutch investment firm or Dutch credit institution that is a subsidiary of a parent investment firm, parent credit institution or financial parent holding company having its registered office in another Member State shall disclose the information referred to in Section 3:74a(1) on an individual or sub consolidated basis.
3. If the Dutch Central Bank exercises the supervision on a consolidated basis of a Dutch investment firm or Dutch credit institution that is a subsidiary of an enterprise having its registered office in a non-Member State, it may, on application, grant that financial enterprise, whether or not for a fixed period, a full or partial dispensation from the obligation to disclose information on a consolidated basis, if the enterprise of which it is a subsidiary discloses information about it that corresponds to the information referred to in Subsection (1).
4. If a Dutch financial EU parent holding company has both an investment firm and a credit institution as its subsidiaries, this section shall apply only to the credit institution.

### **Section 3:280b**

On application, the Dutch Central Bank may, whether or not for a fixed period, grant investment firms a dispensation from the provisions arising from this part with regard to consolidated supervision, as well as from Section 3:269(1). Rules to be observed by the holder of a dispensation, as well as rules with regard to the granting of a dispensation, shall be laid down by or pursuant to a Decree.

## **Part 3.6.3. Supplementary supervision of life insurers and non-life insurers in an insurance group**

### **Section 3:281 [Cancelled from 1 January 2007]**

### **Section 3:282**

1. Supplementary supervision as referred to in Sections 3:284, 3:285 and 3:287 shall be exercised in respect of a Dutch life insurer or non-life insurer that is a participating enterprise in a Dutch life insurer or non-life insurer, in a European life insurer or non-life insurer, in a non-European life insurer or non-life insurer or in a reinsurer. Section 3:269 shall apply *mutatis mutandis*.
2. Supplementary supervision as referred to in Sections 3:284, 3:286 and 3:287 shall be exercised in respect of a Dutch life insurer or non-life insurer that is a subsidiary of an insurance holding company, of a non-European life insurer or non-life insurer or of a reinsurer.
3. Supplementary supervision as referred to in Sections 3:284 and 3:286 shall be exercised in respect of a Dutch life insurer or non-life insurer whose parent enterprise is a mixed-activity insurance holding company.

### **Section 3:283**

The supplementary supervision referred to in Section 3:282 shall include:

- a. enterprises affiliated to the Dutch life insurer or non-life insurer;
- b. enterprises participating in the Dutch life insurer or non-life insurer;
- c. enterprises affiliated to the enterprises referred to under (b).

### **Section 3:284**

1. The Dutch Central Bank shall include in the supplementary supervision referred to in Subsection 3:282, among other things, intra-group contracts and positions between the Dutch life insurer or non-life insurer subject to that

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

supervision and:

- a. enterprises affiliated to that life insurer or non-life insurer;
  - b. enterprises participating in that life insurer or non-life insurer;
  - c. enterprises affiliated to the enterprises referred to under (b); and
  - d. natural persons that own a holding in:
    - 1°. that life insurer or non-life insurer or an affiliated enterprise;
    - 2°. an enterprise participating in that life insurer or non-life insurer;
    - 3°. an enterprise affiliated to an enterprise as referred to under 2°.
2. The life insurer or non-life insurer shall supply the Dutch Central Bank periodically, within the terms specified for that purpose, with a report documenting contracts and positions where these are of significant importance.
  3. Rules shall be laid down by or pursuant to a Decree as regards the content, the supply, the models and the periodicity of the reports.
  4. Where the intra-group contracts and positions show that the solvency of the life insurer or non-life insurer is or might be jeopardised, the Dutch Central Bank shall take measures in respect of that life insurer or non-life insurer.

#### **Section 3:285**

1. A life insurer or non-life insurer subject to the supplementary supervision referred to in Section 3:282(1) shall calculate the adjusted solvency. Rules shall be laid down by or pursuant to a Decree as regards the calculation of the adjusted solvency and the manner, periodicity and terms of the submission of the reports.
2. The calculation shall be based on all the affiliated enterprises, participating enterprises and enterprises affiliated with a participating enterprise.
3. Where the calculation shows that the adjusted solvency is negative, the Dutch Central Bank shall take measures in respect of that life insurer or non-life insurer.

#### **Section 3:286**

1. A life insurer or non-life insurer subject to the supplementary supervision referred to in Section 3:282(2) shall calculate the adjusted solvency. Rules shall be laid down by or pursuant to a Decree as regards the content of the adjusted solvency and the manner, periodicity and terms of the submission of the reports.
2. The calculation shall be based on all the enterprises affiliated to the insurance holding company, reinsurer or non-European life insurer or non-life insurer.
3. Where the calculation referred to in Subsection (2) shows that the solvency of a life insurer or non-life insurer that is a subsidiary of the insurance holding company, of the reinsurer or of the non-European life insurer or non-life insurer is or might be jeopardised, the Dutch Central Bank shall take measures in respect of that life insurer or non-life insurer.

#### **Section 3:287**

1. The Dutch Central Bank shall only demand the information required for the supervision regulated in this part directly from the enterprises involved, as referred to in Section 3:283, if such information was first demanded from the Dutch life insurer or non-life insurer but was not obtained.
2. The Dutch Central Bank may carry out, either itself or through the broker of the persons referred to in Section 1:72(1), on-the-spot verification of the information at:
  - a. the life insurer or non-life insurer subject to the supervision referred to in Section 3:282;
  - b. the subsidiaries of that life insurer or non-life insurer;
  - c. the parent enterprises of that life insurer or non-life insurer; or

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

d. the subsidiaries of a parent enterprise of that life insurer or non-life insurer.

3. If the supervisory authority of another Member State wishes to carry out a verification of important information regarding a Netherlands-based enterprise that is an affiliated life insurer or non-life insurer, a subsidiary, a parent enterprise or a subsidiary of a parent enterprise of the Dutch life insurer or non-life insurer subject to the supervision referred to in Section 3:282, the Dutch Central Bank shall carry out a verification requested by that supervisory authority within the framework of its powers, grant permission to that supervisory authority to carry out the verification itself or permit an expert to carry out the verification. The supervisory authority of the other Member State may participate in the verification if it does not carry out the verification itself.

### **Section 3:288**

If a Dutch life insurer or non-life insurer and one or more European life insurers or European non-life insurers have as their parent enterprise the same insurance holding company, reinsurer, mixed-activity insurance holding company, non-European life insurer or non-European non-life insurer, the Dutch Central Bank may, after consultation with the supervisory authorities concerned of other Member States, permit one of those other supervisory authorities to exercise the supplementary supervision referred to in Section 3:282(1).

## **Part 3.6.4. Prudential supervision of financial conglomerates**

### **3.6.4.1. Introductory provisions**

#### **Section 3:289**

For the purposes of this part and the provisions based upon it, the following terms shall have the following meaning:

- a. investment firm: Dutch investment firm, European investment firm or non-European investment firm;
- b. subsector: the collection of enterprises within a group that is formed by all of the following group members:
  - 1°. credit institutions, enterprises providing ancillary services, investment firms and financial institutions, which subsector shall be referred to as the credit institution and investment firm sector; or
  - 2°. life insurers, non-life insurers, reinsurers and insurance holding companies, which subsector shall be referred to as the insurer sector;
- c. financial market sector: the collection of enterprises within a group that is formed by the combined subsectors;
- d. regulated entity: a credit institution, life insurer, non-life insurer or investment firm;
- e. group: the combination of a parent enterprise, its subsidiaries, other enterprises in which the parent enterprise or one or more of its subsidiaries owns a holding, as well as enterprises that are affiliated to one of the aforementioned enterprises because of a central management that exists pursuant to a contract concluded with these enterprises or a provision in the articles of association of one or more of these enterprises, or because the administrative, managing or supervisory bodies of these enterprises are composed for the majority of the same persons during the financial year and until the compilation of the consolidated accounts;
- f. group member: an enterprise pertaining to a group as referred to under (e);
- g. intra-group contracts and positions: any contract and the resulting financial relationships between a regulated entity in a financial conglomerate and either another group member or a person affiliated to a group member in a formal or actual control structure;
- h. credit institution: Dutch credit institution, European credit institution or non-European credit institution;
- i. life insurer or non-life insurer: Dutch life insurer or non-life insurer, European life insurer or non-life insurer or non-European life insurer or non-life insurer;
- j. relevant supervisory authority:
  - 1°. the supervisory authority of another Member State that is responsible under the Financial Conglomerates Directive for supervising the regulated entities as part of a subsector pertaining to the relevant financial conglomerate as referred to in Section 3:290;
  - 2°. the coordinator referred to in Section 3:293(1) if this is not the supervisory authority referred to under 1°;
  - 3°. other supervisory authorities of other Member States if these are relevant in the opinion of the supervisory authorities referred to under 1° and 2°;
- k. Financial Conglomerates Directive: Directive 2002/87/EC of the European Parliament and the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance enterprises and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC,

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC and Directives 98/78/EC and 2000/12/EC of the European Parliament and the Council (OJEC L 35);

- l. risk concentration: all exposures with a loss potential borne by the group members in a financial conglomerate, which are large enough to threaten the solvency or the financial position in general of the regulated entities in the conglomerate;
- m. sectoral rules: the legislation laid down by the Member States under Directives as referred to in Article 249 of the Treaty establishing the European Community relating to the supervision of regulated entities pertaining to one of the subsectors listed under (b).

### **Section 3:290**

1. In this part and the provisions based upon it, a financial conglomerate shall be understood to mean a group which satisfies the following conditions:
  - a. the group is headed by:
    - 1°. a regulated entity having its registered office in a Member State which is:
      - a parent enterprise of an enterprise in the financial market sector;
      - an owner of a holding in an enterprise in the financial market sector; or
      - affiliated to an enterprise in the financial market sector because of a central management or because the administrative, managing or supervisory bodies are composed for the majority of the same persons during the financial year; or
    - 2°. an enterprise which is not a regulated entity, in which case the balance sheet total of the enterprises in the financial market sector exceeds 40 percent of the balance sheet total of the group as a whole;
  - b. at least one of the regulated entities in the group pertains to the credit institution and investment firm sector, and at least one of the regulated entities in the group pertains to the insurer sector;
  - c. as regards any subsector in the group, the average of the ratio between the balance sheet total of that subsector and the balance sheet total of the financial market sector on the one hand, and the ratio between the required capital under the solvency requirements of that subsector and the total required capital under the solvency requirements of the financial market sector on the other, exceeds ten percent.
2. A group which satisfies the conditions referred to in Subsection (1)(a) and (b) and which does not satisfy the conditions referred to in Subsection (1)(c) shall also be a financial conglomerate if the balance sheet total of the smallest subsector exceeds €6,000,000,000. In derogation from the foregoing, the Dutch Central Bank, having consulted the relevant supervisory authorities, may decide that a group will not be classified as a financial conglomerate, or may decide not to apply Sections 3:297 to 3:299, if it considers the inclusion of the group in the supervision or the application of the said sections to be unnecessary, inappropriate or misleading in light of the objectives of that supervision.
3. In derogation from Subsection (1), the Dutch Central Bank, having consulted the relevant supervisory authorities, may decide:
  - a. not to include a regulated entity in the calculation of the ratios referred to in Subsection (1)(c) in the cases referred to in Section 3:296(5);
  - b. in special cases, to replace or supplement the criterion based on the balance sheet total by a criterion based on income structure or off-balance sheet activities, where the Dutch Central Bank is of the opinion that these criteria are particularly relevant with a view to the supervision referred to in this part.
4. In derogation from Subsection 1(a)(2°) and (c), where the ratios referred to in those subsections of a financial conglomerate already subject to supervision fall below 40 percent and ten percent respectively, the percentages referred to in those subsections shall be set at 35 percent and eight percent respectively during the following three years. In derogation from Subsection (2), where the balance sheet total of the smallest subsector of a financial conglomerate already subject to supervision falls below €6,000,000,000, the requirement referred to in Subsection (2) shall be set at a minimum of €5,000,000,000 for the smallest subsector during the following three years.
5. If the Dutch Central Bank is the coordinator it may, after consultation with the relevant supervisory authorities, decide to reduce the three-year periods referred to in Subsection (4).

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

6. The calculations relating to the balance sheet shall be based on the aggregated balance sheet total of the group members pertaining to the group, in accordance with their annual accounts. For the purpose of that calculation, enterprises in which a group member owns a holding shall be included for the amount of their balance sheet total that corresponds to the aggregated proportional share of the group. Where consolidated accounts are available, the calculations shall be based on those consolidated accounts. The solvency requirements shall be calculated on the basis of the rules laid down in this Act.
7. The Dutch Central Bank shall communicate a decision as referred to in Subsections (2), (3) or (5) to the other supervisory authorities involved of other Member States.

### **Section 3:291**

Where the Dutch Central Bank has been designated as the coordinator pursuant to Section 3:293, it shall notify the enterprise at the head of the group, or, in the absence thereof, the regulated entity with the highest balance sheet total in the most important subsector, of the decision that the group has been classified as a financial conglomerate and that the Dutch Central Bank has been designated as the coordinator. It shall also communicate the decision to the supervisory authorities of other Member States that licensed regulated entities in the group, the supervisory authorities of the Member State where the mixed financial holding company has its registered office and the Commission of the European Communities. It shall also communicate the decision to the Authority for the Financial Markets if the latter licensed a regulated entity of the financial conglomerate.

### **Section 3:292**

1. This part shall apply to Dutch credit institutions, Dutch life insurers or non-life insurers, Dutch investment firms, and management companies of enterprises for collective investment in transferable securities that hold a licence as referred to in Section 2:65(1)(a) or (2) and form part of a financial conglomerate.
2. Where the Dutch Central Bank has been appointed as the coordinator, the supervision in accordance with Sections 3:293 to 3:299 shall apply to each regulated entity of the financial conglomerate. For the purposes of the preceding sentence, a regulated entity shall also be understood to mean a management company of an enterprise for collective investment in transferable securities that holds a licence as referred to in Section 2:65(1)(a) or (2), or a management company having its registered office outside the Netherlands which, if it had had its registered office in the Netherlands, would have been a management company of an enterprise for collective investment in transferable securities that could be licensed pursuant to Section 2:65(2).
3. In derogation from Subsections (1) and (2), the supervision by the Dutch Central Bank in accordance with Sections 3:293 to 3:299 shall not extend to regulated entities of a financial conglomerate whose parent enterprise is a regulated entity or a mixed financial holding company having its registered office in a non-Member State, if it has concluded that the supervision of the regulated entities of the financial conglomerate by the supervisory authority of that State is equivalent to the supervision of regulated entities referred to in Subsection (2). Nor shall the Dutch Central Bank supervise a regulated entity having its registered office in the Netherlands that forms part of a financial conglomerate as referred to in the first sentence, if it is not the coordinator and the coordinator has drawn a conclusion that corresponds to a conclusion as referred to in the first sentence.
4. In the case of a financial conglomerate as referred to in Subsection (3) and where there is no equivalent supervision as referred to in that subsection, the Dutch Central Bank may exercise the supervision of the regulated entities having their registered office in the Netherlands of that financial conglomerate in a manner other than that referred to in Subsection (2), if that manner is appropriate, will ensure that the objectives of the supervision are achieved and, where the Dutch Central Bank itself is not the coordinator, has been approved by the coordinator.
5. In drawing the conclusion referred to in Subsection (3), the Dutch Central Bank shall consult the relevant supervisory authorities and observe the general guidelines drawn up in this respect in accordance with Article 21(5) of the Financial Conglomerates Directive by the Financial Conglomerates Committee referred to in Article 21(1) of that Directive. The Dutch Central Bank shall consult the Committee before determining the result of its

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*  
investigation.

6. Where the Dutch Central Bank has been designated as the coordinator, it shall grant approval that corresponds to the approval referred to in Subsection (4) after consultation with the relevant supervisory authorities. It shall communicate that granting of approval to the other supervisory authorities involved of other Member States and to the Commission of the European Communities.
7. Where a regulated entity as referred to in Subsection (1) forms part of a group that fulfils the requirements referred to in Section 3:290(1)(b) and (c), (2) and (6), and is affiliated to a person through a formal or actual control structure, the Dutch Central Bank, in collaboration with the relevant supervisory authorities, shall determine to what extent the regulated entity will be subject to supervision as referred to in this part.
8. Where a financial conglomerate includes another financial conglomerate, the supervision referred to in this part shall apply only to the entire financial conglomerate.

#### **3.6.4.2. The coordinator, collaboration and enforcement**

##### **Section 3:293**

1. In the case of a financial conglomerate that includes a regulated entity or mixed financial holding company having its registered office in the Netherlands, the Dutch Central Bank, in agreement with the supervisory authorities involved of other Member States, including those of the Member State where the mixed financial holding company has its registered office if this is a Member State other than the Netherlands, shall designate a coordinator that will be responsible for coordinating and exercising the supervision of the financial conglomerate.
2. In doing so, the Dutch Central Bank shall apply the criteria referred to in Article 10(2) and (3) of the Financial Conglomerates Directive, whereby for the purposes of the said paragraphs the Dutch Central Bank shall be regarded as the supervisor that licensed an investment firm or a management company as referred to in Section 3:292(1).

##### **Section 3:294**

1. Where the Dutch Central Bank has been designated as the coordinator as referred to in Section 3:293:
  - a. it shall coordinate the collection and dissemination of information relevant or essential in normal circumstances and in emergency situations, including the dissemination of information that is important for the prudential supervision based on the sectoral rules;
  - b. it shall supervise and assess the financial situation of the financial conglomerate as a whole;
  - c. it shall supervise compliance with the regulations on capital adequacy, risk concentration and intra-group contracts and positions referred to in Sections 3:296 to 3:298;
  - d. it shall supervise compliance with the rules regarding the operations of the financial conglomerate referred to in Section 3:299; and
  - e. it shall plan and coordinate supervisory activities in normal circumstances and in emergency situations, in collaboration with the relevant supervisory authorities.
2. Where the Dutch Central Bank, as coordinator or supervisor, is involved in the supervision of a financial conglomerate, it shall consult the supervisory authorities of other Member States with a view to exercising such supervision.
3. Where the Dutch Central Bank, as coordinator or supervisor, requires information that has already been supplied to another supervisory authority of another Member State, it shall first contact that supervisory authority.

##### **Section 3:295**

1. The Dutch Central Bank may apply Sections 1:75 and 1:79 to 1:88 to a mixed financial holding company that forms part of a financial conglomerate regarding which the Dutch Central Bank has been designated as the

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

coordinator, if, notwithstanding compliance with Sections 3:296 to 3:299 or corresponding provisions of other Member States, the solvency might be jeopardised or the intra-group contracts and positions or the risk concentrations threaten or may threaten the financial position of a regulated entity pertaining to the financial conglomerate.

2. If, notwithstanding compliance by a regulated entity having its registered office in the Netherlands with Sections 3:296 to 3:299, the solvency might be jeopardised or the intra-group contracts and positions or the risk concentrations threaten or may threaten the financial position of that regulated entity, the Dutch Central Bank may take measures in respect of that regulated entity.
3. Where the Dutch Central Bank is not the coordinator, it may apply Sections 1:75 and 1:79 to 1:88 to a mixed financial holding company having its registered office in the Netherlands that forms part of a financial conglomerate, if that holding company or a regulated entity pertaining to that financial conglomerate acts in violation of Sections 3:296 to 3:299 or of corresponding provisions of other Member States. Sections 1:75 and 1:79 to 1:88 shall also apply if the said provisions are complied with but the solvency might nevertheless be jeopardised or the intra-group contracts and positions or the risk concentrations threaten or may threaten the financial position of a regulated entity pertaining to the financial conglomerate.

### **3.6.4.3. Rules on operating as a financial conglomerate**

#### **Section 3:296**

1. An enterprise which, either on its own or together with another enterprise, heads a financial conglomerate that includes a regulated entity having its registered office in the Netherlands, shall ensure that it complies, on a consolidated basis or on an aggregated basis, with the rules to be laid down by or pursuant to a Decree as regards the capital adequacy of the conglomerate, if the Dutch Central Bank is the coordinator. These rules shall concern the manner, the periodicity and terms of the submission of reports, as well as the calculation of the capital adequacy.
2. Where a regulated entity having its registered office in the Netherlands forms part of a financial conglomerate, the enterprise referred to in Subsection (1) shall ensure that appropriate capital adequacy strategies are in place for the conglomerate as a whole.
3. If the enterprise fails to comply with the obligation referred to in Subsections (1) or (2), or fails to do so in time, such obligation shall also lie with the regulated entity referred to in that subsection.
4. Where the Dutch Central Bank is the coordinator, the enterprise referred to in Subsection (1), or a regulated entity pertaining to the group that has been designated by the Dutch Central Bank after consultation with the relevant supervisory authorities and with the financial conglomerate, shall provide the Dutch Central Bank at least once a year with a calculation, accompanied by the data on which that calculation is based, showing whether Subsection (1) is complied with.
5. Where the Dutch Central Bank has been designated as the coordinator, it may decide not to include a group member in the calculation of the capital adequacy if:
  - a. the group member has its registered office in a non-Member State in which there are statutory impediments to providing the required information;
  - b. the group member is of negligible importance in light of the objectives of the supervision as referred to in this part; or
  - c. including the group member would be misplaced or misleading in light of the objectives of the supervision as referred to in this part.
6. Subsection (5)(b) shall not apply where it concerns more than one group member and those group members together are not of negligible importance.
7. In the case referred to in Subsection (5)(c), the Dutch Central Bank shall, except in urgent cases, consult the relevant supervisory authorities before rendering a decision.



Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

8. Rules may be laid down by or pursuant to a Decree as regards the capital adequacy of a group that is not a financial conglomerate and, in addition to an investment firm or credit institution having its registered office in the Netherlands, includes a life insurer, non-life insurer or funeral expenses and benefits in kind insurer having its registered office in the Netherlands. The enterprise which heads the group, either on its own or together with another enterprise, shall ensure that those rules are complied with.

### **Section 3:297**

1. An enterprise which, either on its own or together with another enterprise, heads a financial conglomerate that includes a regulated entity having its registered office in the Netherlands shall report regularly and at least once a year all significant risk concentrations at financial conglomerate level to the Dutch Central Bank where the latter is the coordinator.
2. In derogation from Subsection (1), the Dutch Central Bank, having consulted the other relevant supervisory authorities and the financial conglomerate, may provide that a regulated entity of its choice that forms part of the financial conglomerate must submit the report to the Dutch Central Bank.
3. Rules shall be laid down by or pursuant to a Decree as regards the report referred to in Subsection (1). These rules shall concern the manner, periodicity and terms of the submission of the report.
4. Rules shall be laid down by or pursuant to a Decree as regards the quantitative limits or other measures to restrict the risk concentration.
5. Where a financial conglomerate is headed by a mixed financial holding company and includes a regulated entity having its registered office in the Netherlands, any sectoral rules regarding risk concentrations applicable to the most important subsector in the financial conglomerate shall apply to the financial market sector as a whole, including the mixed financial holding company. Where a financial conglomerate includes a management company as referred to in Section 3:292(1), the Dutch Central Bank shall determine to which subsector that management company must be allocated.

### **Section 3:298**

1. An enterprise which, either on its own or together with another enterprise, heads a financial conglomerate that includes a regulated entity having its registered office in the Netherlands shall report regularly and at least once a year all significant intra-group contracts and positions of regulated entities in the financial conglomerate to the Dutch Central Bank where the latter is the coordinator.
2. In derogation from Subsection (1), the Dutch Central Bank, having consulted the other relevant supervisory authorities and the financial conglomerate, may provide that a regulated entity of its choice must submit the report to the Dutch Central Bank.
3. Rules shall be laid down by or pursuant to a Decree as regards the report referred to in Subsection (1). These rules shall concern the manner, periodicity and terms of the submission of the report.
4. Rules may be laid down by or pursuant to a Decree as regards the quantitative or qualitative limits for intra-group contracts and positions or with regard to measures seeking to achieve the same objective.
5. Where a financial conglomerate is headed by a mixed financial holding company and includes a regulated entity having its registered office in the Netherlands, the sectoral rules regarding intra-group contracts and positions applicable to the most important subsector of the financial conglomerate shall apply to the financial market sector as a whole, including the mixed financial holding company. Where a financial conglomerate includes a management company as referred to in Section 3:292(1), the Dutch Central Bank shall determine to which subsector that management company must be allocated.

### **Section 3:299**

1. An enterprise which, either on its own or together with another enterprise, heads a group that includes a regulated entity having its registered office in the Netherlands shall ensure such operations that the financial

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

soundness of the regulated entities and the enterprise itself is not jeopardised by:

- a. the risk management of the group as a whole and of the individual group members;
  - b. the strategy and the policy of the group as a whole and of the individual group members;
  - c. possible conflicts of interest and relationships between the regulated entities, the enterprise referred to in the opening words and the other group members; or
  - d. activities carried out by group members that are of essential importance to the operations with regard to the financial activities of one or more regulated entities.
2. Rules shall be laid down by or pursuant to a Decree with regard to Subsection (1).
3. The group members listed below shall organise their operations in such a way that all the data relevant to the supervision referred to in this part can be provided:
- a. the regulated entity having its registered office in the Netherlands;
  - b. the enterprise which heads the group, either on its own or together with another enterprise;
  - c. group members other than the group members referred to under (a) and (b) which carry out activities that are of essential importance to the operations with regard to the financial activities of one or more regulated entities in the group.
4. Section 1:75 shall apply mutatis mutandis to enterprises referred to in Subsection (1), opening words.

## **4. Pursue of Business Supervision of Financial Enterprises**

### **Chapter 4.1. Introductory provisions**

#### **Part 4.1.1. Scope**

##### **Section 4:1**

1. Where not otherwise provided, this part shall apply to:
  - a. financial service providers that are permitted under Chapter 2.2 to provide financial services in the Netherlands or that hold a supervisory status certificate as referred to in Section 3:110, and comply with Section 3:110(4) or (5);
  - b. investment firms having their registered office in the Netherlands or in a non-Member State that are permitted under Chapter 2.2 to provide investment services or perform investment activities;
  - c. collective investment schemes that are permitted under Part 2.2.7 to offer units in the Netherlands, the management companies of those collective investment schemes and any depositaries associated with those collective investment schemes; and
  - d. clearing institutions that are permitted under Part 2.2.1 to conduct their business in the Netherlands insofar as they act for clients having their registered office in the Netherlands.
2. Sections 4:4a, 4:14(2), opening words and under (c), 4:19, 4:20, 4:22, 4:23, 4:24, 4:89, 4:90, 4:90a, 4:90b, 4:90c, 4:90d, 4:90e, Section 4.3.7.3 and Section 4.3.7.4 shall apply to investment firms with a branch office in the Netherlands that are permitted under Section 2.2.12.2 to provide investment services or perform investment activities in the Netherlands.

##### **Section 4:2**

1. With the exception of Sections 4:36 and 4:37, this part shall not apply to offers of credit by a municipal credit bank where regulations have been adopted and approved for the operations of that municipal credit bank pursuant to Section 4:37(1) and (2).

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

2. Sections 4:9(1) and 4:10 shall not apply to persons that determine the day-to-day policy of a municipal credit bank, that determine or co-determine the policy of a municipal credit bank or that belong to a body responsible for supervising the policy and the general affairs of a municipal credit bank and also hold seats on or chair a municipal council or are part of a municipal executive.

#### **Section 4:2a**

The provisions arising from this part with regard to offering non-life insurance contracts shall not apply to guarantee funds as referred to in Section 3:6.

#### **Part 4.1.2. Special provisions**

#### **Section 4:3**

1. No party operating in or from the Netherlands may perform activities as a broker in another Member State as a service of the information society as referred to in Section 15d(3) of Book 3 of the Dutch Civil Code in the course of a business or profession in order to attract or obtain the disposal of callable funds from others than professional market parties beyond a restricted circle.
2. Subsection (1) shall not apply to:
  - a. banks that have been licensed by the Dutch Central Bank as referred to in Sections 2:11(1) or 2:20(1), and banks having their registered office in another Member State that pursue their business from a branch office situated in the Netherlands or by providing services to the Netherlands and that comply with the provisions of Sections 2:15 or 2:16 as regards the performance of the activities referred to under 1 in Annex I to the Recast Banking Directive;
  - b. banks having their registered office in another Member State that have been licensed to pursue their business by the supervisory authority of that Member State and that satisfy the conditions applicable in that other Member State for providing services to another Member State;
  - c. the Member States, as well as the regional or local government bodies of the Member States;
  - d. international institutions governed by public law in which one or more Member States participate;
  - e. investment firms that have been licensed by the Authority for the Financial Markets as referred to in Section 2:96;
  - f. investment firms having their registered office in another Member State that provide investment services or perform investment activities by providing services to the Netherlands and comply with Section 2:102; and
  - g. intermediaries that have been licensed by the Authority for the Financial Markets as referred to in Section 2:80(1) to provide brokerage services in relation to a current account or savings account.
3. An exemption from Subsection (1) may be granted by ministerial regulation.
4. On application, the Authority for the Financial Markets may, whether or not for a fixed period, grant a dispensation from Subsection (1) if the applicant demonstrates that the interests which this part seeks to protect are sufficiently protected in other ways. Rules may be laid down by or pursuant to a Decree which the holder of the dispensation should observe and with regard to granting the dispensation.

#### **Section 4:4**

1. Where a financial enterprise that has not been licensed by the Authority for the Financial Markets fails to comply with the applicable rules arising from this part, the Authority for the Financial Markets may prohibit that financial enterprise from performing the activities that are contrary to those rules.
2. Subsection (1) shall not apply to the fulfilment of contracts concluded prior to the moment when the prohibition was imposed.
3. Where the financial enterprise referred to in Subsection (1) has its registered office in another State, the Authority for the Financial Markets shall notify the supervisory authority of that other State of the prohibition it has imposed.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

4. Subsections (1) to (3) shall not apply to:

- a. management companies of enterprises for collective investment in transferable securities having their registered office in another Member State;
- b. intermediaries as referred to in Section 2:81(2);
- c. tied agents as referred to in Section 2:97(5) and Section 2:98(2);
- d. insurance intermediaries having their registered office in another Member State;
- e. financial service providers having their registered office in another Member State that pursue the business of a financial institution, credit institution or insurer; and
- f. reinsurance intermediaries having their registered office in another Member State.

#### **Section 4:4a**

The Authority for the Financial Markets may prohibit an investment firm operating as a systematic internaliser from conducting the business of an investment firm operating as a systematic internaliser, if the investment firm fails to comply with the applicable rules laid down pursuant to Section 4.3.7.3.

#### **Section 4:4b**

1. The Authority for the Financial Markets may oblige an investment firm conducting the business of an investment firm operating as a systemic internaliser in the Netherlands or an investment firm operating a multilateral trading facility in the Netherlands, by issuing an instruction, to suspend, interrupt or cancel trading in a particular financial instrument within a reasonable term to be specified by the Authority for the Financial Markets, if this is required with a view to protecting the interests of the investors in the financial instrument or the orderly trade in the financial instrument.
2. Having issued an instruction as referred to in Subsection (1), the Authority for the Financial Markets may request the court of Rotterdam to exclude the financial instrument concerned from systematic internalisation or from trading on the multilateral trading facility, if this is required with a view to protecting the interests of the investors in the financial instrument or the orderly trade in the financial instrument.

#### **Section 4:5**

1. For the purposes of the provisions arising from this part with regard to providing financial services, with the exception of offering units in a collective investment scheme, any act or omission to act on the part of an affiliated enterprise as referred to in Section 2:105(1) and (2) shall be considered equivalent to an act or omission to act on the part of the legal person referred to in Section 2:105(1) and the legal person referred to in Section 2:105(4) respectively.
2. The legal person referred to in Section 2:105(1) shall, without delay, notify the Authority for the Financial Markets of the affiliation of an enterprise as referred to in Section 2:105(2) and of the termination of the affiliation of an affiliated enterprise as referred to in Section 2:105(1) or (2).
3. Rules may be laid down by or pursuant to a Decree as regards the manner in which the notification referred to in Subsection (2) is to be made and the data to be provided and documents to be submitted on that occasion.

#### **Section 4:6**

1. An offeror that is no longer responsible for a broker as referred to in Subsection 2:81(2) shall, without delay, notify the Authority for the Financial Markets and the broker involved.
2. Rules may be laid down by or pursuant to a Decree as regards the manner in which the notification referred to in Subsection (1) is to be made and the data to be provided and documents to be submitted on that occasion.

#### **Section 4:6a**

1. An enterprise which, either on its own or together with another enterprise, heads a group that includes a financial enterprise to which the provisions arising from this part apply, shall refrain from actions or policies

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

which may result in that financial enterprise acting in violation of the provisions arising from this part.

2. Section 1:75 shall apply mutatis mutandis to the enterprise referred to in Subsection (1).

### **Part 4.1.3. Exemption**

#### **Section 4:7**

An exemption may be granted by ministerial regulation from the provisions arising from this part, with the exception of Section 4.3.1.5.

### **Chapter 4.2. Rules on operating in the financial markets regarding all financial services**

#### **Part 4.2.1. Expertise, properness and integrity**

#### **Section 4:8**

1. This part shall not apply to:

- a. management companies of enterprises for collective investment in transferable securities having their registered office in another Member State, enterprises for collective investment in transferable securities having their registered office in another Member State and any depositaries associated with those enterprises;
- b. management companies of collective investment schemes having their registered office in a designated State, collective investment schemes having their registered office in a designated State and any depositaries associated with those collective investment schemes;
- c. insurance intermediaries having their registered office in another Member State;
- d. financial service providers having their registered office in another Member State or a designated State that pursue the business of a financial institution, credit institution or insurer; and
- e. reinsurance intermediaries having their registered office in another Member State.

2. This part shall not apply to investment firms that have been licensed by the Dutch Central Bank to pursue the business of a bank, or that hold a supervisory status certificate granted by the Dutch Central Bank to pursue the business of a financial institution.

3. This part, with the exception of Section 4:9(2), shall not apply to financial service providers that have been licensed by the Dutch Central Bank to pursue the business of a credit institution or insurer, or that hold a supervisory status certificate granted by the Dutch Central Bank to pursue the business of a financial institution.

#### **Section 4:9**

1. The day-to-day policy of a management company, investment company, investment firm, depositary or financial service provider shall be determined by persons expert in conducting the business operations of the financial enterprise.

2. A financial service provider shall ensure the professional competence of its employees and of other natural persons who are directly engaged under its responsibility in providing financial services to consumers or, where it concerns financial services relating to insurance or reinsurance brokerage, to clients. To this end, the number of de facto managers of the financial enterprise that possess sufficient professional competence shall in any case be such as to guarantee the quality of the financial services to the consumer or the client.

3. Rules may be laid down by or pursuant to a Decree as regards the professional competence of the persons referred to in Subsection (2). Provisions may be laid down by Decree to the effect that Our Minister, in accordance with rules to be laid down for that purpose, recognises examination institutes that are authorised to issue diplomas as evidence of professional competence. On that occasion, rules may also be laid down as regards the supervision of compliance with those rules.

4. On application, the Authority for the Financial Markets may, whether or not for a fixed period, grant a full or

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

partial dispensation from Subsection (2) and from the provisions arising from Subsection (3), if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which this section seeks to achieve are achieved in other ways.

5. Where the day-to-day policy of a multilateral trading facility operated by a market operator that holds a licence as referred to in Section 5:26(1) is determined by the same persons who determine the day-to-day policy of the regulated market operated by the market operator, those persons shall be deemed to comply with Subsection (1).

#### **Section 4:10**

1. The policy of a management company, investment company, investment firm, depositary or financial service provider shall be determined or co-determined by persons whose properness is beyond doubt. If a body within the financial enterprise is responsible for supervising the policy and the general affairs of the financial enterprise, the properness of the persons exercising this supervision shall be beyond doubt.
2. The properness of a person as referred to in Subsection (1) shall be beyond doubt once this has been established for the purposes of this Act by a supervisor, as long as a change in the relevant facts or circumstances has not given reasonable cause for a reassessment.
3. Rules shall be laid down by or pursuant to a Decree as regards the manner in which to establish that the properness of a person as referred to in Subsection (1) is beyond doubt and which facts and circumstances must be considered in that respect.

#### **Section 4:11**

1. A management company, investment company, investment firm or depositary shall pursue an adequate policy that safeguards controlled and sound business operations. This shall mean that:
  - a. measures are taken to prevent conflicts of interest;
  - b. measures are taken to prevent the financial enterprise or its employees from committing offences or other transgressions of the law that could damage confidence in the financial enterprise or in the financial markets;
  - c. measures are taken to prevent confidence in the financial enterprise or in the financial markets from being damaged because of its clients; and
  - d. measures are taken to prevent the financial enterprise or its employees from performing other acts that are so contrary to generally accepted standards as to seriously damage confidence in the financial enterprise or in the financial markets.
2. A financial service provider shall pursue an adequate policy that safeguards controlled and sound business operations. This shall mean that measures are taken to prevent the financial service provider or its employees from committing offences or other transgressions of the law that could damage confidence in the financial service provider or in the financial markets. Other matters may be designated by Decree that may be regarded as part of controlled and sound business operations by a financial service provider.
3. Rules may be laid down by or pursuant to a Decree as regards the minimum requirements to be satisfied by the policy referred to in Subsections (1) and (2).
4. A financial enterprise as referred to in Subsections (1) or (2) shall supply the Authority for the Financial Markets with information to be specified by Decree about incidents relating to the matters referred to in Subsections (1) and (2).
5. On application, the Authority for the Financial Markets may, whether or not for a fixed period, grant a full or partial dispensation from the provisions arising from Subsection (3), where these do not concern the provision of an investment service or the performance of an investment activity or ancillary service, if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which this section seeks to achieve are achieved in other ways.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

#### **Part 4.2.2. Structuring and organisation**

##### **Section 4:12**

1. Sections 4:13, 4:14 and 4:17 shall not apply to:
  - a. management companies of enterprises for collective investment in transferable securities having their registered office in another Member State, enterprises for collective investment in transferable securities having their registered office in another Member State and any depositaries associated with those enterprises; and
  - b. management companies of collective investment schemes having their registered office in a designated State, collective investment schemes having their registered office in a designated State and any depositaries associated with those collective investment schemes.
2. Sections 4:13, 4:15 and 4:17 shall not apply to:
  - a. insurance intermediaries having their registered office in another Member State;
  - b. financial service providers having their registered office in another Member State or a designated State that pursue the business of a financial institution, credit institution or insurer; and
  - c. reinsurance intermediaries having their registered office in another Member State.
3. Section 4:17 shall not apply to clearing institutions having their registered office in a designated State.
4. Section 4:13 and the provisions arising from Section 4:14(2), opening words and under (a) and (b) shall not apply to investment firms that have been licensed by the Dutch Central Bank to pursue the business of a bank, or that hold a supervisory status certificate granted by the Dutch Central Bank to pursue the business of a financial institution.
5. Section 4:13 shall not apply to financial service providers that have been licensed by the Dutch Central Bank to pursue the business of a credit institution or insurer, or that hold a supervisory status certificate granted by the Dutch Central Bank to pursue the business of a financial institution.

##### **Section 4:13**

1. A management company, investment company, investment firm, depositary or financial service provider shall not be affiliated to persons in a formal or actual control structure which is impenetrable to such an extent that it constitutes or may constitute an impediment to the adequate exercise of supervision of the management company, the collective investment schemes under its management, the investment company, the investment firm, the depositary and the financial service provider respectively.
2. A management company, investment company, investment firm, depositary or financial service provider shall not be affiliated to persons in a formal or actual control structure if the law of a non-Member State applicable to those persons constitutes or may constitute an impediment to the adequate exercise of supervision of the management company, the collective investment schemes under its management, the investment company, the investment firm, the depositary and the financial service provider respectively.

##### **Section 4:14**

1. A management company, investment company, investment firm or depositary shall organise its operations in such a way as to safeguard controlled and sound business operations.
2. Rules shall be laid down by or pursuant to a Decree with regard to Subsection (1). These rules shall concern:
  - a. control of business processes and business risks;
  - b. integrity, which is understood to mean the prevention of:
    - 1°. conflicts of interest;
    - 2°. offences or other transgressions of the law committed by the financial enterprise or its employees that

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

- could damage confidence in the financial enterprise or in the financial markets;
  - 3°. relationships with clients or unit holders that could damage confidence in the financial enterprise or in the financial markets; and
  - 4°. other acts performed by the financial enterprise or its employees that are so contrary to generally accepted standards as to seriously damage confidence in the financial enterprise or in the financial markets; and
  - c. orderly and transparent financial market processes, integrity in relations between market parties and due care in the provision of services to clients and unit holders, which is understood to mean:
    - 1°. safeguarding the provision of information to clients or unit holders;
    - 2°. safeguarding the recording of the relationship with clients or unit holders;
    - 3°. safeguarding due care in the provision of services to clients or unit holders;
    - 4°. preventing conflicts of interest between the financial enterprise and clients or unit holders and between the clients or unit holders themselves;
    - 5°. safeguarding the rights of clients or unit holders; and
    - 6°. other matters, to be specified by Decree.
3. Without prejudice to Sections 3:17 and 3:27, rules may be laid down by or pursuant to a Decree in respect of clearing institutions having their registered office in the Netherlands and branch offices of clearing institutions having their registered office in a non-designated State in relation to the matters referred to in Subsection (2)(c).
4. On application, the Authority for the Financial Markets may, whether or not for a fixed period, grant a full or partial dispensation from the provisions arising from Subsection (2), where these do not concern provision of an investment service or the performance of an investment activity or ancillary service, if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which this section seeks to achieve are achieved in other ways.

#### **Section 4:15**

1. A financial service provider that does not conduct the business of a financial institution, credit institution or insurer shall organise its operations in such a way as to safeguard controlled and sound business operations.
2. Rules may be laid down by or pursuant to a Decree in respect of Subsection (1). These rules shall concern:
  - a. integrity, which shall be understood to mean:
    - 1°. preventing the financial service provider or its employees from committing offences and other transgressions of the law that could damage confidence in the financial service provider or in the financial markets; and
    - 2°. taking measures relating to other matters designated by Decree that may be regarded as part of controlled and sound business operations by a financial service provider; and
  - b. orderly and transparent financial market processes, integrity in relations between market parties and due care in the provision of services to clients and consumers, which is understood to mean:
    - 1°. safeguarding the provision of information to clients or consumers; and
    - 2°. safeguarding due care in the provision of services to clients or consumers.
3. The provisions arising from Subsection (2), opening words and under (b) shall apply *mutatis mutandis* to financial service providers that conduct the business of a financial institution, credit institution or insurer.
4. On application, the Dutch Central Bank may, whether or not for a fixed period, grant a full or partial dispensation from the provisions arising from Subsection (2), if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which this section seeks to achieve are achieved in other ways.

#### **Section 4:16**

1. Where a financial enterprise delegates activities to a third party, that financial enterprise shall ensure that such third party complies with the rules applicable under this part to the delegating financial enterprise with regard to those activities.
2. A management company or investment firm shall not delegate activities to be designated by Decree.



Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

3. By or pursuant to a Decree:

- a. rules shall be laid down, for the purpose of supervision of compliance with the provisions arising from this part, with regard to the delegation of activities by financial enterprises;
- b. rules shall be laid down with regard to the control of risks entailed by the delegation of activities by management companies, depositaries and investment firms; and
- c. rules shall be laid down with regard to the contract to be concluded between a management company, depositary or investment firm and the third party relating to the delegation of activities.

#### **Section 4:17**

1. A management company, investment firm, clearing institution or financial service provider shall ensure that complaints from clients, consumers or unit holders about financial services or financial products of the financial enterprise are handled properly. To this end:
  - a. the financial service provider shall have an internal complaints procedure, aimed at prompt and careful handling of complaints; and
  - b. the financial service provider shall be associated with a disputes body recognised by Our Minister that handles disputes in respect of financial services or financial products of the financial enterprise, unless no such disputes body exists.
2. Subsection (1)(b) shall not apply to financial enterprises insofar as they:
  - a. offer units in collective investment schemes;
  - b. provide investment services or perform investment activities exclusively for professional investors;
  - c. act as a clearing institution.
3. Rules may be laid down by Decree as regards the handling of complaints, and rules shall be laid down by Decree as regards the recognition of disputes bodies, the resolution of disputes by recognised disputes bodies and the information which recognised disputes bodies must provide to Our Minister.

#### **Part 4.2.3. Provision of services with due care**

##### **Section 4:18**

1. This part shall not apply to:
  - a. reinsurance intermediaries; and
  - b. financial services relating to the insurance of major risks.
2. For the purposes of the provisions arising from Sections 4:19, 4:20, 4:21 and 4:22, a funeral expenses and benefits in kind insurance contract shall also be understood to mean a contract intended to accrue a fund to pay for the provision of the funeral of a natural person, if the contract is concluded by a funeral expenses and benefits in kind insurer and does not entail an investment risk for the latter.

##### **Section 4:18a**

1. An investment firm shall classify its clients as eligible counterparties, professional investors or non-professional investors and shall notify them of this.
2. The investment firm shall inform its clients on a durable medium that they may apply for a reclassification and shall inform them about the lower or higher protection level ensuing from such reclassification.

##### **Section 4:18b**

1. Sections 4:19, 4:20, 4:22, 4:23, 4:24, 4:89, 4:90, 4:90a, 4:90b, 4:90c and 4:90d(1) shall not apply to receiving and forwarding orders and to executing orders or directly related ancillary services in relation to eligible

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

counterparties.

2. An investment firm may classify a professional investor as referred to under (o) of the definition of professional investor in Section 1:1, or an enterprise having its registered office in another Member State that is not an eligible counterparty within the meaning of Section 1:1 and is classified as an eligible counterparty in that Member State, as an eligible counterparty if the client has agreed to such classification.
3. In derogation from Subsection (1), an investment firm may, at the request of an eligible counterparty, apply each of Sections 4:19, 4:20, 4:22, 4:23, 4:24, 4:89, 4:90, 4:90a, 4:90b, 4:90c and 4:90d(1) towards that party in relation to individual transactions or in general. In such cases, the provisions of this part with regard to professional investors shall apply mutatis mutandis, unless the eligible counterparty has agreed with the investment firm that it will be treated as a non-professional investor for the purposes of those provisions.
4. An investment firm may classify an eligible counterparty as a professional investor or non-professional investor at its own initiative in relation to individual transactions or in general.
5. An enterprise that complies with Section 4:18c(1) and (2) may request the investment firm to be classified as an eligible counterparty if it has been classified as a professional investor under Section 4:18c(3) in respect of the investment services or investment activities referred to in Subsection (1).

#### **Section 4:18c**

1. An investment firm may classify a non-professional investor at the latter's request as a professional investor, if that investor, in the opinion of the investment firm, has sufficient expertise, knowledge and experience with regard to the nature of the proposed investment services, investment activities or ancillary services to take investment decisions independently and assess the risks attached to those decisions.
2. A non-professional investor shall be deemed to have sufficient expertise, knowledge and experience as referred to in Subsection (1) if he satisfies at least two of the following three criteria:
  - 1°. during the preceding four quarters, the client carried out an average of ten transactions of significant size per quarter on the market concerned;
  - 2°. the value of the non-professional's portfolio of financial instruments and monetary deposits exceeds € 500,000; or
  - 3°. the non-professional investor works or has worked for at least one year in the financial sector, holding a professional position which requires or required knowledge of the proposed investment services, investment activities or ancillary activities.
3. A contract between the investment firm and the non-professional investor shall specify the investment services, types of financial instruments or transactions to which the classification as a professional investor applies.
4. Rules shall be laid down by Decree as regards the procedure to be observed.

#### **Section 4:18d**

1. An investment firm may classify a client that is a professional investor, at the latter's request or at its own initiative, as a non-professional investor in relation to individual transactions or in general. The investment firm shall inform a client that is a professional investor that the latter may request to be classified as a non-professional investor, unless the investment firm has adopted a policy line from which it appears that such a request will not be honoured.
2. If the investment firm and the client agree that the client will be classified as a non-professional investor, such shall be laid down in a contract. This contract shall specify the investment services, types of financial instruments or transactions to which the classification as a non-professional investor applies.

#### **Section 4:18e**

1. An investment firm shall adopt rules of conduct and procedures with regard to classifying or not classifying its

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

clients as professional investors.

2. Where an investment firm finds that a non-professional investor, on a structural basis, no longer satisfies the conditions to be eligible as a professional investor, it shall classify this investor as a non-professional investor and inform the investor of this.

#### **Section 4:19**

1. A financial enterprise shall ensure that the information provided by it or on its behalf with regard to a financial product, financial service or ancillary service, including advertisements, is not detrimental to the information to be supplied or made available pursuant to this part.
2. The information supplied by an investment firm to clients or potential clients shall be accurate, clear and not misleading. The preceding sentence shall apply mutatis mutandis to information supplied pursuant to this part by a financial enterprise that is not an investment firm.
3. The financial enterprise shall ensure that the commercial objective of the information supplied or made available is recognisable as such.
4. Rules shall be laid down by or pursuant to a Decree in respect of Subsection (2), insofar as the information referred to in that subsection is supplied in the context of the provision of investment services.

#### **Section 4:20**

1. Prior to issuing advice, providing an investment service, providing an ancillary service or concluding a contract regarding a financial product other than a financial instrument, an investment firm or financial service provider shall supply information to the consumer or, where it concerns a financial instrument or insurance, to the client insofar as this is reasonably relevant for an adequate assessment of that service or product. Rules may be laid down by or pursuant to a Decree as regards the information referred to in the preceding sentence. These rules may concern matters such as the information supplied in relation to exercising the rights referred to in Section 4:28(1) and (2).
2. In derogation from Subsection (1), first sentence, provisions may be laid down by Decree to the effect that, in cases to be specified on that occasion, a financial enterprise shall supply all or part of the information referred to in that subsection after the conclusion of the contract.
3. During the term of a contract regarding a financial product, financial service or ancillary service, an investment firm or financial service provider shall inform the consumer or, where it concerns a financial instrument or insurance, the client in time with regard to:
  - a. material changes in the information referred to in Subsection (1), insofar as these changes are reasonably relevant to the consumer or the client; and
  - b. other matters, to be specified by or pursuant to a Decree.
4. Rules may be laid down by or pursuant to a Decree as regards the cases and the manner in which a financial enterprise must supply information during the term of a contract.
5. Provisions may be laid down by Decree to the effect that, in cases to be specified on that occasion, the information referred to in Subsection (3) shall only be supplied at the consumer's or client's request.
6. The information referred to in this section may be supplied in standardised form.
7. On application, the Authority for the Financial Markets may, whether or not for a fixed period, grant a full or partial dispensation from the provisions arising from this section, where these do not concern the provision of an investment service or ancillary service, if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which this section seeks to achieve are achieved in other ways.

#### **Section 4:21**

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

If a financial service provider provides a financial service through a broker, authorised agent or authorised sub-agent, the information referred to in Section 4:20(1) and (3) shall be supplied by this broker, authorised agent or authorised sub-agent, unless the financial enterprise concerned and the broker, authorised agent or authorised sub-agent have agreed that the financial enterprise will itself comply with Section 4:20(1) and (2).

#### **Section 4:22**

1. Rules may be laid down by or pursuant to a Decree as regards the supply of information by a financial enterprise in relation to a financial product, financial service or ancillary service.
2. On application, the Authority for the Financial Markets may, whether or not for a fixed period, grant a full or partial dispensation from the provisions arising from Subsection (1), where these do not concern the provision of an investment service or ancillary service, if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which this section seeks to achieve are achieved in other ways.

#### **Section 4:23**

1. If a financial enterprise advises a consumer or, where it concerns a financial instrument or insurance, a client, or if it performs portfolio management activities:
  - a. it shall, in the interest of the consumer or client, obtain information about the latter's financial position, knowledge, experience, objectives and risk tolerance, insofar as this is reasonably relevant to the advice or the portfolio management;
  - b. it shall ensure that its advice or manner of managing the portfolio, insofar as reasonably possible, is partly based on the information referred to under (a); and
  - c. it shall, where it concerns advice regarding financial products other than financial instruments, explain the considerations underlying its advice insofar as this is necessary for a proper understanding of the advice.
2. If a financial enterprise, in providing a financial service other than an investment service, refrains from advising a consumer or, where it concerns insurance, a client, it shall make this known to the consumer or the client when commencing its activities for the consumer or the client.
3. Rules may be laid down by or pursuant to a Decree in respect of:
  - a. the information referred to in Subsection (1)(a) and the manner in which that information is obtained;
  - b. the manner referred to in Subsection (1)(b) in which an investment firm takes account of the information obtained when issuing advice on financial instruments or performing portfolio management activities;
  - c. the manner in which the explanation referred to in Subsection (1)(c) is provided; and
  - d. the manner in which the financial enterprise notifies the customer or the client that it will refrain from issuing advice.
4. On application, the Authority for the Financial Markets may, whether or not for a fixed period, grant a full or partial dispensation from the provisions arising from Subsection (3), where these do not concern advice regarding financial instruments or portfolio management, if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which this section seeks to achieve are achieved in other ways.

#### **Section 4:24**

1. Where a financial enterprise, without also issuing advice, provides an investment service other than portfolio management or another financial service to be designated by Decree, it shall obtain information about the knowledge and experience of the consumer or, where it concerns a financial instrument or insurance, of the client with regard to the financial service or financial product concerned, in order to be able to assess whether that service or product is suitable for the consumer or the client.
2. Where the financial enterprise, based on the information referred to in Subsection (1), is of the opinion that the financial service is not suitable for the consumer or the client, it shall warn the consumer or the client.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

3. Where the consumer or the client fails to supply any or sufficient information about its knowledge and experience, the financial enterprise shall warn the consumer or the client that this will prevent it from checking whether the financial service is suitable for the consumer or the client.
4. Subsections (1) to (3) shall not apply if an investment service as referred to under (a) or (b) of the definition of providing an investment service in Section 1:1 is provided at a client's initiative with regard to:
  - a. shares admitted to trading on a regulated market or on a system in a non-Member State that is comparable to a regulated market;
  - b. instruments normally traded on the money market;
  - c. negotiable bonds or other debt instruments, insofar as these are not convertible bonds or convertible debt instruments;
  - d. units in an enterprise for collective investment in transferable securities; or
  - e. other financial instruments to be designated by Decree, if the financial enterprise, prior to providing the investment service, notifies the client that it has not assessed the suitability of the financial service or the financial product for the consumer.
5. Rules may be laid down by or pursuant to a Decree as regards the manner in which the information referred to in Subsection (1) is to be obtained and the manner in which the suitability of the financial service or the financial product for the consumer is to be assessed.
6. The warnings referred to in Subsections (2) and (3) and the notification referred to in Subsection (4), second sentence may be issued in standardised form.

#### **Section 4:25**

1. A financial enterprise, in dealing with the unit holder, the consumer or, where it concerns a financial instrument or insurance, the client, shall comply with further rules to be laid down by or pursuant to a Decree about the care to be observed.
2. On application, the Authority for the Financial Markets may, whether or not for a fixed period, grant a full or partial dispensation from the provisions arising from Subsection (1), where these do not concern advice regarding financial instruments or portfolio management, if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which this section seeks to achieve are achieved in other ways.
3. The proposal for a Decree to be adopted pursuant to Subsection (1) that serves to amend a Decree adopted earlier pursuant to that subsection shall not be made any earlier than four weeks after the draft was submitted to Parliament, except where Our Minister considers the adoption of the Decree to be urgent.

#### **Section 4:25a**

Where an investment firm is instructed by another investment firm to provide investment services or ancillary services to a client:

- a. the obligation to obtain information referred to in Section 4:23(1), opening words and under (a) and Section 4:24(1) shall not apply to it insofar as the information referred to in those provisions was supplied to it by the other investment firm; and
- b. it may trust that the advice issued to the client by the other enterprise in relation to financial instruments or the proposed manner of managing the client's portfolio complies with the relevant provisions laid down by or pursuant to this Act.

#### **Part 4.2.4. Duties to disclose**

#### **Section 4:26**

1. A financial enterprise shall notify the Authority for the Financial Markets of changes with regard to subjects on which data must be provided pursuant to Sections 2:13(2), 2:22(2), 2:32(2), 2:33(2), 2:42(2), 2:43(2), 2:58(2),

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

2:63(2), 2:67(4), 2:68(3), 2:69(2), 2:72(2), 2:73(1), 2:78(2), 2:83(2), 2:89(2), 2:94(2), 2:99(3), 2:105(5), 2:125(1), 2:126(1), 2:130(1), 3:110(2), 4:5(3), 4:10(3), 4:50(1) or 4:71(3).

2. A management company or investment firm shall report changes with regard to subjects on which data must be provided pursuant to Sections 2:122(2), 2:127(2) or 2:129(1) to the Authority for the Financial Markets and the supervisory authority of the Member State where that financial enterprise provides financial services.
3. An investment firm that holds a licence to provide the investment service referred to under (b) of the definition of providing an investment service in Section 1:1 and to perform the investment activity referred to under (a) of the definition of performing an investment activity in Section 1:1, and intends to conduct the business of an investment firm operating as a systematic internaliser with regard to transactions in shares admitted to trading on a regulated market, shall notify the Authority for the Financial Markets of this intention.
4. An investment firm that no longer conducts the business of an investment firm operating as a systematic internaliser shall notify the Authority for the Financial Markets of this.
5. An investment firm that holds a licence as referred to in Section 2:96(1) of the Act on Financial Supervision and provides ancillary services shall notify the Authority for the Financial Markets of this without delay.
6. Provisions shall be laid down by or pursuant to a Decree, specifying the procedures to be followed, with regard to the changes to be reported as referred to in Subsections (1) and (2), the data to be supplied on that occasion and, where applicable, the conditions on which the changes may be implemented.

#### **Section 4:27**

1. An auditor reviewing the annual accounts of a management company of a collective investment scheme having its registered office in the Netherlands, a collective investment scheme having its registered office in the Netherlands, an investment firm, clearing institution, credit institution or insurer having its registered office in the Netherlands, shall notify the Authority for the Financial Markets as soon as possible of any circumstance which came to its attention during the audit and which contravenes the obligations imposed pursuant to this part.
2. An auditor reviewing the annual accounts of a management company of a collective investment scheme having its registered office in the Netherlands, a collective investment scheme having its registered office in the Netherlands or an investment firm having its registered office in the Netherlands, shall notify the Authority for the Financial Markets as soon as possible of any circumstance which came to its attention during the audit and which causes it to withhold a statement regarding the fair presentation or to make reservations.
3. Subsections (1) and (2) shall apply mutatis mutandis to an auditor that, apart from auditing the annual accounts of the financial enterprise referred to in Subsections (1) and (2), also audits the annual accounts of another person to which the financial enterprise is affiliated in a formal or actual control structure.
4. The auditor referred to in Subsection (2) shall provide the Authority for the Financial Markets as soon as possible with information to be specified by Decree for the purpose of the supervision of the financial enterprise. Rules shall be laid down by Decree as regards the procedures to be observed.
5. The Authority for the Financial Markets shall provide the financial enterprise with the opportunity to be present when the auditor makes the notification referred to in Subsections (1) or (2) and when the auditor supplies the information referred to in Subsection (4).
6. The auditor that has made a notification pursuant to Subsections (1), (2) or (3) or has supplied information pursuant to Subsection (4) to the Authority for the Financial Markets shall not be liable for subsequent third-party losses, unless it is demonstrated that, in view of all the facts and circumstances, it should not within reason have made the notification or supplied the information.
7. Subsections (2) and (4) shall not apply to auditors auditing the annual accounts of an investment firm that has been licensed by the Dutch Central Bank to conduct the business of a bank.

#### **Part 4.2.5. Distance contracts**

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

#### **Section 4:28**

1. A consumer may cancel a distance contract, without owing a fine and without giving reasons, during a period of 14 calendar days commencing on the day when that contract was concluded, or during a period of 14 calendar days commencing on the day when the consumer received the information that the financial enterprise must supply pursuant to Section 4:20(1), whichever is later.
2. In derogation from Subsection (1), a consumer may cancel a distance contract regarding life insurance, without owing a fine and without giving reasons, during a period of 30 calendar days commencing on the day when the consumer was informed of the establishment of the contract, or during a period of 30 calendar days commencing on the day when the consumer received the information that the financial enterprise must supply pursuant to Section 4:20(1), whichever is later.
3. Where a consumer wants to exercise the right referred to in Subsections (1) or (2), he shall notify the financial enterprise of this before the expiry of the period referred to in that subsection, in accordance with the instructions that were issued to him in accordance with Section 4:20(1). The notification shall be regarded as in time if it was submitted in writing or on a durable medium available and accessible to the financial enterprise before the period expired.
4. Subsections (1) and (2) shall not apply to:
  - a. contracts regarding financial products whose value during the period referred to in the relevant subsection depends on developments in the financial markets or other markets;
  - b. insurance contracts with a term of less than one month;
  - c. contracts that were performed in full at the consumer's express request before the consumer exercises the right referred to in Subsections (1) or (2);
  - d. credit contracts that were cancelled in accordance with Sections 7:46e and 7:48e of the Dutch Civil Code;
  - e. credit contracts secured by a mortgage; and
  - f. other contracts regarding financial products, to be designated by Decree.
5. If the distance contract is linked to another contract in respect of an item of property or service provided by the financial enterprise or by a third party under a contract between the financial enterprise and this third party, the cancellation of the distance contract in accordance with Subsections (1) or (2) shall entail, by operation of law, the cancellation of that linked contract, without the consumer owing a fine.

#### **Section 4:29**

1. The performance of a distance contract shall not commence until the consumer has given his consent.
2. Where the consumer exercises the right as referred to in Section 4:28(1) or (2), the financial enterprise may only require a fee for the financial product supplied pursuant to the distance contract. This fee shall:
  - a. not exceed an amount proportional to the ratio between the product already supplied and the full performance of the distance contract; and
  - b. in no case be at a level where it could be construed as a fine.
3. The financial enterprise may only require payment of the fee referred to in Subsection (2) if:
  - a. it can demonstrate that the consumer was informed about the fee referred to in Subsection (2) in accordance with Section 4:20(1); and
  - b. it commenced the performance of the contract before the expiry of the cancellation period referred to in Section 4:28(1) or (2) at the consumer's express request.
4. Where the consumer exercises the right referred to in Section 4:28(1) or (2), the financial enterprise shall, without delay and no later than 30 calendar days after receiving the notification of cancellation, repay to the consumer any sums it received from the consumer pursuant to the distance contract, reduced by the amount referred to in Subsection (2).

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

5. Where the consumer exercises the right referred to in Section 4:28(1) or (2), he shall, without delay and no later than 30 calendar days after sending the notification of cancellation, return to the financial enterprise any sums of money and goods it received from the financial enterprise pursuant to the distance contract.

#### **Section 4:30**

Derogations from Sections 4:28 and 4:29 to the detriment of the consumer shall not be permitted.

### **Chapter 4.3. Supplementary rules on operating in the financial markets regarding specific financial services**

#### **Part 4.3.1. Offers**

##### **4.3.1.1. Investment objects**

#### **Section 4:30a**

1. An offeror of an investment object shall have a website on which an investment object prospectus is available. The offeror shall, without delay, supply an investment object prospectus free of charge to any consumer who so requests.
2. Where an investment object is offered through a broker, this broker shall supply the investment object prospectus referred to in Subsection (1), unless the offeror and the broker have agreed that the offeror will itself fulfil this obligation. Subsection (1) shall apply mutatis mutandis.
3. The investment object prospectus referred to in Subsection (1) shall contain only data to be specified by Decree which must be included in the investment object prospectus in a manner to be specified by or pursuant to a Decree. Further rules may be laid down by Decree as regards the manner in which the investment object prospectus is to be supplied.
4. Derogations from the obligation to have available and supply an investment object prospectus shall be permitted, subject to rules to be laid down by Decree.
5. Section 4:19(2) shall apply mutatis mutandis to the investment object prospectus referred to in Subsection (1).

##### **4.3.1.2. Electronic money**

#### **Section 4:31**

1. A credit institution shall, at the request of a holder of electronic money it has issued, exchange the electronic money through payment of the electronic money in notes and coins or a transfer to a current or savings account, charging only the costs necessary for the exchange.
2. Rules may be laid down by or pursuant to a Decree as regards the exchange referred to in Subsection (1).

##### **4.3.1.3. Credit**

#### **Section 4:32**

1. An offeror of credit shall participate in a credit registration system.
2. Derogations from Subsection (1) shall be permitted, subject to rules to be laid down by Decree.

#### **Section 4:33**

1. An offeror of credit with a website shall have a credit prospectus available and shall, without delay, supply a credit prospectus free of charge to any consumer who so requests. In the absence of a website, the offeror of credit shall supply a free credit prospectus to a consumer prior to the conclusion of a credit contract.



Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

2. Where credit is offered through a broker, this broker shall supply the credit prospectus referred to in Subsection (1), unless the offeror and the broker have agreed that the offeror will itself fulfil this obligation. Subsection (1) shall apply mutatis mutandis.
3. The credit prospectus referred to in Subsection (1) shall contain only data to be specified by Decree which must be included in the credit prospectus in a manner to be specified by or pursuant to a Decree. Further rules may be laid down by Decree as regards the manner in which the credit prospectus is to be supplied.
4. Derogations from the obligation to have available and supply a credit prospectus shall be permitted, subject to rules to be laid down by Decree, and forms of credit may be designated by Decree regarding which the obligation to have available and supply a credit prospectus will not apply.
5. Section 4:19(2) shall apply mutatis mutandis to the credit prospectus referred to in Subsection (1).

#### **Section 4:34**

1. Before concluding a credit contract, an offeror of credit shall, in the consumer's interest, obtain information on the latter's financial position and assess, in order to prevent overextension of credit to the consumer, whether concluding the contract would be justified.
2. The offeror shall not enter into a credit contract with the consumer where this would not be justified with a view to overextension of credit to the consumer.
3. Rules may be laid down by or pursuant to a Decree in respect of Subsections (1) and (2).

#### **Section 4:35**

Rules may be laid down by Decree as regards the maximum lending fee permitted.

#### **Section 4:36**

A municipal credit bank shall be incorporated and wound up by a decision to that effect of the municipal council or by the adoption of a joint scheme by the councils of two or more municipalities. The decision or the joint scheme shall be subject to the approval of the Provincial Executive.

#### **Section 4:37**

1. The operations of a municipal credit bank shall be governed by regulations adopted by the Municipal Executive, or, if the municipal credit bank was set up by way of a joint scheme, by the councils of the municipalities taking part in the scheme, which regulations shall, where offering credit in the context of its public duties is concerned, at least contain provisions equivalent to the provisions arising from Part 4.2.1, Part 4.2.2, Part 4.2.3, Part 4.2.5, Section 4:32, Section 4:33, Section 4.3.8.1 and Chapters IV and V of the Consumer Credit Act (*Wet op het consumentenkrediet*).
2. The regulations shall be subject to the approval of the Provincial Executive.
3. The supervision of compliance with the regulations by the municipal credit bank:
  - a. shall be exercised by the general board of the municipal credit bank, if the municipal credit bank was set up by way of a joint scheme and has no legal form under private law;
  - b. shall, if the municipal credit bank has a legal form under private law, be safeguarded by the fact that:
    - 1°. the majority of the management board is appointed on the recommendation of the municipal council or Municipal Executive of one or more municipalities for which the municipal credit bank performs activities;
    - 2°. the majority of the supervisory board is appointed on the recommendation of the municipal council or Municipal Executive of one or more municipalities for which the municipal credit bank performs activities;
    - 3°. the annual accounts and the budget of the municipal credit bank are approved by the municipal council or Municipal Executive of one or more municipalities for which the municipal credit bank performs activities;

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

c. shall be exercised by the Municipal Executive in situations where (a) and (b) do not apply.

4. The requirements listed in Subsection (3)(b)(1°) to (3°) shall not apply to a municipal credit bank with a legal form under private law if a negative operating balance is made good by one or more municipalities for which the municipal credit bank performs activities.

#### **4.3.1.4. Units in a collective investment scheme**

##### **Section 4:38**

1. This section, with the exception of Sections 4:53, opening words and under (b), and 4:62, shall not apply to management companies of enterprises for collective investment in transferable securities having their registered office in another Member State, enterprises for collective investment in transferable securities having their registered office in another Member State and any depositaries associated with those enterprises.
2. This section, with the exception of Sections 4:46, 4:49, 4:50(2) and (3), 4:51, 4:52 and 4:53, shall not apply to management companies of collective investment schemes having their registered office in a designated State, collective investment schemes having their registered office in a designated State and any depositaries associated with those collective investment schemes.

##### **Section 4:39**

At least two natural persons shall determine the day-to-day policy of a management company, investment company or depositary.

##### **Section 4:40**

The persons determining the day-to-day policy of a management company or investment company having its registered office in the Netherlands shall perform their activities in that respect from the Netherlands.

##### **Section 4:41**

A management company shall be a director of every investment company under its management.

##### **Section 4:42**

A management company administering a common fund shall take measures to ensure that:

- a. the assets of the common fund are acquired for the benefit of the unit holders by a depositary unrelated to the management company; and
- b. the depositary may only access the assets of the common fund with the cooperation of the management company.

##### **Section 4:43**

1. Where the assets of a collective investment scheme are held by a depositary, the management company of the collective investment scheme shall conclude a written management and custody agreement with the depositary.
2. Rules may be laid down by Decree as regards the content of the management and custody agreement to be concluded between the management company and a depositary.

##### **Section 4:44**

1. Only a legal person whose sole object according to its articles of association is to hold assets and administer the goods in which a collective investment scheme invests, shall act as a depositary.
2. The assets of a common fund shall be held by a depositary that acts as depositary exclusively for the common fund, if there is a real risk under the investment policy of the common fund concerned that the capital of the

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

common fund and the equity capital of the depository will be insufficient to cover claims as referred to in Section 4:45(1).

3. On application, the Authority for the Financial Markets may, whether or not for a fixed period, grant a full or partial dispensation from Subsection (2), if the applicant demonstrates that it cannot reasonably comply with that subsection and that the objectives which that subsection seeks to achieve are achieved in other ways.

#### **Section 4:45**

1. The capital of a common fund shall be used exclusively to cover claims ensuing from:
  - a. liabilities relating to the management and custody of the fund; and
  - b. units.
2. If the capital of a common fund is not sufficient to cover the claims at the time of liquidation, the capital of the fund shall be used to cover the claims in the order of Subsection (1).
3. In derogation from Subsection (1), other claims may be recovered from the capital of a common fund where it is established that the claims referred to in Subsection (1) can be paid and that such claims will not arise in the future.
4. If the claims referred to in Subsection (1) cannot be fully covered out of the capital of the common fund, the equity capital of the depository shall first be used to cover the claims in the order of Subsection (1) and subsequently to cover the other claims, subject to the rules of priority recognised by law.

#### **Section 4:46**

1. A management company shall have a website.
2. The management company shall, where relevant, present information on the website in accordance with the individual collective investment schemes under its management.
3. The management company shall state the website address in the prospectus referred to in Section 4:49(1), in the half-yearly figures and in the annual report of the management company and the collective investment schemes under its management as referred to in Section 4:51(1) and (2).
4. Where the management company publishes information on its website that must be made available or supplied pursuant to this Act, or makes this information otherwise available in electronic form, it shall state on that occasion that a copy of that information will be supplied upon request and, where applicable, specify the costs attached to this.

#### **Section 4:46a**

Whenever a collective investment scheme offers, sells, repurchases or redeems units, the management company shall determine the net asset value of the units and publish this value on its website without delay, stating the moment when the net asset value was determined.

#### **Section 4:47**

1. A management company shall publish a proposal to amend the terms and conditions applicable between a collective investment scheme under its management and the unit holders in an advertisement in a national Dutch newspaper or announce it to each unit holder individually, as well as on its website. The management company shall explain the proposal to amend the terms and conditions on its website. When publishing the proposed amendment, the management company shall simultaneously notify the Authority for the Financial Markets of this.
2. A management company shall publish an amendment to the terms and conditions applicable between a

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

collective investment scheme under its management and the unit holders in an advertisement in a national Dutch newspaper or announce it to each unit holder individually, as well as on its website. The management company shall explain the amendment to the terms and conditions on its website. When publishing the amendment, the management company shall simultaneously notify the Authority for the Financial Markets of this.

3. Where the amendment to the terms and conditions referred to in Subsection (2) entails a reduction of the unit holders' rights or security or the imposition of charges on the unit holders, the amendment shall not be invoked towards the unit holders before three months have elapsed since the publication referred to in Subsection (2), and unit holders may withdraw under the usual terms and conditions during this period.
4. Where the amendment to the terms and conditions referred to in Subsection (2) entails a change to the investment policy of the collective investment scheme, the amendment shall not be implemented before three months have elapsed since the publication referred to in Subsection (2), and unit holders may withdraw under the usual terms and conditions during this period.

#### **Section 4:48**

1. A management company shall have a registration document available on its website that contains information about the management company, the collective investment schemes it manages or intends to manage and any depositaries associated with those schemes.
2. Rules shall be laid down by Decree as regards the minimum information to be included in the registration document.

#### **Section 4:49**

1. A management company shall have a prospectus available on its website with regard to each collective investment scheme under its management.
2. The prospectus shall contain at least the following information:
  - a. the information which investors need in order to form an opinion on the collective investment scheme and the costs and risks attached to it;
  - b. a statement from the management company to the effect that the management company itself, the collective investment scheme and any depositary associated with it comply with the rules laid down by or pursuant to the Act, and that the prospectus complies with the rules laid down by or pursuant to the Act;
  - c. a statement from an auditor, containing the latter's name and office address, to the effect that the prospectus includes the information prescribed by this Act;
  - d. the management company's registration document as referred to in Section 4:48(1); and
  - e. other information to be specified by Decree which must be included in the prospectus in a manner to be specified by or pursuant to a Decree.
3. A management company shall update the information included in the prospectus as soon as there is reason to do so.
4. The Authority for the Financial Markets may require that the prospectus be made available in one or more languages of its choice where this is necessary, in view of the proposed dissemination of the prospectus, for an adequate provision of information to the public.
5. On application, the Authority for the Financial Markets may, whether or not for a fixed period, grant a full or partial dispensation from the provisions arising from Subsection (2) and from Subsection (3), if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which this section seeks to achieve are achieved in other ways.
6. This section shall not apply to collective investment schemes whose units are transferable and are not repurchased or repaid either directly or indirectly out of the assets at the unit holder's request.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

#### **Section 4:50**

1. At least two weeks before units in a collective investment scheme under its management are offered, a management company shall provide the Authority for the Financial Markets with the following information for the purpose of entering the collective investment scheme in the register referred to in Section 1:107:
  - a. the name and address of the management company;
  - b. the name and address of the collective investment scheme;
  - c. where applicable: the names of the persons determining the day-to-day policy of the investment company, the names of the persons determining or co-determining the policy of the investment company and the names of the persons belonging to a body responsible for supervising the policy and the general affairs of the investment company;
  - d. the name and address of any depositary associated with the collective investment scheme;
  - e. the manner in which units are repurchased and sold;
  - f. a description of the investment policy of the collective investment scheme;
  - g. any listing on a regulated market;
  - h. the proposed date on which the units will be offered; and
  - i. the fund regulations of a common fund where it concerns units in an enterprise for collective investment in transferable securities.
2. The management company, when offering the units or making the written announcement that the units will be offered, shall make available free of charge the prospectus referred to in Section 4:49, the fund regulations or the articles of the collective investment scheme and, where published, the annual accounts of the collective investment scheme for the preceding two years and shall publish this information on its website. Every publication in which those units are offered shall specify the locations where the prospectus is available to the public.
3. Subsection (2) shall not apply to collective investment schemes whose units are transferable and are not repurchased or repaid either directly or indirectly out of the assets at the unit holder's request.

#### **Section 4:51**

1. A management company, collective investment scheme or depositary shall, within four months of the end of the financial year, provide the Authority for the Financial Markets with annual accounts, an annual report and other information as referred to in Sections 361(1), 391(1) and 392(1)(a) to (h) respectively of Book 2 of the Dutch Civil Code.
2. A management company or collective investment scheme shall, within nine weeks of the end of the first half of the financial year, provide the Authority for the Financial Markets with half-yearly figures.
3. The management company, the collective investment scheme or the depositary shall compile the annual accounts, the annual report and the other information referred to in Subsection (1) and the half-yearly figures referred to in Subsection (2) in accordance with Title 9 of Book 2 of the Dutch Civil Code, with the exception of Section 403 of Book 2 of the Dutch Civil Code where it concerns a management company.
4. Rules shall be laid down by or pursuant to a Decree as regards the submission and the content of the annual accounts, the annual report and the other information referred to in Subsection (1) and of the half-yearly figures referred to in Subsection (2).
5. Without prejudice to the provisions of Title 9 of Book 2 of the Dutch Civil Code, the Authority for the Financial Markets may, on application, whether or not for a fixed period, grant a full or partial dispensation from Subsections (1), (2) or (3) or from the provisions arising from Subsection (4), if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which this section seeks to achieve are achieved in other ways.

#### **Section 4:52**

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

1. A management company, collective investment scheme or depositary shall publish the annual accounts, the annual report and the other information referred to in Section 4:51(1) within four months of the end of the financial year.
2. A management company or collective investment scheme shall publish the half-yearly figures referred to in Section 4:51(2) within nine weeks of the end of the first half of the financial year.
3. Rules shall be laid down by or pursuant to a Decree as regards the publication of the annual accounts, the annual report and the other information referred to in Subsection (1) and of the half-yearly figures referred to in Subsection (2).
4. On application, the Authority for the Financial Markets may, whether or not for a fixed period, grant a full or partial dispensation from Subsections (1) or (2) or from the provisions arising from Subsection (3), if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which this section seeks to achieve are achieved in other ways.

#### **Section 4:52a**

At least once a year, an independent expert shall value the assets of a collective investment scheme that are not financial instruments admitted to trading on a regulated market, a multilateral trading facility or a system comparable with a regulated market or multilateral trading facility in a non-Member State.

#### **Section 4:53**

Where the name used or to be used by a management company or a collective investment scheme may be confusing or misleading, the Authority for the Financial Markets may require the management company or the collective investment scheme:

- a. to change the name; or
- b. to add an explanatory statement to the name.

#### **Section 4:54**

1. At the request of the Authority for the Financial Markets, an investment company managed by a management company whose licence has been withdrawn or an investment company whose licence has been withdrawn may be dissolved by the court.
2. At the request of the Authority for the Financial Markets, the capital of a common fund managed by a management company whose licence has been withdrawn may be wound up by one or more liquidators to be appointed by the court within a term to be specified by the court.
3. Furthermore, an investment company or the capital of a common fund may, at the request of the Authority for the Financial Markets, be dissolved by the court or wound up by one or more liquidators to be appointed by the court within a term to be specified by the court, if:
  - a. the licence of the management company of the collective investment scheme has changed to such an extent that that licence no longer covers the management of the common fund or the investment company;
  - b. the collective investment scheme or its management company:
    - 1°. has not engaged in any activities within a term of 12 months after its incorporation;
    - 2°. has expressly made it known that the collective investment scheme will not engage in any activities;
    - 3°. has discontinued its activities during a term of more than six months;
    - 4°. has apparently ceased to be a collective investment scheme;
    - 5°. fails to comply with this Act; or
    - 6°. has failed to carry out an instruction as referred to in Section 1:75, or to do so satisfactorily.
4. The dissolution referred to in Subsections (1) or (3) and the winding-up referred to in Subsections (2) or (3) shall not be implemented until the decision to withdraw or change the licence has become final and conclusive.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

**Section 4:55**

If a management company suspends the repurchase or redemption of units in a collective investment scheme under its management, it shall, without delay, notify the Authority for the Financial Markets and, where it concerns a management company of an enterprise for collective investment in transferable securities, the supervisory authorities of every Member State in which the units in the collective investment scheme are traded.

**Section 4:56**

1. The assets of an enterprise for collective investment in transferable securities that is an investment company shall be held by a depositary unrelated to this enterprise. Derogations from this requirement shall be permitted, subject to conditions to be laid down by Decree.
2. Section 4:42, opening words and under (b) shall apply mutatis mutandis.

**Section 4:57**

A depositary of an enterprise for collective investment in transferable securities having its registered office in the Netherlands shall have its registered office in a Member State and, where it does not have its registered office in the Netherlands, a branch office situated in the Netherlands.

**Section 4:58**

An enterprise for collective investment in transferable securities that is an investment company shall have a separate management company, unless the investment company has at least € 300,000 in equity capital.

**Section 4:59**

1. A management company of an enterprise for collective investment in transferable securities shall have its registered office in the Netherlands.
2. The activities of the management company of an enterprise for collective investment in transferable securities shall be limited to managing collective investment schemes, portfolio management and providing ancillary services.

**Section 4:60**

1. The sole object of an enterprise for collective investment in transferable securities according to its articles of association or regulations shall be to invest, on the basis of the principle of risk diversification, in:
  - a. securities;
  - b. instruments normally traded on the money market;
  - c. units in collective investment schemes that are repurchased or repaid either directly or indirectly out of the assets at the unit holders' request;
  - d. financial futures or equivalent instruments aimed at monetary settlement;
  - e. forward rate agreements;
  - f. interest rate swaps, currency swaps or share swaps;
  - g. options for the acquisition or disposal of instruments as referred to under (a) to (f), including equivalent instruments aimed at monetary settlement; or
  - h. credit balances with banks that can be withdrawn immediately and for which the interest period does not exceed 12 months.
2. The units in an enterprise for collective investment in transferable securities shall be offered without restriction in the Netherlands and shall be repurchased or repaid either directly or indirectly out of the assets at a unit holder's request.
3. An enterprise for collective investment in transferable securities shall have its registered office in the Netherlands.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

4. The activities of an enterprise for collective investment in transferable securities that is an investment company shall be limited to the management of its capital.
5. An enterprise for collective investment in transferable securities may not amend its articles of association or regulations in such a way that it no longer complies with Subsections (1) to (4).
6. An amendment of the articles of association or regulations as referred to in Subsection (5) shall be void. At the request of the Public Prosecution Service, the court shall appoint an administrator authorised to cancel the effects of the void act.
7. In cancelling the effects of the void act, the administrator shall also act in the interest of the unit holders in the collective investment scheme.

#### **Section 4:61**

1. Further rules shall be laid down by Decree as regards the operations of and the provision of information by enterprises for collective investment in transferable securities, and rules shall be laid down by or pursuant to a Decree as regards the investments of enterprises for collective investment in transferable securities.
2. Provisions may be laid down by Decree to the effect that the Authority for the Financial Markets, in accordance with rules to be laid down on that occasion, may grant a dispensation from the provisions arising from Subsection (1) as regards the investments of enterprises for collective investment in transferable securities.

#### **Section 4:62**

1. A management company which offers units in the Netherlands in an enterprise for collective investment in transferable securities under its management that has its registered office in another Member State, shall make available in the Netherlands the data and documents relating to that enterprise for collective investment in transferable securities which it must publish in accordance with the rules laid down by the other Member State in the Dutch language or another language approved by the Authority for the Financial Markets.
2. The management company referred to in Subsection (1) shall see to the payments on or the repurchase or redemption of the units in the Netherlands, with due observance of the applicable Dutch statutory provisions.

#### **4.3.1.5. Insurance**

#### **Section 4:63**

1. A life insurer or funeral expenses and benefits in kind insurer shall ensure that an individual life insurance contract with a term of more than six months or a funeral expenses and benefits in kind insurance contract states expressly that the policyholder may cancel the insurance contract with immediate effect, either on paper or on another durable medium available and accessible to the insurer, within a period of 30 calendar days commencing on the day he was informed of the conclusion of the insurance contract.
2. The notification of the conclusion of the insurance contract referred to in Subsection (1) shall be made in writing or on another durable medium available and accessible to the policyholder within four weeks of the conclusion of the insurance contract.
3. The cancellation by the policyholder shall mean that the policyholder and the life insurer or funeral expenses and benefits in kind insurer respectively shall be released from all the obligations ensuing from this insurance contract with effect from the moment when the insurer receives this cancellation.
4. This section shall apply mutatis mutandis to contracts intended to accrue a fund to pay for the provision of the funeral of natural persons.

#### **Section 4:64**

Sections 4:65 to 4:69 shall not apply to:



Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

- a. legal assistance insurers having their registered office in another Member State;
- b. legal assistance granted by an insurer, where this assistance concerns risks relating to the use of sea-going vessels; and
- c. legal assistance granted by an insurer as an ancillary risk in the Assistance sector in a State other than the State in which the insured person resides, insofar as:
  - 1°. this legal assistance forms part of an insurance contract only covering assistance; and
  - 2°. the contract states separately that the legal assistance cover is limited to the legal assistance in a State other than the State in which the insured person resides and is only ancillary to the assistance.

#### **Section 4:65**

1. A legal assistance insurer that operates exclusively in the Legal Assistance sector:
  - a. shall organise its operations in such a way that the staff members who are engaged in legal assistance claims settlement or in providing legal advice with regard to that claims settlement do not simultaneously perform the same or similar activities for another insurer which has financial, commercial or administrative ties with the first insurer and which operates in a different sector;
  - b. shall entrust the activities with regard to legal assistance claims settlement to a legally independent claims settlement office and specify this claims settlement office in the contract of legal assistance cover; or
  - c. shall include in the contract of legal assistance cover a clause to the effect that the insured person, as soon as it is entitled to legal assistance under the insurance contract, may entrust the promotion of its interests to a lawyer or another expert of its choice that is competent by law.
2. A legal assistance insurer that operates in another sector in addition to the Legal Assistance sector:
  - a. shall entrust the activities with regard to legal assistance claims settlement to a legally independent claims settlement office and specify this claims settlement office in the contract of legal assistance cover; or
  - b. shall include in the contract of legal assistance cover a clause to the effect that the insured person, as soon as it is entitled to legal assistance under the insurance contract, may entrust the promotion of its interests to a lawyer or another expert of its choice that is competent by law.
3. A legal assistance insurer shall entrust activities with regard to legal assistance claims settlement only to a claims settlement office as referred to in Subsection (1)(b) and Subsection (2)(b) which organises its operations in such a way that the staff members and the members of the managing body who are engaged in legal assistance claims settlement or in providing legal advice with regard to that claims settlement do not simultaneously perform the same or similar activities for another sector of an insurer with which the claims settlement office has financial, commercial or administrative ties.

#### **Section 4:66**

Where an insurance contract also covers risks of another sector, a legal assistance insurer shall ensure that the substance of the legal assistance cover is included in a separate contract or in a separate chapter of the contract.

#### **Section 4:67**

1. A legal assistance insurer shall ensure that the contract of legal assistance cover stipulates expressly that the insured person is free to choose a lawyer or another expert competent by law if:
  - a. a lawyer or other expert competent by law is requested to defend, represent or promote the interests of the insured person in court or administrative proceedings; or
  - b. a conflict of interest arises.
2. This section shall not apply to legal assistance insurers that have implemented Section 4:65(1)(c) or Section 4:65(2)(b).

#### **Section 4:68**

1. A legal assistance insurer shall ensure that the contract of legal assistance cover expressly provides for arbitration proceedings or other proceedings providing guarantees similar in terms of objectivity to arbitration

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

proceedings, in order to determine what line of conduct will be followed in the event of a difference of opinion between the insurer or the legally independent claims settlement office and the insured person in the settlement of the dispute regarding which the legal assistance insurance contract is invoked.

2. This section shall not apply to legal assistance insurers that have implemented Section 4:65(1)(c) or Section 4:65(2)(b).

#### **Section 4:69**

1. A legal assistance insurer shall ensure that whenever a conflict of interest arises or there is a difference of opinion on the settlement of the dispute, the insured person is informed of the right referred to in Section 4:67 or of the possibility to conduct the proceedings referred to in Section 4:68.
2. This section shall not apply to legal assistance insurers that have implemented Section 4:65(1)(c) or Section 4:65(2)(b).

#### **Section 4:70**

1. A non-life insurer that operates in the Motor Vehicle Liability sector from a place of business in the Netherlands:
  - a. shall be a member of the agency referred to in Section 2(6) of the Motor Insurance Liability Act;
  - b. shall fulfil its obligations towards the Dutch Motor Traffic Guarantee Fund (*Waarborgfonds Motorverkeer*) under Sections 24(1) and 24a(1) of the Motor Insurance Liability Act;
  - c. shall fulfil its obligation to notify under Section 13(1) of the Motor Insurance Liability Act towards the government agency referred to in that subsection; and
  - d. shall ensure that its conditions of insurance comply with the requirements laid down by the Motor Insurance Liability Act.
2. A non-life insurer having its registered office in the Netherlands that operates in the Motor Vehicle Liability sector or a non-life insurer having its registered office in a non-Member State that operates in the Motor Vehicle Liability sector from a branch office situated in the Netherlands shall appoint a person as loss adjuster in each of the other Member States. The loss adjuster shall be responsible for handling and settling, on the non-life insurer's behalf, claims of injured parties claiming compensation on account of facts which were caused by the participation in traffic of motor vehicles normally kept and insured in a Member State other than that in which the injured party resides, and which either occurred in a Member State other than that in which the injured party resides or in a non-Member State in which a national agency is active similar to the agency referred to in Section 2(6) of the Motor Insurance Liability Act.
3. The loss adjuster shall have its place of business in the Member State in which it is appointed. It shall handle and settle claims of injured parties as referred to in Subsection (2) in the official language or official languages of that Member State.
4. The loss adjuster shall not engage in the conduct of the business of an insurer on behalf of the non-life insurer. Nor shall it be regarded as a place of business of the non-life insurer within the meaning of Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJEC L 12), or within the meaning of the Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJEC C 27).
5. The non-life insurer referred to in Subsection (2) shall, within two weeks of commencing its operations in the Motor Vehicle Liability sector, inform the Information Centre referred to in Section 27b of the Motor Insurance Liability Act and the information centres in each of the other Member States of the name and address of the loss adjuster it has appointed in each Member State. The non-life insurer shall inform the information centres referred to in the first sentence within two weeks of any change in the name or address of the loss adjuster concerned.
6. The non-life insurer of the party that caused the damage, this insurer's loss adjuster or the agency referred to in Section 2(6) of the Motor Insurance Liability Act shall, within three months of the date on which an injured party submitted its claim for compensation, present:

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

- a. a reasoned proposal for compensation where the liability is not contested and the extent of the damage has been established; or
- b. a reasoned reply to all the points of the request for compensation where the liability is contested or the full extent of the damage has not yet been established.

Section 119 of Book 6 of the Dutch Civil Code shall apply.

7. The non-life insurer referred to in Subsection (1), opening words shall, within two weeks of commencing its operations in the Motor Vehicle Liability sector, submit to the Authority for the Financial Markets a signed statement to the effect that its conditions of insurance comply with the requirements laid down by the Motor Insurance Liability Act.
8. On application, the Authority for the Financial Markets may grant a dispensation from Subsections (1) or (2) to a non-life insurer that covers no liabilities to which the Motor Insurance Liability Act applies and only covers the risks of the Motor Vehicle Liability sector as ancillary risks.

#### **Section 4:71**

1. A non-life insurer having its registered office outside the Netherlands that operates in the Motor Vehicle Liability sector by providing services to the Netherlands:
  - a. shall be a member of the agency referred to in Section 2(6) of the Motor Insurance Liability Act;
  - b. shall fulfil its obligations towards the Dutch Motor Traffic Guarantee Fund under Sections 24(1) and 24a(1) of the Motor Insurance Liability Act;
  - c. shall fulfil its obligation to notify under Section 13(1) of the Motor Insurance Liability Act towards the government agency referred to in that subsection;
  - d. shall ensure that its conditions of insurance comply with the requirements laid down by the Motor Insurance Liability Act; and
  - e. shall have appointed as a loss adjuster a person that has its place of business in the Netherlands and that is responsible for handling and settling claims of injured parties as referred to in Section 1 of the Motor Insurance Liability Act on behalf of the non-life insurer.
2. The loss adjuster shall have sufficient powers to represent the non-life insurer both in and out of court.
3. The non-life insurer shall, within two weeks of commencing the provision of services in the Motor Vehicle Liability sector, provide the Authority for the Financial Markets with the instrument of appointment of the loss adjuster showing the latter's name, address and powers.
4. Rules shall be laid down by or pursuant to a Decree as regards:
  - a. the circumstances under which the loss adjuster ceases to be a loss adjuster; and
  - b. the succession of the loss adjuster.
5. The non-life insurer shall, within two weeks of commencing the provision of services in the Motor Vehicle Liability sector, submit to the Authority for the Financial Markets a signed statement to the effect that its conditions of insurance comply with the requirements laid down by the Motor Insurance Liability Act.
6. On application, the Authority for the Financial Markets may grant a dispensation from Subsection (1) to a non-life insurer that covers no liabilities to which the Motor Insurance Liability Act applies and only covers the risks of the Motor Vehicle Liability sector as ancillary risks.
7. In the case of Community co-insurance, this section shall apply only to the non-life insurer acting as the first non-life insurer.

#### **Part 4.3.2. Performing advisory services**

#### **Section 4:72**

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

1. An advisor that does not also offer the recommended financial product or does not also provide an investment service, perform brokerage services or act as an authorised agent or authorised sub-agent in respect of the recommended financial product, shall inform the consumer, or, where it concerns insurance, the client on the following matters prior to or at the time of issuing its advice:
  - a. that it:
    - 1°. advises on the basis of an objective analysis;
    - 2°. has a contractual obligation exclusively to advise for one or more offerors, in which case it shall also inform the consumer or the client upon request of the names of these offerors; or
    - 3°. has no contractual obligation exclusively to advise for one or more offerors and does not advise on the basis of an objective analysis, in which case it shall also inform the consumer or the client upon request of the names of the offerors for which it advises or may advise;
  - b. the manner in which it is remunerated;
  - c. whether it owns a qualifying holding in a particular offeror;
  - d. whether a particular offeror or a parent company of a particular offeror owns a qualifying holding in the advisor; and
  - e. other matters, to be specified by Decree.
2. An objective analysis as referred to in Subsection (1) shall be an analysis of an adequate number of similar financial products available on the market which enables the advisor to recommend a financial product that meets the needs of the consumer, or, where it concerns insurance, of the client.
3. Rules may be laid down by or pursuant to a Decree in respect of:
  - a. the form and manner in which the information referred to in Subsection (1) is to be supplied;
  - b. the objective analysis; and
  - c. the remuneration or fee for advising on financial products, in whatever form, and the payment method.
4. Section 4:19(2) shall apply mutatis mutandis to the information supplied pursuant to Subsection (1).
5. Subsections (1) to (4) shall not apply to advisors involved in the insurance of major risks.
6. On application, the Authority for the Financial Markets may, whether or not for a fixed period, grant a full or partial dispensation from the provisions arising from Subsection (3), if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which this section seeks to achieve are achieved in other ways.

### **Part 4.3.3. Performing brokerage services**

#### **4.3.3.1. General provisions**

##### **Section 4:73**

1. Before concluding a contract regarding a financial product, a broker shall inform the consumer, or, where it concerns insurance, the client, of the following matters:
  - a. that it:
    - 1°. advises on the basis of an objective analysis;
    - 2°. has a contractual obligation exclusively to perform brokerage services for one or more offerors, in which case it shall also inform the consumer or the client upon request of the names of these offerors; or
    - 3°. has no contractual obligation exclusively to perform brokerage services for one or more offerors and does not advise on the basis of an objective analysis, in which case it shall also inform the consumer or the client upon request of the names of the offerors for which it performs or may perform brokerage services;
  - b. the manner in which it is remunerated;
  - c. whether it owns a qualifying holding in a particular offeror;
  - d. whether a particular offeror or a parent company of a particular offeror owns a qualifying holding in the broker; and
  - e. other matters, to be specified by Decree.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

2. An objective analysis as referred to in Subsection (1) shall be an analysis of an adequate number of similar financial products available on the market which enables the broker to recommend a financial product that meets the needs of the consumer, or, where it concerns insurance, of the client.
3. Rules may be laid down by or pursuant to a Decree in respect of:
  - a. the form and manner in which the information referred to in Subsection (1) is to be supplied;
  - b. the objective analysis; and
  - c. the remuneration or fee for performing brokerage services in respect of financial products, in whatever form, and the payment method.
4. Section 4:19(2) shall apply mutatis mutandis to the information supplied pursuant to Subsection (1).
5. Subsections (1) to (4) shall not apply to intermediaries involved in the insurance of major risks.
6. On application, the Authority for the Financial Markets may, whether or not for a fixed period, grant a full or partial dispensation from the provisions arising from Subsection (3), if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which this section seeks to achieve are achieved in other ways.

#### **4.3.3.2. Credit**

##### **Section 4:74**

1. A credit broker or a credit sub-broker is prohibited from demanding or accepting a remuneration or fee, in whatever form, or to charge any such remuneration or fee to a party other than the credit offeror or the credit broker for which the credit sub-broker performs brokerage services.
2. In order to promote due care in the performance of credit brokerage services, rules may be laid down by Decree as regards the remuneration or fee referred to in Subsection (1) and the payment method.
3. Derogations from Subsection (1) shall be permitted, subject to rules to be laid down by Decree.
4. Legal acts performed contrary to Subsection (1) shall be capable of annulment.

#### **4.3.3.3. Insurance**

##### **Section 4:75**

1. An insurance broker shall have professional liability insurance or a comparable provision.
2. Rules may be laid down by or pursuant to a Decree as regards the professional liability insurance and the comparable provision.
3. The amount of cover under the professional liability insurance and the comparable provision shall be specified by ministerial regulation.
4. Subsections (1) to (3) shall not apply to:
  - a. insurance intermediaries that have been licensed by the Dutch Central Bank to conduct the business of a bank;
  - b. insurance intermediaries that have been licensed by the Dutch Central Bank to conduct the business of an insurer;
  - c. insurance intermediaries as referred to in Section 2:81(2), insofar as the insurers for which they perform brokerage services have been licensed by the Dutch Central Bank to conduct the business of an insurer; and
  - d. insurance intermediaries having their registered office in another Member State.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

5. On application, the Authority for the Financial Markets may, whether or not for a fixed period, grant a full or partial dispensation from the provisions arising from Subsection (2), if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which this section seeks to achieve are achieved in other ways.

#### **Part 4.3.4. Performing reinsurance brokerage services**

##### **Section 4:76**

1. A reinsurance broker shall have professional liability insurance or a comparable provision.
2. Rules may be laid down by or pursuant to a Decree as regards the professional liability insurance and the comparable provision.
3. The amount of cover under the professional liability insurance and the comparable provision shall be specified by ministerial regulation.
4. Subsections (1) to (3) shall not apply to:
  - a. reinsurance intermediaries that have been licensed by the Dutch Central Bank to conduct the business of a bank;
  - b. reinsurance intermediaries that have been licensed by the Dutch Central Bank to conduct the business of an insurer; and
  - c. reinsurance intermediaries having their registered office in another Member State.
5. On application, the Authority for the Financial Markets may, whether or not for a fixed period, grant a full or partial dispensation from the provisions arising from Subsection (2), if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which this section seeks to achieve are achieved in other ways.

#### **Part 4.3.5. Acting as a clearing institution**

##### **Section 4:77**

1. The conditions applied by a clearing institution for admitting clients shall be objective and public.
2. A clearing institution shall conduct an adequate policy to prevent conflicts of interests between itself and its clients and among its clients.
3. A clearing institution shall ensure that its clients are treated fairly where a conflict of interest appears to be inevitable.
4. Further rules may be laid down by or pursuant to a Decree in respect of Subsections (1) and (2).
5. On application, the Authority for the Financial Markets may, whether or not for a fixed period, grant a full or partial dispensation from the provisions arising from Subsections (1) or (2), if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which that particular subsection seeks to achieve are achieved in other ways.

##### **Section 4:78**

1. Rules may be laid down by Decree as regards the supply of information by a clearing institution to the client during the term of a contract.
2. Rules may be laid down by or pursuant to a Decree as regards the supply of information by a clearing institution to the Authority for the Financial Markets for the purpose of the supervision of compliance with this part.

#### **Part 4.3.6. Acting as an authorised agent or authorised sub-agent**

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

#### **Section 4:79**

1. The authorisation or sub-authorisation to be granted to an authorised agent or authorised sub-agent shall be granted in writing and shall be drawn up in accordance with a model to be specified by ministerial regulation.
2. An authorisation may be restricted by the insurer granting the authorisation.
3. A sub-authorisation may be restricted both by the insurer granting the authorisation and by its authorised agent, as long as the authorised agent's authorisation is valid. The sub-authorised agent shall not classify as a third party towards the insurer.
4. Restrictions of the authorisation or sub-authorisation may not be invoked against third parties.

#### **Section 4:80**

1. The termination of an authorised agent's authorisation shall have no effect on third parties until the moment when the insurer or the authorised agent has notified the Authority for the Financial Markets of that termination and the Authority for the Financial Markets has amended the register referred to in Section 1:107.
2. Where an authorisation has been terminated, the insurer may entrust the authorised agent whose authorisation has lapsed with the management and fulfilment of the insurance portfolio put together by that agent. The insurer may also provide for the management and fulfilment of that portfolio in a different manner.
3. Sections 1:104(3) and 4:4(2) shall not apply to the authorised agent, if the insurer, in the case of termination of the authorisation, exercises the right referred to in Subsection (2) to provide for the management and fulfilment of the insurance portfolio put together by the authorised agent in a manner other than by entrusting the management and fulfilment to the authorised agent.

#### **Section 4:81**

1. The provisions of Section 4:80 in respect of an authorised agent shall apply mutatis mutandis to an authorised sub-agent.
2. For the purposes of Subsection (1), the insurer referred to in Section 4:80 shall also be understood to mean the authorised agent in its capacity of grantor of sub-authorisations.

### **Part 4.3.7. Providing investment services, performing investment activities and systematic internalisation**

#### **4.3.7.1. General provisions**

#### **Section 4:82**

1. Sections 4:83, 4:84 and 4:87(2)(b) shall not apply to investment firms that have been licensed by the Dutch Central Bank to conduct the business of a bank, or that hold a supervisory status certificate granted by the Dutch Central Bank to conduct the business of a financial institution. Section 4:85(1) shall not apply to investment firms that have been licensed by the Dutch Central Bank to conduct the business of a bank.

#### **Section 4:83**

1. At least two natural persons shall determine the day-to-day policy of an investment firm.
2. On application, the Authority for the Financial Markets may grant a dispensation from Subsection (1) to an investment firm that is a natural person and has taken measures which, in view of the nature and scope of its activities, are adequate to protect the interests of its clients in other ways.
3. Subsection (2) shall apply mutatis mutandis to legal persons and companies managed by a natural person.

#### **Section 4:84**

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

1. The persons determining the day-to-day policy of an investment firm having its registered office in the Netherlands shall perform their activities in that respect from the Netherlands.
2. The persons determining the day-to-day policy of a branch office situated in the Netherlands of an investment firm having its registered office in a non-Member State shall perform their activities in that respect from that branch office.

#### **Section 4:85**

1. An investment firm having its registered office in the Netherlands shall, within six months of the end of the financial year, provide the Authority for the Financial Markets with annual accounts, an annual report and other information as referred to in Sections 361(1), 391(1) and 392(1)(a) to (h) respectively of Book 2 of the Dutch Civil Code.
2. Insofar as the investment firm referred to in Subsection (1) is not subject to Title 9 of Book 2 of the Dutch Civil Code, that title shall apply mutatis mutandis to the annual accounts, the annual report and the other information referred to in Subsection (1).
3. Rules shall be laid down by or pursuant to a Decree as regards the manner in which the annual accounts, the annual report and the other information referred to in Subsection (1) will be provided.
4. An investment firm having its registered office in a non-Member State shall, within six months of the end of the financial year, provide the Authority for the Financial Markets with annual accounts and an annual report. Subsection (3) shall apply mutatis mutandis.
5. The annual accounts of the investment firm referred to in Subsection (4) shall be accompanied by a statement regarding the fair presentation, or by a statement equivalent to the statement regarding the fair presentation, issued by an auditor or by an expert competent to audit the annual accounts under the law of the State where the investment firm has its registered office.
6. Without prejudice to the provisions of Title 9 of Book 2 of the Dutch Civil Code, the Authority for the Financial Markets may, on application, whether or not for a fixed period, grant a full or partial dispensation from this section, if the applicant demonstrates that it cannot reasonably comply with this section and that the objectives which this section seeks to achieve are achieved in other ways.

#### **Section 4:86**

Rules may be laid down by or pursuant to a Decree as regards the supply of information by an investment firm to the Authority for the Financial Markets for the purpose of the supervision of compliance with this part.

#### **Section 4:87**

1. An investment firm that holds financial instruments belonging to a client shall take adequate measures:
  - a. to protect the client's rights to those financial instruments; and
  - b. to prevent the use by the investment firm of those financial instruments for its own account, except with the client's express permission.
2. An investment firm that holds funds belonging to a client shall take adequate measures:
  - a. to protect the client's rights to those funds; and
  - b. to prevent the use by the investment firm of those funds for its own account.
3. Further rules may be laid down by or pursuant to a Decree in respect of:
  - a. the measures to protect the client's rights and to prevent the use of financial instruments or monies belonging to the client; and
  - b. the manner in which the investment firm may obtain the client's permission to use the client's financial



Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*  
instruments for its own account.

4. A tied agent may not hold financial instruments or monies belonging to a client.

#### **Section 4:88**

1. An investment firm, including its directors, employees and tied agents or a person directly or indirectly affiliated to the investment firm through a control structure, shall conduct an adequate policy with regard to preventing and managing conflicts of interest between itself and its clients and among its clients.
2. An investment firm shall ensure that its clients are treated fairly where a conflict of interest appears to be inevitable. In that case, an investment firm – before doing business – shall inform its clients of the conflict of interest.
3. Rules may be laid down by or pursuant to a Decree as regards the policy referred to in Subsection (1) and informing the clients in case of a conflict of interest as referred to in Subsection (2).
4. Without prejudice to the provisions of Section 4:12(1)(c), an investment firm having its registered office in another Member State shall organise the operations of a branch office situated in the Netherlands in such a way that these operations are not contrary to Subsections (1) and (2).
5. On application, the Authority for the Financial Markets may, whether or not for a fixed period, grant a full or partial dispensation from the provisions arising from Subsection (3), if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which this section seeks to achieve are achieved in other ways.

#### **Section 4:89**

1. An investment firm shall open a file with regard to each client, containing documents describing the mutual rights and obligations of the investment firm and the client.
2. An investment firm shall conclude a contract with each client, which contract shall be recorded on paper or on another durable medium and be included in the file referred to in Subsection (1). This contract shall constitute the exclusive basis for the investment services which the investment firm provides to the client and shall in any event set out the mutual rights and obligations of the client and the investment firm.
3. Further rules shall be laid down by Decree as regards the content of the contract.
4. Subsections (2) and (3) shall not apply to the provision of investment services to professional investors.
5. The rights and obligations referred to in Subsections (1) and (2) may be described by means of a reference to other documents or pieces of legislation.

#### **Section 4:89a**

1. A tied agent, when contacting the client about or prior to the provision of an investment service as referred to under (a), (d) and (e) of the definition of providing an investment service in Section 1:1, shall inform the client of the following matters:
  - a. the capacity in which it is acting;
  - b. that it has a contractual obligation exclusively to act for an investment firm, whereby it shall also inform the client of the name of the investment firm;
  - c. the manner in which it is remunerated; and
  - d. other matters, to be specified by Decree.
2. Rules may be laid down by or pursuant to a Decree in respect of:
  - a. the form and manner in which the information referred to in Subsection (1) is to be supplied; and

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

b. the remuneration or fee for providing the investment services, in whatever form, and the payment method.

3. Section 4:19(2) shall apply mutatis mutandis to the information supplied pursuant to Subsection (1).
4. On application, the Authority for the Financial Markets may, whether or not for a fixed period, grant a full or partial dispensation from the provisions arising from Subsection (2), if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which this section seeks to achieve are achieved in other ways.

#### **Section 4:90**

1. An investment firm shall promote the interests of its clients in an honest, fair and professional manner when providing investment services or ancillary services, shall act in an honest, fair and professional manner when performing investment activities and shall refrain from actions that are detrimental to the integrity of the market.
2. Rules shall be laid down by Decree as regards the processing of orders and the payment or receipt of commission in providing investment services or ancillary services.

#### **Section 4:90a**

1. When executing orders with regard to financial instruments for the account of clients, an investment firm shall take all reasonable measures to achieve the best possible result for these clients, taking account of the price of the financial instruments, the execution fees, the promptness, the probability of execution and settlement, the scope, the nature and all other aspects relevant to the execution of the order. In the event of a specific instruction from the client with regard to an order or a specific aspect of an order, an investment firm shall carry out that specific instruction.
2. In determining the relative weight of the factors listed in Subsection (1), the investment firm shall take the following aspects into consideration:
  - a. the features of the client, including the client's classification in accordance with Section 4:18a;
  - b. the features of the order;
  - c. the features of the financial instruments to which the order relates;
  - d. the features of the execution locations where the order may be executed.
3. When executing an order for a non-professional investor, an investment firm shall determine the best possible result on the basis of the total consideration. The latter shall consist of the price of the financial instrument and the execution fees.
4. If the order execution policy of the investment firm specifies various execution locations where an order may be executed, the investment firm shall compare the results that would be achieved for the client if the order were executed at each of those execution locations. In making this comparison, the investment firm shall take account of its own commission and costs for executing the order at each of the eligible execution locations.
5. An investment firm shall not structure and charge its commission in such a way as to cause differences in commission, without such differences being related to actual differences in costs between different execution locations.

#### **Section 4:90b**

1. In order to fulfil the obligation referred to in Section 4:90a(1), an investment firm shall adopt adequate arrangements and monitor compliance with those arrangements. An investment firm shall in any case adopt a policy enabling it to achieve the best possible result as referred to in Section 4:90a(1) in executing client orders with regard to financial instruments, and shall apply this policy.
2. The order execution policy referred to in Subsection (1) shall, for each class of financial instruments, contain information on the execution location and the factors affecting the choice of execution location. It shall specify in any event the execution locations that enable the investment firm to consistently achieve the best possible result in executing client orders.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

3. An investment firm shall provide its clients with reliable information about its order execution policy. Where the order execution policy provides for the possibility to execute orders otherwise than on a regulated market or a multilateral trading facility, the investment firm shall inform its clients of this possibility.
4. The execution of an order with regard to a financial instrument shall only be commenced after the client's consent has been obtained.
5. The execution of an order with regard to a financial instrument otherwise than on a regulated market or a multilateral trading facility shall only be commenced after the client's consent has been obtained.
6. If a specific instruction is inconsistent with the order execution policy, the order shall not be executed or shall not be executed in accordance with that specific instruction. The order execution policy shall preclude the execution of an order contrary to specific instructions.
7. An investment firm shall monitor the effectiveness of its arrangements and order execution policy in order to identify and rectify shortcomings. Each year, it shall examine whether the execution locations specified in the order execution policy produce the best possible result for the client, or whether it must amend its execution arrangements. Such an assessment shall also be made whenever an essential change occurs in the investment firm's options for always achieving the best possible result when executing orders from its clients at the execution locations specified in its execution policy.
8. An investment firm shall notify its clients of essential changes in its order execution arrangements or its order execution policy.
9. At a client's request, an investment firm shall demonstrate to this client that it executed an order for the latter in accordance with the order execution policy, unless the order or a specific aspect of the order was executed in accordance with a specific instruction from the client.
10. Rules shall be laid down by Decree as regards the provision of information to non-professional investors about the order execution policy referred to in Subsection (3), first sentence.

#### **Section 4:90c**

1. An investment firm shall take all reasonable measures to achieve the best possible result for its clients, taking account of the factors listed in Section 4:90(1) and the relative weight of these factors determined on the basis of the criteria listed in Section 4:90a(2) and (3), in:
  - a. placing orders with regard to financial instruments with third parties when implementing decisions relating to portfolio management;
  - b. forwarding client orders with regard to financial instruments to third parties for execution.

In the event of a specific instruction from the client with regard to an order or a specific aspect of an order, an investment firm shall place or forward the order in accordance with that specific instruction.

2. The investment firm shall adopt a policy enabling it to comply with Subsection (1) and shall apply this policy. The policy shall, for all categories of financial instruments, specify the third parties with which the orders are placed or to which the investment firm forwards the orders for execution. The specified third parties must have order execution arrangements enabling the investment firm to fulfil its obligations under this section when placing or forwarding orders with or to these third parties for execution.
3. The investment firm shall provide its clients with sufficient information about the policy adopted in accordance with Subsection (2).
4. Each year, the investment firm shall assess the policy adopted in accordance with Subsection (2), checking in particular the quality of the execution of client orders by the third parties specified in that policy and rectifying any shortcomings in the policy where necessary. Such an assessment shall also be made whenever an essential change occurs in the investment firm's options for always achieving the best possible result for its clients.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

#### **Section 4:90d**

1. An investment firm shall apply procedures and arrangements that guarantee an immediate, fair and prompt execution of client orders with regard to financial instruments in relation to orders from other clients or the dealing positions of the investment firm itself. These procedures or arrangements shall enable the investment firm to execute comparable client orders in the order in which they were received.
2. If a client limit order with regard to shares admitted to trading on a regulated market is not executed immediately because of the market conditions, the investment firm shall, without delay, disclose the relevant client limit order in such a way that other market participants can easily obtain knowledge of this order, unless the client expressly instructs otherwise.
3. On application, the Authority for the Financial Markets may grant a dispensation from Subsection (2) if the limit order is of considerable size in comparison with the normal market size.
4. Rules shall be laid down by Decree as regards the procedures and arrangements referred to in Subsection (1).

#### **Section 4:90e**

1. An investment firm shall retain all relevant data regarding the transactions in financial instruments it conducted for a minimum period of five years.
2. Where it concerns transactions conducted for the account of clients, the information to be retained shall in any event comprise data on the identity of the client and data that must be provided pursuant to Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJEU L 309).
3. An investment firm that has conducted transactions in financial instruments admitted to trading on a regulated market shall disclose the details of these transactions to the Authority for the Financial Markets as soon as possible and by the end of the following working day at the latest.
4. Disclosures as referred to in Subsection (3) shall contain the data to be specified by Decree.
5. Disclosures as referred to in Subsection (3) may be made by a third party acting on behalf of the investment firm, an order matching or reporting system accepted by the Authority for the Financial Markets, the regulated market or the multilateral trading facility whose systems are used to carry out the transaction. In that case, the investment firm shall be deemed to have complied with Subsection (3).
6. On application, the Authority for the Financial Markets shall decide to accept an order matching or reporting system if the applicant demonstrates that the transaction reporting arrangements under that system comply with Article 12(1) of the Regulation implementing the Markets in Financial Instruments Directive. The Authority for the Financial Markets may revoke its acceptance decision.
7. The Authority for the Financial Markets shall send the details it has obtained to:
  - a. the supervisory authority of the most relevant market for these financial instruments in terms of liquidity; and
  - b. the supervisory authority of the home Member State of the investment firm if the latter has its registered office in another Member State, unless that supervisory authority has indicated that it does not wish to receive this information.
8. Provisions may be laid down by Decree to the effect that Subsection (3) will apply *mutatis mutandis* to financial instruments not admitted to trading on a regulated market.

#### **Section 4:91**

Where an investment firm that is a member of or participant in a regulated market that has been licensed in accordance with Section 5:26(1), is obliged under the rules to be applied pursuant to Section 5:27(1) to cooperate in the monitoring of compliance with those rules by providing personal data as referred to in the Personal Data

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

Protection Act (*Wet bescherming persoonsgegevens*), the investment firm shall not require the consent of the person to whom the personal data relates in order to provide this data.

#### **4.3.7.2. Operating a multilateral trading facility**

##### **Section 4:91a**

1. An investment firm operating a multilateral trading facility shall adopt transparent, non-discretionary rules and procedures that guarantee fair and orderly trading, and shall lay down objective criteria for the efficient execution of orders.
2. The rules and procedures referred to in Subsection (1) shall in any event be understood to mean rules and procedures for a healthy management of the technical operation of the system and effective precautionary measures to eliminate risks relating to system breakdowns.
3. The investment firm shall adopt transparent rules with regard to the criteria used in determining which financial instruments can be traded via its system.
4. The investment firm shall ensure access to sufficient public information to enable the users of its trading facility to form an investment opinion, taking account of the nature of the users as well as the categories of negotiable financial instruments.
5. Using objective criteria, the investment firm shall adopt and enforce transparent rules for access to the multilateral trading facilities, which rules shall satisfy the conditions of Section 5:32c.
6. The investment firm shall properly inform the users of the multilateral trading facility about their respective responsibilities in the context of the settlement of the transactions carried out via this facility.
7. The investment firm shall take the necessary measures to promote the efficient settlement of the transactions carried out in accordance with the systems of the multilateral trading facility.
8. Where securities admitted to trading on a regulated market are traded on a multilateral trading facility without the issuer's consent, this issuer shall not be subject to any obligation as regards the provision of information in respect of that multilateral trading facility.
9. The investment firm shall, without delay, follow an instruction issued by the Authority for the Financial Markets pursuant to Section 4:4b to suspend, interrupt or cancel trading in particular financial instruments or to exclude a financial instrument from trading.

##### **Section 4:91b**

1. An investment firm operating a multilateral trading facility shall adopt effective arrangements and procedures with regard to this trading facility and shall enforce these arrangements and procedures in order to check on a regular basis whether its users observe its rules.
2. The investment firm shall monitor the transactions conducted by the users of the multilateral trading facility via its systems, so that it will be able to identify violations of the arrangements and procedures referred to in the preceding subsection, as well as trading conditions disrupting the orderly operation of the market or actions indicative of market abuse.
3. The investment firm shall report serious violations as referred to in Subsection (2) to the Authority for the Financial Markets.
4. The investment firm shall, without delay, supply the applicable information to the Authority for the Financial Markets, the Public Prosecution Service or investigating officers competent under the Economic Offences Act, and shall fully cooperate with the Authority for the Financial Markets, the Public Prosecution Service or these investigating officers in their investigation or prosecution of actions indicative of market abuse that have occurred in or via its systems.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

**Section 4:91c**

1. An investment firm operating a multilateral trading facility shall disclose the bid and offer prices issued via its systems and the size of the market at these prices in respect of shares admitted to trading on a regulated market.
2. The investment firm shall ensure that the information referred to in Subsection (1) is continuously available to the public on reasonable commercial terms and conditions and during the normal trading hours of that multilateral trading facility.
3. On application, the Authority for the Financial Markets may grant a dispensation from Subsection (1) if the multilateral trading facility complies with Articles 18 to 20 of the Regulation implementing the Markets in Financial Instruments Directive.
4. Provisions may be laid down by Decree to the effect that Subsections (1) to (3) will apply mutatis mutandis with regard to financial instruments other than shares.
5. Subsection (1) shall not apply to units in a collective investment scheme that are repurchased or repaid either directly or indirectly out of the assets at the unit holder's request.

**Section 4:91d**

1. An investment firm operating a multilateral trading facility shall disclose the price, scope and moment of the transactions in shares admitted to trading on a regulated market that were conducted via the systems of this trading facility.
2. The investment firm shall disclose the information referred to in Subsection (1) on reasonable commercial terms and conditions and within a timeframe as close as possible to real time.
3. Subsection (2) shall not apply to information about transactions on a multilateral trading facility that are disclosed in accordance with the systems of a regulated market.
4. On application, the Authority for the Financial Markets may permit the investment firm to delay the disclosure referred to in Subsection (1) on the basis of the type or scope of the transaction, if:
  - a. it has agreed to the proposed provisions for the delayed disclosure; and
  - b. the investment firm supplies clear information on those provisions to the market participants and the investor public.
5. Provisions may be laid down by Decree to the effect that Subsections (1) to (4) will apply mutatis mutandis with regard to financial instruments other than shares.
6. Subsection (1) shall not apply to units in a collective investment scheme that are repurchased or repaid either directly or indirectly out of the assets at the unit holder's request.

**Section 4:91e**

On application, the Authority for the Financial Markets may, whether or not for a fixed period, grant a full or partial dispensation from this section if the applicant demonstrates that the interests which this part seeks to protect are sufficiently protected in other ways.

**4.3.7.3. Systematic internalisation**

**Section 4:91f**

This section shall not apply to investment firms that conduct the business of an investment firm operating as a systematic internaliser only with regard to transactions whose scope exceeds the standard market size.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

#### **Section 4:91g**

1. An investment firm operating as a systematic internaliser shall determine the price for which it is prepared to carry out a transaction in shares admitted to trading on a regulated market which it internalises systematically and for which there is a liquid market, and shall disclose this price on reasonable commercial terms and conditions and in such a way that it is easily accessible.
2. An investment firm operating as a systematic internaliser shall, upon request, inform its clients of the price of shares for which there is no liquid market.
3. The investment firm may determine the transaction volume to which a fixed price applies, and shall disclose this information on reasonable commercial terms and conditions and in such a way that it is easily accessible.
4. The fixed price of a share shall comprise a bid or offer price and the corresponding transaction volume. If the investment firm does not determine the transaction volume to which a fixed price applies, the price shall comprise the bid or offer prices for a transaction volume not exceeding the standard market size for the class of shares to which the share belongs. The prices shall reflect the prevailing market situation for the share concerned.
5. Provisions may be laid down by Decree to the effect that Subsections (1) to (4) will apply mutatis mutandis with regard to financial instruments other than shares.
6. Subsection (1) shall not apply to units in a collective investment scheme that are repurchased or repaid either directly or indirectly out of the assets at the unit holder's request.

#### **Section 4:91h**

At least once a year, the Authority for the Financial Markets shall determine for each share for which the Netherlands is the most relevant market in terms of liquidity, as referred to in Section 4:90e(5)(a), the class of shares to which the share belongs in a manner to be specified by Decree, and shall disclose this information.

#### **Section 4:91i**

An investment firm operating as a systematic internaliser shall update the prices determined pursuant to Section 4:91g on a regular and continuous basis during normal trading hours.

#### **Section 4:91j**

1. An investment firm operating as a systematic internaliser shall, with due observance of Sections 4:90a and 4:90b, execute orders which it receives from a non-professional client with regard to the shares it internalises systematically at the price it determined at the moment when it received the order.
2. An investment firm operating as a systematic internaliser shall execute an order which it receives from a professional client with regard to the shares it internalises systematically at the price it determined at the moment when it received the order. In derogation from the first sentence, the investment firm may execute this order at a price more favourable for the client, if:
  - a. the price falls within a disclosed price range that approximates the prevailing market situation referred to in Section 4:91g(4); and
  - b. the scope of the order exceeds the customary order volume of a non-professional investor.
3. In derogation from Subsection (2), first sentence, an investment firm operating as a systematic internaliser may execute an order which it receives from a professional client at a price different from the prices it has determined, if this concerns a transaction with regard to various securities or if this concerns an order to which special conditions are attached.
4. Where an investment firm operating as a systematic internaliser which has disclosed only one fixed price or which has determined and disclosed prices of which the highest applies to a transaction volume lower than the standard market size, receives an order from a client whose volume is larger than the volume relating to the

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

fixed price, but smaller than the standard market size, it may, without prejudice to Subsection (2), second sentence and Subsection (3), execute the portion of the order that exceeds the volume relating to the fixed price at the price it has determined.

5. Where an investment firm operating as a systematic internaliser has disclosed the prices it has determined for various transaction volumes and executes an order whose volume lies between those volumes, it shall do so, without prejudice to Sections 4:90a and 4:90b and Subsection (2), second sentence and Subsection (3), at one of the prices determined for those volumes.

#### **Section 4:91k**

1. An investment firm operating as a systematic internaliser shall grant investors access to its internalisation system on the basis of objective and non-discriminatory criteria.
2. An investment firm operating as a systematic internaliser may refuse only on commercial grounds to establish or sever business relations with an investor that satisfies the criteria referred to in Subsection (1).

#### **4.3.7.4. Other provisions on supply of post-trade information by investment firms**

#### **Section 4:91l**

1. An investment firm that conducts a transaction in shares admitted to trading on a regulated market otherwise than on a regulated market or a multilateral trading facility, shall disclose the price, scope and moment of the transaction carried out.
2. The investment firm shall disclose the information referred to in Subsection (1) within a timeframe as close as possible to real time and on reasonable commercial terms and conditions, in such a way that this information is easily accessible.
3. Provisions may be laid down by Decree to the effect that Subsection (1) will apply mutatis mutandis with regard to financial instruments other than shares.
4. Subsection (1) shall not apply to units in a collective investment scheme that are repurchased or repaid either directly or indirectly out of the assets at the unit holder's request.

#### **Part 4.3.8. Relationship between financial enterprises**

##### **4.3.8.1. Relationship between offeror, (sub-)broker and authorised (sub-)agent**

#### **Section 4:92**

1. With the exception of Section 4:93, the provisions arising from this section with regard to the relationship between an offeror and a broker shall apply mutatis mutandis to:
  - a. the relationship between an authorised agent and a broker;
  - b. the relationship between an authorised sub-agent and a broker; and
  - c. the relationship between a broker and a sub-broker.
2. The provisions of this section with regard to the relationship between an offeror and an authorised agent shall apply mutatis mutandis to:
  - a. the relationship between an authorised agent and an authorised sub-agent; and
  - b. the relationship between an authorised sub-agent and another authorised sub-agent to which it has granted a sub-authorisation.

#### **Section 4:93**

1. An offeror shall ensure that a broker as referred to in Section 2:81(2) through which it concludes contracts with



Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

consumers or, where it concerns insurance, clients, complies with the provisions arising from this Act.

2. Rules may be laid down by Decree as regards the manner in which the offeror ensures that the broker complies with the provisions arising from this Act.
3. On application, the Authority for the Financial Markets may, whether or not for a fixed period, grant a full or partial dispensation from the provisions arising from Subsection (2), if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which this section seeks to achieve are achieved in other ways.

#### **Section 4:94**

1. An offeror which for the first time concludes a contract regarding a financial product through a particular broker shall only do so after it has ascertained that the broker, in providing brokerage services in respect of that financial product, does not act in contravention of the prohibition referred to in Section 2:80(1), and that no prohibition as referred to in Sections 1:58(2) or 4:4(1) has been imposed on the broker.
2. The offeror shall check, once every 12 months and where it receives signals in the course of its normal operations that raise doubts on this point, whether the broker through which the offeror concludes contracts regarding financial products or which assists it in the administration and performance of a credit or insurance contract, acts in contravention of the prohibition referred to in Section 2:80(1) in respect of this activity and whether a prohibition as referred to in Sections 1:58(2) or 4:4(1) has been imposed on the broker in respect of this activity.
3. Where the broker referred to in Subsection (2) acts in contravention of the prohibition referred to in Section 2:80(1), or a prohibition as referred to in Sections 1:58(2) or 4:4(1) has been imposed on the broker, the offeror shall cease concluding contracts regarding financial products through the broker. The broker may assist the offeror in the administration and performance of credit or insurance contracts already concluded, insofar as the broker is permitted to fulfil contracts under Sections 1:58(2), 1:104(3) or 4:4(2).

#### **Section 4:95**

1. An offeror shall only grant an authorisation after it has ascertained that the authorised agent does not act in contravention of the prohibition referred to in Section 2:92(1) and that no prohibition as referred to in Section 4:4(1) has been imposed on the authorised agent.
2. The offeror shall check, once every 12 months and where it receives signals in the course of its normal operations that raise doubts on this point, whether the authorised agent acts in contravention of the prohibition referred to in Section 2:92(1) and whether a prohibition as referred to in Section 4:4(1) has been imposed on the authorised agent.
3. Where the authorised agent referred to in Subsection (2) acts in contravention of the prohibition referred to in Section 2:92(1), or a prohibition as referred to in Section 4:4(1) has been imposed on the authorised agent, the offeror shall cancel the authorisation. The offeror may entrust the authorised agent with the management and fulfilment of the insurance portfolio put together by that agent, insofar as the authorised agent is permitted to fulfil contracts under Sections 1:104(3) or 4:4(2).

#### **Section 4:96**

1. Where a broker receives signals in the course of its normal operations that an offeror for which it performs brokerage services in offering that financial product acts in contravention of a prohibition laid down in Chapter 2.2 on conducting a business or providing a financial service without an appropriate licence, or that a prohibition as referred to in Sections 1:58(2), 1:104(3) or 4:4(1) has been imposed on the offeror, it shall cease performing brokerage services for the offeror, except where the offeror is permitted to fulfil contracts under Section 1:58(2) or Section 4:4(2).
2. Where an authorised agent receives signals in the course of its normal operations that an offeror for which it acts as an authorised agent acts in contravention of a prohibition laid down in Chapter 2.2 on conducting a

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

business or providing a financial service without an appropriate licence, or that a prohibition as referred to in Sections 1:58(2) or 4:4(1) has been imposed on the offeror, it shall cease acting as an authorised agent for the offeror, except where the offeror is permitted to fulfil contracts under Sections 1:58(2), 1:104(3) or 4:4(2).

#### **Section 4:97**

1. Where an offeror finds in the course of its normal operations that a broker or an authorised agent infringes the provisions arising from Sections 4:9, 4:10, 4:15 or 4:75, the offeror shall, without delay, report the observed infringement to the Authority for the Financial Markets.
2. Where an offeror finds in the course of its normal operations that a broker or an authorised agent systematically infringes the provisions arising from this Act, with the exception of the provisions arising from Sections 4:9, 4:10, 4:15 or 4:75, the offeror shall, without delay, report the observed infringements to the Authority for the Financial Markets.
3. Further rules may be laid down by Decree as regards the cases in which the offeror reports an infringement as referred to in Subsections (1) and (2). Further rules may be laid down by or pursuant to a Decree as regards the manner in which the offeror reports an infringement.

#### **Section 4:98**

The party that reported an infringement pursuant to Section 4:97 shall not be liable for damage sustained by a third party as a result of that report, unless it is demonstrated that no such report should reasonably have been made in view of all the facts and circumstances.

#### **Section 4:99**

1. Financial enterprises shall enable each other to comply with the provisions arising from this part, insofar as they depend upon each other in that respect.
2. Further rules may be laid down by or pursuant to a Decree as regards the cases and the manner in which financial enterprises enable each other to comply with this part.
3. On application, the Authority for the Financial Markets may, whether or not for a fixed period, grant a full or partial dispensation from the provisions arising from Subsection (2), if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which this section seeks to achieve are achieved in other ways.

#### **4.3.8.2. Relationship between investment firms themselves and between investment firms and tied agents**

#### **Section 4:100**

1. An investment firm that for the first time provides an investment service as referred to under (a), (b) or (d) of the definition of providing an investment service in Section 1:1 to another investment firm, or provides an investment service to clients introduced by another investment firm, shall only do so after it has ascertained that the other investment firm does not act in contravention of the prohibition referred to in Section 2:96(1) or that no prohibition as referred to in Sections 1:58(2) or 4:4(1) has been imposed on the other investment firm.
2. The investment firm shall check, once every 12 months and where it receives signals in the course of its normal operations that raise doubts on this point, whether the other investment firm acts in contravention of the prohibition referred to in Section 2:96(1) and whether a prohibition as referred to in Sections 1:58(2) or 4:4(1) has been imposed on the other investment firm.
3. Where the other investment firm referred to in Subsection (1) acts in contravention of the prohibition referred to in Section 2:96(1), or a prohibition as referred to in Sections 1:58(2) or 4:4(1) has been imposed on the other investment firm, the investment firm shall cease providing investment services to the other investment firm or to clients introduced by the other investment firm from the moment it becomes aware of that contravention or that

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*  
prohibition.

#### **Section 4:100a**

1. An investment firm that provides investment services as referred to under (a), (d) or (e) of the definition of providing an investment service in Section 1:1 through a tied agent shall take adequate measures to prevent any negative effects that other activities of the tied agent, to which this Act does not apply, may have on the activities of the tied agent concerned which it performs for the account of the investment firm.
2. Rules may be laid down by Decree as regards the manner in which the investment firm ensures that the tied agent complies with the provisions arising from this Act.
3. On application, the Authority for the Financial Markets may, whether or not for a fixed period, grant a full or partial dispensation from the provisions arising from Subsection (2), if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which this section seeks to achieve are achieved in other ways.

#### **Section 4:100b**

1. An investment firm that intends for the first time to provide investment services as referred to under (a), (d) or (e) of the definition of providing an investment service in Section 1:1 through a particular tied agent, shall only do so after the investment firm has reported the tied agent to the Authority for the Financial Markets, and the Authority for the Financial Markets has entered the tied agent in the register referred to in Section 1:107.
2. The investment firm shall check, once every 12 months and where it receives signals in the course of its normal operations that raise doubts on this point, whether the tied agent through which it provides investment services as referred to under (a), (d) or (e) of the definition of providing an investment service in Section 1:1 acts in contravention of the provisions arising from this Act in respect of this activity.
3. Where the tied agent referred to in Subsection (2) acts in contravention of the provisions arising from this Act, the investment firm shall cease providing investment services through the tied agent.

#### **Section 4:100c**

Where a tied agent receives signals in the course of its normal operations that an investment firm for whose account it provides investment services as referred to under (a), (d) or (e) of the definition of providing an investment service in Section 1:1, acts in contravention of a prohibition laid down in Chapter 2.2 on conducting a business or providing a financial service without an appropriate licence, or that a prohibition as referred to in Sections 1:58(2), 1:104(3) or 4:4(1) has been imposed on the investment firm, it shall cease providing investment services for the account of the investment firm, except where it concerns investment services regarding which the investment firm is permitted to fulfil contracts under Section 1:58(2) or Section 4:4(2).

#### **Section 4:100d**

1. Where an investment firm finds in the course of its normal operations that a tied agent which it has reported to the Authority for the Financial Markets as referred to in Section 2:97(5)(b) infringes the provisions arising from this Act, the investment firm shall, without delay, report the observed infringement to the Authority for the Financial Markets.
2. Rules may be laid down by Decree as regards the cases in which the investment firm reports an infringement as referred to in Subsection (1). Further rules may be laid down by or pursuant to a Decree as regards the manner in which the investment firm reports an infringement.

#### **Section 4:100e**

1. The party that reported an infringement pursuant to Section 4:100d shall not be liable for damage sustained by a third party as a result of that report, unless it is demonstrated that no such report should reasonably have been made in view of all the facts and circumstances.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

#### **4.3.8.3. Relationship between financial enterprises with regard to insurance-related financial services**

##### **Section 4:101**

The provisions of this section with regard to the relationship between an insurer and a broker shall apply mutatis mutandis to:

- a. the relationship between an authorised agent and a broker;
- b. the relationship between an authorised sub-agent and a broker; and
- c. the relationship between a broker and a sub-broker.

##### **Section 4:102**

An insurance contract that was concluded through a broker or transferred to a broker's portfolio shall belong to the portfolio of that broker in the relationship with the insurer concerned as long as the insurance contract has not been transferred from that portfolio.

##### **Section 4:103**

1. An insurer shall not transfer all or part of a broker's portfolio to the portfolio of another broker without the consent of the former broker or its legal successors.
2. In derogation from Subsection (1), the insurer shall, at the written request of a client, transfer the latter's insurance contract from the portfolio of a broker to that of another broker, unless the insurer has well-founded objections against that broker.
3. Subsections (1) and (2) shall apply mutatis mutandis if an insurer transfers an insurance contract to its own portfolio.
4. The insurer shall, at the written request of a broker, lend its cooperation to the full or partial transfer of that broker's portfolio to another broker, unless the insurer has well-founded objections against that broker.

##### **Section 4:104**

1. Unless it is agreed otherwise, or the broker has undertaken towards the insurer to pay premiums and costs in respect of the insurance as if they were its own debt, the broker shall collect the premiums on the insurer's behalf. The broker shall at all times be accountable and responsible to the insurer for this collection of premiums.
2. Unless agreed otherwise between an insurer and a broker, the insurer may determine that the broker may no longer collect premiums, if:
  - a. the broker is no longer listed in the register referred to in Section 1:107;
  - b. the broker seriously neglects the collection of premiums;
  - c. the broker fails to hand over premiums it collected on the insurer's behalf to the insurer in a timely fashion;  
or
  - d. the broker has committed acts which justify the fear that it will not meet its obligations ensuing from the collection of premiums.
3. In cases where the collection of premiums by a broker ends pursuant to Subsection (2), the insurer shall take over this collection.

## **5. Market Conduct Supervision**

### **Chapter 5.1. Rules on offering securities**

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

### **Part 5.1.1. Introductory provision**

#### **Section 5:1**

For the purposes of the provisions arising from this chapter, the following terms shall have the following meaning:

- a. offering securities to the public: making a sufficiently specific offer addressed to more than one person as referred to in Section 217(1) of Book 6 of the Dutch Civil Code to conclude a contract to purchase or otherwise acquire securities, or issuing an invitation to make an offer on such securities;
- b. offeror: the party offering securities to the public;
- c. offering programme: programme creating the possibility of offering non-equity securities or securities as referred to under (d)(2°) of the same category or class during a specified period, in a continuous or repeated manner;
- d. equity security:
  - 1°. negotiable share issued by a legal person, company or institution, or another negotiable instrument or right considered equivalent;
  - 2°. any other negotiable instrument issued by a legal person, company or institution through which another equity security as referred to under (1°) may be acquired by exercising the right attached to this instrument or by converting or exchanging this instrument, if the negotiable instrument was issued by the legal entity, company or institution which also issued the equity security to be acquired, or by a group company affiliated to the issuer in a group;
- e. non-equity security: security that is not an equity security, to be divided into the following categories:
  - 1°. negotiable instrument issued by a legal person, company or institution through which another security may be acquired by exercising the right attached to this instrument or by converting or exchanging this instrument, and which was not issued by the legal entity, company or institution which also issued the equity security to be acquired, or by a group company affiliated to the issuer in a group;
  - 2°. negotiable instrument issued by a legal person, company or institution which entitles its holder to a monetary settlement by exercising the right attached to this instrument;
  - 3°. any other security that is not an equity security.

#### **Section 5:1a**

The provisions arising from this chapter shall not apply to money market instruments with a term of less than 12 months.

### **Part 5.1.2. Prohibition and exceptions**

#### **Section 5:2**

No party may offer securities to the public in the Netherlands or have securities admitted to trading on a regulated market situated or operating in the Netherlands, unless a prospectus is generally available in respect of the offer or admission which has been approved by the Authority for the Financial Markets or by a supervisory authority of another Member State.

#### **Section 5:3**

1. Section 5:2 shall not apply to offering securities to the public, if:
  - a. the securities are offered exclusively to qualified investors;
  - b. the securities are offered to fewer than 100 persons other than qualified investors;
  - c. the securities on offer can only be acquired for an equivalent value of at least €50,000 per investor;
  - d. the denomination per security is at least €50,000; or
  - e. the total equivalent value of the offer of securities to the public is less than €10,000, which limit is calculated over a period of 12 months.
2. Furthermore, the prohibition referred to in Section 5:2 shall not apply to offering the following categories of securities to the public:

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

- a. shares or depositary receipts for shares which were issued in substitution for shares or depositary receipts for shares of the same category or class already issued, if the issuance of those new instruments does not involve any increase in the issued capital;
- b. securities which are offered in connection with a takeover through a public exchange offer, if a document is generally available which contains information equivalent to the information included in the prospectus;
- c. securities which are offered or allotted or are to be allotted in connection with a merger or section, if a document is generally available which contains information equivalent to the information included in the prospectus;
- d. shares or depositary receipts for shares which are offered or allotted or are to be allotted to shareholders free of charge, and dividends which are distributed in the form of shares or depositary receipts for shares of the same category or class as the instruments regarding which the dividends are distributed, if a document is made available which contains information on the number of instruments on offer, the features of the instruments, the reasons for and the details of the offer; or
- e. securities which are offered or allotted or are to be allotted by an employer whose securities are already admitted to trading on a regulated market, or by a legal person, company or institution affiliated to that employer in a group, to present or former directors, present or former supervisory board members or present or former employees, if a document is made available which contains information on the number of securities on offer, the features of the securities, the reasons for and the details of the offer.

#### **Section 5:4**

Section 5:2 shall not apply to the admission to trading on a regulated market situated or operating in the Netherlands of:

- a. shares or depositary receipts for shares which, viewed over a period of 12 months, represent less than ten percent of the number of shares or depositary receipts for shares of the same category or class already admitted to trading on the same regulated market situated or operating in the Netherlands;
- b. shares or depositary receipts for shares which were issued in substitution for shares or depositary receipts for shares of the same category or class already admitted to trading on the same regulated market, and whose issuance does not involve any increase in the issued capital;
- c. securities which are offered in connection with a takeover through a public exchange offer, if a document is available which contains information equivalent to the information included in the prospectus;
- d. securities which are offered or allotted or are to be allotted in connection with a merger or section, if a document is available which contains information equivalent to the information included in the prospectus;
- e. shares or depositary receipts for shares which are or have been offered or are to be allotted to shareholders free of charge, or are distributed as dividends in the form of shares or depositary receipts for shares of the same category or class as the instruments regarding which they are distributed, if these instruments are of the same category or class as the instruments already admitted to trading on the same regulated market and a document is made available which contains information on the number of instruments on offer, the features of the instruments, the reasons for and the details of the offer;
- f. securities which are offered or allotted or are to be allotted by an employer, or by a legal person, company or institution affiliated to that employer in a group, to its present or former directors, present or former supervisory board members or present or former employees, if those securities are of the same category or class as the securities already admitted to trading on the same regulated market and a document is made available which contains information on the number of securities on offer, the features of the securities, the reasons for and the details of the offer;
- g. shares or depositary receipts for shares ensuing from the conversion or exchange of other securities or from the exercise of rights attached to other securities, if those shares or depositary receipts for shares are of the same category or class as the shares or depositary receipts for shares already admitted to trading on the same regulated market; or
- h. securities already admitted to trading on another regulated market, if:
  - 1°. those securities, or securities of the same category or class, have been admitted to trading on that other regulated market for a period of more than 18 months;
  - 2°. where it concerns securities which were first admitted to trading on a regulated market after the Prospectus Directive entered into force, an approved prospectus was issued at the time of admission to trading on that other regulated market which was made generally available in conformity with Section 5:21;

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

- 3°. the prospectus for those securities, if these were first officially listed after 30 June 1983, was approved in accordance with Directive 80/390/EEC of the European Parliament and of the Council of 17 March 1980 coordinating the requirements for the drawing up, scrutiny and distribution of the listing particulars to be published for the admission of securities to official stock exchange listing (OJEC L 100) or Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities (OJEC L 184), unless the provisions under (2°) apply;
- 4°. the applicable obligations for trading on that other regulated market have been fulfilled;
- 5°. the person asking for the admission of securities to trading on a regulated market makes a summary note generally available in a language accepted by the Authority for the Financial Markets;
- 6°. the summary note is made generally available in the manner referred to in Section 5:21; and
- 7°. the content of the summary note complies with Section 5:14 and the summary note states where the most recent prospectus can be obtained and where the issuer makes the financial information available pursuant to its ongoing information requirements.

## **Section 5:5**

An exemption from this chapter may be granted by ministerial regulation.

### **Part 5.1.3. Offering securities to the public and admitting securities to trading on a regulated market**

#### **5.1.3.1. Power of approval**

## **Section 5:6**

1. The Authority for the Financial Markets is authorised to approve a prospectus where the issuer has its registered office in the Netherlands and it concerns an offer of securities to the public or the admission of securities to trading on a regulated market:
  - a. in the Netherlands or in another Member State of equity securities;
  - b. in the Netherlands of non-equity securities as referred to in Section 5:1(e)(1°) and (2°);
  - c. in the Netherlands or in another Member State of non-equity securities as referred to in Section 5:1(e)(3°) with a denomination per security of less than € 1,000; or
  - d. in the Netherlands of non-equity securities as referred to in Section 5:1(e)(3°) with a denomination per security of at least € 1,000.
2. The Authority for the Financial Markets is also authorised to approve a prospectus where it concerns an offer of securities to the public or the admission of securities to trading on a regulated market:
  - a. of equity securities or non-equity securities as referred to in Section 5:1(e)(3°) with a denomination per security of less than € 1,000:
    - 1°. in the Netherlands by an issuer having its registered office in a non-Member State;
    - 2°. in the Netherlands or in another Member State by an issuer having its registered office in a non-Member State, if the approval of the Authority for the Financial Markets was sought at the time of an earlier offer of those securities to the public or the admission of those securities to trading on a regulated market; or
    - 3°. in the Netherlands or in another Member State by an issuer having its registered office in a non-Member State, if another party sought the approval of a supervisory authority of another Member State at the time of an earlier offer of those securities to the public or the admission of those securities to trading on a regulated market, and the issuer seeks the approval of the Authority for the Financial Markets in respect of the offer of those securities to the public or the admission of those securities to trading on a regulated market;
  - b. of non-equity securities as referred to in Section 5:1(e)(1°) and (2°) or non-equity securities as referred to in Section 5:1(e)(3°) with a denomination per security of at least € 1,000:
    - 1°. in another Member State by an issuer having its registered office in the Netherlands;
    - 2°. in the Netherlands by an issuer having its registered office in a non-Member State; or
    - 3°. in the Netherlands or in another Member State by an issuer having its registered office in a non-Member State.
3. Where Subsection (1), opening words and under (c) or (d), or Subsection (2) concerns non-equity securities whose denomination is not in euros, the denomination of the securities shall be converted into euros for the

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

purposes of the limits specified in those provisions, whereby a converted value of almost € 1,000 shall be equated with € 1,000.

#### **Section 5:7**

The Authority for the Financial Markets is also authorised to approve a prospectus where a supervisory authority of another Member State that is competent to approve the prospectus has requested the Authority for the Financial Markets to approve the prospectus and the Authority for the Financial Markets has agreed to do so.

#### **Section 5:8**

1. Where the Authority for the Financial Markets is authorised to approve a prospectus pursuant to Section 5:6(1) or (2), it may request a supervisory authority of another Member State to take a decision regarding the approval of the prospectus. Where that authority agrees to do so, the Authority for the Financial Markets shall decide to disregard the application and shall notify the applicant of this. From the moment of the notification, the Authority for the Financial Markets shall no longer be authorised to approve the prospectus.
2. The Authority for the Financial Markets shall notify the applicant and Our Minister within three working days of a request it has made pursuant to Subsection (1).
3. Where the supervisory authority of the other Member State has agreed to take a decision regarding the approval of the prospectus, the Authority for the Financial Markets shall, without delay, forward the documents relating to the application to that authority.

#### **5.1.3.2. Approval of the prospectus**

#### **Section 5:9**

1. The Authority for the Financial Markets shall approve a prospectus if it complies with:
  - a. Sections 5:13 to 5:19; and
  - b. Articles 3 to 23, 25, 26, with the exception of 26(5), and 28 of the Prospectus Regulation.
2. The Authority for the Financial Markets may, if it is authorised under Sections 5:6 or 5:7, grant approval of the prospectus to an issuer having its registered office in a non-Member State if:
  - a. that issuer has drawn up the prospectus in accordance with the legislation of the State where it has its registered office;
  - b. that issuer has drawn up the prospectus in conformity with international standards, including disclosure standards, set by international organisations of securities commissions; and
  - c. the ongoing information requirements regarding the issuer's business, including information of a financial nature, are equivalent to the requirements of the Prospectus Directive.
3. The meaning of the term 'equivalent' as referred to in Subsection (2)(c) may be specified by Decree.

#### **Section 5:9a**

1. Having received an application for approval, the Authority for the Financial Markets shall inform the applicant of its decision regarding the approval within ten working days.
2. The period referred to in Subsection (1) shall not exceed 20 working days where it concerns a securities issuer of which no securities have yet been offered to the public or admitted to trading on a regulated market.
3. If the documents submitted by the applicant are incomplete, or additional information is required under Articles 3, third paragraph, 22(1), third paragraph, 23(1) or (3), second paragraph of the Prospectus Regulation in order to assess the assets and liabilities, financial position, profits and losses or prospects of the issuer or the rights and obligations attached to the securities, the Authority for the Financial Markets shall notify the applicant of this within the period referred to in Subsection (1) or, where applicable, Subsection (2) and shall provide it with the



Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

opportunity to supplement the application within a specified period. If the applicant fails to supplement the application within the specified period, the Authority for the Financial Markets may decide to disregard the application.

4. If the Authority for the Financial Markets has provided the applicant with the opportunity to supplement the application in accordance with Subsection (3), first sentence, the periods referred to in Subsections (1) and (2) shall recommence from the moment when the applicant supplied the additional information.
5. Section 4:5 of the General Administrative Law Act shall not be applicable.

#### **Section 5:10**

1. Where the Authority for the Financial Markets has approved a prospectus, it shall, on application of the issuer or the person responsible for drawing up the prospectus, issue to the supervisory authorities of every other Member State where the securities concerned are offered to the public or where the admission of those securities to trading on a regulated market is sought, a notification to the effect that the prospectus was drawn up in accordance with the Prospectus Directive, as well as a copy of the approved prospectus. On request, the notification shall be accompanied by a translation of the summary note.
2. The Authority for the Financial Markets shall issue the notification referred to in Subsection (1) and the copy of the approved prospectus within three working days of having received the application. If the application is made before approval has been granted, the Authority for the Financial Markets shall issue the notification within one working day of the approval being granted.
3. Where applicable, the notification referred to in Subsection (1) shall also state that the Authority for the Financial Markets, with due observance of Section 5:18(3) and (4), has allowed certain information not to be included in the prospectus, as well as the reasons for such omission.
4. Subsections (1) to (3) shall apply mutatis mutandis to a document approved by the Authority for the Financial Markets to supplement the prospectus as referred to in Section 5:23.

#### **5.1.3.3. Scope of a prospectus approved in another Member State**

#### **Section 5:11**

1. An issuer, offeror or person asking for the admission of securities to trading on a regulated market that has a prospectus approved by a supervisory authority of another Member State, may offer the securities concerned to the public in the Netherlands or have them admitted to trading on a regulated market situated or operating in the Netherlands, if the Authority for the Financial Markets has received a notification to the effect that the prospectus was drawn up in accordance with the Prospectus Directive and a copy of the approved prospectus from the supervisory authority of that other Member State.
2. Where applicable, the notification referred to in Subsection (1) shall state that Article 8(2) or (3) of the Prospectus Directive or the legislation of a Member State implementing that Directive has been applied, and the reasons for such application.

#### **5.1.3.4. Procedure for drawing up the prospectus and the data to be included in the prospectus**

#### **Section 5:12**

Sections 5:13 to 5:18, 5:20 and 5:21 shall apply exclusively to offers of securities to the public and admissions of securities to trading on a regulated market regarding which the Authority for the Financial Markets is competent to approve the prospectus under Sections 5:6 or 5:7.

#### **Section 5:13**

1. The prospectus shall contain all data which is necessary, in view of the nature of the issuer and of the securities offered to the public or admitted to trading on the regulated market, in order to enable investors to make an

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the issuer and of any guarantor, and of the rights and obligations attached to such securities, including the data referred to in Articles 3 to 23 of the Prospectus Regulation and the annexes pertaining to those articles.

2. The data referred to in Subsection (1) shall not be contradictory or inconsistent with other information in the possession of the Authority for the Financial Markets as regards the issuer, offeror or person asking for the admission of securities to trading on the regulated market, and shall be presented in a format that is comprehensible to a reasonably informed and carefully acting person.

#### **Section 5:14**

1. The summary note shall, in a succinct manner and in language comprehensible to a reasonably informed and carefully acting person, convey the essential features and risks associated with the issuer, any guarantor and the securities, in the language in which the prospectus was originally drawn up.
2. The summary note shall contain a warning that:
  - a. the summary note must be read as an introduction to the prospectus;
  - b. any decision to invest in the securities must be based on consideration of the prospectus as a whole by the investor;
  - c. where a claim relating to the information contained in the prospectus is brought before a court, the claimant might, under the national legislation of the Member States, have to bear the costs of translating the prospectus before the legal proceedings are initiated; and
  - d. civil liability attaches to those persons who have tabled the summary note, including any translation thereof, and applied for a notification as referred to in Section 5:10(1), but only if the summary note is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus.

#### **Section 5:15**

1. The prospectus shall be drawn up in:
  - a. a single document which, in addition to a summary note that complies with Section 5:14, shall at least contain the data referred to in Section 5:13(1); or
  - b. the following three separate documents:
    - 1°. a registration document containing information about the issuer;
    - 2°. a securities note containing information about the securities offered to the public or regarding which an application for admission to trading on a regulated market is submitted; and
    - 3°. a summary note that complies with Section 5:14.
2. An issuer which has a registration document that forms part of a prospectus already approved shall only draw up a new securities note and a summary note if securities are offered to the public or admitted to trading on a regulated market.
3. Where a change or a recent, significant development has occurred after the approval of the most up-to-date registration document or of any supplement to the prospectus in accordance with Section 5:23 which might affect the assessment of the offer by the investor, the securities note referred to in Subsection (2) shall contain the data that must be stated in a registration document. Together with the registration document referred to in Subsection (2), the securities note and the summary note shall constitute a new prospectus.

#### **Section 5:16**

1. An issuer, offeror or person asking for the admission of securities to trading on a regulated market may draw up the prospectus in the form of a base prospectus which, where applicable, contains the information referred to in Sections 5:13 and 5:14, where it concerns:
  - a. non-equity securities offered or issued under an offering programme; or
  - b. non-equity securities offered or issued in a continuous or repeated manner by credit institutions, if:
    - 1°. the sums deriving from the offer or admission of the securities are placed, in accordance with the

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

applicable statutory provisions, in assets which provide sufficient coverage for the liabilities deriving from the said securities until their maturity date; and

2°. in the event of insolvency of the credit institution involved, the said sums are intended, as a priority, to repay the capital and interest falling due, without prejudice to the provisions of Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions (OJEC L 125).

2. If the issuer has not included the final terms of an offer of securities to the public in the base prospectus or in a supplement to the prospectus, it shall, on the occasion of every offer of securities to the public or admission of securities to trading on a regulated market, make these final terms generally available and file them with the Authority for the Financial Markets without delay, where possible prior to the start of the offer of securities to the public or the admission of securities to trading on a regulated market. Section 5:18(1) shall thereby apply *mutatis mutandis*.

#### **Section 5:17**

1. Where the prospectus incorporates information by reference, reference shall be made to documents made generally available previously or simultaneously with the prospectus that have been approved by the Authority for the Financial Markets, or, where applicable, by a competent supervisory authority of another Member State, in accordance with the Prospectus Directive or Titles IV or V of Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities (OJEC L 184), or have been filed with the Authority for the Financial Markets or the supervisory authority of another Member State.
2. The information to which the prospectus refers shall be the latest information made generally available by the issuer.
3. The summary note shall not incorporate information by reference.
4. Where the prospectus incorporates information by reference, a cross-reference list shall be provided in order to enable investors to identify easily specific items of information.

#### **Section 5:18**

1. Where the issuer or the offeror fails to mention in the prospectus the final price or exchange ratio at which the securities will be offered to the public and the final number of securities which will be offered, the prospectus shall state the criteria or the conditions based on which this data will be determined, or a maximum price if no final price is stated.
2. The issuer or the offeror shall file with the Authority for the Financial Markets the information regarding the final price at which the securities will be offered to the public and the final number of securities to be offered, and shall make this information generally available in accordance with Section 5:21(3).
3. The Authority for the Financial Markets may authorise the omission from the prospectus of certain information to be included pursuant to this chapter or the Prospectus Regulation, if:
  - a. disclosure of such information would be contrary to the public interest;
  - b. disclosure of such information would be seriously detrimental to the issuer, and the omission would not be likely to mislead the public with regard to facts and circumstances essential for an informed assessment of the issuer, the offeror, the person asking for the admission of securities to trading on a regulated market, or, where appropriate, the guarantor, and of the rights attached to the securities to which the prospectus relates; or
  - c. such information is of minor importance, is intended only for a specific offer of securities to the public or admission of securities to trading on a regulated market and is not such as will influence the assessment of the financial position and prospects of the issuer, offeror, person asking for the admission of securities to trading on a regulated market, or, where appropriate, the guarantor.
4. Where the information to be included in the prospectus pursuant to Articles 3 to 22 of the Prospectus Regulation

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

is inappropriate to the issuer's sphere of activity or legal form, or to the securities to which the prospectus relates, the prospectus shall contain information equivalent to the required information where such information is available to the issuer, without prejudice to the adequate information of investors.

#### **Section 5:19**

1. A prospectus concerning an offer of securities to the public in the Netherlands or the admission of securities to trading on a regulated market situated or operating in the Netherlands which the Authority for the Financial Markets is authorised to approve, shall be drawn up in Dutch or in a language customary in the sphere of international finance, irrespective of whether those securities are also offered in other Member States.
2. A prospectus concerning an offer of securities to the public in the Netherlands or the admission of securities to trading on a regulated market situated or operating in the Netherlands which a supervisory authority of another Member State is authorised to approve, shall be drawn up in Dutch or in a language customary in the sphere of international finance. If the prospectus has been drawn up in a language other than Dutch, the Authority for the Financial Markets may require that the summary note be translated into Dutch.
3. A prospectus concerning an offer of securities to the public in another Member State or the admission of securities to trading on a regulated market situated or operating in another Member State which the Authority for the Financial Markets is authorised to approve, shall be drawn up in Dutch or in a language customary in the sphere of international finance.
4. A prospectus concerning the admission of non-equity securities whose denomination per unit amounts to at least € 50,000 to trading on a regulated market situated or operating in another Member State which the Authority for the Financial Markets is authorised to approve, or concerning the admission of non-equity securities whose denomination per unit amounts to at least € 50,000 to trading on a regulated market situated or operating in the Netherlands which the supervisory authority of another Member State is authorised to approve, shall be drawn up in a language accepted by the Authority for the Financial Markets and the supervisory authority of the other Member State or in a language customary in the sphere of international finance.

#### **5.1.3.5. Advertisements, general availability of the prospectus and validity of the prospectus**

#### **Section 5:20**

1. An issuer, offeror or person asking for the admission of securities to trading on a regulated market shall ensure that an advertisement relating to the offer of securities to the public or to the admission of securities to trading on a regulated market:
  - a. states that a prospectus has been or will be made generally available and where the prospectus can be obtained; and
  - b. is recognisable as an advertisement and contains information that is not inaccurate or misleading and is consistent with the information contained or to be included in the prospectus.
2. An issuer, offeror or person asking for the admission of securities to trading on a regulated market shall make no disclosures in oral or written form concerning the offer of securities to the public or the admission of securities to trading on the regulated market that are inconsistent with the information contained in the prospectus.
3. An issuer, offeror or person asking for the admission of securities to trading on a regulated market shall incorporate the essential information addressed to qualified investors and other persons, including information disclosed in the context of meetings relating to offers of securities to the public or admissions of securities to trading on a regulated market that is relevant to the assessment of the assets and liabilities, financial position, profits and losses and prospects of the issuer and of the rights and obligations attached to the securities, in the prospectus or in a supplement to the prospectus in accordance with Section 5:23.
4. If, pursuant to Sections 5:3, 5:4 or 5:5 or, where applicable, pursuant to the law of another Member State, no prospectus needs to be made generally available in respect of an offer of securities to the public or an

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

admission of securities to trading on a regulated market, the provisions of Subsections (1) to (3) shall not apply and the information referred to in Subsection (3) shall be supplied to the parties to which the offer of securities to the public is addressed.

### **Section 5:21**

1. Following the approval by the Authority for the Financial Markets, the prospectus may be made generally available by the issuer, offeror or person asking for the admission of securities to trading on a regulated market. The prospectus shall be made generally available within a reasonable term prior to and no later than at the start of the offer of securities to the public or the admission of the securities concerned to trading on the regulated market.
2. In the event of an initial public offer or admission to trading on a regulated market of securities as referred to in Section 5:1(d)(1<sup>o</sup>) not yet admitted to trading on a regulated market that are to be admitted to trading on a regulated market for the first time, the offeror or person asking for the admission of securities to trading on a regulated market shall make the prospectus generally available at least six working days before the end of the offer or the admission.
3. The issuer, offeror or person asking for the admission of securities to trading on a regulated market shall make the prospectus generally available:
  - a. by publication in a national daily newspaper in the Member State in which the offer of securities to the public is made or the admission to trading on the regulated market is sought;
  - b. in a printed form, to be obtained free of charge at the offices of the operator of the market where the securities are admitted to trading, or at the offices of the issuer and at the offices of the investment firm that places the securities or is otherwise involved in establishing transactions in the securities concerned;
  - c. in an electronic form on the issuer's website and, where applicable, on the website of the investment firm that places the securities or is otherwise involved in establishing transactions in the securities concerned;
  - d. in an electronic form on the website of the operator of the market where the admission of the securities to trading is sought; or
  - e. in an electronic form on the website of the Authority for the Financial Markets, if the latter offers this service.
4. If the prospectus has been drawn up in the manner referred to in Section 5:15(1)(b), the various constituent documents of the prospectus may be made available separately in the manner stipulated in Subsection (3). Each document made available separately shall indicate where the other constituent documents of the prospectus may be obtained.
5. The text and format of the prospectus made generally available or the supplements to the prospectus shall at all times be identical to the text and format of the prospectus approved by the Authority for the Financial Markets.
6. Where the prospectus has been made generally available in electronic form only, the issuer, offeror or person asking for the admission of securities to trading on a regulated market or the securities institution shall provide a paper copy of the prospectus free of charge to anyone who so requests.
7. Where the prospectus incorporates information by reference within the meaning of Section 5:17, the documents to which reference is made may be made available separately, without prejudice to the provisions of Subsections (1) to (5). Each document made available separately shall indicate where the other constituent documents of the prospectus may be obtained.

### **Section 5:22**

1. A prospectus shall be valid for a period of 12 months after it was made generally available for offers of securities to the public or for admissions of securities to trading on a regulated market, provided that, where applicable, the prospectus is supplemented by the documents required pursuant to Section 5:23.
2. In the case of an offering programme, the base prospectus previously filed shall be valid for a period of up to 12 months after it was made generally available.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

3. In the case of the non-equity securities referred to in Section 5:16(1)(b), the base prospectus shall be valid from the date it was made generally available until no more of the securities concerned are issued in a continuous or repeated manner.
4. A previously filed registration document as referred to in Section 5:15(1)(b)(1°) shall be valid for a period of up to 12 months after it was made generally available, provided that it has been updated in accordance with Section 5:23. The registration document accompanied by the securities note, updated where applicable in accordance with Section 5:15(3), and the summary note shall be considered to constitute a valid prospectus.

#### **5.1.3.6. Information requirements after the approval of the prospectus**

##### **Section 5:23**

1. If a significant new development occurs in relation to the information contained in the approved prospectus between the time when the prospectus is approved and the time when trading in the securities concerned on a regulated market situated or operating in the Netherlands begins or the offer of the securities concerned to the public in the Netherlands is closed, or a material mistake or inaccuracy is found in the prospectus that may affect the assessment of the securities, the issuer, offeror or person asking for the admission of the securities to trading on a regulated market shall draw up a supplement to the prospectus.
2. The supplement referred to in Subsection (1) shall require the approval of the Authority for the Financial Markets or of a supervisory authority of another Member State.
3. If the Authority for the Financial Markets has approved a prospectus pursuant to Sections 5:6 or 5:7, it shall be competent to approve a supplement to the prospectus. The Authority for the Financial Markets shall take its decision regarding the approval of the supplement within seven working days of having received the supplement and shall, without delay, inform the applicant of its decision. Following its approval by the Authority for the Financial Markets, the supplement shall constitute part of the prospectus.
4. Where necessary, the issuer, offeror or person asking for the admission of the securities to trading on the regulated market shall supplement the summary note referred to in Section 5:14, and any translation thereof, by the new information included in the supplement to the prospectus.
5. The supplement to the prospectus referred to in Subsection (1) shall be made generally available in accordance with Section 5:21(3).
6. Where a supplement to the prospectus has been made generally available in respect of an offer of securities to the public in the Netherlands, a party which concluded a contract regarding the purchase or acquisition of those securities or made an offer to conclude a contract regarding the purchase or acquisition of those securities shall have the right to cancel the contract or withdraw the offer within two working days after the publication of that supplement.
7. Where a supplement to the prospectus has been made generally available in respect of an admission of securities to trading on a regulated market situated or operating in the Netherlands, the right referred to in Subsection (6) may also be exercised by a party which concluded a contract regarding the purchase or acquisition of those securities.
8. Where a prospectus has been approved by the Authority for the Financial Markets and the securities regarding which the prospectus has been approved are offered to the public or admitted to trading on a regulated market in another Member State, the Authority for the Financial Markets shall comply with a request from the supervisory authority of that other Member State to have a supplement to the prospectus drawn up.

#### **5.1.3.7. Ongoing information requirement**

##### **Section 5:24**

1. An issuer whose securities have been admitted to trading on a regulated market situated or operating in the Netherlands shall make a document generally available at least once a year.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

2. The document referred to in Subsection (1) shall contain or refer to:
  - a. the information drawn up and made generally available by the issuer during the 12 months preceding the publication of the annual accounts with due observance of the Fourth Directive 78/660/EEC of the European Parliament and of the Council of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies (OJEC L 222), the Consolidated Accounts Directive, Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities (OJEC L 184) and Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJEC L 243); and
  - b. the other information which the issuer made generally available during the 12 months preceding the publication of the annual accounts pursuant to statutory regulations of any State on the supervision of the securities trade.
3. Where the issuer incorporates information by reference in the document referred to in Subsection (1), it shall indicate where and in what manner that information may be obtained.
4. Each year, an issuer whose securities are admitted to trading on a regulated market and whose prospectus concerning the admission of those securities has been approved by the Authority for the Financial Markets shall file a document to be made generally available with the Authority for the Financial Markets after the publication of its annual accounts.
5. Subsections (1) to (4) shall not apply to issuers of which only non-equity securities have been offered whose denomination per unit amounts to at least € 50,000.
6. Subsection (4) shall apply mutatis mutandis to issuers whose securities were admitted to trading on a regulated market before the entry into force of the Act of 23 June 2005 amending the Act on the Supervision of the Securities Trade 1995 (*Wet toezicht effectenverkeer 1995*) implementing Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJEU L 345), and implementing Commission Regulation (EC) No. 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements (OJEU L 149), and whose prospectus the Netherlands Authorities for the Financial Markets would have been competent to approve pursuant to Section 5:6, if the admission had occurred after that entry into force.

#### **5.1.3.8. Supplementary powers of the Authority for the Financial Markets in connection with offers of securities**

##### **Section 5:25**

1. The Authority for the Financial Markets may apply Section 1:75(1) mutatis mutandis in respect of an issuer, offeror or person asking for the admission of securities to trading on a regulated market, if that issuer, offeror or person does not comply with the provisions arising from this chapter or the Prospectus Regulation.
2. An instruction issued pursuant to Subsection (1) shall not affect contracts between the issuer, offeror or person asking for the admission of securities to trading on a regulated market receiving the instruction and third parties.

#### **Chapter 5.2. Rules on access to the Dutch financial markets for market operators and on operating or managing a regulated market**

##### **Section 5.2.1. Access to the Dutch financial markets for market operators**

##### **Section 5:26**

1. No party may operate or manage a regulated market in the Netherlands without a licence granted for that purpose by Our Minister.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

2. Subsection (1) shall not apply to operating or managing a regulated market having its registered office in another Member State that has been licensed by the supervisory authority of that other Member State, insofar as the market operator has taken appropriate measures in the Netherlands in order to better enable the long-distance members or participants based in the Netherlands to gain access to and trade on this market.
3. On application, Our Minister may grant a full or partial dispensation from Subsection (1) if the applicant demonstrates that the objectives which this chapter seeks to achieve are achieved in other ways.

#### **Section 5:27**

1. On application, Our Minister shall grant a licence as referred to in Section 5:26(1) if the applicant demonstrates that the market operator has its registered office in the Netherlands and that it will comply with the provisions arising from:
  - a. Section 5:29 with regard to the properness of the persons referred to in that section;
  - b. Sections 5:30 and 5:32(1) with regard to the rules of the regulated market;
  - c. Section 5:30, opening words and under (f) with regard to the financial resources to promote the orderly operation of the regulated market;
  - d. Section 5:32a(1)(a) with regard to the rules on the admission of financial instruments to trading on the regulated market; and
  - e. Section 5:32b with regard to the rules on access to the regulated market.
2. The licence application shall contain the data to be specified by or pursuant to a Decree.
3. The market operator shall ensure that the rules referred to in Subsection (1), their application and the monitoring of compliance with those rules will meet the standards necessary with a view to the interests which this Act seeks to protect.
4. The market operator shall notify the Authority for the Financial Markets of every intended change to the rules referred to in Subsection (1) or to the monitoring of compliance with those rules, and of every intended change with regard to subjects on which data must be provided pursuant to the sections referred to in Subsection (1).
5. Provisions may be laid down by or pursuant to a Decree as regards the data to be provided on the occasion of the changes referred to in Subsection (4), the manner in which the notification is made and, where applicable, the conditions on which the changes may be implemented.
6. Our Minister shall publish a notification of an order to grant a licence as referred to in Subsection (1) and the revocation of such an order in the Government Gazette.

#### **Part 5.2.2. Operating or managing a regulated market**

##### **Section 5:28**

For the purposes of the provisions arising from this section, the term «market operator» shall be understood to mean: a market operator licensed in accordance with Section 5:26(1).

##### **Section 5:29**

1. The day-to-day policy of a market operator shall be determined by persons expert in conducting the business of the regulated market.
2. The policy of the market operator shall be determined or co-determined by persons whose properness is beyond doubt. If a body within the market operator is responsible for supervising the policy and the general affairs of the regulated market, the properness of the persons exercising this supervision shall be beyond doubt.
3. The expertise or properness of a person as referred to in Subsections (1) and (2) respectively shall be beyond doubt once this has been established for the purposes of this Act by a supervisor, as long as a change in the



Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

relevant facts or circumstances has not given reasonable cause for a reassessment.

4. The market operator shall inform the Authority for the Financial Markets of the names and addresses of the persons referred to in Subsections (1) or (2), and of any changes with regard to these details insofar as they relate to the persons referred to in Subsections (1) or (2).
5. The market operator shall submit an intended change in the persons referred to in Subsection (2) to the Authority for the Financial Markets for approval.
6. The Authority for the Financial Markets shall consent to an intended change with regard to the persons referred to in Subsection (2), unless this change could be a specific threat to the healthy and prudent management or operation of the regulated market.

### **Section 5:30**

A market operator shall ensure that the regulated market:

- a. has rules and procedures for identifying and controlling potential negative consequences for the operation or proper functioning of the regulated market or for its participants of conflicts between the interests of the regulated market, the owners or the market operator;
- b. is adequately equipped to control the risks to which it is exposed, in any case by having rules and regulations for identifying all significant risks to the operation and for taking effective measures to limit those risks;
- c. has rules and procedures for a healthy management of the technical operation of the system and effective precautionary measures to eliminate risks relating to system breakdowns;
- d. has transparent, non-discretionary rules and procedures that guarantee fair and orderly trading, as well as objective criteria for the efficient execution of orders;
- e. has effective rules and procedures for settling transactions carried out through its system efficiently and in time; and
- f. has sufficient financial resources to promote the orderly operation of the market, in view of the nature and size of the transactions carried out on the market and the scope and level of the risks to which it is exposed.

### **Section 5:31**

1. If a market operator licensed in accordance with Section 5:26(1) delegates activities to a third party, the market operator shall ensure that such third party complies with the rules applicable under this part with regard to those activities.
2. By or pursuant to a Decree:
  - a. rules may be laid down, for the purpose of supervision of compliance with the provisions arising from this part, with regard to the delegation of activities by market operators;
  - b. rules may be laid down with regard to the control of risks entailed by the delegation of activities by market operators; and
  - c. rules shall be laid down with regard to the contracts to be concluded between market operators and third parties relating to the delegation of activities.
3. A market operator shall not be affiliated to persons in a formal or actual control structure which is so lacking in transparency that it constitutes or may constitute an impediment to the adequate exercise of supervision of compliance with this Act by the market operator.
4. A market operator shall not be affiliated to persons in a formal or actual control structure if the law of a non-Member State, applicable to those persons, constitutes or may constitute an impediment to the adequate exercise of supervision of compliance with this Act by the market operator.

### **Section 5:32**

1. A market operator shall adopt effective rules and procedures in order to regularly check ongoing compliance

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

with these rules by the members of or participants in the regulated market, and shall apply these rules.

2. The market operator shall monitor the transactions conducted by its members or participants via the regulated market, so as to be able to identify violations of the rules and procedures referred to in the preceding subsection, as well as trading conditions disrupting the orderly operation of the market or actions indicative of market abuse.
3. The market operator shall report serious violations as referred to in Subsection (2) to the Authority for the Financial Markets.
4. The market operator shall, without delay, supply the applicable information to the Authority for the Financial Markets, the Public Prosecution Service or investigating officers competent under the Economic Offences Act, and shall fully cooperate with the Authority for the Financial Markets, the Public Prosecution Service or these investigating officers in their investigation or prosecution of actions indicative of market abuse that have occurred in or via its systems.

#### **Section 5:32a**

1. A market operator shall adopt clear and transparent rules:
  - a. on the admission of financial instruments to trading on the regulated market;
  - b. in order to verify that issuers which issued financial instruments admitted to trading on the regulated market fulfil their obligations regarding the initial, ongoing or incidental provision of information;
  - c. which make it easier for the members of or participants in the regulated market to access information in the public domain; and
  - d. in order to regularly check whether the financial instruments admitted to trading on the regulated market satisfy the conditions of admission.
2. The market operator shall ensure the effective enforcement of the rules referred to in Subsection (1).
3. The market operator may admit to trading on the regulated market securities that have already been admitted to trading on another regulated market without the issuer's consent, if the provisions of Chapter 5.1 are complied with in respect of those securities. The market operator shall notify the issuer of the admission.
4. An issuer shall not be obliged to supply the information referred to in Subsection (1)(b) to a market operator that admitted its securities to trading without its consent.

#### **Section 5:32b**

1. A market operator shall adopt transparent and non-discriminatory rules, based on objective criteria, with regard to access to trading on or membership of the regulated market, and shall ensure the effective enforcement of those rules.
2. The rules referred to in Subsection (1) shall contain obligations for the members of or participants in the regulated market ensuing from:
  - a. the establishment and management of the regulated market;
  - b. the rules regarding transactions on the regulated market;
  - c. the professional standards applicable to the staff members of the investment firms operating on the regulated market;
  - d. the conditions laid down by the regulated market for members or participants other than investment firms;
  - e. the rules and procedures for the clearing and settlement of transactions conducted on the regulated market.
3. The rules referred to in Subsection (1) shall provide for the possibility of direct participation or long-distance participation by investment firms.
4. Rules may be laid down by or pursuant to a Decree as regards the rules referred to in Subsection (1).

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

5. The market operator shall not include any obligations in the rules referred to in Subsection (1) that are contrary to the interests which this Act seeks to protect.

#### **Section 5:32c**

Only the following parties may be admitted as members of or participants in a regulated market that has been licensed in accordance with Section 5:26(1):

- a. investment firms;
- b. credit institutions;
- c. persons who:
  - 1°. are expert and proper;
  - 2°. possess adequate competences and powers in respect of trading;
  - 3°. where applicable, have taken adequate organisational measures;
  - 4°. have sufficient resources for the activities which they perform as a member or participant, taking account of the various financial regulations which the market operator may have adopted to guarantee the adequate settlement of transactions.

#### **Section 5:32d**

1. No party may, except after obtaining a declaration of no objection, own, acquire or increase a qualifying holding or exercise any control relating to a qualifying holding in a market operator licensed in accordance with Section 5:26(1).
2. On application, Our Minister shall issue a declaration of no objection in respect of an act as referred to in Subsection (1), unless:
  - a. the act might or would have the effect that the market operator concerned becomes affiliated to persons in a formal or actual control structure that is so lacking in transparency that it would constitute an impediment to the adequate exercise of supervision of compliance with the rules applicable to the regulated market;
  - b. the act might or would lead to an influence on the market operator concerned that is contrary to the interests which this Act seeks to protect; and
  - c. the act might jeopardise the healthy and prudent management of the regulated market.
3. A notification of the issuance of a declaration of no objection as referred to in Subsection (2) shall be published in the Government Gazette, unless the publication would or might lead to a disproportionate advantage or disadvantage for interested parties.
4. Our Minister may attach limitations and conditions to the declaration of no objection, based on the considerations referred to in Subsection (2).
5. If any party owns, acquires or increases a qualifying holding as referred to in Subsection (1) without having obtained a declaration of no objection in respect of that act, or without observing the limitations attached to the declaration of no objection, that party shall reverse that act within a period to be specified by Our Minister, or shall still observe the limitations within a period to be specified by Our Minister. This obligation shall lapse at the moment when and insofar as a declaration of no objection is subsequently issued in respect of the act concerned, or the non-observed limitations are revoked.
6. If any party exercises control relating to a qualifying holding in a market operator without having obtained a declaration of no objection in respect of owning the qualifying holding or exercising that control, or without observing the limitations attached to the declaration of no objection, a decision adopted owing in part to the control exercised shall be capable of annulment. The decision may be declared null and void on the demand of Our Minister or of the market operator over which the control was exercised. In that event, the decision shall be declared null and void by the court within whose jurisdiction the market operator is based if, but for the exercise of the control concerned, the decision would have been different or would not have been adopted, unless a declaration of no objection is issued or the non-observed limitations are revoked before the date of the judgment. Where necessary, the court shall provide for the consequences of the annulment.
7. Where conditions or limitations have been attached to a declaration of no objection as referred to in Subsection

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

(1), the holder of the declaration of no objection shall observe those conditions or limitations.

#### **Section 5:32e**

A market operator shall provide investment firms having their registered office in another Member State that have been licensed by the supervisory authority of that Member State to provide investment services as referred to under (b) of the definition of providing an investment service in Section 1:1 or to perform investment activities as referred to under (a) of the definition of performing an investment activity in Section 1:1, and that satisfy the other conditions for membership or participation, with the opportunity to take part in trading on a regulated market that has been licensed in accordance with Section 5:26(1):

- a. from a branch office in the Netherlands; or
- b. otherwise than from a branch office in the Netherlands, if the trading procedures and systems of the regulated market do not require a physical presence to conduct transactions on that market.

#### **Section 5:32f**

1. A market operator that intends to take appropriate measures in another Member State that will better enable its members or participants based in that Member State to access and trade on that market, shall inform the Authority for the Financial Markets of such intention.
2. Within one month of receiving the notification referred to in Subsection (1), the Authority for the Financial Markets shall inform the Member State concerned of the intention.

#### **Section 5:32g**

1. A market operator may not suspend trading in a financial instrument on the regulated market or exclude a financial instrument from trading where that instrument no longer complies with the rules of the regulated market, if such a measure might seriously harm the interests of investors or the orderly operation of the regulated market.
2. A market operator that suspends trading in a financial instrument or excludes a financial instrument from trading shall disclose this decision and notify the Authority for the Financial Markets. The Authority for the Financial Markets shall notify the supervisory authorities of the other Member States.

#### **Section 5:32h**

1. The Authority for the Financial Markets may oblige a market operator, by issuing an instruction, to suspend, interrupt or cancel trading in a particular financial instrument within a reasonable term to be specified by the Authority for the Financial Markets, if this is required with a view to protecting the interests of the investors in the financial instrument or the orderly trade in the financial instrument.
2. Having issued an instruction as referred to in Subsection (1), the Authority for the Financial Markets may request the Court of Rotterdam to exclude the financial instrument concerned from trading on the regulated market, if this is required with a view to protecting the interests of the investors in the financial instrument or the orderly trade in the financial instrument.

#### **Section 5:32i**

1. The Authority for the Financial Markets shall disclose its decision to suspend, interrupt or cancel trading in the financial instrument, or the judgment of the Court of Rotterdam to exclude the financial instrument from trading, immediately after its announcement and shall notify the supervisory authorities of the other Member States.
2. Where the Authority for the Financial Markets is notified by the supervisory authorities of another Member State of a decision to suspend, interrupt or cancel trading in a financial instrument or of the exclusion of a financial instrument from trading on a regulated market in that Member State, and the financial instrument is admitted to trading on a regulated market that has been licensed in accordance with Section 5:26(1), the Authority for the Financial Markets shall issue an instruction to the market operator concerned to suspend, interrupt or cancel

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

trading in the financial instrument concerned, or shall request the Court of Rotterdam to exclude the financial instrument concerned from trading on the regulated market, unless this might seriously harm the interests of the investors in the financial instrument or the orderly operation of the trade in the financial instrument. Where the financial instrument is traded by an investment firm that conducts the business of an investment firm operating as a systematic internaliser or that operates a multilateral trading facility, the preceding sentence shall apply mutatis mutandis with regard to that investment firm.

#### **Section 5:32j**

1. A market operator shall disclose the bid and offer prices issued via the regulated market and the size of the market at these prices in respect of shares admitted to trading.
2. The market operator shall ensure that the information referred to in Subsection (1) is continuously available to the public on reasonable commercial terms and conditions and during the normal trading hours of that regulated market.
3. A market operator which provides investment firms that have to disclose their share prices pursuant to Section 4:91g with access to the facilities which it uses to disclose the information referred to in Subsection (1), shall do so on reasonable commercial terms and conditions and on a non-discriminatory basis.
4. On application, the Authority for the Financial Markets may grant a dispensation from Subsection (1) if the market operator complies with Articles 18 to 20 of the Regulation implementing the Markets in Financial Instruments Directive.
5. Provisions may be laid down by Decree to the effect that Subsections (1) to (4) will apply mutatis mutandis with regard to financial instruments other than shares.
6. Subsection (1) shall not apply to units in a collective investment scheme that are repurchased or repaid either directly or indirectly out of the assets at the unit holder's request.

#### **Section 5:32k**

1. A market operator shall disclose the price, scope and time of the transactions conducted via the regulated market in shares admitted to trading.
2. The market operator shall disclose the information referred to in Subsection (1) on reasonable commercial terms and conditions and within a timeframe as close as possible to real time.
3. On application, the Authority for the Financial Markets may permit the market operator to delay the disclosure referred to in Subsection (1) on the basis of the type or scope of the transaction, if:
  - a. it has agreed to the proposed provisions for the delayed disclosure; and
  - b. the market operator supplies clear information on those provisions to the market participants and the investor public.
4. A market operator which provides investment firms that have to disclose the price, scope and time of the transactions conducted pursuant to Section 4:91n with access to the facilities which it uses to disclose the information referred to in Subsection (1), shall do so on reasonable commercial terms and conditions and on a non-discriminatory basis.
5. Provisions may be laid down by Decree to the effect that Subsections (1) to (4) will apply mutatis mutandis with regard to financial instruments other than shares.
6. Subsection (1) shall not apply to units in a collective investment scheme that are repurchased or repaid either directly or indirectly out of the assets at the unit holder's request.

#### **Section 5:32l**

1. A market operator:

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

- a. shall supply the Authority for the Financial Markets with information on its ownership structure and that of the regulated market it operates or manages, in particular on the identity of and size of the interests held by parties that are in a position to exert a significant influence on the management of the regulated market;
  - b. shall report to the Authority for the Financial Markets each transfer of ownership that causes a change in the circle of persons exerting a significant influence on the operation of the regulated market; and
  - c. shall disclose the information referred to under (b).
2. The market operator shall periodically provide the Authority for the Financial Markets with a list of the members of and participants in the regulated market.
  3. The market operator shall submit an intended change as referred to in Subsection (1)(b) to the Authority for the Financial Markets for approval.
  4. The Authority for the Financial Markets shall consent to an intended change as referred to in Subsection (1)(b), unless this change could be an objective and demonstrable threat to the healthy and prudent management of the regulated market.

### **Section 5:32m**

A market operator shall not prohibit the use of systems for settling transactions in financial instruments conducted on the regulated markets concerned, unless:

- a. the links and interfaces between the system chosen by the members or participants concerned and other systems or facilities, and the efficient and economic settlement of the transactions concerned, cannot be guaranteed; or
- b. the Authority for the Financial Markets is of the opinion that the technical conditions for settling the transactions conducted on that market via the designated system preclude a proper and orderly operation of the financial markets.

## **Chapter 5.3. Rules on disclosure of voting rights, capital, major holdings and capital interest in issuers**

### **Part 5.3.1. Introductory provision**

#### **Section 5:33**

1. For the purposes of this chapter and the provisions based upon it, and where applicable in derogation from Section 1:1, the following terms shall have the following meaning:
  - a. issuer: a public limited company under Dutch law whose shares as referred to under (b)(1°) or (2°) are admitted to trading on a regulated market, or a legal person, incorporated under the law of a non-Member State, whose shares as referred to under (b)(1°) or (2°) are admitted to trading on a regulated market that has been licensed in accordance with Section 5:26(1);
  - b. share:
    - 1°. a negotiable share as referred to in Section 79(1) of Book 2 of the Dutch Civil Code;
    - 2°. a depositary receipt for a share or another negotiable instrument equivalent to a depositary receipt for a share;
    - 3°. any other negotiable instrument, other than an option as referred to under (4°), to acquire a share as referred to under (1°) or an instrument as referred to under (2°);
    - 4°. an option to acquire a share as referred to under (1°) or an instrument as referred to under (2°).  
Provisions may be laid down by Decree as regards the meaning of option as referred to in the first sentence;
  - c. subsidiary: a subsidiary as referred to in Section 24a of Book 2 of the Dutch Civil Code, or a legal person or company in which the rights and powers as referred to in Section 24a of Book 2 of the Dutch Civil Code can be exercised by a natural person;
  - d. party obliged to notify: a person that is obliged to make a notification pursuant to this chapter;
  - e. voting rights: voting rights that may be exercised in respect of shares, including rights under a contract to acquire voting rights;
  - f. capital: the issued capital of an issuer;
  - g. substantial holding: at least five percent of the capital or the right to exercise at least five percent of the

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

voting rights;

- h. threshold value: a percentage of the capital or the voting rights which leads to an obligation to make a notification under this chapter where a person that owns or acquires shares, or that may exercise or acquires voting rights, attains, exceeds or falls below this value.

2. For the purposes of this chapter and the provisions based upon it, an issuer shall not be understood to mean an investment company whose units are repurchased or repaid, either directly or indirectly, out of the assets of this investment company at the unit holders' request.

### **Part 5.3.2. Notifications by issuers regarding capital and voting rights**

#### **Section 5:34**

1. An issuer shall, without delay, notify the Authority for the Financial Markets of the total of the changes in its capital as a result of which that capital has changed by one percent or more since the previous notification pursuant to this section. The issuer may also notify the Authority for the Financial Markets of the other changes in its capital at a time preceding the time of the periodic notification referred to in Subsection (2).
2. The issuer shall periodically notify the Authority for the Financial Markets of the total of the changes in its capital for which there is no notification requirement pursuant to Subsection (1), first sentence, insofar as it has not yet reported those changes in accordance with Subsection (1), second sentence. The period to which the notification relates and the term within which the notification must be made shall be specified by Decree.

#### **Section 5:35**

1. An issuer shall, without delay, notify the Authority for the Financial Markets of any change in its voting rights not ensuing from a change as referred to in Section 5:34(2). Where a change in the voting rights ensues from a change as referred to in Section 5:34(1), second sentence, the issuer may report this change to the Authority for the Financial Markets simultaneously with the other change.
2. The issuer shall periodically notify the Authority for the Financial Markets of the total of the changes in voting rights for which there is no immediate notification requirement pursuant to Subsection (1), first sentence, insofar as it has not yet reported those changes in accordance with Subsection (1), second sentence. The period to which the notification relates and the term within which the notification must be made shall be specified by Decree.
3. The issuer shall, without delay, inform the Authority for the Financial Markets of any issuance or withdrawal made with its concurrence of shares as referred to in Section 5:33(1)(b)( 2°), where the issuance or withdrawal involves one percent or more of its capital. The issuer may also periodically notify the Authority for the Financial Markets, at any time preceding the time of the periodic notification referred to in Subsection (4), of any other issuance or withdrawal of shares as referred to in Section 5:33(1)(b)( 2°).
4. An issuer shall periodically notify the Authority for the Financial Markets of the total number of shares as referred to in Section 5:33(1)(b)( 2°) issued or withdrawn with its concurrence for which there is no immediate notification requirement pursuant to Subsection (3), first sentence, insofar as it has not yet reported those shares in accordance with Subsection (3), second sentence. The period to which the notification relates and the term within which the notification must be made shall be specified by Decree.

#### **Section 5:36**

A public limited company under Dutch law or a legal person incorporated under the law of a non-Member State which becomes an issuer shall, without delay, notify the Authority for the Financial Markets of its capital and its voting rights, and of the shares as referred to in Section 5:33(1)(b)( 2°) that were issued with its concurrence.

#### **Section 5:37**

Rules shall be laid down by Decree as regards the data that must be supplied in a notification as referred to in this

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*  
part and the manner of notification.

### **Part 5.3.3. Notifications by shareholders and other parties with voting rights regarding changes in major holdings and capital interest**

#### **Section 5:38**

1. Any party that obtains or loses the disposal of shares, which it knows or should know will make the percentage of the capital at its disposal attain, exceed or fall below a threshold value, shall, without delay, notify the Authority for the Financial Markets.
2. Any party that obtains or loses the disposal of voting rights, which it knows or should know will make the percentage of the voting rights at its disposal attain, exceed or fall below a threshold value, shall, without delay, notify the Authority for the Financial Markets.
3. The threshold values referred to in Subsections (1) and (2) shall be: five percent, ten percent, 15 percent, 20 percent, 25 percent, 30 percent, 40 percent, 50 percent, 60 percent, 75 percent and 95 percent.
4. Rules may be laid down by Decree as regards the cases in which a party obliged to notify should know that it attains, exceeds or falls below a threshold value.

#### **Section 5:39**

1. Any party that knows or should know that the percentage of the capital or of the voting rights at its disposal will attain, exceed or fall below a threshold value as a result of a change which the Authority for the Financial Markets has entered in the register referred to in Section 1:107 pursuant to a notification as referred to in Sections 5:34 or 5:35, shall notify the Authority for the Financial Markets. The notification shall be made no later than on the fourth trading day following the entry in the register referred to in the preceding sentence. Provisions may be laid down by Decree as regards the meaning of trading day.
2. The threshold values referred to in Subsection (1), first sentence shall be: five percent, ten percent, 15 percent, 20 percent, 25 percent, 30 percent, 40 percent, 50 percent, 60 percent, 75 percent and 95 percent.
3. Rules may be laid down by Decree as regards the cases in which a party obliged to notify should know that it attains, exceeds or falls below a threshold value.

#### **Section 5:40**

Any party that obtains or loses the disposal of one or more shares with a special controlling right in the issuer under the articles of association shall, without delay, notify the Authority for the Financial Markets. This obligation shall have been fulfilled if a notification has been made pursuant to Section 5:38(1) in respect of the same event.

#### **Section 5:41**

1. Any party whose substantial holding on 31 December at 24.00 hours differs from a previous notification as a result of an exchange of shares as referred to in Section 5:33(1)(b)(3°) or (4°) for shares as referred to in Section 5:33(1)(b)(1°) or (2°), or vice versa, or as a result of an exchange of shares as referred to in Section 5:33(1)(b)(1°) for shares as referred to in Section 5:33(1)(b)(2°), or vice versa, shall notify the Authority for the Financial Markets within four weeks. A director or supervisory board member shall have fulfilled this obligation if a notification has been made pursuant to Section 5:48(6) or (7) in respect of the same event.
2. Any party whose substantial holding on 31 December at 24.00 hours differs from the previous notification as a result of the exercise of rights under a contract to acquire voting rights or vice versa, shall notify the Authority for the Financial Markets within four weeks. This obligation shall have been fulfilled by a director or supervisory board member if a notification has been made pursuant to Section 5:48(7) in respect of the same event.

#### **Section 5:42**



Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

Any party that ceases to be a subsidiary and has the disposal of a substantial holding or one or more shares with a controlling right in an issuer under the articles of association, shall, without delay, notify the Authority for the Financial Markets.

#### **Section 5:43**

1. Any party that knows or should know at the time when a public limited company under Dutch law becomes an issuer that it has the disposal of a substantial holding or one or more shares with a special controlling right in an issuer under the articles of association, shall, without delay, notify the Authority for the Financial Markets.
2. Any party that knows or should know at the time when a legal entity incorporated under the law of a non-Member State becomes an issuer that it has the disposal of a substantial holding in this issuer, shall, without delay, notify the Authority for the Financial Markets.
3. Provisions may be laid down by Decree as regards the cases in which a party obliged to notify should know that it has the disposal of a substantial holding in an issuer.

#### **Section 5:44**

Rules shall be laid down by Decree as regards the data that must be supplied in a notification as referred to in this part and the manner of notification.

#### **Part 5.3.4. Special provisions and exceptions to the notification requirement regarding changes in major holdings and capital interest**

#### **Section 5:45**

1. A party shall have the disposal of the shares it holds, as well as of the voting rights it may exercise as a holder of shares.
2. A party shall have the disposal of the voting rights it may exercise as a usufructuary or pledgee, if Section 88(3) or Section 89(3) respectively of Book 2 of the Dutch Civil Code is applied.
3. A party shall be deemed to have the disposal of the shares held by its subsidiary, as well as of the voting rights which its subsidiary may exercise. A subsidiary shall be deemed not to have the disposal of shares or voting rights.
4. A party shall be deemed to have the disposal of the shares held by a third party for its account, as well as of the voting rights which this third party may exercise.
5. A party shall be deemed to have the disposal of the voting rights of which a third party has the disposal, if it has concluded a contract with that third party which provides for a long-term common policy on the exercise of the voting rights.
6. A party shall be deemed to have the disposal of the voting rights of which a third party has the disposal, if it has concluded a contract with that third party that provides for a temporary and paid transfer of those voting rights.
7. The management company of a common fund shall be deemed to have the disposal of the shares held by the depositary and the related voting rights. The depositary of a common fund shall be deemed not to have the disposal of shares or voting rights.
8. Shares and voting rights that form part of a community shall be apportioned to the participants in that community in proportion to their entitlement to it. In derogation from the preceding sentence, voting rights that form part of a statutory community of property as referred to in Section 93 of Book 1 of the Dutch Civil Code shall be apportioned to the spouse who contributed the voting rights to the community as referred to in Section 97 of Book 1 of the Dutch Civil Code.
9. A party shall be deemed to have the disposal of the voting rights which it may exercise at its own discretion in its

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*  
capacity of proxy holder.

10. Subject to rules to be laid down by Decree, Subsection (3) shall not apply to parties whose subsidiary:

- a. is a management company that may exercise, at its own discretion, the voting rights attached to the shares held by the collective investment scheme under its management, or the voting rights of which it is deemed to have the disposal pursuant to Subsection (7), first sentence; or
- b. is a portfolio manager that may exercise, at its own discretion, the voting rights attached to the shares under its management.

#### **Section 5:46**

1. Where the shares and the related voting rights are held in the regular course of a business and for a short period of time, the obligations referred to in Part 5.3.3 shall not apply to:

- a. clearing institutions, insofar as they do not also conduct the business of a bank or an electronic money institution;
- b. settlement agents as referred to in Section 212a(d) of the Bankruptcy Act; and
- c. national central banks that form part of the European System of Central Banks referred to in Article 8 of the Treaty establishing the European Community, insofar as the voting rights are not exercised.

2. Where the shares and the related voting rights are held in the regular course of a business, the obligations referred to in Part 5.3.3 shall not apply to:

- a. depositaries of shares, insofar as they may not exercise the voting rights attached to those shares at their own discretion; and
- b. persons performing operations as referred to under (a) of the definition of performing an investment activity in Section 1:1, that acquire or lose the disposal of shares and the related voting rights, which transaction, as they know or should know, causes the percentage of the capital or the voting rights at their disposal to attain, exceed or fall below the threshold value of five percent, insofar as they exert no influence in the management of the issuer concerned and are licensed to conduct their business in their home Member State.

3. In determining whether the threshold values referred to in Sections 5:38(3) or 5:39(2) are attained or exceeded, shares and the related voting rights belonging to the trading portfolio of one of the financial enterprises specified below shall be disregarded, insofar as these shares or voting rights do not exceed five percent of the capital or the voting rights of an issuer and if the voting rights are not exercised or otherwise used to exert influence in the management of the issuer concerned:

- a. financial enterprises that have been licensed by the Dutch Central Bank under Part 2, Market Access of Financial Enterprises, to conduct the business of a bank;
- b. financial enterprises that hold a supervisory status certificate issued by the Dutch Central Bank under Part 3, Prudential Supervision of Financial Enterprises, to conduct the business of a financial institution;
- c. financial enterprises that have been licensed by the Authority for the Financial Markets under Part 2, Market Access of Financial Enterprises, to provide investment services or perform investment activities;
- d. investment firms having their registered office in another Member State that have been licensed by the supervisory authority of that other Member State in accordance with Article 5(1), first sentence of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJEU L 145);
- e. credit institutions having their registered office in another Member State that have been licensed by the supervisory authority of that other Member State in accordance with in Article 4, section 2 of the Recast Banking Directive; and
- f. financial institutions having their registered office in another Member State that have been issued with a supervisory status certificate to conduct their business by the supervisory authority of that Member State that corresponds to the certificate referred to in Section 3:110.

4. Rules may be laid down by Decree in respect of Subsections (1), (2) or (3).

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

5. Where an enterprise or institution as referred to in Subsections (1), (2) or (3) still holds the shares or may still exercise the voting rights at the time when Subsections (1), (2) or (3) cease to apply, it shall be deemed to have acquired the disposal of those shares and voting rights at that time.

#### **Section 5:47**

With regard to shares or voting rights in a legal person incorporated under the law of a non-Member State whose shares are admitted to trading on a regulated market licensed in accordance with Section 5:26(1) and for which legal person the Netherlands is a host Member State as referred to in Article 2(1)(n) of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJEU L 390):

- a. Sections 5:40, 5:41 and 5:42 shall not apply;
- b. the threshold values of five percent and 10 percent shall, in derogation from Section 5:38(3), apply in respect of the notification requirements referred to in Section 5:38(1) and (2), insofar as the party obliged to notify is an issuer with a duty to notify as a result of obtaining or losing the disposal of its own shares; and
- c. the threshold values of five percent, ten percent, 15 percent, 20 percent, 25 percent, 30 percent, 50 percent and 75 percent shall, in derogation from Sections 5:38(3) and 5:39(2), apply to the notification requirements referred to in Section 5:38(1) and (2) and 5:39(1).

#### **Part 5.3.5. Notifications by directors and supervisory board members regarding majority holdings and capital interest**

#### **Section 5:48**

1. For the purposes of this section and the provisions based upon it, an issuer shall, in derogation from Section 5:33(1)(a), be understood to mean: a public limited company under Dutch law whose shares as referred to in Section 5:33(1)(b)(1°) or (2°) are admitted to trading on a regulated market.
2. For the purposes of this section and the provisions based upon it, an affiliated issuer shall be understood to mean: any other issuer:
  - 1°. to which the issuer is affiliated in a group or in which the issuer owns a holding and whose most recently adopted turnover is at least ten percent of the consolidated turnover of the issuer;
  - 2°. which, directly or indirectly, provides more than 25 percent of the capital of the issuer.
3. A director or supervisory board member of an issuer shall inform the Authority for the Financial Markets of the shares and voting rights in the issuer and the affiliated issuers at his disposal. They shall make these notifications within two weeks of their designation or appointment as director or supervisory board member.
4. A director or supervisory board member of a public limited company that becomes an issuer within the meaning of Subsection (1) shall, without delay, inform the Authority for the Financial Markets of the shares and voting rights in the issuer and the affiliated issuers at his disposal. The obligation under the preceding sentence shall have been fulfilled if a notification has been made pursuant to Section 5:43(1) in respect of the same event.
5. A director or supervisory board member of a public limited company regarding which another public limited company becomes an affiliated issuer within the meaning of Subsection (2) shall, without delay, inform the Authority for the Financial Markets of the shares and voting rights in the affiliated issuer concerned at his disposal. The obligation under the preceding sentence shall have been fulfilled if a notification has been made pursuant to Section 5:43 in respect of the same event.
6. A director or supervisory board member of an issuer shall, without delay, inform the Authority for the Financial Markets of any change in the shares in the issuer and the affiliated issuers at his disposal. The obligation under the preceding sentence shall have been fulfilled if a notification has been made pursuant to Sections 5:38(1) or 5:40(1) in respect of the same event.
7. A director or supervisory board member of an issuer shall, without delay, inform the Authority for the Financial

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

Markets of any change in the voting rights in the issuer and the affiliated issuers at his disposal. The obligation under the preceding sentence shall have been fulfilled if a notification has been made pursuant to Section 5:38(2) in respect of the same event.

8. An issuer shall, without delay, notify the Authority for the Financial Markets of the fact that a director or supervisory board member is no longer in office.
9. Where a director of an issuer is a legal person, Subsections (3) to (8) shall apply mutatis mutandis to the natural persons determining the day-to-day policy of this legal person, and to the natural persons supervising the management's policy and the general affairs of this legal entity.
10. Rules shall be laid down by Decree as regards the data that must be supplied in a notification as referred to in this section and the manner of notification.

### **Section 5.3.6. Registration of notifications**

#### **Section 5:49**

1. Subject to the provisions of Subsection (3), the Authority for the Financial Markets, having received a notification, shall, without delay, communicate this notification to the issuer concerned and to the party obliged to notify. The communication referred to in the first sentence shall serve as proof for the party obliged to notify that it has fulfilled that obligation.
2. Following the entry in the register referred to in Section 1:107(3)(c)(1°), the Authority for the Financial Markets shall, without delay, communicate the substance of the notification to the issuer concerned.
3. Where the Authority for the Financial Markets has suspended the entry of a notification in the register referred to in Section 1:107 pursuant to Section 5:51(2), it shall, in derogation from Section 1:107(3)(c)(1°), enter the data referred to in Subsection (2) in that register in any event within one working day following the working day on which the requested information was obtained, or, if the requested information was not obtained, as soon as it considers entry in that register to be possible. In that case, the Authority for the Financial Markets shall, following the entry referred to in the preceding sentence, communicate the notification to the party obliged to notify and communicate the substance of the notification to the issuer concerned. The communication referred to in the second sentence shall serve as proof for the party obliged to notify that it has fulfilled that obligation.

### **Part 5.3.7. Other rules**

#### **Section 5:50**

Where an issuer, based on a communication as referred to in Section 5:49(2) or (3), second sentence, suspects that an incorrect notification has been made, it shall, without delay, inform the Authority for the Financial Markets.

#### **Section 5:51**

1. The Authority for the Financial Markets may, by issuing an instruction, oblige a party that made an incorrect notification or wrongly failed to make a notification still to make a correct notification within a reasonable term specified by the Authority for the Financial Markets.
2. The Authority for the Financial Markets may suspend the entry of a notification in the register referred to in Section 1:107 until the requested information as referred to in Section 1:74 has been obtained. It shall inform the issuer concerned and the party obliged to notify of the suspension.
3. Where a notification is incorrect and has not been rectified, or where a notification has wrongly been omitted and the correct notification has not been made, the Authority for the Financial Markets may enter the data it considers to be correct in the register referred to in Section 1:107 after informing the issuer concerned and the party obliged to notify.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

#### **Section 5:52**

1. Where a notification obligatory under this chapter has not been made in accordance with this chapter, the court within whose jurisdiction the issuer concerned has its registered office may take the measures listed in Subsection (4) on application of the parties authorised to do so under Subsection (2). Where a notification relates to an issuer having its registered office outside the Netherlands, the Court of The Hague shall be competent.
2. The following parties may file an application:
  - a. holders of shares that alone or jointly have the disposal of a substantial holding;
  - b. holders of one or more shares with a special controlling right in the issuer under the articles of association; and
  - c. the issuer concerned.
3. The authority to file an application shall lapse by the passage of three months from the day on which the party authorised to file the application took note or was able to take note of the violation.
4. The measures referred to in Subsection (1) shall be the following:
  - a. ordering the party obliged to notify to make a notification in accordance with this chapter;
  - b. suspending the right to exercise the voting rights in the issuer concerned at the disposal of the party obliged to notify for a period to be specified by the court of no more than three years;
  - c. suspending a decision of the general meeting of shareholders of the issuer concerned until a decision regarding a measure as referred to under (d) has become final and conclusive;
  - d. annulment of a decision of the general meeting of shareholders of the issuer concerned, where it is likely that this decision would not have been passed if the voting rights at the disposal of the party obliged to notify had not been exercised; or
  - e. ordering the party obliged to notify to refrain from obtaining the disposal of shares or voting rights of the issuer concerned during a period to be specified by the court of no more than five years.
5. A measure as referred to in Subsection (4)(b) or (e) shall not apply to shares entrusted to the management of a party other than the party obliged to notify, unless the party obliged to notify is authorised to acquire those shares or to determine how the voting rights attached to those shares will be exercised.
6. Where necessary, the court shall make arrangements for the consequences of the measures it has taken.
7. The court may, on application of the party that filed the initial application or of the party to which the measure is addressed, reduce the period referred to in Subsection (4)(b) or (e).
8. A measure as referred to in Subsection (4)(d) may not be declared immediately enforceable.
9. Where the application referred to in Subsection (1) relates to shares that are not held by the party obliged to notify or to voting rights which this party cannot exercise in the capacity of shareholder, pledgee or usufructuary, the claimant shall summon the shareholder, pledgee or usufructuary concerned to appear in court, provided such party is known to the claimant.
10. An application for an immediately enforceable order may only be made to the preliminary relief judge of the court that is competent under Subsection (1). The application may only relate to the measures referred to in Subsection (4)(a), (b), (c) and (e). Subsections (5) and (9) shall apply *mutatis mutandis*.

### **Chapter 5.4. Rules on preventing market abuse and on operating in markets in financial instruments**

#### **Part 5.4.1. Introductory provision**

#### **Section 5:53**

1. For the purposes of this chapter and the provisions based upon it, inside information shall be understood to

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

mean: awareness of specific information that relates directly or indirectly to an issuer as referred to in Subsection (4)(a) to which the financial instruments pertain, or to the trade in those financial instruments, which information has not been publicly disclosed and whose disclosure might have a significant influence on the price of the financial instruments or on the price of derivative financial instruments. Where it concerns derivatives on commodities, inside information shall, for the purposes of this chapter and the provisions based upon it, be understood to mean, in derogation from the preceding sentence: awareness of non-disclosed specific information that relates directly or indirectly to one or more derivatives on commodities, which investors in those derivatives on commodities may expect to be publicly disclosed in accordance with market practices that are customary on the regulated market, or replaced by: the multilateral trading facility for which the investment firm holds a licence as referred to in Section 2:96 on which those derivatives on commodities are traded.

2. Market practices as referred to in Subsection (1), second sentence may be designated by or pursuant to a Decree.
3. For the purposes of this chapter and the provisions based upon it, a financial instrument shall, in addition to Section 1:1, also be understood to mean: any other instrument that is admitted to trading on a regulated market or a multilateral trading facility for which the investment firm holds a licence as referred to in Section 2:96 or for which the admission to trading on a regulated market has been requested.
4. For the purposes of this chapter and the provisions based upon it, an issuer shall, in derogation from Section 1:1, be understood to mean:
  - a. a legal person, company or institution that has issued financial instruments as referred to in Section 5:56(1)(a) or (b), or a party at whose proposal a purchase contract in respect of a financial instrument other than a security has been established; or
  - b. a legal person, company or institution that intends to issue financial instruments as referred to in Section 5:56(1)(a) or (b), or a party that proposes a purchase contract in respect of a financial instrument other than a security.
5. For the purposes of this chapter and the provisions based upon it, an investment recommendation shall be understood to mean: information intended for the general public that is drawn up or published by:
  - a. the persons referred to in Section 5:64(2)(a), in which an investment strategy is recommended or proposed, either explicitly or implicitly, with regard to:
    - 1°. financial instruments admitted to trading on a regulated market that has been licensed in accordance with Section 5:26(1) or a multilateral trading facility for which the investment firm holds a licence as referred to in Section 2:96, or for which the admission to trading on a regulated market has been requested;
    - 2°. financial instruments admitted to trading on a regulated market in another Member State; or
    - 3°. an issuer that has issued financial instruments as referred to under (1°) or (2°);
  - b. the persons referred to in Section 5:64(2)(b), in which an investment decision is explicitly recommended with regard to:
    - 1°. financial instruments admitted to trading on a regulated market that has been licensed in accordance with Section 5:26(1) or a multilateral trading facility for which the investment firm holds a licence as referred to in Section 2:96, or for which the admission to trading on a regulated market has been requested; or
    - 2°. financial instruments admitted to trading on a regulated market in another Member State.
6. For the purposes of this chapter and the provisions based upon it, a publisher of an investment recommendation shall be understood to mean: a person making an investment recommendation in the course of a profession or business.

#### **Part 5.4.2. Rules on preventing market abuse**

##### **Section 5:54**

Infringement of Sections 5:56(1), (3) or (7), 5:57(1) or (2), or 5:58(1) shall classify as a crime.

##### **Section 5:55**

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

The Court of Amsterdam shall have exclusive jurisdiction in the first instance with regard to criminal offences as referred to in Sections 5:56(1), (3) and (7), 5:57(1) and (2), 5:58(1), 5:59(1) and (5), and 5:62(1).

#### **5.4.2.1. Prohibitory provisions**

##### **Section 5:56**

1. No party pertaining to a category of persons listed in Subsection (2) is allowed to use inside information by conducting or effecting a transaction:
  - a. in or from the Netherlands or a non-Member State in financial instruments admitted to trading on a regulated market which has been licensed in accordance with Section 5:26(1) or a multilateral trading facility for which the investment firm holds a licence as referred to in Section 2:96, or for which the admission to such trading has been requested;
  - b. in or from the Netherlands in financial instruments admitted to trading on a regulated market in another Member State or admitted to trading on a system comparable with a regulated market or multilateral trading facility in a non-Member State, or in financial instruments for which the admission to such trading has been requested; or
  - c. in or from the Netherlands or a non-Member State in financial instruments other than financial instruments as referred to under (a) or (b), whose value partly depends on the financial instruments referred to under (a) or (b);
  - d. in or from another Member State in financial instruments admitted to trading on a multilateral trading facility for which the investment firm holds a licence as referred to in Section 2:96.
2. The categories referred to in Subsection (1) shall be the following:
  - a. persons that possess inside information because of the fact that they determine or co-determine the day-to-day policy or supervise the policy and the general affairs of the issuer referred to in Section 5:53(4)(a) to which the inside information relates;
  - b. persons that possess inside information because of the fact that they own a qualifying holding in the issuer referred to in Section 5:53(4)(a), or which has issued financial instruments as referred to in Subsection (1)(c) to which the inside information relates;
  - c. persons that have access to information as referred to in Section 5:53(1) by virtue of their duties, profession or position; and
  - d. persons that possess inside information by virtue of their involvement in criminal offences.
3. Any party not pertaining to a category listed in Subsection (2) that knows or should reasonably suspect that it possesses inside information shall be prohibited from using such inside information by:
  - a. conducting or effecting a transaction in financial instruments as referred to in Subsection(1)(a) in or from the Netherlands or a non-Member State;
  - b. conducting or effecting a transaction in financial instruments as referred to in Subsection (1)(b) in or from the Netherlands; or
  - c. conducting or effecting a transaction in financial instruments as referred to in Subsection(1)(c) in or from the Netherlands or a non-Member State;
  - d. conducting or effecting a transaction in financial instruments as referred to in Subsection (1)(d) in or from another Member State.
4. Information which investors may expect to be publicly disclosed as referred to in Section 5:53(1), second sentence, shall be involved if this information is of such a nature that it:
  - a. is routinely made available to the investors in those financial instruments; or
  - b. must be publicly disclosed in accordance with the statutory regulations applicable to the market referred to in that subsection, or in accordance with the market rules, contracts or customary practices applied on that market.
5. Subsections (1) and (3) shall not apply to conducting or effecting transactions in financial instruments:

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

- a. in compliance with an enforceable obligation that already existed at the time when the party conducting or effecting the transaction became aware of information as referred to in Section 5:53(1), first sentence, with regard to the issuer as referred to in Section 5:53(4)(a) to which those financial instruments pertain;
  - b. in the context of monetary policy, foreign exchange policy or public debt management;
  - c. in the context of a buy-back programme as described in Chapter II of Commission Regulation (EC) No. 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments (OJEU L 336); and
  - d. in the context of stabilisation as described in Chapter III of Commission Regulation (EC) No. 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments (OJEU L 336).
6. Categories of transactions to which the prohibitions referred to in Subsections (1) and (3) do not apply may be designated by Decree. On this occasion, a distinction may be made within a category to be designated between the persons by whom and the circumstances in which the transactions are conducted or effected.
7. No party may use inside information by trying to conduct or effect a transaction as referred to in Subsection (1).

#### **Section 5:57**

1. A person that pertains to a category referred to in Section 5:56(2)(a), (b) or (d), as well as a person in possession of inside information that pertains to the category referred to in Section 5:56(2)(c), shall, where it concerns financial instruments as referred to in the relevant subsection, not be allowed, in or from a State as referred to in Section 5:56(1)(a), (b), (c) or (d):
  - a. to communicate the data to which the inside information relates to a third party, other than in the course of his normal duties, profession or position; or
  - b. to recommend or induce a third party to conduct or effect transactions in those financial instruments.
2. Subsection (1) shall apply *mutatis mutandis* to any other person that knows or should reasonably suspect that he possesses inside information.
3. Rules may be laid down by Decree in respect of the cases and circumstances in which communication in the course of the normal duties, profession or position as referred to in Subsection 1(a) is involved.

#### **Section 5:58**

1. No person shall, where it concerns financial instruments as referred to in the relevant subsection, be allowed, in or from a State as referred to in Section 5:56(1)(a) or (b):
  - a. to conduct or effect a transaction or trade order in financial instruments that sends or may send an incorrect or misleading signal with regard to the supply of, demand for or the price of those financial instruments, unless the party that conducted or effected the transaction or trade order demonstrates that it had a justified reason for conducting or effecting the transaction or trade order, and that the transaction or trade order is in agreement with the accepted market practice on the regulated market concerned or the multilateral trading facility concerned for which the investment firm holds a licence as referred to in Section 2:96;
  - b. to conduct or effect a transaction or trade order in financial instruments in order to maintain the price of those financial instruments at an artificial level, unless the party that conducted or effected the transaction or trade order demonstrates that it had a justified reason for conducting or effecting the transaction or trade order, and that the transaction or trade order is in agreement with the accepted market practice on the regulated market concerned or the multilateral trading facility concerned for which the investment firm holds a licence as referred to in Section 2:96;
  - c. to conduct or effect a transaction or trade order in financial instruments involving deception or misrepresentation; or
  - d. to disseminate information that sends or may send an incorrect or misleading signal with regard to the supply of, demand for or the price of financial instruments, while the party disseminating the information knows or should reasonably suspect that that information is incorrect or misleading.



Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

2. Subsection (1) shall not apply to conducting or effecting transactions or trade orders in financial instruments or disseminating information in the context of:
  - a. monetary policy, foreign exchange policy or public debt management;
  - b. a buy-back programme as described in Chapter II of Commission Regulation (EC) No. 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments (OJEU L 336); and
  - c. stabilisation as described in Chapter III of Commission Regulation (EC) No. 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments (OJEU L 336).
3. Categories of transactions or trade orders to which the prohibitions referred to in Subsection (1), opening words and under (a) and (b) do not apply may be designated by or pursuant to a Decree, which Decree may also specify the manner in which this designation is achieved in further detail.
4. Subsection (1), opening words and under (d) shall not apply to the dissemination of information by journalists acting in their normal professional capacity, with due observance of the rules applicable within their occupational group, unless these journalists obtain benefit or profit by disseminating the information.

#### **5.4.2.2. Disclosure and notification requirements**

##### **Section 5:59**

1. An issuer as referred to in Section 5:53(4)(a) that has issued financial instruments as referred to in Section 5:56(1)(a) or (b) which were admitted with its consent to trading on a regulated market licensed in accordance with Section 5:26(1) or a multilateral trading facility for which the investment firm holds a licence as referred to in Section 2:96, or for which the admission of those financial instruments to trading on such a market has been requested with its consent, shall, without delay, disclose information as referred to in Section 5:53(1) directly pertaining to itself. This disclosure shall be made by means of a press release that is issued simultaneously in the Netherlands and in each of the other Member States where the financial instruments issued by the issuer have been admitted with its consent to trading on a regulated market or a multilateral trading facility for which the investment firm holds a licence as referred to in Section 2:96, or where the issuer has requested or consented to the admission of those financial instruments to trading on such a market. When making this disclosure, the issuer shall simultaneously communicate this information to the Authority for the Financial Markets.
2. The issuer shall have a website and shall post the information on that website without delay. If the issuer is a collective investment scheme, the information may also be posted without delay on the website of the management company of that collective investment scheme. The issuer or the management company shall keep the information accessible on the website for a minimum period of one year.
3. In derogation from Subsections (1) and (2), the issuer may delay the disclosure of the information if:
  - a. the delay serves a legitimate interest of the issuer;
  - b. the delay is unlikely to deceive the public; and
  - c. the issuer can guarantee the confidentiality of this information.
4. Rules shall be laid down by Decree in respect of Subsection (3). These rules shall specify what a legitimate interest of the issuer may be understood to mean, and what requirements the issuer must fulfil in order to guarantee the confidentiality of the information.
5. If the issuer or a person representing the issuer deliberately communicates information as referred to in Section 5:53(1) to a third party in the course of the normal duties, profession or position, the issuer shall publicly disclose that information at the same time. If the information was not communicated deliberately to a third party, the issuer shall disclose the information immediately afterwards. Subsection (1) shall apply mutatis mutandis.
6. Subsection (5) shall not apply if the person to whom the information is communicated is obliged to observe secrecy in this respect.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

7. An issuer having its registered office in the Netherlands that has issued financial instruments as referred to in Section 5:56(1)(a) or (b) which were admitted with its consent to trading on a regulated market or a multilateral trading facility as referred to in that subsection for which the investment firm holds a licence as referred to in Section 2:96, or for which the admission of those financial instruments to trading on such a market has been requested with its consent, an issuer having its registered office in another Member State that has issued financial instruments as referred to in Section 5:56(1)(d) which were admitted with its consent to trading on system comparable with a regulated market or multilateral trading facility as referred to in that subsection, an issuer having its registered office in a non-Member State that has issued or intends to issue financial instruments as referred to in Section 5:56(1)(a) which were admitted with its consent to trading on a regulated market or a multilateral trading facility as referred to in that subsection for which the investment firm holds a licence as referred to in Section 2:96, or for which the admission of those financial instruments to trading on such a market has been requested with its consent, as well as any party acting on behalf or for the account of an issuer as referred to above, shall keep a list of the persons working for it who may have knowledge of information as referred to in Section 5:53(1) on a regular or occasional basis, and shall inform those persons of the prohibitions laid down in this part and the level of the sanctions entailed by their violation.
8. Rules shall be laid down by or pursuant to a Decree in respect of the manner in which the disclosure referred to in Subsections (1), (2) and (5) must be made, and in respect of the content, updating and retention of the list referred to in Subsection (7).

#### **Section 5:60**

##### **1. Any person who:**

- a. determines or co-determines the day-to-day policy of an issuer having its registered office in the Netherlands or of an issuer having its registered office in a non-Member State that has issued or intends to issue financial instruments as referred to in Section 5:56(1)(a), or of an issuer having its registered office in another Member State that has issued or intends to issue financial instruments as referred to in Section 5:56(1)(d), or the party at whose proposal a purchase contract in respect of a financial instrument as referred to in that subsection, other than a security, has been established or which proposes a purchase contract in respect of a financial instrument as referred to in that subsection, other than a security;
- b. supervises the policy and the general affairs of an issuer as referred to under (a), and the related enterprise;
- c. holds a management position and has the power for that reason to take decisions affecting the future developments and business prospects of an issuer as referred to under (a), and who may regularly have knowledge of information as referred to in Section 5:53(1); or
- d. pertains to a category, to be designated by Decree, of persons closely associated with a person as referred to under (a), (b) or (c),

shall, no later than on the fifth working day following the transaction date, report transactions conducted or effected for his own account in shares pertaining to the issuer referred to under (a), (b) or (c) respectively, or in financial instruments whose value partly depends on the value of those shares. The notification shall, where it concerns an issuer having its registered office in the Netherlands or in another Member State, be made to the Authority for the Financial Markets or, where it concerns an issuer having its registered office in a non-Member State, to the supervisory authority of the Member State in which the issuer is obliged to supply the annual information relating to the shares in accordance with Article 10 of the Prospectus Directive.

2. The notification referred to in Subsection (1) may be delayed by the persons referred to in Subsection (1)(a), (b) or (c) until the moment when the transactions which they conducted for their own account, added to the transactions which persons associated with them, as referred to in Subsection (1)(d), conducted for their own account, amount to a sum of at least € 5,000 in the calendar year concerned. The notification may be delayed by the persons referred to in Subsection (1)(d) until the moment when the transactions which they conducted for their own account, added to the transactions which persons as referred to in Subsection (1)(a), (b) or (c), with whom they are associated, conducted for their own account, amount to a sum of at least € 5,000 in the calendar year concerned.
3. The notification shall comply with rules to be laid down by or pursuant to a Decree.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

4. The notification may be made through a person to be designated by the issuer to which the financial instruments pertain.
5. Where the notification is concerned, provisions may be laid down by Decree to the effect that, if certain data has already been disclosed to the Authority for the Financial Markets pursuant to other statutory provisions to be specified on that occasion, the notification requirement pursuant to Subsection (1) has been fulfilled.
6. This section shall not apply to transactions conducted or effected in the context of monetary policy, foreign exchange policy or public debt management. Other categories of transactions to which this section does not apply may be designated by Decree.

#### **Section 5:61**

1. The Authority for the Financial Markets may, by issuing an instruction, oblige a party that made an incorrect notification or wrongly failed to make a notification still to make a correct notification within a reasonable term specified by the Authority for the Financial Markets.
2. Where a notification is incorrect and has not been rectified following a request to that effect from the Authority for the Financial Markets, or where a notification has wrongly been omitted and the correct notification has not been made, the Authority for the Financial Markets may enter the data it considers to be correct in the register referred to in Section 1:107 after informing the issuer concerned and the party obliged to notify.
3. The Authority for the Financial Markets may, with a view to an investigation of the correctness of a notification, suspend entering the notification in the register for the duration of the investigation. It shall inform the party that made the notification of the suspension.

#### **Section 5:62**

1. An investment firm which has a reasonable suspicion that a transaction or a transaction order regarding which it performs activities in or from the Netherlands may be contrary to Sections 5:56(1) or (2) or 5:58(1) shall, without delay, notify the Authority for the Financial Markets of this suspicion.
2. The Authority for the Financial Markets shall, without delay, communicate a suspicion reported in accordance with Subsection (1) to every government body or government-appointed body that is responsible for supervising a regulated market where the financial instruments to which the notification relates have been admitted to trading or for which the admission of those financial instruments to trading has been requested.
3. Provisions may be laid down by or pursuant to a Decree as to when a reasonable suspicion as referred to in Subsection (1) is involved and rules may be laid down with which the notification must comply and which stipulate the manner of the notification.

#### **Section 5:63**

1. An investment firm that made a notification pursuant to Section 5:62(1) in good faith shall not be liable for damage sustained by a third party as a result.
2. Data or information provided pursuant to Section 5:62(1) may not serve as the basis for or be used in a criminal investigation or prosecution on suspicion of, or be used as evidence on a charge of, infringement of Sections 5:56 or 5:58 with regard to an investment firm that provided data or information pursuant to Section 5:62(1).
3. An investment firm that made a notification pursuant to Section 5:62(1) shall be obliged to observe confidentiality in this respect.

#### **Section 5:64**

1. Any party publishing investment recommendations in or from the Netherlands, another Member State or a non-Member State shall observe the rules to be laid down by Decree with regard to:

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

- a. disclosing the identity of the party that drew up or publishes the investment recommendation;
- b. ensuring that the investment recommendation gives a fair presentation; and
- c. disclosing information that may reasonably be assumed to potentially affect the objectivity of the investment recommendation.

**2. Subsection (1) shall apply to:**

- a. independent analysts, investment firms, other persons whose main activity consists in publishing recommendations, or natural persons working for them under a contract of employment or otherwise, that:
  - 1°. publish investment recommendations in or from the Netherlands or a non-Member State in which an investment strategy is recommended or proposed, either explicitly or implicitly, with regard to financial instruments admitted to trading on a regulated market that has been licensed in accordance with Section 5:26(1) or a multilateral trading facility for which the investment firm holds a licence as referred to in Section 2:96, or for which the admission to such trading has been requested, or publish investment recommendations in or from another Member State in which an investment strategy is recommended or proposed, either explicitly or implicitly, with regard to financial instruments admitted to trading on a multilateral trading facility for which the investment firm holds a licence as referred to in Section 2:96; or
  - 2°. publish investment recommendations in or from the Netherlands in which an investment strategy is recommended or proposed, either explicitly or implicitly, with regard to financial instruments admitted to trading on a regulated market in another Member State, or with regard to an issuer;
- b. persons other than those referred to under (a), that:
  - 1°. publish investment recommendations in or from the Netherlands or a non-Member State in which an investment decision is explicitly recommended with regard to financial instruments admitted to trading on a regulated market that has been licensed in accordance with Section 5:26(1) or a multilateral trading facility for which the investment firm holds a licence as referred to in Section 2:96, or for which the admission to such trading has been requested, or publish investment recommendations in or from another Member State in which an investment decision is explicitly recommended or proposed with regard to financial instruments admitted to trading on a multilateral trading facility for which the investment firm holds a licence as referred to in Section 2:96; or
  - 2°. publish investment recommendations in or from the Netherlands in which an investment decision is explicitly recommended with regard to financial instruments admitted to trading on a regulated market in another Member State; and
- c. any person that, other than in the course of a profession or business:
  - 1°. publishes investment recommendations in or from the Netherlands or a non-Member State in which an investment decision is explicitly recommended with regard to financial instruments admitted to trading on a regulated market that has been licensed in accordance with Section 5:26(1) or a multilateral trading facility for which the investment firm holds a licence as referred to in Section 2:96, or for which the admission to such trading has been requested, or publishes investment recommendations in or from another Member State in which an investment decision is explicitly recommended with regard to financial instruments admitted to trading on a multilateral trading facility for which the investment firm holds a licence as referred to in Section 2:96; or
  - 2°. publishes investment recommendations in or from the Netherlands in which an investment decision is explicitly recommended with regard to financial instruments admitted to trading on a regulated market in another Member State.

3. An investment firm as referred to in Subsection (2)(a) shall state in the investment recommendation that the Authority for the Financial Markets is the competent supervisor. Any party that is not an investment firm and to which standards or rules of conduct arising from self-regulation apply in respect of the subjects referred to in Subsection (1) shall specify those standards or rules of conduct in the investment recommendation.
4. An investment firm as referred to in Subsection (2)(a) shall disclose in general terms the organisational and administrative measures it has taken in order to prevent conflicts of interest in relation to recommendations.
5. A publisher of an investment recommendation that disseminates an investment recommendation published by a third party on its own responsibility, shall clearly and conspicuously state any changes that it has made to the investment recommendation, or shall state that this recommendation was taken over without changes and complies with the rules to be laid down by Decree pursuant to Subsection (1). Subsection (3), first sentence shall apply *mutatis mutandis*.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

6. A publisher of an investment recommendation that disseminates in or from the Netherlands a summary of an investment recommendation published by a third party shall ensure that this summary is clear, not misleading and directly and easily accessible. On this occasion, this publisher shall also specify the location where the information presented in the summary can be accessed, if this information is in the public domain.
7. Different rules may be laid down by the Decree referred to in Subsection (1) with regard to the disclosure of investment recommendations by journalists or other professionals.

#### **Section 5:65**

An issuer having its registered office in the Netherlands that has issued or intends to issue financial instruments as referred to in Section 5:56(1)(a) or (b), or an issuer having its registered office in a non-Member State that has issued or intends to issue financial instruments as referred to in Section 5:56(1)(d), or at whose proposal a purchase contract in respect of a financial instrument as referred to in those subsections, other than a security, has been established or which proposes such a contract, with the exception of financial instruments that have been or will be issued in the context of monetary policy, foreign exchange policy or public debt management, as well as an issuer having its registered office in a non-Member State that has issued or intends to issue financial instruments as referred to in Section 5:56(1)(a), or at whose proposal a purchase contract in respect of a financial instrument as referred to in that subsection, other than a security, was established, or which proposes such a contract, with the exception of financial instruments that have been issued in the context of monetary policy, foreign exchange policy or public debt management, shall adopt regulations containing rules with regard to the ownership of and transactions in shares pertaining to it, or in financial instruments whose value partly depends on the value of those shares, by its employees and the persons referred to in Section 5:60(1)(a) and (b). The regulations shall comply with the rules to be laid down by Decree.

#### **5.4.2.3. Additional supervisory powers**

#### **Section 5:66 [Cancelled from 1 November 2007]**

#### **Section 5:67**

1. Where the Authority for the Financial Markets is convinced that acts have been or are performed in another Member State that are contrary to this part, or that certain acts affect financial instruments traded on a regulated market in another Member State, it shall inform the supervisory authority of the Member State concerned of this as specifically as possible.
2. Where a supervisory authority of another Member State makes a notification comparable to the notification referred to in Subsection (1) to the Authority for the Financial Markets, the latter shall take the required measures and inform the notifying supervisory authority of the results, and, where possible, of any important interim developments.
3. The Authority for the Financial Markets shall consult the supervisory authorities of the other Member States on the proposed measures.

#### **Part 5.4.3. Operating in markets in financial instruments**

#### **Section 5:68**

1. A branch office in the Netherlands of a bank, management company, collective investment scheme, investment firm, clearing institution or financial institution holding a supervisory status certificate as referred to in Section 3:110(1), pension fund or insurer shall observe the rules to be laid down by or pursuant to a Decree with regard to honest and ethical business conduct in respect of operating in markets in financial instruments. These rules shall in any event seek to achieve that the enterprise referred to in the preceding sentence:
  - a. adopts internal regulations with regard to the handling of inside information and with regard to private transactions in financial instruments by directors and staff members;
  - b. manages conflicts of interest relating to transactions in financial instruments; and
  - c. has adequate control mechanisms to ensure compliance with the rules referred to in the opening words.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

2. An exemption from Subsection (1) may be granted by ministerial regulation.
3. On application, the Authority for the Financial Markets may, whether or not for a fixed period, grant a full or partial dispensation from the provisions arising from Subsection (1), if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which this section seeks to achieve are achieved in other ways.

## **Section 5:69**

Section 1:75(1) shall apply mutatis mutandis to pension funds in respect of compliance with the provisions arising from this part.

## **Chapter 5.5. Public takeover bids**

### **Part 5.5.1. Rules on mandatory bids**

#### **Section 5:70**

1. Any party that, either on its own or together with persons with which it acts in joint consultation, acquires, either directly or indirectly, predominant control over a public limited company having its registered office in the Netherlands whose shares or depositary receipts for shares, issued with the public limited company's concurrence, are admitted to trading on a regulated market, shall make a public takeover bid for all the shares and all the depositary receipts for shares issued with the public limited company's concurrence, and shall announce this without delay after the end of the period referred to in Section 5:72(1).
2. Sections 1:72 to 1:74 shall not apply to this part.

#### **Section 5:71**

1. Section 5:70(1) shall not apply to a party that:
  - a. acquires predominant control over a public limited company that is an investment company whose units are repurchased or repaid either directly or indirectly out of the assets at the unit holders' request;
  - b. acquires predominant control by declaring unconditional a public takeover bid concerning all the shares of a public limited company, or all the depositary receipts for shares of the public limited company that were issued with that company's concurrence;
  - c. is a legal person unrelated to the offeree company whose object is to promote the interests of the offeree company and the enterprise affiliated to it, and which will hold the shares for a maximum period of two years after the announcement of a public takeover bid in order to protect the offeree company;
  - d. is a legal person unrelated to the offeree company which has issued depositary receipts for shares with the company's concurrence;
  - e. acquires predominant control in the context of a transfer of the holding entailing predominant control within a group as referred to in Section 2:24b of the Dutch Civil Code or between a legal person or company and its subsidiary;
  - f. acquires predominant control over a public limited company that has been granted a provisional moratorium or has been declared insolvent;
  - g. acquires predominant control by hereditary succession;
  - h. acquires predominant control simultaneously with the acquisition of predominant control over the same public limited company by one or more other natural persons, legal persons or companies, on the understanding that the obligation referred to in Section 5:70(1) shall lie with the party that can exercise the greatest number of voting rights;
  - i. has predominant control at the moment when the shares or the depositary receipts for shares issued with the company's concurrence are admitted for the first time to trading on a regulated market;
  - j. is a depositary of shares, insofar as it may not exercise the voting rights attached to the shares at its own discretion; and
  - k. acquires predominant control by entering into a marriage or a registered partnership with a person who already has predominant control over the public limited company concerned.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

2. Further rules may be laid down by Decree in respect of Subsection (1), opening words and under (c) and (d).

### **Section 5:72**

1. The obligation to make a public takeover bid shall lapse if the party with which this obligation lies loses predominant control within 30 days of acquiring it, unless:
  - a. the loss of predominant control is the result of a transfer of a holding to a natural person, legal person or company that may invoke Section 5:71(1); or
  - b. the party with which the obligation lies has exercised its voting rights in that period.
2. The Enterprise Division of the Amsterdam Court of Appeal may, on application of the party with which the obligation to make a public takeover bid lies, extend the period referred to in Subsection (1) by a maximum of 60 days. In taking its decision, the Enterprise Decision shall consider all the interests involved.
3. The Enterprise Division of the Amsterdam Court of Appeal may, on application of the offeree company, any holder of shares of the offeree company and any holder of depositary receipts for shares issued with the offeree company's concurrence, rule that the party acquiring predominant control as referred to in Section 5:70(1) will not be obliged to make the takeover bid referred to in that subsection where the financial situation of the offeree company and the enterprise affiliated to it opposes this.
4. Subsections (1) and (2) shall apply mutatis mutandis to a party which, upon acquiring predominant control pursuant to Section 5:71(1)(h), was exempt from the obligation to make a public takeover bid and this exemption has ceased to apply, on the understanding that the term of 30 days shall commence at the moment when the exemption ceased to apply.

### **Section 5:73**

1. Upon an infringement of Section 5:70, the Enterprise Division of the Amsterdam Court of Appeal shall, on application of the offeree company, any holder of shares of the offeree company and any holder of depositary receipts for shares issued with the offeree company's concurrence or a legal person as referred to in Section 305a of Book 3 of the Dutch Civil Code, order the party that acquired predominant control to make a public takeover bid in accordance with the provisions laid down in or pursuant to this chapter.
2. At the request of the applicant referred to in Subsection (1), the Enterprise Division may also:
  - a. suspend the exercise of the voting right by the party that acquired predominant control during a period to be specified by the Enterprise Division;
  - b. prohibit the party that acquired predominant control from taking part in the general meeting of shareholders during a period to be specified by the Enterprise Division;
  - c. order a temporary transfer of the management of shares by the party that acquired predominant control;
  - d. suspend or nullify decisions of the general meeting of shareholders.
3. The Enterprise Division may, on application of the persons referred to in Subsection (1) and the party that acquired predominant control, order the party which has predominant control to reduce the holding providing it with predominant control within a period to be specified by the Enterprise Division, if:
  - a. the obligation to make a public takeover bid results in a concentration within the meaning of Article 3 of Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between enterprises (OJEU L 24) and the Commission of the European Communities has declared such concentration to be incompatible with the common market on the basis of Article 8(3) of that Regulation;
  - b. the Netherlands Competition Authority (*Nederlandse Mededingingsautoriteit*) has refused to issue a licence within the meaning of Section 41 of the Competitive Trading Act (*Mededingingswet*); or
  - c. in a case as referred to in Section 39(2)(a) of the Competitive Trading Act, the licence application was not submitted within four weeks, or the application was withdrawn.
4. At the request of the party that made the application referred to in Subsection (1), the Enterprise Division may grant preliminary relief.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

5. Where necessary, the Enterprise Division shall make arrangements for the consequences of the measures it has taken.
6. Orders of the Enterprise Division shall be open only to an appeal in cassation.

### **Part 5.2.2. Making a public takeover bid and the competence to approve an offer document**

#### **Section 5:74**

1. No party may make a public takeover bid for securities admitted to trading on a regulated market that has been licensed in accordance with Section 5:26(1), unless an offer document approved by the Authority for the Financial Markets or by a supervisory authority of another Member State has been made generally available prior to the takeover bid.
2. The Authority for the Financial Markets may approve the offer document if:
  - a. the offeree company has its registered office in the Netherlands and the securities are admitted to trading on a regulated market licensed in accordance with Section 5:26(1);
  - b. the offeree company has its registered office in another Member State, the securities are admitted to trading on a regulated market licensed in accordance with Section 5:26(1) and the securities are not also admitted to trading on a regulated market in that other Member State;
  - c. the offeree company has its registered office in another Member State, the securities are admitted to trading on a regulated market licensed in accordance with Section 5:26(1) and also in a Member State other than that where the offeree company has its registered office, and the securities were first admitted to trading on the regulated market in the Netherlands;
  - d. the offeree company has its registered office in another Member State, the securities were admitted simultaneously and for the first time to trading on a regulated market licensed in accordance with Section 5:26(1) and in a Member State other than that where the offeree company has its registered office, and the offeree company has opted for approval by the Authority for the Financial Markets;
  - e. the offeree company has its registered office in a non-Member State, and the securities are admitted to trading on a regulated market licensed in accordance with Section 5:26(1).
3. Where Subsection (2)(d) applies, the offeree company shall communicate its choice on the first trading day to the Authority for the Financial Markets, the supervisory authority concerned in the Member State where the regulated market is situated, as well as the market operator that holds a licence as referred to in Section 5:26(1) and the relevant market operator of the regulated market situated in another Member State. The offeree company shall disclose this choice with due observance of Section 5:59(1), second and third sentences.
4. The offeror shall incorporate a reference to the approved offer document in every public announcement with regard to the public takeover bid.

### **Part 5.5.3. Regulations if the Authority for the Financial Markets is authorised to approve the offer document**

#### **Section 5:75**

This section shall apply to public takeover bids regarding which the Authority for the Financial Markets is authorised to approve the offer document pursuant to Section 5:74(2).

#### **Section 5:76**

1. The Authority for the Financial Markets shall approve an offer document if this document complies with the rules to be laid down by Decree as regards the data to be included in the offer document.
2. Rules may be laid down by Decree in respect of the following subjects, with a view to the proper operation of the securities markets or the position of investors in those markets:
  - a. the preparation of, the announcement of, the making of, the course of the procedure of, the declaring



Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

- unconditional of and the information to be supplied with regard to a public takeover bid;
- b. the consideration payable by an offeror; and
- c. the imposition of additional requirements regarding an offer document approved by a supervisory authority of another Member State, and regarding the supply of an offer document.

#### **Section 5:77**

1. Having received the application for approval of the offer document, the Authority for the Financial Markets shall inform the applicant of its decision regarding the approval within ten working days.
2. Where Section 4:5 of the General Administrative Law Act is applied, the term referred to in Subsection (1) shall commence at the moment when the applicant for approval has provided the additional information. Section 4:15 of the General Administrative Law Act shall not apply. Within ten working days of submitting the application, the applicant shall be informed of the invitation referred to in Section 4:5 of the General Administrative Law Act.

#### **Section 5:78**

Within six working days of having been informed of a decision of approval, the offeror shall make its bid by making the approved offer document generally available, or shall make a public announcement to the effect that it will not make a public takeover bid.

#### **Part 5.5.4. Additional regulations, exemption and dispensation**

#### **Section 5:79**

Where the offeror has declared its public takeover bid unconditional, it may not, during a period of one year after the offer document was made generally available, acquire securities of the type to which the public takeover bid related, either directly or indirectly, at conditions more favourable to the party entitled to those securities than those applicable under the public takeover bid.

#### **Section 5:80**

1. Section 1:75(1) shall apply mutatis mutandis to an offeror, where that offeror does not comply with the rules laid down by or pursuant to Section 5:74(1), 5:76(2), 5:78 or 5:79.
2. Where the Authority for the Financial Markets finds that a public takeover bid is prepared, announced or made in contravention of the rules laid down by or pursuant to this chapter, it may, by issuing an instruction, order an investment firm involved in this bid to refrain from cooperating in the public takeover bid.
3. Further rules may be laid down by Decree as regards the competence under Subsection (2).

#### **Section 5:80a**

1. A party obliged to make a public takeover bid shall do so at a fair price.
2. The fair price shall be the highest price paid by the offeror or the persons with which it acts in joint consultation for securities of the same category or class as that to which the mandatory bid relates during the year preceding the announcement of the mandatory bid.
3. The fair price shall be specified by Decree, if:
  - a. securities are acquired by the offeror or the persons with which it acts in joint consultation for a price in excess of the fair price;
  - b. the offeror did not acquire any securities of the same category or class as that to which the mandatory bid relates during the year preceding the announcement of the mandatory bid.
4. The fair price shall be stated in securities, money or a combination of securities and money. Further rules shall be laid down in this respect by Decree.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

#### **Section 5:80b**

1. Where there is an obligation to make a public takeover bid, the Enterprise Division of the Amsterdam Court of Appeal may, on application of the offeror, the offeree company, another holder of shares of the offeree company or a holder of depositary receipts issued with the offeree company's concurrence, determine a fair price, whereby derogations from the provisions laid down by or pursuant to Section 5:80a(2) or (3) shall be permitted.
2. The application shall state the grounds on which it is based and shall specify in which respect the fair price must be adjusted. The application shall be submitted within a period of two weeks after the bid was made. The Enterprise Section shall hear the application with the utmost despatch.
3. The application shall be inadmissible if the fair price under Section 5:80a(2) or (3) differs by less than ten percent from the average market price during the three-month period preceding the submission of the application.
4. The Enterprise Section may only grant the application if the fair price referred to in Section 5:80a has a disproportionate effect on the applicant's interests.
5. Further rules may be laid down by Decree as regards the consequences of granting an application for the course of the procedure and the information to be supplied in respect of a public takeover bid.

#### **Section 5:81**

1. An exemption from the provisions laid down by or pursuant to Section 5:70 may be granted by Decree. An exemption may be subject to limitations and conditions with a view to the proper operation of the securities markets or the position of investors in those markets. The proposal for the Decree referred to in Subsection (1) shall not be made any earlier than four weeks after the draft was submitted to Parliament.
2. An exemption from the provisions laid down by or pursuant to Sections 5:74(1), 5:76(1) and (2) or 5:79 may be granted by ministerial regulation. An exemption may be subject to limitations and conditions with a view to the proper operation of the securities markets or the position of investors in those markets.
3. On application, the Authority for the Financial Markets may grant a full or partial dispensation from the provisions laid down by or pursuant to Sections 5:74(1), 5:76(1) and (2), 5:78 or 5:79, if the applicant demonstrates that it cannot reasonably comply with those provisions and that the objectives which these sections seek to achieve are achieved in other ways.

#### **Section 5:82**

A Decree adopted pursuant to Sections 5:71(2), 5:76(2), 5:80a(3) or (4), 5:80b(5) or 5:81(3) shall be submitted to Parliament. It shall enter into force at a time to be determined by Royal Decree after four weeks have elapsed since its submission, unless a wish is expressed within that term by or on behalf of either House, or by at least one fifth of the constitutional number of members of either House, that the entry into force of the Decree must be regulated by an Act of Parliament. In that case, a legislative proposal to that effect shall be submitted without delay. If the legislative proposal is withdrawn, or if Parliament decides not to adopt the proposal, the Decree shall be withdrawn.

#### **Section 5:83**

A dispensation from the prohibition referred to in Section 6a(1) of the Act on the Supervision of the Securities Trade 1995, or from the requirements referred to in Section 6a(3) of the Act on the Supervision of the Securities Trade 1995, that was granted pursuant Section 6c(1) of the Act on the Supervision of the Securities Trade 1995 shall be based on Section 5:83(2) from the moment the Act on Financial Supervision enters into force.

### **Chapter 5.6. Rules on the application of a code of conduct by institutional investors**

#### **Section 5:86**

1. An institutional investor having its registered office in the Netherlands and an invested capital which includes shares or depositary receipts for shares admitted to trading on a regulated market, a multilateral trading facility

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

or a system comparable with a regulated market or multilateral trading facility in a non-Member State, shall report its compliance with the principles and best practice provisions of the code of conduct designated pursuant to Section 391(5) of Book 2 of the Dutch Civil Code that are directed at institutional investors. If the institutional investor failed to comply with those principles or best practice provisions, either fully or in part, in the most recently completed financial year, or does not intend to comply with them in full in the current and subsequent financial years, it shall make a statement to this effect, giving its reason.

2. The institutional investor shall issue the report and the statement referred to in Subsection (1) at least once in the course of each financial year:
  - a. in its annual report;
  - b. on its website; or
  - c. to each participant or client individually that has given its express prior consent to be so approached.
3. A participant within the meaning of the preceding subsection shall also be understood to mean a participant as referred to in Section 1(1)(g) of the Pension and Savings Funds Act (*Pensioen- en spaarfondsenwet*).
4. Section 1:15 shall not apply to the preceding subsections.

#### **Section 5:87**

An exemption from Section 5:86 may be granted by ministerial regulation.

#### **6. Supervision of Financial Market Infrastructure [reserved]**

#### **7. Final Provisions**

##### **Section 7:1**

Before publication of this Act in the Bulletin of Acts, Orders and Decrees (*Staatsblad*), Our Minister shall redetermine the numbering of the sections, divisions, parts and chapters of this Act, and shall adjust the citations of and references to sections, divisions, parts and chapters in this Act to the new numbering.

##### **Section 7:2**

This Act shall enter into force at a time to be determined by or pursuant to an Act of Parliament.

##### **Section 7:3**

This Act shall be cited as: the Act on Financial Supervision (*Wet op het financieel toezicht*).

We order and command that this Act shall be published in the Bulletin of Acts, Orders and Decrees, and that all ministerial departments, authorities, bodies and officials whom it may concern shall diligently implement it.

Done at The Hague, 28 September 2006

The Minister of Finance,  
G. Zalm

Beatrix

Published on the thirty-first of October 2006

The Minister of Justice,  
E.M.H. Hirsch Ballin

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

## Sectors Annex

The business of a life insurer shall be subdivided into the following sectors:

1. General Life Insurance: capital sum, pension and annuity insurance contracts, with the exception of the insurance contracts included in sectors 2 and 3, insurance contracts providing for the funeral of a human being under which a performance is delivered that is exclusively non-monetary, as well as supplementary insurance contracts as referred to in Section 1(2), such as disability insurance contracts and accidental death insurance contracts.
2. Life Insurance relating to Marriage or Birth
3. Life Insurance relating to Common Funds
4. Permanent Health Insurance: non-cancellable long-term health insurance contracts concluded with residents of Ireland or the United Kingdom.
5. Participation in Savings Funds
6. Capitalisation Operations: operations based on an actuarial savings technique with a view to capital accumulation, consisting of commitments which are fixed in terms of duration and amount in exchange for one-off or regular payments.
7. Management of Group Pension Funds: management of the investments of pension funds, including the assets securing the provision for pension commitments.

The business of a non-life insurer shall be subdivided into the following sectors, encompassing the risks specified:

1. Accident:
  - a. fixed benefits in respect of accidents and occupational illnesses;
  - b. other benefits in respect of accidents and occupational illnesses.
2. Health:
  - a. fixed benefits in respect of illnesses other than occupational illnesses;
  - b. other benefits in respect of illnesses other than occupational illnesses.
3. Land Vehicles: damage to motor vehicles and other vehicles, with the exception of damage to railway rolling stock.
4. Railway Rolling Stock: damage to railway rolling stock.
5. Aircraft:  
damage to aircraft.
6. Ships (sea, lake, river and canal vessels): damage to sea, lake, river and canal vessels.
7. Goods in Transit: damage to goods in transit or baggage, regardless of the nature of the means of transport.
8. Fire and Natural Forces: damage to property (with the exception of damage falling into the sectors Land Vehicles, Railway Rolling Stock, Aircraft, Ships (sea, lake, river and canal vessels) and Goods in Transit) where such damage was caused by fire, explosion, storm or other natural forces (with the exception of hail and frost), nuclear power or subsidence.
9. Other Damage to Property: damage to property (with the exception of damage included in the sectors Land Vehicles, Railway Rolling Stock, Aircraft, Ships (sea, lake, river and canal vessels) and Goods in Transit) where such damage is caused by hail or frost, or by any other forces not falling into the Fire and Natural Forces sector.
- 10A. Motor Vehicle Liability:  
liability arising from the use of motor vehicles (with the exception of liability falling into the Road Transport Liability sector).
- 10B. Road Transport Liability:  
liability arising for the carrier from goods transport by road (with the exception of liability falling into the Motor Vehicle Liability sector).
11. Aircraft Liability: liability arising from the use of aircraft, including liability on the part of the carrier.
12. Liability for Ships (sea, lake, river and canal vessels): liability arising from the use of sea, lake, river and canal vessels, including liability on the part of the carrier.
13. General Liability: other forms of liability not falling into the sectors Motor Vehicle Liability, Road Transport Liability, Aircraft Liability and Liability for Ships (sea, lake, river and canal vessels).
14. Credit: damage resulting from general insolvency, export credit, mortgage loans or agricultural credit granted, and instalment sales.

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

15. Suretyship: damage resulting from direct suretyship and indirect suretyship granted.
16. Various Monetary Losses: monetary losses resulting from risks not falling into any of the other sectors.
17. Legal Assistance: services provided and costs incurred in particular with a view to the recovery of damage sustained by an insured party and the latter's defence counsel or representative, both in and out of court (with the exception of the activities carried out in defending or representing an insured party which an insurer performs partly in its own interest under a liability insurance contract).
18. Assistance: immediate assistance to persons in difficulties who are travelling or staying outside their place of residence (with the exception of maintenance services, after-sales services and the mere designation or making available of assistance by a broker).

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive.*

*No rights can be derived from this translation.*

**Annex to Section 1:79 of the Act on Financial Supervision**

**Violation of regulations laid down by or pursuant to Section:**

**Part 1, General Provisions**

1:10  
1:12(3) and (4)  
1:58c(2)  
1:74(1)

**Part 2, Market Access of Financial Enterprises**

2:4(1)  
2:6(1)  
2:8(1)  
2:9(1) and (2)  
2:10(1), (2) and (4)  
2:11(1)  
2:15  
2:16(1) and (3)  
2:18(1) and (2)  
2:19  
2:20(1)  
2:23(1)  
2:25(1) and (2)  
2:26  
2:27(1)  
2:35  
2:36(1) to (5)  
2:38(1) and (2)  
2:39(1) and (2)  
2:40  
2:45(1) to (4)  
2:46(1) to (3)  
2:48(1)  
2:50(1)  
2:52(1)  
2:53(1) and (2)  
2:54(1), (2) and (4)  
2:55(1)  
2:60(1)  
2:65(1) and (2)  
2:71(1)  
2:72, (1) to (3)  
2:73(1) and (2)  
2:75(1)  
2:80(1)  
2:81(4)  
2:84(2)  
2:86(1)  
2:90(2)  
2:92(1)  
2:96  
2:100(2)  
2:101(1)  
2:102(1)  
2:103  
2:107(1)  
2:108(1)  
2:110(1)  
2:111(1)  
2:112(1)  
2:114(1)

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive.*

*No rights can be derived from this translation.*

2:115(1)  
2:117(1)  
2:118(1)  
2:120(1)  
2:121(1)  
2:122(1)  
2:123(1)  
2:125(1)  
2:126(1)  
2:127(1)  
2:128(5)  
2:129(1) and (3)  
2:130(1)

**Part 3, Prudential Supervision of Financial Enterprises**

3:5(1) and (4)  
3:6(1)  
3:7(1) and (4)  
3:8  
3:9(1)  
3:10(1) to (3)  
3:15(1) and (2)  
3:16(1) to (3)  
3:17(1) and (2)  
3:18(1) to (3)  
3:19(1) and (2)  
3:20  
3:21(1) and (2)  
3:24  
3:29(1) to (3)  
3:30(1)  
3:32  
3:34(1) and (2)  
3:35  
3:36(1), (2) and (4)  
3:37(1) to (3)  
3:38  
3:39(1) and (2)  
3:40  
3:41  
3:42  
3:43(2)  
3:44(1)  
3:47(1) to (3), (5) and (6)  
3:48  
3:51  
3:52  
3:53(1) to (3)  
3:54(3)  
3:55(2)  
3:57(1) and (2)  
3:59(2)  
3:62(2)  
3:63(1) and (2)  
3:67(1) to (4)  
3:68(1) and (3)  
3:69(1) and (2)  
3:70(1)  
3:71(1) and (2)  
3:72(1), (3) to (7) and (9)  
3:73  
3:74(1) and (2)  
3:74a(1) to (4)

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive.*

*No rights can be derived from this translation.*

3:75

3:76(1) and (2)

3:77

3:78(1) and (2)

3:81(1) to (3)

3:82(1) and (2)

3:83(1) and (2)

3:86(1) and (2)

3:87(1) and (2)

3:88(4)

3:89(1)

3:95(1)

3:96(1)

3:99(1)

3:103(2)

3:104(1) and (3)

3:105(4)

3:106(1)

3:108(1) and (3)

3:110(4) and (5)

3:111(3)

3:111a(1) and (2)

3:116

3:119(1)

3:120(1), (2), (4) and (5)

3:124(2)

3:125(1)

3:129(1)

3:132(1) to (3)

3:135(1)

3:136(1) to (3)

3:137

3:138(1)

3:139(1)

3:141(1)

3:143

3:144(1)

3:145(1)

3:146(1)

3:148(1)

3:151(3)

3:153

3:155(1) and (3)

3:156(6) and (10)

3:158(3) and (4)

3:175(3)

3:196

3:259(1)

3:262

3:263(1) to (3)

3:264(1)

3:267(3) and (4)

3:269(1) and (2)

3:271

3:272(1)

3:273(1)

3:277a(1)

3:279(1) and (4)

3:280(2) to (4)

3:280a(2)

3:284(2) and (3)

3:285(1) and (2)

3:286(1) and (2)

3:296(1), (2) to (4) and (8)



Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive.*

*No rights can be derived from this translation.*

3:297(1) to (3) and (5)

3:298(1) to (3) and (5)

3:299(1) and (3)

**Part 4, Conduct of Business Supervision of Financial Enterprises**

4:3(1)

4:4(1)

4:4a

4:5(3)

4:6(2)

4:6a(1)

4:9(1) and (2)

4:10(1)

4:11(1) to (4)

4:13(1) and (2)

4:14(1) and (2)

4:15(1) and (2)

4:16(1) to (3)

4:17(1) and (3)

4:18a(1) and (2)

4:18b(2)

4:18c(3)

4:18d(1) and (2)

4:18e(1) and (2)

4:19(1) to (3)

4:20(1), (3) and (4)

4:21

4:22(1)

4:23(1) to (3)

4:24(1) to (3) and (5)

4:25(1)

4:26(1) to (5)

4:27(1), (2) and (4)

4:30a(1) to (3)

4:31(1) and (2)

4:32(1)

4:33(1) to (3)

4:35

4:39

4:40

4:41

4:42

4:43(1) and (2)

4:44(1) and (2)

4:46(1) to (4)

4:46a

4:47(1) to (4)

4:48(1) and (2)

4:49(1) to (3)

4:50(1) and (2)

4:51(1), (2) and (4)

4:52(1) to (3)

4:52a

4:53

4:55

4:56(1)

4:57

4:58

4:59(1) and (2)

4:60(5)

4:61(1)

4:62(1) and (2)

4:63(1)

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive.*

*No rights can be derived from this translation.*

4:65(1) to (3)  
4:66  
4:67(1)  
4:68(1)  
4:69(1)  
4:70(1) to (7)  
4:71(1) to (5)  
4:72(3)  
4:73(3)  
4:74(1)  
4:75(1) to (3)  
4:76(1) and (3)  
4:77(1) to (4)  
4:78(1) and (2)  
4:83(1)  
4:84(1) and (2)  
4:85(1), (4) and (5)  
4:86  
4:87(1) to (4)  
4:88(1) to (4)  
4:89(1) and (2)  
4:89a(1) and (2)  
4:90(1) and (2)  
4:90a(1) to (5)  
4:90b(1) to (10)  
4:90c(1) to (4)  
4:90d(1), (2) and (4)  
4:90e(1) to (5) and (8)  
4:91a(1), (3) to (7) and (9)  
4:91b  
4:91c(1) and (2)  
4:91d(1) and (2)  
4:91g(1) to (4)  
4:91i  
4:91j(1), (2) and (5)  
4:91k(1) and (2)  
4:91l(1) and (2)  
4:93(1) and (2)  
4:94(2) and (3)  
4:95(2) and (3)  
4:96(1) and (2)  
4:97(3)  
4:99(1) and (2)  
4:100(2) and (3)  
4:100a(1) and (2)  
4:100b(1) to (3)  
4:100c  
4:100d(1) and (2)

**Part 5, Market Conduct Supervision**

5:2  
5:16(2)  
5:18(2)  
5:20(3) and (4)  
5:21(1) and (3) to (7)  
5:23(1) and (5)  
5:24(1), (3) and (4)  
5:26(1)  
5:27(3) and (4)  
5:29(1), (2), (4) and (5)  
5:30  
5:31(1), (3) and (4)  
5:32(1) to (4)

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive.*

*No rights can be derived from this translation.*

5:32a(1) to (3)  
5:32b(1), (2), (3) and (5)  
5:32c  
5:32d(1)  
5:32e  
5:32f(1)  
5:32g  
5:32j(1) to (3)  
5:32k(1), (2) and (4)  
5:32l(1) to (3)  
5:32m  
5:51(1)  
5:58(1)  
5:59(1), (2), (5), (7) and (8)  
5:60(3)  
5:61(1)  
5:64(1) and (3) to (7)  
5:65  
5:66  
5:68(1)  
5:71(1), (3) and (8)  
5:72  
5:74(1) and (4)  
5:76(2)  
5:78(1)  
5:79  
5:80  
5:81

***Prospectus Regulation***

Article 26(5)  
Article 27  
Article 29  
Article 30  
Article 34

***Regulation implementing the Markets in Financial Instruments Directive***

7  
8(1) and (2)  
17(1)  
24  
27(1)  
29(1) to (5)  
36  
37

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

**Annex to Section 1:80 of the Act on Financial Supervision**

**Violation of regulations laid down by or pursuant to Section:**

***Part 1, General Provisions***

1:10  
1:12(3) and (4)  
1:58c(2)  
1:74(1)

***Part 2, Market Access of Financial Enterprises***

2:4(1)  
2:6(1)  
2:8(1)  
2:9(1) and (2)  
2:10(1), (2) and (4)  
2:11(1)  
2:15(1) and (2)  
2:16(1) and (3)  
2:18(1) and (2)  
2:19  
2:20(1)  
2:23(1)  
2:25(1) and (2)  
2:26  
2:27(1)  
2:35  
2:36(1) to (5)  
2:38(1) and (2)  
2:39(1) and (2)  
2:40  
2:45(1) to (4)  
2:46(1) to (3)  
2:48(1)  
2:50(1)  
2:52(1)  
2:53(1) and (2)  
2:54(1), (2) and (4)  
2:55(1)  
2:60(1)  
2:65(1) and (2)  
2:71(1)  
2:72(1) to (3)  
2:73(1) and (2)  
2:75(1)  
2:80(1)  
2:81(3) and (4)  
2:84(2)  
2:86(1)  
2:90(2)  
2:92(1)  
2:96  
2:99(4) and (5)  
2:100(2)  
2:101(1)

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

2:102(1)

2:103

2:103a

2:107(1)

2:108(1)

2:110(1)

2:111(1)

2:112(1)

2:114(1)

2:115(1)

2:117(1)

2:118(1)

2:120(1)

2:121(1)

2:122(1)

2:123(1)

2:125(1)

2:126(1)

2:127(1)

2:128(5)

2:129(1) and (3)

2:130(1)

### **Part 3, Prudential Supervision of Financial Enterprises**

3:5(1) and (4)

3:6(1)

3:7(1) and (4)

3:8

3:9(1)

3:10(1) to (3)

3:15(1) and (2)

3:16(1) to (3)

3:17(1) and (2)

3:18(1) to (3)

3:19(1) and (2)

3:20

3:21(1) and (2)

3:24

3:29(1) to (3)

3:30(1)

3:32

3:34(1) and (2)

3:35

3:36(1), (2) and (4)

3:37(1) to (3)

3:38

3:39(1) and (2)

3:40

3:41

3:42

3:43(2)

3:44(1)

3:47(1) to (3), (5) and (6)

3:48

3:51

3:52

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

3:53(1) to (3) and (5)

3:54(3)

3:55(2)

3:57(1), (2) and (5)

3:59(2)

3:62(2)

3:63(1) to (3)

3:67(1) to (4)

3:68(1) and (3)

3:69(1) and (2)

3:70(1)

3:71(1) and (2)

3:72(1), (3) to (7) and (9)

3:73

3:74(1) and (2)

3:74a(1) to (4)

3:75

3:76(1) and (2)

3:77

3:78(1) and (2)

3:81(1) to (3)

3:82(1) and (2)

3:83(1) and (2)

3:86(1) and (2)

3:87(1) and (2)

3:88(1), (2) and (4)

3:89(1)

3:95(1)

3:96(1)

3:99(1)

3:103(1) and (2)

3:104(1) and (3)

3:105(4)

3:106(1)

3:108(1) to (3)

3:110(4) and (5)

3:111(3)

3:111a(1) and (2)

3:112(1)

3:113(1) and (2)

3:116

3:119(1)

3:120(1) to (5)

3:124(2)

3:125(1)

3:126(1)

3:129(1) and (2)

3:131(1)

3:132(1) to (3)

3:135(1)

3:136(1) to (3)

3:137

3:138(1)

3:139(1)

3:141(1)

3:143

3:144(1)

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

3:145(1)  
3:146(1)  
3:148(1)  
3:151(3)  
3:153  
3:155(1) and (3)  
3:156(6) and (10)  
3:158(3) and (4)  
3:175(3)  
3:196  
3:259(1) and (2)  
3:262  
3:263(1) to (3)  
3:264(1)  
3:267(3) and (4)  
3:269(1) and (2)  
3:271  
3:272(1)  
3:273(1)  
3:277a(1)  
3:279(1) and (4)  
3:280(2) to (4)  
3:280a(2)  
3:284(2) and (3)  
3:285(1) and (2)  
3:286(1) and (2)  
3:296(1), (2) to (4) and (8)  
3:297(1) to (3) and (5)  
3:298(1) to (3) and (5)  
3:299(1) and (3)

#### **Part 4, Conduct of Business Supervision of Financial Enterprises**

4:3(1)  
4:4(1)  
4:4a  
4:5(2) and (3)  
4:6(1) and (2)  
4:6(2)  
4:6a(1)  
4:9(1) and (2)  
4:10(1)  
4:11(1) to (4)  
4:13(1) and (2)  
4:14(1) and (2)  
4:15(1) and (2)  
4:16(1) to (3)  
4:17(1) and (3)  
4:18a(1) and (2)  
4:18b(2)  
4:18c(3)  
4:18d(1) and (2)  
4:18e(1) and (2)  
4:19(1) to (3)  
4:20(1), (3) and (4)  
4:21  
4:22(1)

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

4:23(1) to (3)  
4:24(1) to (3) and (5)  
4:25(1)  
4:26(1) to (5)  
4:27(1), (2) and (4)  
4:30a(1) to (3)  
4:31(1) and (2)  
4:32(1)  
4:33(1) to (3)  
4:34(1) to (3)  
4:35  
4:39  
4:40  
4:41  
4:42  
4:43(1) and (2)  
4:44(1) and (2)  
4:46(1) to (4)  
4:46a  
4:47(1) to (4)  
4:48(1) and (2)  
4:49(1) to (3)  
4:50(1) and (2)  
4:51(1), (2) and (4)  
4:52(1) to (3)  
4:52a  
4:53  
4:55  
4:56(1)  
4:57  
4:58  
4:59(1) and (2)  
4:60(5)  
4:61(1)  
4:62(1) and (2)  
4:63(1) and (2)  
4:65(1) to (3)  
4:66  
4:67(1)  
4:68(1)  
4:69(1)  
4:70(1) to (7)  
4:71(1) to (5)  
4:72(1) and (3)  
4:73(1) and (3)  
4:74(1)  
4:75(1) to (3)  
4:76(1) and (3)  
4:77(1) to (4)  
4:78(1) and (2)  
4:83(1)  
4:84(1) and (2)  
4:85(1), (4) and (5)  
4:86  
4:87(1) to (4)  
4:88(1) to (4)  
4:89(1) and (2)



Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

4:89a(1) and (2)  
4:90(1) and (2)  
4:90a(1) to (5)  
4:90b(1) to (10)  
4:90c(1) to (4)  
4:90d(1), (2) and (4)  
4:90e(1) to (5) and (8)  
4:91a(1), (3) to (7) and (9)  
4:91b  
4:91c(1) and (2)  
4:91d(1) and (2)  
4:91g(1) to (4)  
4:91i  
4:91j(1), (2) and (5)  
4:91k(1) and (2)  
4:91l(1) and (2)  
4:93(1) and (2)  
4:94(1) to (3)  
4:95(1) to (3)  
4:96(1) and (2)  
4:97(1) to (3)  
4:99(1) and (2)  
4:100(1) to (3)  
4:100a(1) and (2)  
4:100b(1) to (3)  
4:100c  
4:100d(1) and (2)

**Part 5, Market Conduct Supervision**

5:2  
5:16(2)  
5:18(2)  
5:20(1) to (4)  
5:21(1) to (7)  
5:23(1) and (5)  
5:24(1), (3) and (4)  
5:26(1)  
5:27(3) and (4)  
5:29(1), (2), (4) and (5)  
5:30  
5:31(1), (3) and (4)  
5:31  
5:32(1) to (4)  
5:32a(1) to (3)  
5:32b(1) to (3) and (5)  
5:32c  
5:32d(1)  
5:32e  
5:32f(1)  
5:32g  
5:32j(1) to (3)  
5:32k(1), (2) and (4)  
5:32l(1) to (3)  
5:32m  
5:34(1) and (2)  
5:35(1) to (4)

Unofficial translation of *Wet op het financieel toezicht* dated 12 October 2006.

*Only the official text in Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.*

5:36

5:37

5:38(1) and (2)

5:39(1)

5:40

5:41(1) and (2)

5:42

5:43(1) and (2)

5:44

5:48(3) to (8) and (10)

5:50

5:51(1)

5:56(1), (3) and (7)

5:57(1)

5:58(1)

5:59(1), (2), (5), (7) and (8)

5:60(1) and (3)

5:61(1)

5:62(1) and (3)

5:63(3)

5:64(1) and (3) to (7)

5:65

5:66

5:68(1)

5:71(1), (3) and (8)

5:72

5:74(1)

5:76(2)

5:78(1)

5:79

5:80

5:81

### ***Prospectus Regulation***

Article 26(5)

Article 27

Article 29

Article 30

Article 34

### ***Regulation implementing the Markets in Financial Instruments Directive***

7

8(1) and (2)

17(1)

24

27(1)

29(1) to (5)

36

37