

Act of 28th September 2006, on rules relating to the financial markets and their supervision (Financial Supervision Act)

PART 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. to make a direct or indirect and sufficiently specific proposal in the course of a profession or business to enter into a contract as the other party with a consumer or, where it concerns insurance, a client with regard to a financial product that is not a financial instrument or to enter into, manage or perform such a contract in the course of a profession or business; or
- b. to make a direct or indirect and sufficiently specific proposal to enter into an contract as the other party with a client with regard to units issued by an collective investment scheme or to request or acquire, directly or indirectly, funds or other goods from a client in order to hold a unit in an collective investment scheme;

the offeror: the 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 or funeral expenses and benefits in kind insurers provides sufficient safeguards with regard to the interests which this Act seeks to protect;

auditor: an auditor as meant in Section 393 (1) of Book 2 of the Dutch Civil Code;

to advise: to recommend one or more specific products in the course of a profession or business to a certain consumer or, where it is a financial instrument or insurance, client;

advisor: the party giving the opinion;

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

bank: the party which business it is to receive funds, outside a restricted circle, from parties other than professional market parties, and to grant credits for its own account;

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

portfolio management: all activities focused on the management in the course of a profession or business under a contract, other than as a management company, of financial instruments belonging to a person or means belonging to this person as investment in financial instruments, including the performance or causing to perform transactions in financial instruments for the account of the person with which the contract is concluded;

investor compensation scheme: a system relating to a guarantee for investors' claims relating to investment activities at banks, investment firms or financial institutions that may provide investment services, at the risk that these financial undertakings fail to perform their obligations with regard to those claims;

common fund: capital not kept by an investment company including funds or other goods requested or acquired for collective investment in order to have the unit-holders share in the proceeds of the investments;

collective investment scheme: investment company or common fund;

collective investment scheme established in a non-designated State: a collective investment scheme established 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 institution for collective investment in 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 proceeds of 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 meant under b-h of the definition of financial product in this present 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 designated under order in council;

investment firm: the party providing an investment service;

intermediary: the party providing mediation services;

to provide mediation services:

- a. all activities carried out in the course of a profession or business focused on concluding as a middleman a contract regarding a financial product other than a financial instrument, credit or insurance between a consumer and an offeror;

- b. all activities carried out in the course of a profession or business focused on concluding as a middleman a contract regarding credit between a consumer and an offeror or on assisting in the administration and performance of such a contract; or
- c. all activities carried out in the course of a profession or business focused on concluding as a middleman an insurance between a client and an insurer or on assisting in the administration and performance of such an insurance;

restricted circle: a circle composed of persons or companies from which a person or company receives redeemable funds,

- a. that is exactly defined;
- b. of which the criteria of access are defined beforehand, are verifiable and do not result in easy access of persons or companies not belonging to the circle; and
- c. within which the members of the circle already had a legal relationship with the person or company having the funds available at the time at which the redeemable funds are received, based on which they may in all reasonableness be aware of his/her/its financial condition;

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

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

branch:

- a. a permanent branch in a State other than the State in which it is established, which has no legal personality, of a financial undertaking that is not an insurer; or
- b. a permanent branch of an insurer, except for the registered office, managed by the insurer's own staff or by an independent person authorized to represent the insurer on a permanent basis;

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

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

clearing institution established in a non-designated State: a clearing institution established in a State outside the Netherlands not designated under Section 2:16 (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 undertaking provides a financial service or to whom it intends to provide a financial service;

Community co-assurance: a direct non-life insurance regarding substantial risks, concluded in co-assurance, whereby:

- a. the non-life insurer that acts as the first non-life insurer has assumed its obligations under the non-life insurance from a branch 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 course of his/her business or profession to whom a financial undertaking provides a financial service or to whom it intends to provide a financial service;

unit-holder: a shareholder or a holder of a claim 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 Section 22, fourth paragraph, of the UCITS Directive;

deposit-guarantee scheme: a system regarding a guarantee for claims of deposit holders on banks against the risk that these banks fail to perform their obligations relating to such claims;

durable medium: a device enabling a person to store information addressed personally to him/her in a way accessible for future reference for a period of time adequate to the object which the information may serve, and which allows the unchanged reproduction of the information stored;

security:

- a. a negotiable share or other negotiable securities or rights equivalent to negotiable shares, not being a unit in a collective investment scheme directly or indirectly re-purchased or redeemed on request of the unit-holders at the expense of the assets or an apartment right;
- b. a negotiable bond or other forms of negotiable securitized debt; or
- c. any other negotiable securities issued by a legal person, company or institution by which securities meant under a or b may be acquired by the performance of the rights pertaining thereto or by conversion or that is settled in money;

effective credit compensation percentage: the credit compensation to be charged to the consumer in the performance of a credit contract in accordance with the payment scheme, expressed in a percentage on an annual basis of the outstanding balance, calculated in a manner to be laid down 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, which has as its business to have available funds in exchange of which electronic money is issued by which payments may be made also to parties other than the party issuing the electronic money;

European investment firm: investment firm established in another Member State that holds a licence there to carry on its business;

European credit institution: credit institution established in another Member State that holds a licence there to carry on its business;

European life insurer or non-life insurer: life insurer or non-life insurer established in another Member State that holds a licence there to carry on its business corresponding to the licence meant in Section 2:27;

financial instrument;

- a. securities
- b. a unit in a collective investment scheme, not being a security;
- c. an instrument usually negotiated on the money market;
- d. a right to transfer goods in time, or an equivalent instrument focused on settlement in money;
- e. an interest instalment contract;
- f. an interest swap, currency swap or share swap; or
- g. an option to acquire or alienate the aforementioned instrument, including an equivalent instrument focused on settlement in money;

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; or
- h. another product to be designated by order in council;

financial service:

- a. to offer;
- b. to advise;
- c. to provide mediation services;
- d. to provide reinsurance mediation services;
- e. to act as a clearing institution;
- f. to act as an authorized agent or sub-authorized agent; or
- g. to provide an investment service;

financial service provider: a party that offers a financial product other than a financial instrument, or that advises, provides mediation services, provides

reinsurances mediation services, acts as an authorized agent or acts as a sub-authorized agent in that respect;

financial institution: a party, other than a credit institution, that has as its main business the performance of one or more of the activities, meant under 2 -12 in annex 1 to the Recast Banking Directive, or the acquisition and holding of units;

financial Dutch parent holding company: financial holding company established in the Netherlands that is not a subsidiary of a Dutch investment firm or Dutch credit institution or of a financial holding company established in the Netherlands, whereby subsidiary shall be deemed to mean a subsidiary as meant in Articles 1 and 2 of the Consolidated Annual Accounts Directive, or an undertaking over which, in the opinion of the Netherlands Central Bank, a parent undertaking effectively exercises a dominant influence;

financial undertaking:

- 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;

qualifying investor:

- a. a legal person or a company that holds a licence or is otherwise regulated to be active on the financial markets;
- b. a legal person or a company that does not hold a licence or is not otherwise regulated to be active on the financial markets and of which the only company objective is investing in securities;
- c. a national or regional government body, central bank, international or supranational financial organization or other type of international organization;
- d. a legal person or a company established in the Netherlands that:
 - 1 °. under rules to be laid down by order in council is deemed to be a small enterprise;
 - 2 °. was registered by the Netherlands Authority for the Financial Markets as a qualifying investor at its own request;
- e. a legal person or a company, not being a legal person or a company as means in subsection d, opening words and under 1 °;
- f. a natural person with his/her place of residence in the Netherlands who satisfies the rules to be laid down by order in council and who was registered by the Netherlands Authority for the Financial Markets as a qualifying investor at his/her own request; or
- g. a natural person or a company deemed to be a qualifying investor in another Member State as meant in Section 2 (1), under 3, sub iv or v respectively, of the Prospectus Directive;

qualifying holding: a direct or indirect holding representing ten per cent or more of the undertaking's issued capital or the right to exercise, directly or indirectly, ten per cent or more of the voting rights in an undertaking, or the right to exercise, directly or indirectly, equivalent control of an undertaking, whereby in determining the number of voting rights of a party in an undertaking, the voting rights shall also include the votes 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: a market as meant in Article 1 under 13 of the Investment Services Directive or a similar market in raw materials derivatives;

regulated market in the Netherlands: a regulated market of which the holder is recognized as meant in Section 5:26 (1);

authorized agent: the party acting as an authorized agent;

derivatives on commodities: a financial instrument as meant in Annex I, Section C, parts 5 to 7 of Directive 2004/39/EC of the European Parliament and the Council of 21 April 2004 concerning markets for financial instruments, amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and the Council and repealing Council Directive 93/22/EEC (OJ EU L 145);

large risks:

- a. the risks pertaining to the sectors listed in the annex to this Act, i.e. Railway Rolling Stock, Aircraft, Ships (sea, lake and river and canal vessels), Goods in Transit, Aircraft Liability and Liability for Ships (sea, lake, river and canal vessels);
- b. the risks pertaining to the sectors listed in the Annex to this Act, i.e. Credit and Suretyship, to the extent that the policy-holder acts in the course of a profession or business and the risk pertains to such profession or business; or
- c. the risks pertaining to the sectors listed in the Annex to this Act, i.e. 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 Money Losses, to the extent that the policy-holder meets two or more of the following requirements:
 - 1^o. the value of the assets according to the balance-sheet is more than € 6,200,000;
 - 2^o. the net turnover of the previous financial year is more than € 12,800,000;
 - 3^o. the average number of employees of the previous financial year amounts to more than 250;

whereby these requirements, where the policy-holder forms part of a group of which the consolidated accounts are prepared in accordance with the Consolidated Accounts Directive, are applied on the basis of the consolidated

accounts and where the policy-holder forms part of a joint venture, these requirements apply to the joint participants in the joint venture;

trading portfolio: portfolio as meant in Section 11 (1) of the Capital Requirements Directive;

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

reinsurance intermediary: the party providing reinsurance mediation services;

to provide reinsurance mediation services: all activities carried out in the course of a profession or business focused on concluding as a middleman a contract in which risks from contracts of insurance are ceded or on the assistance of the management and performance of such contracts;

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

Capital Requirements Directive: Directive 2006/49/EC of the European Parliament and the Council of 14 June 2006 relating to the capital adequacy of investment firms and credit institutions (recast) (OJ L 177);

undertaking for collective investment in transferable securities: a collective investment scheme as meant in Article 1 (2) of the UCITS Directive;

institutional investor:

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

credit: cash credit or commodity credit whereby the following shall have the following meaning:

- a. cash credit: to make a sum of money available to a consumer, regarding which the consumer shall be required to make one or more payments;
- b. commodity credit:
 - 1°. to make the enjoyment of movable property, financial instrument or 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 shall be 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 make 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 with regard to the provision of a

service to that consumer in respect of which the consumer is required to make one or more payments;

credit institution: a bank or electronic money institution;

life insurer: the 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 as meant in Section 975 of Book 7 of the Dutch Civil Code, it being understood that the life insurer's performance is only made in money, or a funeral expenses and benefits in kind insurance as meant 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 a party to the European Economic Area Agreement;

market in financial instruments: a market subject to rules and meant to bring together supply and demand of financial instruments;

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

parent undertaking: parent undertaking as meant in Sections 1 and 2 of the Consolidated Annual Accounts Directive, or an undertaking that, in the opinion of the Netherlands Central Bank, effectively exercises a dominant influence over another undertaking;

funeral expenses and benefits in kind insurer: a party that, not being a life insurer, 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 established in a non-designated State: a funeral expenses and benefits in kind insurer established 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 Netherlands Central Bank: De Nederlandsche Bank N.V.;

Dutch investment firm: investment firm established in the Netherlands that holds a licence to carry on its business;

Dutch EU parent investment firm: parent investment firm established in the Netherlands that is not itself a subsidiary of an investment firm, credit institution or of a financial holding company established in another Member State;

Dutch EU parent credit institution: parent credit institution established in the Netherlands that is not itself a subsidiary of an investment firm or credit institution or of a financial holding company established in another Member State;

Dutch financial EU parent holding company: financial holding company established in the Netherlands that is not a subsidiary of an investment firm or credit institution or of a financial holding company established in another Member State;

Dutch credit institution: credit institution established in the Netherlands that holds a licence to carry on its business;

Dutch life insurer or non-life insurer: life insurer or non-life insurer established in the Netherlands that holds a licence to carry on its business;

Dutch parent investment firm: investment firm established in the Netherlands that has an investment firm, credit institution or financial institution as a subsidiary or that holds a unit in such a financial undertaking and that is not itself a subsidiary of another Dutch investment firm, Dutch credit institution or financial holding company established in the Netherlands;

Dutch parent credit institution: credit institution established in the Netherlands that has as a subsidiary an investment firm, credit institution or financial institution or that holds a unit in such a financial undertaking and that is not itself a subsidiary of another Dutch investment firm, Dutch credit institution or financial holding company established in the Netherlands;

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

non-European credit institution: credit institution established in a non-Member State that holds a licence there to carry on its business;

non-European life insurer or non-life insurer: life insurer or non-life insurer established in a non-Member State that holds a licence there to carry on its business;

sub-intermediary: an intermediary providing mediation services for another intermediary;

sub-authorized agent: a party acting as a sub-authorized agent;

company savings fund: a fund as meant in Section 1 (1) (d) of the Pensions and Savings Funds Act;

Our Minister: Our Minister of Finance;

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

to act as a sub-authorized agent: to conclude an insurance with a client in the course of a profession or business under a sub-authority issued by an authorized agent or by a sub-authorized agent as an authorized party of an insurer;

relief institution: a public limited company established in the Netherlands that solely intends to help, on the instructions of the Netherlands Central Bank, a life insurer in trouble by reinsurance or by assuming the life insurer's portfolio;

redeemable funds: funds that must be redeemed at some point, for whatever reason, and regarding which it is clear beforehand which nominal sum should be redeemed;

distance contract:

- a. a contract regarding a financial service or financial product between a financial undertaking and a consumer concluded within the scope of a system organized by the financial undertaking for distance sales or services, whereby sole use is made of one or more distance communication techniques up to and including the conclusion of this contract; or
- b. a contract intended to accrue a fund to provide for the funeral expenses and benefits in kind of a natural person that is concluded between a funeral expenses and benefits in kind insurer and a consumer in the context of a system organized by the funeral expenses and benefits in kind insurer for distance sales or services which does not entail an investment risk for the latter and whereby sole use is made of one or more distance communication techniques up to and including the conclusion of this contract;

person: a natural person or legal person;

pension fund:

- a. a sectoral pension fund as meant in Section 1 (1) (b) of the Pensions and Savings Funds Act;
- b. a company pension fund as meant in Section 1 (1) (c) of the Pensions and Savings Funds Act; or
- c. an occupational pension fund as meant in Section 1 (1) (j) of the Compulsory Occupational Pension Scheme Obligatory Participation Act as well as the pension fund meant in Section 113a (1) of the Notaries Act;

local company: a party that, solely for its own account or for the account of investment firms that have been admitted to trading on those markets, in so far as the execution and settlement of the transactions takes place under the

responsibility of and is guaranteed by a clearing institution established in the Netherlands, trades on the markets for:

- a. options for the acquisition or alienation of financial instruments;
- b. rights to transfer goods in time, or equivalent instruments that are focused on settlement in money;
- c. other derivative financial instruments; or
- d. financial instruments in relation to the derivative financial instruments meant in subsections a through 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 the premium tax;

professional investor:

- a. a collective investment scheme;
- b. an investment firm;
- c. a body governed by public law and forming part of Central Government;
- d. a financial institution;
- e. an international or supranational organization governed by public law;
- f. a credit institution;
- g. a pension fund having an invested capital of € 25,000,000 or more or its equivalent in foreign currency at its disposal;
- h. a legal person with a consolidated balance-sheet total of € 500,000,000 or more at its disposal or having an invested capital of € 25,000,000 or more or its equivalent in foreign currency at its disposal; or
- i. an insurer having an invested capital of € 25,000,000 or more or its equivalent in foreign currency at its disposal;

professional market party:

- a. a qualifying investor;
- b. a subsidiary of a qualifying investor that is involved in the supervision of the qualifying investor on a consolidated basis;
- c. any other persons or companies designated by order in council as a professional market party;

Prospectus Regulation: Regulation 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 (OJ L 149);

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

advertising: any kind of provision of information serving to promote or with an advertising nature in respect of a certain financial service or a certain financial product;

register holder:

- a. to the extent that the register concerns financial undertakings that may conduct activities under parts 2.2.1 through 2.2.4 and 2.3.1 through 2.3.4 and data that may be registered under the Prudential Supervision of Financial Undertakings Part: the Netherlands Central Bank;
- b. to the extent that the register concerns financial undertakings that may conduct activities under parts 2.2.5 through 2.2.13 and 2.3.5 through 2.3.8 and data registered under Part 4, Conduct of business supervision of financial undertakings or the Supervision of Conduct of Financial Market Part: the Netherlands Authority for the Financial Markets;

Investment Services Directive: Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities services (OJ L 141);

UCITS Directive: Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ 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 (OJ L 193);

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 (OJ L 345);

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

rationalization measure: the emergency measure as meant 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 situation 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 non-life insurance contracts;

non-life insurance:

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

it being understood that for the purposes of this Act, insurance is only deemed to be accident insurance if it involves an obligation to make payment as a

consequence of an uncertain event or an uncertain circumstance which 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, in as far 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 party has taken out an insurance contract where it concerns a non-life insurance contract with a duration of four months or less and 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 person having taken out the insurance contract has his/her habitual place of residence, or, where it is a legal person, the State in which this legal person has any of its permanent, fixed establishments that are covered by the insurance contract;

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

Supervisory Authority: a foreign government body or a foreign body designated by the public authorities which is entrusted with the supervision of financial markets or persons working on such markets;

supervisor: the Netherlands Central Bank or the Netherlands 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 company for it to carry out activities on behalf of that financial company:

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

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

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

to provide an investment service:

- a. the performance of activities in the course of a profession or business as a middleman focused on receiving orders from clients relating to financial instruments and on passing on those orders to an investment firm in the name of and for the account of those clients;
- b. the performance of activities in the course of a profession or business as a middleman focused on receiving orders from clients relating to financial instruments and carrying out those orders or causing them to

- be carried out for the account of those clients as well as otherwise bringing together parties in the matter of transactions in financial instruments;
- c. the performance of activities focused on carrying out transactions in relation to financial instruments for own account, otherwise than at the issue of financial instruments as meant in subsection f, so as to obtain benefit from a difference between the price asked and the price offered for them;
 - d. the performance of activities in the course of a profession or business focused on offering an opportunity to obtain claims, expressed in financial instruments, by opening an account by means of which transactions in financial instruments can be effectuated;
 - e. the performance of activities in the course of a profession or business focused on taking over or placing financial instruments by an offer as meant in Chapter 5.1;
 - f. the performance of activities in the course of a profession or business focused on carrying out transactions in relation to financial instruments in order to maintain a market therein;
 - g. the performance of activities in the course of a profession or business focused on acting as a local company; or
 - h. portfolio management;

portfolio manager: the party managing a portfolio;

to provide 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 person having taken out the insurance contract has his/her habitual place of residence, or in which, where the person having taken out the insurance contract is a legal person, the latter has the place of business 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 party having taken out the insurance contract has his/her 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;

representative of an insurer: the party appointed by an insurer to represent it in a State other than the State of in which the insurer is established in the performance of the powers of that insurer and in the compliance with 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. a life insurance;
- b. a funeral expenses and benefits in kind insurance; or

c. a non-life insurance;

place of business: branch or registered office;

insurance claim: a direct claim against the insurer of an insured party, a party having taken out an insurance contract, a 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 expectations 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 undertaking has registered its office according to its articles of associations or its rules or, where it is not a legal person, the place where such undertaking has its principal place of business;

Part 1.1.2 Scope regarding financial undertakings

§ 1.1.2.1. General

Section 1:2

This Act, except for this part, Chapters 5.1, 5.3 and 5.5 and part 5.4.2, does 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 meant in Section 2 (3) of the Recast Banking Directive.

Section 1:3

For the purposes of the provisions under this Act a financial undertaking must also be taken to mean the person belonging to one of the categories of the financial undertakings with no profit motive.

§ 1.1.2.2. Clearing institutions and credit institutions

Section 1:4

The Netherlands Central Bank is not a clearing institution and not a 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, except for 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 electronic money does at no time exceed € 6,000,000;

b. the electronic money is accepted only by an undertaking 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 undertakings 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 ensuing from this section shall apply *mutatis mutandis* to electronic money institutions as meant in the first subsection. The annual accounts state which part of the first subsection applies and the total amount of the financial liabilities relating to the issuance of electronic money.

3. This Act shall not concern:

a. financial services relating to electronic money accepted as payment only by the financial undertaking issuing the electronic money;

b. financial services relating to electronic money issued by an electronic money institution as meant in the first subsection 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 concern:

a. the Social Insurance Bank;

b. the Employee Insurance Schemes Implementing Body as meant in Chapter 5 of the Work and Income Implementation Structure Act;

c. health insurance funds admitted under the Compulsory Health Insurance Act;

d. mutual associations established in the Netherlands and mutual associations established outside the Netherlands which solely conclude non-life insurance contracts with regard to damage or loss caused by an armed conflict, civil war, insurrection, civil commotion, riot and mutiny; and

e. undertakings solely concerned with the Assistance class and thereby solely grant cover in the event of an accident with or a 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^o. on-the-spot technical assistance regarding which the undertaking usually deploys its own personnel or equipment;

2^o. the transport of the road vehicle to the nearest or most suitable location for repairs, 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^o. 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, in so far as the cover also extends to an accident or breakdown abroad, where the assistance is limited to the activities listed under 1^o and 2^o, the driver or a passenger is a member of the undertaking and the assistance or the transport merely on presentation of a membership card, without payment of supplemental premium, shall be provided by a similar organization 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 the life insurance contract

includes liabilities relating to incidents with an uncertain cause and affecting a natural person, the life insurer's business does not lose its character and such liabilities shall not be deemed to have been assumed in the course of the business of the life insurer.

Section 1:7

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

Section 1:8

1. The business of life insurer or the business of non-life insurer shall not include the conclusion or settlement of life insurance contracts or non-life insurance contracts, respectively, for their own account by a pension fund in so far as that pension fund implements a lien relating to pension as meant in Section 2 (1) of the Pensions and Savings Funds Act or an occupational pension scheme as meant in Section 1 (1) (e) of the Compulsory Occupational Pension Scheme Obligatory Participation Act.

2. The business of life insurer or the business of non-life insurer shall not include the conclusion or settlement of life insurance contracts or non-life insurance contracts, respectively, for their own account by undertakings within the meaning of Section 1 of the Pensions and Savings Funds Act or pension institutions that neither conclude nor settle any other life insurance contracts or non-life insurance contracts for their own account than those serving to implement the liens meant in Section 2 (3) of the Pensions and Savings Funds Act or liens regarding which a waiver has been granted under Section 29 of the Pensions and Savings Funds Act of Section 2 (1) of that Act.

Section 1:9

1. Solely the provisions concerning the operation of the business of a life insurer shall apply to an insurer who holds a licence as meant in Section 2:37 (1) or Section 2:40 for the operation of the business of a life insurer in the General Life Insurance branch and on that basis operates the business of a funeral expenses and benefits in kind insurer.

2. Solely the provisions concerning the operation of the business of a funeral expenses and benefits in kind insurer shall apply to an insurer who holds a licence as meant in Section 2:48 (1), or 2:50 (1) for the operation of the business of a funeral expenses and benefits in kind insurer.

Section 1:10

It shall be laid down by order in council which of the rules provided under this Act with regard to the operation of the business of a non-life insurer and to the operation of the business of a funeral expenses and benefits in kind insurer, under conditions to be further specified in the order in council, shall not apply to the following categories:

a. mutual associations of a limited scale established in the Netherlands operating the business of a non-life insurer and mutual associations of a limited scale established outside the Netherlands operating the business of a non-life insurer;

- b. non-life insurers established in the Netherlands limited to the conclusion and settlement of export credit insurance contracts for the account of and guaranteed by the State of the Netherlands;
- c. associations and mutual associations of a limited scale established in the Netherlands operating the business of a funeral expenses and benefits in kind insurer.

Section 1:11

For the application of the provisions under or pursuant to this Act with regard to the business of non-life insurer the Swiss Federal State shall be regarded as a Member State, it being understood that different rules may be laid down in respect of certain issues under or pursuant to order in council.

§ 1.1.2.4. Collective investment schemes

Section 1:12

1. This Act, except for this part, Section 3:7 and Chapters 5.1, 5.3, 5.4 and 5.5, shall not concern collective investment schemes which offer units to:
 - a. less than one hundred persons that are not qualifying investors; or
 - b. only qualifying investors.
2. This Act, except for this part, Section 3:7 and Chapters 5.1, 5.3, 5.4 and 5.5, shall not concern management companies and depositaries in so far as they manage collective investment schemes as meant in the first subsection or are responsible for the safekeeping of the assets of those collective investment schemes.
3. In the event of an offer of units as meant in the first subsection, opening words and under a, other than securities, and in advertising and documents announcing such an offer, it shall be stated that the collective investment scheme does not require authorization pursuant to this Act and that no supervision of the collective investment scheme is exercised pursuant to Part 2, Prudential Supervision of Financial Undertakings and Part 4, Conduct of business supervision of financial undertakings.
4. In the event of an offer of units as meant in the first subsection, opening words and under b, other than securities, and in advertising and documents announcing such an offer, it shall be stated that the offer is or shall be solely addressed to qualifying investors.

Section 1:13

1. The provisions under this Act relating to a collective investment scheme which is a common fund or an investment company with a separate management company shall be addressed to its management company.
2. The provisions under this Act relating to a management company shall apply mutatis mutandis to an investment firm without a separate management company, except for Sections 1:60 (1), 2:65 (1) (a), 2:67, 2:71, 3:57, 3:95 and 4:59.
3. The provisions under Sections 4:46, 4:49, 4:50 and 4:52 relating to a management company shall apply mutatis mutandis to a collective investment scheme established in a designated State which has no separate management company.
4. The registered office of a common fund is situated in the State in which its management company is established.

5. The provisions of this Act with regard to collective investment schemes that offer units in the Netherlands, management companies of those collective investment schemes and depositaries affiliated with those collective investment schemes shall apply mutatis mutandis to collective investment schemes that have offered units in the Netherlands, management companies of those collective investment schemes and depositaries affiliated with those collective investment schemes.

Section 1:14

The provisions of this Act with regard to undertakings for collective investment in transferable securities shall not apply to:

- a. collective investment schemes that, pursuant to their articles of association or their fund rules, may conclude loans for amounts higher than 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. collective investment schemes that primarily invest via subsidiaries in objects other than financial instruments as meant in Section 4:60 (1).

Part 1.1.3 Scope regarding financial services

§ 1.1.3.1. General

Section 1:15

This Act, except for this part and Part 5, Market conduct supervision, shall not concern:

- a. the provision of financial services by pension funds or company savings funds in so far as they provide financial services to the sector, undertaking or profession with which they are associated; and
- b. portfolio management on behalf of pension funds or company savings funds as meant under a. or allied funds by persons that are affiliated with the funds to which this financial service is provided.

§ 1.1.3.2. Services of the information society

Section 1:16

1. This Act, except for Sections 2:36 (2 – 4), 2:38, 2:39 and 2:46, shall not concern financial services that may be qualified as a service of the information society as meant in Section 15d (3) of Book 3 of the Dutch Civil Code and that are provided by a financial undertaking established in a non-Member State or from a branch situated in another Member State by a financial undertaking established in a non-Member State.

2. If measures are required to protect any of the interests listed in the sixth subsection under a of Section V of the Act amending the Electronic Commerce Directive, Our Minister may, where necessary with the application of the sixth subsection of that section, decide that Part 4, Conduct of business supervision of financial undertakings and the ensuing provisions shall concern, either fully or in part, notwithstanding the first subsection, a certain financial service as meant in that subsection.

Section 1:17

The provision of a financial service in the Netherlands shall also be taken to mean the provision of a financial service that may be qualified as a service of the information society as meant in Section 15d (3) of Book 3 of the Dutch Civil Code in another Member State by a financial undertaking established in the Netherlands or by a branch situated in the Netherlands of a financial undertaking established in a non-Member State.

§ 1.1.3.3. Advice on financial instruments and the provision of investment services

Section 1:18

This Act, except for Part 5, Financial Markets conduct supervision, shall not concern advice on financial instruments and the provision of investment services in so far as:

- a. these financial services are provided by consultants or investment firms to the undertaking of which they are a subsidiary, for their subsidiaries or for another subsidiary of the undertaking of which they are a subsidiary;
- b. these financial services consist of the management, based on a contract with an employer, of an employee-participation scheme relating to financial instruments that are issued at that employer's expense; or
- c. the main business of the consultants or investment firms comprises the trading of items of property with producers, with users that trade in the course of their profession or business, or with other parties with the same main business and they exclusively provide these financial services to these other parties, in so far as required by their main business.

Section 1:19

The provisions under this Act relating to activities focused on working in the course of a profession or business as a middleman, other than under a contract regarding portfolio management, at the conclusion of transactions in financial instruments shall not concern the re-purchase or sale of units in collective investment schemes by the management companies of those collective investment schemes.

§ 1.1.3.4. Financial services relating to credit

Section 1:20

This Act shall not concern:

- a. offering credit by public bodies in the exercise of a statutory function;
- b. financial services provided by registered money transaction offices as meant in Section 2 (1) of the Money Transaction Offices Act in so far as they are services that they may provide under that Act;
- c. financial services relating to credit whereby the effective credit compensation percentage upon entering into the credit contract does not amount to more than the statutory interest rate, meant in Section 120 (2) of Book 6 of the Dutch Civil Code, in so far as the credit is offered to less than 100 consumers or is offered by an employer to its employees;
- d. financial services relating to credit consisting in a lease or to which such a contract belongs, unless it relates to items of property to be designated by order in council and intends to provide the enjoyment of the item of property to which the contract refers, whether or not by renewing the contract or by

entering into a new contract, which shall cover a period of more than six months;

e. financial services relating to credit consisting in the receipt of movable items of property of a consumer in exchange for making available a sum of money to the consumer, in so far as the redemption claim against the consumer shall lapse where the financial undertaking converts the movable items of property concerned into cash; and

f. financial services relating to credit whereby it is agreed that the payments owed in this respect by the consumer shall be redeemed no later than three months after the sum of money is made available, the enjoyment of a movable item of property, financial instrument or investment object has been provided, or a service has been provided.

§ 1.1.3.5. *Financial services relating to insurance*

Section 1:21

This Act shall not concern:

a. providing insurance mediation services in so far as:

1^o. the provision of the mediation services only requires knowledge of the insurance cover that is provided;

2^o. the insurance is not a life insurance and does not cover any liability risks;

3^o. the intermediary has a main professional activity other than providing insurance mediation services;

4^o. the insurance is complementary to the product or service supplied by the intermediary concerned, which is the case where the insurance contract concerned covers the risk of breakdown, loss of or damage to items of property supplied by that intermediary or covers the risk of breakdown, loss of or damage to baggage or other risks linked to the travel booked with that intermediary, even if the insurance covers life assurance or liability risks, provided that the cover is ancillary to the main cover for the risks linked to that travel; and

5^o. it is an insurance of which the amount of the annual premium does not exceed € 500 and the full maturity of the insurance contract, including any renewals, does not exceed five years; and

b. financial services relating to insurance of risks and liabilities situated in a non-Member State.

Section 1:22

The provisions pursuant to 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 – 3), 4:30a (5) and 4:72 (1 – 5) shall apply mutatis mutandis to the provision of insurance mediation services and the provision of reinsurance mediation services from the Netherlands for clients that have their habitual domicile in another Member State.

Part 1.1.4 Affecting the validity of legal acts

Section 1:23

The legal validity of a legal act under private law performed contrary to the rules laid down under or pursuant to this Act cannot be affected, 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 undertakings and contributing to the stability of the financial sector.
2. Under this Act, the Netherlands Central Bank shall be required to exercise the prudential supervision of financial undertakings and to decide on the admission of financial undertakings to the financial markets.

Section 1:25

1. Supervision of conduct shall focus on orderly and transparent financial market processes, clear relations between market parties and due care in the treatment of clients.
2. Under this Act, the Netherlands 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 undertakings to those markets.

§ 1.2.1.2. Institutional provisions

Section 1:26

1. The Management of the Netherlands Authority for the Financial Markets shall be composed of a minimum of three and a maximum of five members. The Chair and the other members of the Management shall be appointed by Royal Decree. They shall be appointed for a period of not more than four years. The Supervisory Board may submit a non-binding recommendation to Our Minister for every appointment of a member of the Management. Re-appointments shall not be not subject to any limitations.
2. Our Minister may suspend or dismiss by Royal Decree the Chair and the other members of the Management where 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.
4. The Supervisory Board shall determine the remuneration and regulations regarding pension and reimbursement of expenses of the Chair and the other members of the Management subject to Our Minister's permission.

Section 1:27

1. The Netherlands Authority for the Financial Markets shall have a Supervisory Board.
2. The Supervisory Board shall supervise the efficient and effective performance of the Management, in particular with regard to the financial management, and shall give its opinion to the Management.

3. The Supervisory Board shall be composed of 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 period of not more than four years. The Supervisory Board may submit a binding recommendation to Our Minister for every appointment. They may be reappointed twice and each time for a period of not more than 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 the respective function 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 on the supervisor under this Act to lay down generally binding regulations, the supervisor shall only do so after consulting the suitable representatives of undertakings 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 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 under the first or second subsection, he/she shall, without delay, submit a recommendation for amendment of the general order in council concerned.

Section 1:29a

1. The Netherlands Central Bank shall make public the following information:
 - a. the provisions under or pursuant to the Prudential Supervision of Financial Undertakings Part;
 - b. the way in which the Netherlands makes use of the options comprised in the directives of the European Union that specifically focus on investment firms and credit institutions;

- c. the general starting points it adopts in utilising the scope in respect of policy which it has by virtue of the provisions under or pursuant to the Prudential Supervision of Financial Undertakings Part;
 - d. the general criteria and methods on the basis of which the evaluation, meant in Section 3:18a, is conducted; and
 - e. the aggregated statistical data with regard to the main aspects of the enforcement of the prudential rules.
2. The information made public pursuant to the first subsection is sufficient to allow for 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

1. Annually, the supervisor shall draw up a budget of 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 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 comprise a comparison with the budget of the present year and the most recent annual accounts or accounting which Our Minister has approved.
4. The supervisor shall send the budget to Our Minister by 1 December of the year preceding the budget year.
5. The approval may be withheld if the annual accounts or accounting are contrary to the law or public interest. The approval shall not be withheld until the supervisor has been provided with the opportunity to adjust the budget within a reasonable term to be fixed 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, dispose of not 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, while also stating the reason for the differences.

Section 1:32

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

Section 1:33

1. Annually, the Netherlands Authority for the Financial Markets shall prepare annual accounts of its function assigned under this Act and the ensuing activities.
2. The Netherlands Authority for the Financial Markets' annual accounts reporting on the financial management and the results attained in the past financial year shall be organized in accordance with Title 9 of Book 2 of the Dutch Civil Code wherever possible.
3. The annual accounts shall be accompanied by a declaration that the annual accounts present a true and fair view issued by an auditor designated by the Netherlands Authority for the Financial Markets.
4. The auditor shall add the declaration, meant in the second subsection, to a report of findings relating to the lawful collection and deployment of funds by the Netherlands Authority for the Financial Markets under this Act.
5. The auditor shall also add to the declaration, meant in the second subsection, a report of findings on the question as to whether the management and organization of the Netherlands Authority for the Financial Markets under this Act meet the requirements of efficiency.
6. The Netherlands Authority for the Financial Markets shall send the annual accounts to Our Minister for approval by 1 May of the year following the financial year.
7. The approval may be withheld where they are contrary to the law or public interest.
8. Immediately upon approval, the Netherlands Authority for the Financial Markets 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.

Section 1:34

1. Annually, the Netherlands Central Bank shall draw up a report of the function assigned to it under this Act and the ensuing activities.
2. The report shall be accompanied by a declaration that the report presents a true and fair view, issued by an auditor appointed by the Netherlands Central Bank.
3. The auditor shall add to the declaration, meant in the second subsection, a report of the findings relating to the lawful collection and deployment of funds by the Netherlands Central Bank under this Act.
4. The auditor shall also add to the declaration, meant in the second subsection, a report of the findings relating to the question as to whether the management and organization of the Netherlands Central Bank under this Act meet the requirements of efficiency.
5. The Netherlands Central Bank shall send the report, meant in the first subsection, to Our Minister for approval by 1 May of the year following the financial year.
6. The approval may be withheld where they are contrary to the law or public interest.
7. Immediately upon approval, the Netherlands 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 realized at the end of a budget year and the supervisor's loss realized is 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 meant in Section 1:40, the supervisor shall submit a proposal to that effect in the annual accounts or the accounting report.

Section 1:36

1. Annually, the supervisor prepares an annual report. This report shall state the performance of its function and the policies pursued to this effect under this Act in the preceding year. The annual report shall also state the policies pursued in respect of quality assurance.
2. The supervisor shall send the annual report to Our Minister by 1 May. Our Minister shall send a copy of the annual report to the House of Representatives.
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 through 10:31 of the General Administrative Law Act shall apply mutatis mutandis.
2. The approval, meant in the first subsection, may be withheld:
 - a. where the articles of association following the amendment insufficiently correspond to the provisions of this Act;
 - b. where the articles of association following the amendment provide insufficient safeguards for the independent performance of its function by the supervisor;
 - c. where they are contrary to the law or public interest.

Section 1:38

1. In the course of the performance of its statutory function 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 to enable any party that comes into contact with the supervisor to submit proposals to improve working methods and procedures.
3. In the annual report, meant in Section 1:36, the supervisor shall report on the activities relating to the implementation of the first and second subsections.

Section 1:39

1. The supervisor shall organize consultations on:
 - a. the budget to be prepared by the supervisor;
 - b. the profit and loss realized by the supervisor as well as the income and expenditure, and the activities carried out;

- c. the costs for undertakings relating to the performance of its statutory function and the ensuing activities.
2. The consultations shall be held by the supervisor and eligible representatives of the undertakings under its supervision. The supervisor may also admit eligible client organizations to the consultations. Our Minister shall appoint public officers to attend the consultations on his/her 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 the course of the exercise of its statutory function to the undertakings regarding which the activities are carried out, in so far as these costs are not included in the National Budget. The costs also include the costs incurred for the preparation of the exercise of new aspects of its function, in so far as they were assigned to the supervisor.
2. The supervisor requesting an opinion from the other supervisor in the course of an application for authorization or approval under Section 1:48 may charge to 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 provided Our Minister has approved the annual accounts or the report including a proposal as meant in Section 1:35 (2).
4. The proceeds from fines and forfeited penalty payments in so far as the underlying orders by the supervisor in the preceding year have become final and conclusive shall be deducted from the budgeted costs.
5. Further rules in relation to the first through the third subsections will be laid down under or pursuant to order in council. A distinction may thereby be made between costs to be charged occasionally or annually, and these rules may also give the supervisor the power not to charge costs in full or in part in certain cases if charging the costs in full would lead to material unfairness. These rules inter alia relate to the assignment of supervisory acts to undertakings.
6. Tariffs shall be laid down by ministerial regulation on the basis of which the costs, meant in the first through the third subsections, are 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, in so far 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 examination of 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. The supervisor shall supply Our Minister with the data or information meant in the first subsection, unless it is confidential data or information within the meaning of Section 1:89 (1), that:
 - a. is related or can be traced back to a separate person or company, except for data or information that is related or can be traced back to a separate financial undertaking:
 - 1^o. authorized under the Market Access of Financial Markets Part or that has received a supervisory status certificate as meant in Section 3:110 or from which the licence or that status has been revoked; and
 - 2^o. to which a suspension of payments has been issued, or in accordance with part 3.5.5 the emergency regulations have been declared applicable or that has been declared bankrupt or dissolved by judicial decision;
 - b. is related to undertakings which are or have been involved in an attempt to enable a financial undertaking to continue its operations; or
 - c. comes from a Supervisory Authority or was obtained further to a verification at a branch situated in another State of a financial undertaking established in the Netherlands, and no explicit permission was granted by that Supervisory Authority or of the Supervisory Authority of the State in which the verification was carried out.
3. Our Minister may instruct a third party to examine the data or information supplied under the second subsection and to report to him/her. Our Minister may also authorize the third party acting on his/her instructions to obtain data or information on his/her behalf, in which case the first and second subsections shall apply mutatis mutandis.
4. Our Minister shall only make use of the data or information obtained under the second or third subsection for reaching a conclusion 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/her instructions shall be required to observe the confidentiality of the data or information received under the second subsection.
6. Notwithstanding the fourth and fifth subsections, Our Minister may inform both Houses of Parliament of the findings and conclusions derived from the data or information and make public the conclusions in a general sense.
7. The Government Information Public Access Act, the National Ombudsman Act and Title 9.2 of the General Administrative Law Act shall not apply to the data and information meant in this section which Our Minister or the third party working on his/her instructions has at his/her/its disposal.

Section 1:43

1. If Our Minister is of the opinion that the supervisor seriously fails to perform its function, Our Minister may take the required measures.
2. In the implementation of the first subsection Our Minister may decide to exercise one or more portions of the supervisor's function him/herself or to have them exercised 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 granted the opportunity to properly exercise its function within a term to be fixed by Our Minister.

4. Our Minister shall, without delay, inform the House of Representatives of the measures taken under the first subsection.

Section 1:44

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

Section 1:45

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

CHAPTER 1.3 COLLABORATION SUPERVISORS

Part 1.3.1 Collaboration supervisors national

Section 1:46

1. The supervisors shall collaborate closely with a view to laying down generally binding regulations and policy rules to ensure they are equivalent wherever possible in so far as they relate to matters that are both subject to prudential supervision and supervision of conduct.
2. The matters meant in the first subsection shall in any event include:
 - a. the use of the powers listed in part 1.4.2;
 - b. the fit and proper qualities, meant in Sections 3:9 and 4:10;
 - c. the expertise, meant in Sections 3:8 and 4:9;
 - d. the controlled and fair operations, meant in Sections 3:17 (2) (a and b), and 4:14 (2) (a and b); and
 - e. other matters to be designated by order in council.

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 mentioned in the second subsection.
2. The measures are:
 - a. the appointment of a liquidator under Section 1:76;
 - b. the withdrawal of an authorization under Section 1:104, opening words and under b, c, d, e, f or j;
 - c. imposing a prohibition, meant in Section 1:58, 1:59 (2), 1:67 (1) or 4:4; and
 - d. the designation under Section 1:75 intended to dismiss a person who (co-)determines the policies of a financial undertaking or intended to dismiss a person who forms part of a body entrusted with the supervision of the policies and the general course of events of a financial undertaking.
3. The view shall be submitted in writing, unless the urgent nature of the measure should so oppose, given the interests involved. In such a case, a verbally submitted view will suffice, it being understood that it will, without

delay, be confirmed in writing. Where the supervisor takes a decision as meant in the first subsection 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. The first and third subsections shall apply mutatis mutandis to petitioning for bankruptcy under Section 212k or Section 213b of the Bankruptcy Act and to applying for emergency regulations under part 3.5.5.

Section 1:48

1. If the Netherlands Central Bank in the course of handling an application meant in Section 2:13, 2:22, 2:32, 2:33, 2:42, 2:43, 3:33 or 3:110, fourth or fifth subsection, is required to assess whether the applicant meets the requirements laid down by Part 4, Conduct of business supervision of financial undertakings, it shall request the opinion of the Netherlands Authority for the Financial Markets before rendering a decision on such application.

2. If the Netherlands Authority for the Financial Markets in the course of handling an application meant in Section 2:67, 2:68 or 2:99 is required to assess whether the applicant meets the requirements laid down by the Prudential Supervision of Financial Undertakings Part it shall request the opinion of the Netherlands Central Bank before rendering a decision on such application.

3. The supervisor that has been requested for an opinion as meant in the first or second subsection shall render such an opinion in writing within six weeks of the request.

4. If the Netherlands Authority for the Financial Markets in the course of an application for approval as meant in Section 2:122, 2:127 or 2:130 or in the course of the report of a change as meant in Section 4:26 (1 or 2) is required to assess whether the financial situation of the applicant or the financial undertaking concerned is adequate, it shall request the opinion of the Netherlands Central Bank in this respect. The Netherlands Central Bank shall give its opinion in writing within three weeks of the request.

5. If the supervisor having requested the opinion considers departing from the opinion it shall provide the supervisor having given the opinion with the opportunity to offer a verbal explanation of the opinion.

6. The opinion, meant in the first, second or fourth subsection, forms part of the decision relating to the authorization or approval.

Section 1:49

1. If a supervisor signals that the fit and proper qualities of a person (co-)determining the policies of a financial undertaking authorized by the other supervisor or that forms part of a body entrusted with the supervision of the policy and the general course of events of such an undertaking, are 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 meant in part 1.4.2.

2. If a supervisor signals that a person determining the day-to-day policies of a financial undertaking authorized by the 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 meant in part 1.4.2.

3. The notification and the recommendation shall be in writing, unless their urgent natures should so oppose, given the interests involved. In such a case a verbal notification and recommendation will suffice, it being understood that they will, without delay, be confirmed in writing.

4. The other supervisor shall inform the supervisor having issued the notification and made the recommendation within a reasonable term and by stating reasons whether it shall proceed to take a measure as meant 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 meant in part 1.4.2.

6. The notification and the recommendation shall form an integral part of the decision to take the supervisory measure if a measure as meant in part 1.4.2 is taken on the basis of the notification.

Section 1:50

1. Section 1:54 first through the fourth subsections shall apply *mutatis mutandis* to the Netherlands Authority for the Financial Markets if the latter supervises a financial undertaking forming part of a financial conglomerate meant in Section 3:290.

2. Section 1:54 first through the fourth subsections shall apply *mutatis mutandis* to the collaboration between the Netherlands Central Bank and the Netherlands Authority for the Financial Markets.

Part 1.3.2 Collaboration with other Member States general

§ 1.3.2.1. Collaboration and exchange of data and information

Section 1:51

1. The supervisor shall collaborate with the Supervisory Authorities of other Member States where required for the performance of its statutory function or for the performance of the function of those Supervisory Authorities.

2. On request the supervisor shall supply a Supervisory Authority of another Member State, with due regard to Section 1:90 first through the third subsections, with all data and information required for the performance of the function of that Supervisory Authority.

Section 1:51a

1. For purposes of the supervision as meant in Part 3.6.2, the Netherlands Central Bank works together with the Supervisory Authorities concerned of other Member States. In that context, the Netherlands Central Bank, if so requested, shall furnish all relevant information to that Supervisory Authority, with due regard to the provision under Section 1:90, subsections 1 - 3.

2. The Netherlands Central Bank shall furnish to the Supervisory Authorities concerned of other Member States, of its own accord, all information that is essential for them to carry out their task of supervision, as meant in Part 3.6.2.

3. Essential information as meant in the second subsection shall in any case be deemed to refer to information on:

a. the group structure, the important 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 in investment firms, credit institutions or other undertakings of the group that could have serious detrimental consequences for the investment firms or credit institutions;

d. important sanctions and special measures taken by the Netherlands Central Bank or the Supervisory Authorities of other Member States with regard to the financial undertakings meant in Part 3.6.2.

4. If the Netherlands Central Bank exercises supervision of 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 exercises the supervision over the EU parent investment firm or EU parent credit institution, it shall first apply to this Supervisory Authority.

5. Before taking a decision that is important for the supervisory tasks of another Supervisory Authority as meant in Part 3.6.2, the Netherlands Central Bank shall consult with the relevant Supervisory Authority with regard to:

a. changes in the shareholding, the organisational or the management structure of investment firms and credit institutions in the group; and
b. important sanctions or special measures.

6. The Netherlands 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 meant in the fifth subsection under b.

7. In urgent cases, the Netherlands Central Bank may refrain from asking advice as meant in the sixth subsection. 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 performance of its function under this paragraph where this is required for the performance of the function 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 with each other as meant in Section 3:268, first subsection, under i, then at its own initiative the Netherlands Central Bank will inform the Supervisory Authority in each other Member State concerned of all data 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 established in another Member State are affiliated with each other as meant in Section 3:268 under i, the Netherlands Central Bank will furnish to the Supervisory Authorities that are charged with the supervision of those other financial undertakings all information that can serve to facilitate the fulfilment of their duties.

Section 1:54

1. The Netherlands Central Bank shall collaborate with the Supervisory Authorities of other Member States in exercising the supervision meant in part 3.6.4. Within that scope, the Netherlands Central Bank shall supply the Supervisory Authorities, on request, with all relevant information and it shall supply them with all essential information on its own initiative.
2. The collaboration meant in the first subsection shall at least provide for the collection and exchange of information with regard to the following items:
 - a. the group structure, meant in Section 3:289 (e), all major undertakings of the financial conglomerate and the Supervisory Authorities of other Member States responsible for the supervision of the regulated entities, meant 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, meant in Section 3:289 (l) and the profitability;
 - d. the financial conglomerate's major shareholders and management;
 - e. the operations at financial conglomerate level;
 - f. procedures for the collection of information from the undertakings in the financial conglomerate, and the verification of that information;
 - g. adverse developments in regulated entities or in other group members of the financial conglomerate which could seriously affect the regulated entities;
 - h. major sanctions and exceptional measures taken by Supervisory Authorities of other Member States in relation to (sections of) the financial conglomerate.
3. The Netherlands Central Bank, before rendering decisions relating to the matters listed below, shall consult the Supervisory Authorities of other Member States entrusted with supervising the regulated entities in the financial conglomerate, where these decisions are of importance to the supervisory functions of those Supervisory Authorities;
 - a. changes in the shareholder, organizational or management structure of regulated entities in a financial conglomerate which require its approval;
 - b. major sanctions or exceptional measures concerning a regulated entity.
4. Without prejudice to the consultations meant in the third subsection, the Netherlands Central Bank may omit such consultations in urgent cases or where the consultations may jeopardize the effectiveness of its decisions. In this case, it shall, without delay, inform the other Supervisory Authorities of the other Member States of its decision.
5. On request of the coordinator, meant in Section 3:293 (1), the Netherlands Central Bank shall ask the parent company, established in the Netherlands, which, alone or together with another undertaking, heads the group to which a regulated entity belongs, for all information relevant to the exercise of the coordinator's functions.
6. If the Netherlands Central Bank is not the coordinator and the coordinator deems it necessary that with a view to the supervision, meant in part 3.6.4, measures are taken against a mixed financial holding company established in the Netherlands, it shall, on the coordinator's request, take the reasonably necessary measures against that mixed holding company by using the powers conferred on it under this Act.

§ 1.3.2.2. *Collaboration within the scope of supervision of the compliance*

Section 1:55

1. If a management company, investment firm, credit institution, life insurer or non-life insurer established in the Netherlands has a branch in another Member State, the supervisor may, on behalf of the supervision of the compliance with this Act by that financial undertaking:
 - a. request the Supervisory Authority of the other Member State to verify data or information at the branch; or
 - b. after notifying the Supervisory Authority of the other Member States verify data or information or have them verified at the branch itself.
2. If the Netherlands Central Bank wishes to verify data or information at an undertaking established in another Member State on behalf of the supervision on a consolidated basis as meant in chapter 3.6, it may on behalf of such supervision:
 - a. request the Supervisory Authority of the other Member State to verify data or information at that financial undertaking; or
 - b. after notifying the Supervisory Authority of the other Member State verify data or information or have them verified at the financial undertaking itself.

Section 1:56

1. If a management company, investment firm, credit institution, life insurer or non-life insurer established in another Member State has a branch in the Netherlands, the Supervisory Authority of that other Member State, after notifying the supervisor, may verify data or information required for the exercise of the supervision of that management company, investment firm, credit institution, life insurer or non-life insurer, at the branch.
2. The Supervisory Authority of the other Member State may also request the supervisor to verify data or information required for the exercise of the supervision of that management company, investment firm, credit institution, life insurer or non-life insurer at the branch. The supervisor shall grant this request or provide the Supervisory Authority of the other Member State with the opportunity to verify data or information or have them verified at the branch itself.
3. If a Supervisory Authority of another Member State wishes to verify data or information on behalf of the supervision on a consolidated basis of a credit institution established in that Member State, it may request the Netherlands Central Bank to do so. The Netherlands Central Bank shall grant this request or provide the Supervisory Authority with the opportunity to verify the data or information or have them verified.
4. The supervisor may request information from the branch or the undertaking on behalf of a verification as meant in the first or second subsection. Sections 5:13, 5:17 and 5:20 of the General Administrative Law Act shall apply mutatis mutandis.

Section 1:57

1. If a Supervisory Authority of another Member State requests the verification of data or information concerning a group member as meant in Section 3:289 (f) established in the Netherlands on behalf of the supervision meant in part 3.6.4, the Netherlands Central Bank shall grant this request or provide that

Supervisory Authority with the opportunity to verify the data or information or have them verified.

2. The Netherlands Central Bank may request information on behalf of a verification as meant in the first subsection. Sections 5:13, 5:17 and 5:20 of the General Administrative Law Act shall apply mutatis mutandis.

§ 1.3.2.3. *Collaboration within the scope of enforcement*

Section 1:58

1. If a management company of an undertaking for collective investment in transferable securities established in another Member State or an investment firm, credit institution, life insurer or non-life insurer established in another Member State which carries on business or provides financial services from a branch in the Netherlands or provides services to the Netherlands, fails to comply with an instruction as meant in Section 1:75 given by the supervisor, the latter shall inform the Supervisory Authority of the other Member State.

2. If the management company, investment firm, credit institution, life insurer or non-life insurer, despite the measures taken by the Supervisory Authority of the Member State in which the financial undertaking is established, or because that Supervisory Authority has not taken measures, does not comply with the provisions laid down under or pursuant to this Act, the supervisor, after informing 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, without prejudice to Sections 1:79 and 1:80.

3. The supervisor shall, without delay, inform the Supervisory Authority of the other Member State in which the management company, investment firm, credit institution, life insurer or non-life insurer concerned is established of the measures taken under the first or second subsection.

4. The supervisor shall also publish a notification of the decision rendered under the second subsection as soon as the appeal period has lapsed or, where an appeal is lodged, as soon as a final and conclusive decision has been rendered.

5. Subsections 1 – 3 shall apply mutatis mutandis to:

- a. insurance intermediaries established in another Member State;
- b. financial service providers established in another Member State that carry on the business of a financial institution, credit institution or insurer; or
- c. reinsurance intermediaries established in another Member State.

Section 1:59

1. If a management company, investment firm, credit institution, life insurer or non-life insurer established in the Netherlands which carries on business or provides financial services from a branch in the Netherlands or provides services to the Netherlands, fails to comply with statutory regulations applicable in that other Member State, the supervisor, after receiving a notification to that effect from the supervisor of that other Member State, shall, without delay, give an instruction to the management company, investment firm, credit institution, life insurer or non-life insurer concerned to adhere to the line of conduct specified in the designation order within a reasonable term fixed in the instruction 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 fails to comply (sufficiently) with the instruction, the supervisor, after informing 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 the first or second subsection.

§ 1.3.2.4. Consultation within the scope of other procedures and notification of certain decisions

Section 1:60

1. The Netherlands Authority for the Financial Markets shall consult the Supervisory Authority of the Member State involved before granting authorization to a management company which is:

- a. a subsidiary of a management company, investment firm, credit institution, life insurer or non-life insurer authorized in another Member State;
- b. a subsidiary of a parent company of a management company, investment firm, credit institution, life insurer or non-life insurer authorized in another Member State;
- c. controlled by the same person who controls a management company, investment firm, credit institution, life insurer or non-life insurer authorized in another Member State.

2. The Netherlands Authority for the Financial Markets shall consult the Supervisory Authority of the Member State involved before granting authorization to an investment firm that:

- a. is a subsidiary of an investment firm, credit insurer, life insurer or non-life insurer authorized in another Member State;
- b. is a subsidiary of a parent company of an investment firm, credit insurer, life insurer or non-life insurer authorized in another Member State;
- c. is controlled by the same natural or legal person who controls a management company, investment firm, credit institution, life insurer or non-life insurer authorized in another Member State;

3. The Netherlands Central Bank shall consult the Supervisory Authority of the Member State involved before granting authorization to a credit institution that:

- a. is a subsidiary of an credit institution authorized in another Member State;
- b. is a subsidiary of a parent company of a credit institution authorized in another Member State;
- c. is controlled by the same natural or legal person that also controls a credit institution authorized in another Member State.

4. The Netherlands Central Bank shall consult the Supervisory Authority of the Member State involved before granting authorization to a life insurer or non-life insurer that:

- a. is a subsidiary of an investment firm, credit institution, life insurer or non-life insurer authorized in another Member State;
- b. is a subsidiary of a parent company of an investment firm, credit institution, life insurer or non-life insurer authorized in another Member State;
- c. is controlled by the same natural or legal person that controls an investment firm, credit institution, life insurer or non-life insurer authorized in another Member State;

Section 1:61

1. The supervisor shall inform the Supervisory Authorities of the Member States in which a financial undertaking established in the Netherlands carries on business or provides financial services from a branch or to which a financial undertaking provides services of the withdrawal of the authorization, meant in Section 2:11 (1), 2:27 (1), 2:65 or 2:96, granted to that financial undertaking.
2. If a financial undertaking established in another Member State carries on business or provides financial services from a branch in the Netherlands or provides services to the Netherlands and the Supervisory Authority of that Member State has informed the supervisor of the withdrawal of the authorization of that financial undertaking by the Supervisory Authority, the supervisor shall make this information public.

Section 1:62

The Netherlands Central Bank shall provide the Supervisory Authority of the Member State involved with the opportunity to give an opinion before issuing a declaration of no-objection as meant in Section 3:95 or issuing a notification as meant in Section 3:108 (4), where the investment firm or credit institution in which the applicant wishes to hold a qualifying unit were to become a subsidiary of the applicant as a result of that qualifying unit, and the applicant:

- a. is an investment firm, credit institution, life insurer or non-life insurer authorized in another Member State;
- b. is the parent company of an investment firm, credit institution, life insurer or non-life insurer authorized in another Member State; or
- c. is a person that otherwise controls an investment firm, credit institution, life insurer or non-life insurer authorized in another Member State.

Section 1:63

1. The Netherlands Central Bank shall provide the Supervisory Authority of the Member State, meant in Section 3:60 (1), with the opportunity to give its opinion before granting a waiver as meant in that section to a life insurer or non-life insurer:
2. Before revoking a waiver as meant in Section 3:60 (1), the Netherlands Central Bank shall request the Supervisory Authority of the Member State involved that has granted a similar waiver to the same financial undertaking to revoke this waiver at a time proposed by the supervisor.
3. If the Supervisory Authority of the Member State, meant in Section 3:60 (1), so requests, the Netherlands Central Bank shall revoke a waiver as meant in that section at the time proposed by that Supervisory Authority.

Section 1:64

The Netherlands Central Bank shall inform the Supervisory Authorities of other Member States in which that financial undertaking carries on business or financial services from a branch or provides services to that Member State if a financial undertaking established in the Netherlands with a certificate of supervised status no longer meets the provisions of Section 3:110 third through the sixth subsections.

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 data and information if the data and information disclosed are subject to statutory guarantees of secrecy at least equivalent to those referred to in Section 1:90 (1), and, in so far as the exchange is for the purposes of exercising the supervision by the Supervisory Authority involved. Section 1:90 first through the third subsections shall apply mutatis mutandis.
2. Immediately upon concluding an agreement on the exchange of data or information with a Supervisory Authority of a non-Member State, with due regard to the first subsection, the supervisor shall send a copy of this agreement to Our Minister.

Section 1:66

1. If a life insurer or non-life insurer established in a non-Member State fails to observe an instruction as meant in Section 1:75 issued by the Netherlands Central Bank in the provision of services towards the Netherlands, the latter shall inform the Supervisory Authority of that Member State.
2. Section 1:58 second through the fourth subsections shall apply mutatis mutandis.

Section 1:67

1. If a clearing institution or a funeral expenses and benefits in kind insurer in another State fails to observe an instruction as meant in Section 1:75 issued by the supervisor, the latter may, where appropriate, prevent the 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 fourth subsection 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 and information or for the implementation of agreements concluded with Supervisory Authorities on the exchange of data and information as meant 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 supervisor shall inform the Commission of the European Communities of any authorization granted under this Act:
- a. to carry on the business of a credit institution;
 - b. to a subsidiary of a financial undertaking governed by the law of a non-Member State to carry on the business of a life insurer, non-life insurer or investment firm.

Section 1:70

The Netherlands Central Bank shall inform the Commission of the European Communities of:

- a. granting a declaration of no-objection as meant in Section 3:95 regarding a qualifying holding in a bank, investment firm, life insurer or non-life insurer, if, through the qualifying holding, the bank, the investment firm, the life insurer or the non-life insurer becomes a subsidiary of a financial undertaking governed by the law of a non-Member State;
- b. making a communication as meant in Section 3:108 (4), if, through the qualifying holding, the electronic money institution becomes a subsidiary of that financial undertaking governed by the law of a non-Member State;
- c. taking a decision to give its consent as meant in Section 3:275, sixth or eighth subsection.

Section 1:71

The supervisor shall inform the Commission of the European Communities of:

- a. the general difficulties which management companies, investment firms, credit institutions, life insurers or non-life insurers established in the Netherlands encounter in the pursuit of their business or providing financial services from a branch in a non-Member State or in providing services to a non-Member State;
- b. the number and nature of the cases in which the supervisor has refused a request for approval with the intention as meant in Section 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 meant in Section 1:58 (2) with regard to a management company, investment firm or credit institution with a branch in the Netherlands.

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 entrusted with supervising compliance with the rules laid down under and pursuant to this Act.
2. A notification of the decision as meant in the preceding subsection shall be published in the Government Gazette.

Section 1:73

1. The persons, meant in Section 1:72 (1), do not have the powers listed in Sections 5:18 and 5:19 of the General Administrative Law Act.
2. In so far as the persons designated by the Netherlands Authority for the Financial Markets under Section 1:72 to exercise the supervision of conduct of financial undertakings authorized by the Netherlands Central Bank require data on aspects of the operations, meant in Section 3:17 (2) (a or b), those persons shall not avail themselves of their powers under Sections 5:15, 5:16 or 5:17 of the General Administrative Law Act until the Netherlands Central Bank has been requested to supply these data and it has become apparent that the Netherlands Central Bank cannot grant this request.

3. In so far as the persons designated by the Netherlands Central Bank under Section 1:72 to exercise the prudential supervision of financial undertakings authorized by the Netherlands Authority for the Financial Markets require data on aspects of the operations, meant in Section 4:14 (2) (a or b), the persons designated by the Netherlands Central Bank under Section 1:72 shall not avail themselves of their powers under 5:15, 5:16 or 5:17 of the General Administrative Law Act until the Netherlands Authority for the Financial Markets has been requested to supply these data and it has become apparent that the Netherlands Authority for the Financial Markets cannot grant this request.

4. A derogation from the second and third subsections is permitted, after consulting the other supervisor, if there is a reasonable suspicion of a violation of the provisions under 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 on behalf of the supervision of the compliance with the rules laid down under or pursuant to this Act.

2. Sections 5:13 and 5:20 of the General Administrative Law Act shall apply mutatis mutandis.

3. In so far as the Netherlands Authority for the Financial Markets requires data on aspects of the operations, meant in Section 3:17 (2) (a and b), to exercise the supervision of conduct of financial undertakings authorized by the Netherlands Central Bank, the Netherlands Authority for the Financial Markets shall not request information until the Netherlands Central Bank has been requested to supply these data and it has become apparent that the Netherlands Central Bank cannot grant this request.

4. In so far as the Netherlands Central Bank requires data on aspects of the operations, meant in Section 4:14 (2) (a or b), to exercise the prudential supervision of financial undertakings authorized by the Netherlands Authority for the Financial Markets, the Netherlands Central Bank shall not request information until the Netherlands Authority for the Financial Markets has been requested to supply these data and it has become apparent that the Netherlands Authority for the Financial Markets cannot grant this request.

5. A derogation from the third and fourth subsections is permitted, after consulting the other supervisor, if there is a reasonable suspicion of a violation of the provisions under or pursuant to this Act and the urgent nature of the interests involved so requires.

Part 1.4.2 Enforcement

Section 1:75

1. The supervisor may oblige a person listed below who does not comply with the provisions laid down under or pursuant to this Act, by giving an instruction, to comply with a certain line of conduct within a reasonable term fixed by the supervisor with regard to the points to be indicated in the instruction:

- a. a financial undertaking;
- b. a representative of an insurer;
- c. a holder of a declaration of no-objection under Section 3:95, 3:96 or 5:32;

- d. any person who, in the course of professional activity and outside the restricted circle, attracts, acquires or has available redeemable funds from parties other than professional market parties;
 - e. any person who, in the course of a profession or business, as a service of the information society as meant in Section 15d (3) of Book 3 of the Dutch Civil Code, carries out activities in or from the Netherlands in another Member State as a middleman and outside the restricted circle, to attract or have available redeemable funds from parties other than professional market parties.
2. The Netherlands Central Bank may also give an instruction as meant in the first subsection to a financial undertaking where it signals signs of a development which may jeopardize the own funds, the solvency or liquidity of that financial undertaking.
3. An instruction given to a person pursuant to the first or second subsection 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 liquidator with regard to all or certain bodies or representatives of a financial undertaking where that financial undertaking does not comply with the provisions of this Act.
2. The decision under the first subsection shall only be taken:
- a. after the financial undertaking has failed to comply, either fully or in part, with an instruction as meant in Section 1:75 (1) within the fixed term; or
 - b. where the violation meant in the first subsection seriously jeopardizes the adequate performance of the financial undertaking and that financial undertaking had been provided with the opportunity to submit its view on the intended decision beforehand; or
 - c. where the violation meant in the first subsection seriously jeopardizes the consumers' interests or, where it concerns financial instruments or insurance, the clients' interests except for professional investors, and that financial undertaking had been provided with the opportunity to submit its view on the intended decision beforehand.
3. Without prejudice to the first and second subsections, the Netherlands Central Bank may decide to appoint one or more persons as a liquidator with regard to all or certain bodies or representatives of a financial undertaking where it signals signs at that financial undertaking of a development which may jeopardize the own funds, solvency or liquidity of that financial undertaking.
4. The decision under the third subsection shall only be taken:
- a. after the financial undertaking has failed, either fully or in part, to comply with an instruction as meant in Section 1:75 (2) within the fixed term; or
 - b. where urgent intervention is required and the financial undertaking had been provided with the opportunity to submit its view on the intended decision beforehand.
5. The appointment decision shall include a description of the interests which the liquidator should observe. The supervisor shall appoint the liquidator for not longer than two years, while this term may be extended each time by not more than one year; the extension shall enter into force immediately. As of the date on which the financial undertaking has been informed of the decision to appoint the liquidator the bodies or representatives involved may only

exercise their powers subject to the liquidator's approval and with due observance of the liquidator's instructions.

6. After the appointment of the liquidator:

- a. the bodies and representatives of the financial undertaking shall grant the liquidator all assistance;
- b. the supervisor may allow the bodies or representatives involved of the financial undertaking to carry out certain legal acts without approval;
- c. the supervisor may at all times replace the appointed liquidator;
- d. every person forming part of the financial undertaking's body having carried out actions resulting in loss or damage and carried out in violation of a decision as meant in the first or third subsection, shall be jointly and severally liable vis-à-vis the financial undertaking, unless these actions may not be attributed to him/her and he/she has not been negligent in taking measures to avert the consequences;
- e. the actions, meant under d, in so far as they are legal acts, may be annulled if the other party knew or should have known that the required approval had not been granted.

7. As soon as the circumstance, meant in the first or third subsection, is no longer relevant, the supervisor shall withdraw the decision to appoint the liquidator. The supervisor shall, without delay, inform the financial undertaking of this decision.

8. The first, second and fifth through seventh subsections shall apply mutatis mutandis to any person that, in the course of professional activity in or from the Netherlands and outside a restricted circle, attracts, acquires or has available redeemable funds from parties other than professional market parties.

Section 1:77

1. If a financial undertaking regarding which the supervisor has approved the intention as meant in Section 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 meant in Section 1:75 relating to its operations or its financial situation, and the financial undertaking has not or insufficiently complied with that instruction, the supervisor may decide to prevent that financial undertaking from the pursuit of its business from a branch or by providing services and from providing financial services in the other Member State. The supervisor shall inform the Supervisory Authority of the Member State involved of this decision. As of the time of this notification the financial undertaking may no longer carry on its business from the branch or by means of services nor may it provide services in the other Member State.

2. If an insurer has received an instruction as meant in Section 1:75 relating to the fit and proper qualities and expertise of the representative of the insurer or of a person who determines the day-to-day policies of that insurer, and the insurer has not or insufficiently complied with that instruction, the first subsection 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 may properly perform its function relating to the financial undertaking, the supervisor may determine that this auditor or actuary is no

longer competent to issue the statements meant in this Act in relation to that financial undertaking.

2. The supervisor shall inform the financial undertaking of the decision meant in the first subsection.

Section 1:79

1. The supervisor may impose an order for incremental penalty payments in relation to a violation of the regulations laid down under 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. As regards the power, meant in the first subsection, Section 5:32 second through the fifth subsections and 5:33 through 5:35 of the General Administrative Law Act shall apply.

3. Rules may be laid down by ministerial regulation in relation to exercising the power meant in the first subsection.

Section 1:80

1. The supervisor may impose an administrative penalty in relation to a violation of regulations laid down under 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 penalty shall accrue to the supervisor which has imposed the penalty.

3. Rules may be laid down by ministerial regulation in relation to exercising the power meant in the first subsection.

Section 1:81

1. The amount of the administrative penalty shall be determined by order in council, it being understood that the penalty per violation may not exceed € 900,000.

2. The order in council, meant in the first subsection, shall determine per violation the amount of the administrative penalty to be imposed.

3. The supervisory may reduce the amount of the administrative penalty as laid down by order in council if the amount of the penalty would be disproportionately high in a specific case.

Section 1:82

1. Any person who has been questioned with a view to imposing an administrative penalty on him is not required to supply any information in respect of the infringement.

2. That person shall be informed that he is not obliged to furnish information before he is questioned.

Section 1:83

1. If the supervisor intends to impose an administrative penalty it shall inform the person involved of this while stating the grounds on which such intention is based.

2. Notwithstanding Part 4.1.2 of the General Administrative Law Act, the supervisor shall provide the person involved with the opportunity to submit, either in writing or verbally at the latter's choice, its view before an administrative penalty is imposed.

Section 1:84

1. The supervisor shall impose the administrative penalty by order.
2. The order shall in any event state:
 - a. the fact regarding which the administrative penalty is imposed, as well as the violated regulation;
 - b. the amount of the penalty and the data on the basis of which this amount was determined; and
 - c. the term, meant in Section 1:85 (1) within which the penalty must be paid.

Section 1:85

1. The administrative penalty shall be paid within six weeks of the entry into force of the order by which it was imposed.
2. If an objection or an appeal should be lodged against the imposition of an administrative penalty, this suspends the obligation to pay the administrative penalty until the period for appeal has expired or, if an appeal has been lodged, until a decision has been taken in this respect.
3. If the administrative penalty has not been paid within the period stated in subsection 1, it shall be increased by the statutory interest. The statutory interest shall be calculated counting from the date on which six weeks have expired since the period cited in subsection 1.
4. If the administrative penalty is not paid in a timely fashion, the supervisor shall send a written demand to make the payment within two weeks, increased by the costs of the warning. The demand contains the notification that the penalty shall be collected in accordance with the fifth subsection if it is not paid within the fixed term.
5. In the absence of a timely payment, the supervisor may collect the administrative penalty by a writ of execution, increased by the costs of the warning and the collection.
6. The writ of execution shall be served by bailiff's notification at the expense of the violator and it shall constitute an enforceable order within the meaning of the Second Book of the Dutch Code of Civil Procedure.
7. During six weeks after the date of service an objection may be filed against the writ of execution by summons of the supervisor which has imposed the administrative penalty.
8. The objection shall not suspend the enforcement unless the preliminary relief judge of the district court decides otherwise in preliminary relief proceedings.
9. The objection may not be based on the argument that the administrative penalty has been wrongly imposed or is too high.

Section 1:86

1. The power to impose an administrative penalty lapses if criminal proceedings are instituted in relation of the violation on account of which the penalty may be imposed and the examination in court has commenced, or the right to prosecute has lapsed under Section 74 of the Dutch Penal Code.
2. The right to prosecute a violation as meant in Section 1:80 shall lapse if the supervisor has already imposed an administrative penalty on account of the same fact.

Section 1:87

1. The power to impose an administrative penalty shall lapse three years after the date on which the violation was committed.
2. The term, meant in the first subsection, shall be interrupted by the notification of the order by which an administrative penalty is imposed.

Section 1:88

The activities relating to imposing an administrative penalty shall be carried out by persons which were not involved in establishing the violation and the prior investigation.

CHAPTER 1.5 OBLIGATION OF SECRECY, EXCEPTIONS AND PUBLICATION OPTIONS

Part 1.5.1 Obligation of secrecy and exceptions

Section 1:89

1. This Act prohibits any person who exercises or has performed any functions under the application of this Act or decisions ensuing from this Act from making any further use of or further disclosing confidential data or information supplied or obtained or received from a person or body as meant in Section 1:90 (1) or 1:91 (1) under this Act or under part 5.2 of the General Administrative Law Act than required for performing its function or required by law.
2. Notwithstanding the first subsection the supervisor may make disclosure by using confidential data or information obtained in the performance of its function under this Act provided this cannot be traced back to individual persons.

Section 1:90

1. Notwithstanding Section 1:89 (1) the supervisor may supply confidential data or information obtained in the performance of its function under this Act to the other supervisor or a Supervisory Authority in another Member State, unless:
 - a. the purpose for which the confidential data or information will be used is insufficiently determined;
 - b. the intended use of the confidential data or information does not fit in the framework of the supervision of financial markets or of persons working on those markets;
 - c. the supply of the confidential data or information would be incompatible with Dutch law or public order;
 - d. the secrecy of the confidential data or information is insufficiently safeguarded;
 - e. the supply of the confidential data or information is reasonably or might reasonably be contrary to the interests which this Act seeks to protect; or
 - f. it is insufficiently safeguarded that the confidential data or information shall not be used for purposes other than for which it is supplied.
2. In so far as the data or information, meant in the first subsection, are obtained from a Supervisory Authority in another Member State, the supervisor shall not supply them to the other supervisor or another Supervisory Authority in another Member State, unless the Supervisory Authority in another Member State from which the data or information were

obtained has expressly agreed to the supply of the data or information and, where appropriate, has agreed to the use for a purpose other than for which the data or information is supplied.

3. If a Supervisory Authority in another Member State requests the supervisor which has supplied the confidential data or information under the first or second subsection to be allowed to use that confidential data or information for a purpose other than for which it was supplied, the supervisor shall only grant the request:

- a. if the intended use is not in violation of the first or second subsection; or
- b. in so far as the Supervisory Authority might obtain the disposal of that data or information in a manner not provided in this Act from the Netherlands with due observance of the applicable statutory procedures for that other purpose; and
- c. after consulting Our Minister of Justice if the request meant in the opening words of this section refers to a criminal investigation.

4. The Netherlands Authority for the Financial Markets or the organizational unit of the Netherlands Central Bank entrusted with the function referred to in Section 1:24 may supply confidential data or information to the organizational unit of the Netherlands Central Bank entrusted with performing its monetary function, in so far as the confidential data or information serves the performance of that function.

5. The first through the third subsections shall apply mutatis mutandis to the exchange of confidential data or information between the supervisor's organizational units entrusted with different functions. The supervisor shall safeguard that such exchange of information occurs with due regard to the secrecy regime applicable to the data or information involved under European Directives.

Section 1:91

1. Notwithstanding Section 1:89 (1), the supervisor may supply confidential data or information obtained in exercising its statutory function to a person as meant under a, b, c, d, e or f in so far as the data or information serves the performance of its function:

- 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 meant in the first subsection:

- a. if the supply of the confidential data or information is reasonably or might reasonably be contrary to the interests which this Act seeks to protect;
- b. if the confidential data or information is obtained from the other supervisor or a Supervisory Authority, and this other supervisor or Supervisory Authority does not agree to supplying the confidential data or information.

3. Notwithstanding Section 1:89 (1), the bankruptcy liquidator appointed in the bankruptcy of a financial undertaking may supply data or information as meant in the first subsection to the district court, in so far as it does not concern an undertaking that is or was involved in an attempt to enable the bankrupt undertaking to carry on its business.

4. Section 1:89 (1) shall not affect the applicability of the provision of the Dutch Code of Civil Procedure relating to making a statement as a witness or party in the personal appearance of parties or an expert in civil cases with regard to data or information obtained in the performance of his/her statutory function, in so far as it concerns confidential data or information regarding a financial undertaking which has been declared bankrupt or dissolved by a judicial decision. The preceding sentence shall not apply to confidential data or information regarding an undertaking which is or was involved in an attempt to enable that undertaking to carry on its business.

Section 1:92

1. Notwithstanding Section 1:89 (1) the supervisor may supply confidential data or information obtained in the performance of its function laid down by this Act to a body entrusted with exercising criminal procedural powers or to an expert entrusted with an instruction by such a body, in so far as the demanded data or information is necessary for the performance of such an instruction.

2. If the body, meant in the first subsection, intends to exercise the power to demand the transmission of an object subject to attachment or the power to demand inspection or a copy of documents as meant in Section 96a, 105 or 126a of the Dutch Code of Criminal Procedure, or Section 18 or 19 of the Economic Offences Act, and the demand refers to confidential data or information as meant in Section 1:89 (1), the body shall provide the supervisor with the opportunity to express its view in this respect before exercising its power.

Section 1:93

1. Notwithstanding Section 1:89 (1), the supervisor may furnish confidential data or information obtained in performing the function laid down by this Act to:

- a. the European Central Bank, a foreign or national central bank or another foreign body entrusted with a similar function, acting in its capacity of monetary authority, in so far as the data or information are intended for the performance of its monetary function;
- b. an auditor entrusted with the statutory audit of the annual accounts of a financial undertaking, in so far as the confidential data or information refers to that financial undertaking and is necessary for the audit;
- c. an actuary entrusted with the statutory audit of a financial undertaking, in so far as the confidential data or information refers to that financial undertaking and is necessary for the audit;
- d. the holder of a market in financial instruments recognized under Section 5:26 (1) with a view to the control of the compliance with the rules applicable to that market; or
- e. the Dutch Healthcare Authority, to the extent that the data or information are useful for the exercise of its statutory duties.

2. The supervisor shall not supply any confidential data or information under the first subsection if:

- a. the purpose for which the confidential data or information will be used is insufficiently determined;

- b. the intended use of the confidential data or information does not fit in the framework of the supervision of financial markets or of persons working on those markets;
 - c. the supply of the confidential data or information would be incompatible with Dutch law or public order;
 - d. the secrecy of the confidential data or information is insufficiently safeguarded;
 - e. the supply of the confidential data or information is reasonably or might reasonably be contrary to the interests which this Act seeks to protect; or
 - f. it is insufficiently safeguarded that the confidential data or information shall not be used for purposes other than for which it is supplied.
3. In so far as the data or information, meant in the first subsection, are obtained from a Supervisory Authority, the supervisor shall not supply them to the other supervisor or another Supervisory Authority, unless the Supervisory Authority from which the data or information was obtained has expressly agreed to supplying the data or information and, where appropriate, has agreed to use them for a purpose other than for which the data and information was supplied.
4. If a body or person as meant in the first subsection requests the supervisor which has supplied the confidential data or information under the first or second subsection to be allowed to use that confidential data or information for a purpose other than for which it was supplied, the supervisor shall only grant the request:
- a. if the intended use is not in violation of the first or second subsection; or
 - b. in so far as that body or person might obtain the disposal of that data or information in a manner not provided in this Act from the Netherlands with due regard to the applicable statutory procedures for that other purpose; and
 - c. after consulting Our Minister of Justice if the request meant in the opening words refers to an investigation into criminal offences.

Section 1:93a

If, pursuant to Part 3.6.2, the Netherlands Central Bank exercises supervision on a consolidated basis of a Dutch investment firm or Dutch credit institution, it shall inform Our Minister and the authorities meant in Section 1:93, first subsection, under a, in so far as it concerns them, without delay of emergency situations regarding financial undertakings that are the object of the consolidated supervision which could be detrimental to the stability of the financial system in the Member State where the latter undertakings are established.

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 the prohibitory provisions in this Act and violation of the prohibitions meant in Sections 1:58 (2), 1:59 (2), 1:67 (1) and 4:4 (1).

Section 1:95

1. The supervisor shall inform the person involved if it decides to issue a public warning as meant in Section 1:94.

2. The decision shall in any event state the signalled violation, 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 provision in Section 4:11 of the General Administrative Law Act, the supervisor may choose not to apply Section 4:8 of that Act if no address of the person involved is known nor can be obtained with a reasonable effort.

Section 1:96

1. A public warning as meant in Section 1:94 shall not be issued before five working days have expired after the date on which the person involved was informed of the decision in accordance with Section 1:95.

2. If preliminary relief as meant in Section 8:81 of the General Administrative Law Act is sought, the decision shall not take effect before the preliminary relief judge has rendered judgment.

3. If the protection of the interests which this Act seeks to protect does not allow for an extension, the supervisor, in derogation from the preceding subsections, may issue a public warning without delay.

Section 1:97

1. The supervisor shall make public an order to impose an administrative penalty under this Act after the notification, if the administrative penalty has been imposed for a violation of:

a. a prohibitory provision in this Act or of Section 1:58 (2), 1:59 (2), 1:67 (1) or 4:4 (1);

b. another provision that has been made subject to an administrative penalty of a maximum rate number of 4 or 5 in the order in council pursuant to Section 1:81 (1); or

c. Section 4:19, 4:20, 4:22, 4:23, 4:24, 4:42 or 4:87.

2. The order to impose an administrative penalty shall not be made public until five working days have passed after the day on which the person concerned was notified of the order.

3. If preliminary relief as meant in Section 8:81 of the General Administrative Law Act is sought, the order shall not be made public before the preliminary relief judge has rendered judgment.

4. If making the order public is contrary or might be contrary to the object of the supervision of compliance with this Act to be exercised by the supervisor, it shall not be made public.

Section 1:98

Without prejudice to Section 1:97, the supervisor shall make public the order to impose incremental penalty payments pursuant to this Act when it has become irreversible, unless making the order public is contrary or might be 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 make public an order to impose incremental penalty payments under this Act when the incremental penalty payment shall have been forfeited, unless making the order public is contrary or might be contrary

to the object of the supervision of compliance with this Act to be exercised by the supervisor.

2. If preliminary relief as meant in Section 8:81 of the General Administrative Law Act is sought, the order shall not be made public before the preliminary relief judge has rendered judgment.

Section 1:100

If protection of the interests which this Act seeks to protect can brook no delay, the supervisor, in derogation from Section 1:97 (2 and 3), 1:98, or 1:99 (1 and 2), may make public without delay an order to impose an administrative penalty or incremental penalty payments respectively.

Section 1:101

1. If preliminary relief is sought as meant in Title 8.3 of the General Administrative Law Act against a decision as meant in sections 1:94, 1:97 (1) or 1:99 (1), the examination shall take place in court behind closed doors.
2. If the preliminary relief judge has ordered that publication of an order as meant in Sections 1:94, 1:97 (1) and 1:99 (1) will be prohibited, the interested parties with regard to the objection shall not be heard in public.
3. If the preliminary relief judge has ordered that publication of an order as meant in Sections 1:94, 1:97 (1) or 1:99 (1) will be prohibited, and an appeal is lodged against the decision on the objection to that decision, the examination shall take place in court behind closed doors.

CHAPTER 1.6 PROCEDURES

Part 1.6.1 Authorizations

Section 1:102

1. Rules shall be laid down under or pursuant to order in council with regard to the application method.
2. The authorization may be subject to regulations 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 thirteen weeks of receipt.
4. The supervisor shall, without delay, inform the applicant of the application's receipt.

Section 1:103

1. Notwithstanding Section 1:102 (3) the supervisor shall stay a decision on the application for authorization if an application to grant a declaration of no-objection as meant in Section 3:95 (1) (b or c) has also been submitted until no later than six weeks of the time at which the order relating to the declaration of no-objection is made known. If a petition for preliminary relief relating to that order is filed within that term, the supervisor shall stay the decision until two weeks after 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 authorization within six months of the application's receipt.

Section 1:104

1. The supervisor may modify, withdraw or limit, either fully or in part, or attach further conditions to the authorization if:
 - a. the holder of the authorization has filed an application to that end;
 - b. the holder of the authorization, as subsequently becomes apparent, has supplied incorrect or incomplete data upon applying for authorization, and the knowledge regarding the correct and complete data would have resulted in another decision;
 - c. the holder of the authorization has suppressed circumstances or facts on the grounds of which, if they had occurred or been known at the time at the which the authorization was granted, the authorization would have been refused;
 - d. the holder of the authorization no longer complies with the rules laid down under or pursuant to this Act or no longer complies with the regulations or limitations attached to the authorization;
 - e. the holder of the authorization has not made use of the authorization within 12 months of having been granted the authorization;
 - f. the holder of the authorization has ceased to perform the activities for which the authorization was granted or the holder of the authorization is an insurer that has ceased to engage in business in the sector for which the authorization was granted;
 - g. the holder of the authorization transfers, either fully or in part, the undertaking for which the authorization was granted;
 - h. the holder of the authorization deceases if it is a natural person or is dissolved if it is a legal person or partnership;
 - i. the fairness opinion which accompanies the other data meant in Section 3:71 (1) or the declaration meant in Sections 3:72 (7), 3:81 (3) or 3:86 (1 or 2) does not show that the annual accounts or the statements meant in Section 3:72 (1 or 3) presents or present a fair picture of the size and composition of the undertaking's assets and liabilities and the results of the financial year concerned; or
 - j. the holder of the authorization is declared bankrupt or the debt rescheduling scheme for natural persons has been declared applicable to him/her, if the district court has appointed an administrator over one or more of the goods of the holder of the authorization as meant in Section 380, 409 or 431 of Book 1 of the Dutch Civil Code or if the holder of the authorization has been declared incapacitated.
2. The supervisor shall withdraw the authorization if:
 - a. an authority meant in Section 3:163 (1) opening words and under b is granted, at the time of granting the authority, or as soon as possible thereafter, in so far as the undertaking was still authorized immediately prior to that time;
 - b. an authority meant in Section 3:163 (1) opening words and under b is granted, at the time at which during the emergency regulations the undertaking's assets and liabilities were for the first time converted into cash with a view to distributing the proceeds among the creditors, shareholders or members, or as soon as possible after said time, in so far as the undertaking was still authorized immediately prior to the conversion into cash for the first time; or
 - c. it has agreed to a portfolio transfer as meant in Sections 3:112, 3:113 and 3:114.

3. In the decision to withdraw authorization the supervisor may also determine that the financial undertaking shall be required to wind up its business, either fully or in part, within a term to be fixed by the supervisor. During the winding-up, whether or not determined by the supervisor, the financial undertaking or the bankruptcy liquidator of the financial undertaking shall be regarded as the authorized undertaking.

Section 1:105

1. The rules laid down under or pursuant to this part with regard to authorization shall apply mutatis mutandis to:
 - a. a recognition as meant in Section 5:26 (1) it being understood that regulations may be attached to such recognition with a view to the interests which this Act seeks to protect;
 - b. a certificate of supervised status as meant in Section 3:110;
 - c. a declaration of no-objection as meant in Sections 3:95, 3:96 and 5:32;
 - d. a waiver of the prohibitions, meant in Sections 2:23, 2:55, 2:60, 2:75, 2:80, 2:86, 2:92, 3:5, 4:3, 5:27 (2) and 5:71 (6), it being understood that the waiver may be granted either fully or in part; and
 - e. an approval as meant in Section 3:116 it being understood that if a Supervisory Authority of another Member State gives its opinion or grants approval on the intended transfer, the decision period shall be suspended by not more than the term available to that Supervisory Authority under Section 3:118 (5).
2. Section 1:102 shall apply mutatis mutandis to a waiver other than meant in the first subsection under d. Rules may be laid down by ministerial regulation with regard to the regulations which may be attached to such waiver. This waiver may be revoked.

Section 1:106

1. In the implementation of a binding decision to that effect of the Commission of the European Communities or of the Council of the European Union with regard to a non-Member State, the supervisor or Our Minister shall, in derogation from Section 1:102, suspend, either fully or in part:
 - a. the handling of any applications for authorization to carry on the business of a credit institution, life insurer or non-life insurer or to provide financial services as a management company or investment firm filed directly or indirectly by financial undertakings governed by the law of a non-Member State;
 - b. the handling of applications of a declaration of no-objection as meant in Section 3:95 filed directly or indirectly by financial undertakings governed by the law of a non-Member State;
 - c. the handling of notifications as meant in Section 3:103 filed directly or indirectly by financial undertakings governed by the law of a non-Member State.
2. The first subsection shall not concern:
 - a. applications for authorization to incorporate subsidiaries that are also subsidiaries of a financial undertaking authorized in a Member State to carry on the business of a credit institution, life insurer, non-life insurer or to provide financial services as a management company or investment firm;
 - b. applications for a declaration of no-objection for qualifying holdings that are also qualifying holdings of a financial undertaking authorized in a Member

State to carry on the business of a credit institution, life insurer, non-life insurer or to provide financial services as a management company or investment firm;

c. notifications of the intention of qualifying holdings in an electronic money institution that are also qualifying holdings of a financial undertaking authorized in a Member State to carry on the business of a credit institution, life insurer, non-life insurer or to provide financial services as a management company or investment firm.

3. If the market access and opportunities of competition in a non-Member State are more limited for financial undertakings established in a Member State than for financial undertakings established in a non-Member State, the supervisor shall notify, upon request, the Commission of the European Communities of:

a. applications for an authorization to carry on the business as a credit institution, life insurer, non-life insurer or to provide financial services as a management company or investment firm, filed directly or indirectly by a financial undertaking governed by the law of a non-Member State;

b. applications for a declaration of no-objection for qualifying holdings in a bank, management company, investment firm, life insurer or non-life insurer filed directly or indirectly by financial undertakings governed by the law of a non-Member State as a result of which that bank, investment firm, life insurer, non-life insurer would become the 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 and removal from the register in such a manner that the register shows from which time the registered financial undertakings may exercise which activities, including any restrictions, and the State in which they are established.

2. The register holder shall, without delay, register:

a. financial undertakings:

1^o. that have been granted authorization under this Act or a waiver as meant in Section 2:23, 2:55, 2:60, 2:75, 2:80, 2:86, 2:92, 3:5, 4:3, or 5:71 (6);

2^o. to which an exemption applies, if they have informed the supervisor of their intention to provide such services further to a regulation attached to that exemption;

3^o. otherwise allowed, under this Act, to carry on their business or to provide services from a branch situated in the Netherlands or by providing services to the Netherlands;

4^o. to which a certificate of supervised status has been issued;

5^o. on which a prohibition under Section 1:58, 1:59, 1:67 or 4:4 has been imposed;

6^o. that are affiliated undertakings as meant in Section 2:105;

7^o. to which the guarantee scheme, meant in part 3.5.6, applies;

8^o. that are managed by authorized management companies; these financial undertakings are registered with the management company managing them;

9^o. that have applied as an investment company with variable capital;

10^o. that have been reported in accordance with Section 2:81 (2) (b); they shall be listed in the register together with the offeror or offerors concerned;

- 11 °. that wind up their company in accordance with Section 1:104 (3); and
- 12 °. to which the rules pursuant to this Act do not apply in accordance with Section 1:10, under a;
- b. markets in financial instruments to the holder of which Our Minister has granted a recognition as meant in Section 5:26 (1) or a waiver as meant in Section 5:27 (2); and
- c. credit rating agencies which have been recognized pursuant to Section 3:57, second subsection.
3. Without prejudice to the provisions in the first subsection, the supervisor shall, without delay, provide for the registration of:
- a. the name and place of residence of the representative in the Netherlands of an insurer with a branch in the Netherlands or providing services to the Netherlands;
- b. the nature of the risks for non-life insurers which carry on their business in the Netherlands by providing services or the nature of the contract of life insurance in so far as they are insurers which carry on their business in the Netherlands by providing services;
- c. the data that must be communicated based on:
- 1 °. Chapter 5.3 it being understood that such data should be registered within a working day following on the working day on which the register holder received said report and except for address data of natural persons obliged to notify the register holder;
- 2 °. Section 5:59 (1 or 5) including the time at which the issuer disclosed the information; and
- 3 °. Section 5:60 except for the address data of parties obliged to notify;
- d. prospectuses approved under Section 5:9;
- e. the names of the States which Our Minister has designated under Sections 2:6, 2:50 and 2:66;
- f. the Member States in which a registered insurance intermediary is authorized to provide mediation services in insurance and the names of the natural persons that determine the policy of the intermediary;
- g. the name of the insurer for which the authorization of an authorized agent or a sub-authorized agent applies and the names of the natural persons who determine the policy of the authorized agent or the sub-authorized agent; and
- h. the financial products in respect of which a registered financial services provider may provide services pursuant to this Act, as well as the nature of the services concerned.
4. Where applicable, it is stated upon removal that the decision concerned is not yet final and conclusive.

Section 1:108

1. The register holder shall make the data meant in Section 1:107 available for the public for a minimum period of 5 years, free of charge. On request, the register holder shall issue copies from the register against payment of the cost price.
2. Rules may be laid down by ministerial regulation with regard to the set-up and operation of the register.

Section 1:109

1. The Netherlands Authority for the Financial Markets keeps a register of the persons who have applied, with due observance of the order in council as

meant in the definition of qualifying investor in Section 1:1, for registration as qualifying investors.

2. Inspection of the register shall be allowed or an extract from the register shall be issued, on request and against cost price, to management companies, collective investment schemes, issuers, and those parties that intend, in the pursuit of a business, to attract or to make available redeemable funds, or those parties that perform activities as meant in Section 4:3 (1).

3. The Netherlands Authority for the Financial Markets shall, without delay, remove an entry from the register where a registered party, legal successor or heir so requests.

4. With a view to the adequate operation of the financial markets, the Netherlands Authority for the Financial Markets may remove an entry from the register.

Part 1.6.3 Appeal

Section 1:110

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

2. As regards a decision under Section 5:9a (1), 5:23 (2), 5:71 (6 or 7), or relating to that stipulated pursuant to Section 5:71 (2 and 3), except for a decision to impose an administrative penalty as meant in Section 1:80, Section 7:1 of the General Administrative Law Act shall not be applied.

3. In derogation from the first subsection, the Trade and Industry Appeals Tribunal shall be competent to take cognizance of appeals against decisions as meant in the second subsection, with the exception of decisions to impose an administrative penalty.

PART 2 – MARKET ACCESS OF FINANCIAL UNDERTAKINGS

CHAPTER 2.1 INTRODUCTORY PROVISIONS

Section 2:1

Authorizations and waivers granted under this Act shall be personal and non-transferable.

Section 2:2

If the supervisor, upon authorizing a financial undertaking, grants a waiver as meant in Section 2:5 (3), 2:7 (3), 2:12 (4), 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 (3), that waiver shall also be regarded as a waiver of the corresponding rules under Part 2, Prudential supervision of financial undertakings or Part 4, Conduct of business supervision of financial undertakings.

Section 2:3

1. If, without prejudice to Section 2:2, the Netherlands Authority for the Financial Markets, upon granting authorization, whereby under Section 1:48

advice has been requested from the Netherlands Central Bank, also grants a waiver as meant in Section 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 (3), the Netherlands Authority for the Financial Markets may simultaneously grant a waiver of the corresponding rules under rules under Part 2, Prudential supervision of financial undertakings, if the advice so necessitates. In such cases, the regulations recommended by the Netherlands Central Bank shall be attached to that waiver. The waiver shall be deemed to have been granted by the Netherlands Central Bank in so far as it relates to rules under Part 2, Prudential supervision of financial undertakings.

2. If, without prejudice to Section 2:2, the Netherlands Central Bank, upon granting an authorization, whereby under Section 1:48 advice has been requested from the Netherlands Authority for the Financial Markets, also grants a waiver as meant in Section 2:5 (3), 2:7 (3), 2:12 (4), 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 Netherlands Central Bank may also grant a waiver of the corresponding rules under Part 4, Conduct of business supervision of financial undertakings, if the advice so necessitates. In such cases, the regulations recommended by the Netherlands Authority for the Financial Markets shall be attached to that waiver. The waiver shall be deemed to have been granted by the Netherlands Authority for the Financial Markets in so far as it relates to the rules under Part 4, Conduct of business supervision of financial undertakings.

CHAPTER 2.2 ACCESS TO THE FINANCIAL MARKETS OF THE NETHERLANDS

Part 2.2.1 Pursuit of the business of a clearing institution

§ 2.2.1.1 Authorization obligation and requirements for clearing institutions established in the Netherlands

Section 2:4

1. No person established in the Netherlands may carry on the business of a clearing institution without being authorized by the Netherlands Central Bank.
2. The first subsection shall not concern financial undertakings established in the Netherlands and authorized by the Netherlands Central Bank under this part to carry on the business of a bank.

Section 2:5

1. The Netherlands Central Bank shall, on application, grant authorization as meant in Section 2:4 (1) if the applicant shows proof that it will comply with the provisions pursuant to:
 - a. Section 3:8 with regard to the expertise of the persons meant in that section;
 - b. Section 3:9 with regard to the fit and proper qualities of the persons meant in that section;
 - c. Section 3:10 (1 and 2) with regard to the policy on sound operations;
 - d. Section 3:15 (1 and 2) with regard to the minimum number of persons determining the day-to-day policies and the place from which they perform their activities;
 - e. Section 3:16 with regard to the participation structure;

- f. Section 3:17 (1 and 2) with regard to the organization of the operations;
 - g. Section 3:19 (1 and 2) with regard to the minimum number of members of the supervisory board or any similar body as meant in Section 3:19 (2);
 - h. Section 3:53 (1 and 3) with regard to the minimum own funds;
 - i. Section 3:57 (1 and 2) with regard to the solvency; and
 - j. Section 3:63 (1 and 2) with regard to the liquidity.
2. The application for authorization shall state the data to be determined under or pursuant to order in council.
3. The Netherlands Central Bank may, on application, grant a waiver, fully or in part, of the first subsection, opening words and under c, d, f, g, h, i or j, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objects which the sections listed in the first subsection seek to attain shall be attained otherwise.

§ 2.2.1.2. Branch and provision of services by clearing institutions established outside the Netherlands

Section 2:6

1. No person established outside the Netherlands may carry on the business of a clearing institution from a branch situated in the Netherlands without being authorized by the Netherlands Central Bank.
2. The first subsection shall not concern clearing institutions established in a State designated by Our Minister in which the supervision 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 order in council with regard to the designation of States. Our Minister may revoke the designation order.
3. A notification of the designation order of a State meant in the second subsection and its revocation shall be published in the Government Gazette.
4. The first subsection shall not apply to financial undertakings established in another Member State authorized to carry on the business of a bank by the Supervisory Authority of that Member State, unless the authorization provides otherwise. Section 2:15 shall apply *mutatis mutandis*.

Section 2:7

1. The Netherlands Central Bank shall grant authorization as meant in Section 2:6 (1) on application provided the applicant shows proof that it will comply with the provisions pursuant to:
- a. Section 3:8 with regard to the expertise of the persons meant in that section;
 - b. Section 3:9 with regard to the fit and proper qualities of the persons meant in that section;
 - c. Section 3:10 (1 and 2) with regard to the policy on sound operations;
 - d. Section 3:17 (1 and 2) with regard to the organization of the operations;
 - e. Section 3:21 with regard to the minimum number of persons determining the day-to-day policies of the branch and the locations from which they perform their activities;
 - f. Section 3:53 (1 and 3) with regard to the minimum own funds;
 - g. Section 3:57 (1 and 2) with regard to the solvency; and
 - h. Section 3:63 (1 and 2) with regard to the liquidity,

it being understood that for the purposes of a – d, f – h of the aforementioned sections for “a clearing institution established in the Netherlands” one should read “the branch in the Netherlands of a clearing institution established in a non-designated State”, and that for the purposes of e of the aforementioned section for “credit institution established in a non-Member State” one should read “clearing institution established in a non-designated State”.

2. Authorization shall be applied for by submitting the data to be determined under or pursuant to order in council.

3. The Netherlands Central Bank may, on application, grant a waiver, fully or in part, of the first subsection, opening words and under c, d, f, g or h, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objects which the sections listed in the first subsection seek to attain shall be attained otherwise.

Section 2:8

1. No person established outside the Netherlands may carry on the business of a clearing institution by providing services to the Netherlands, unless it has informed the Netherlands Central Bank beforehand of its intention to do so and has ensured and shown proof that the provisions under Section 3:57 will be complied with.

2. The first subsection shall not concern clearing institutions established in a State to be designated by Our Minister under Section 2:6.

3. The first subsection shall not concern clearing institutions established in another Member State authorized to carry on the business of a bank by the Supervisory Authority of that Member State, unless the authorization provides otherwise. Section 2:18 shall apply mutatis mutandis.

4. For the purposes of the first subsection clearing institutions established outside the Netherlands shall carry on the business of a clearing institution by providing services to the Netherlands provided this occurs on a market in financial instruments recognized under Section 5:26 (2).

5. On receiving a notification as meant in the first subsection, the Netherlands Central Bank shall, without delay, inform the financial undertaking of its receipt.

Section 2:9

1. The notification, meant in Section 2:8 (1), shall be made by stating the data to be determined under or pursuant to order in council.

2. The financial undertaking, meant in Section 2:8 (1), may proceed to provide services after receiving the notification, meant in Section 2:8 (5), of the Netherlands Central Bank.

Section 2:10

1. A clearing institution as meant in Section 2:6 (2) or Section 2:8 (2) intending to carry on the business of a clearing institution from a branch situated in the Netherlands or by providing services to the Netherlands, shall inform the Netherlands Central Bank of such intention.

2. Following the notification, the clearing institution may carry on the intended business by providing services to the Netherlands unless the Netherlands Central Bank notifies the former that such intention or the intended business method is contrary to this Act.

3. On receiving a notification as meant in the first subsection, the Netherlands Central Bank shall, without delay, inform the financial undertaking of its receipt.

4. Within two months of receiving the notification, the Netherlands Central Bank may inform the clearing institution which conditions it should observe for reasons of public interest in the pursuit of its business from a branch situated in the Netherlands.

Part 2.2.2 Pursuit of the business as a credit institution and financial institution

§ 2.2.2.1. Authorization obligation and requirements for credit institutions established in the Netherlands

Section 2:11

1. No person established in the Netherlands may carry on the business of a bank or electronic money institution without being authorized by the Netherlands Central Bank.

2. The first subsection shall not concern financial undertakings established in the Netherlands and authorized by the Netherlands Central Bank under this part to carry on the business of a bank in so far as it concerns the business of an electronic money institution.

3. The first subsection shall not apply to those who receive funds made available as meant in Section 3:2.

Section 2:12

1. The Netherlands Central Bank shall grant authorization as meant in Section 2:11 (1) if the applicant shows proof that it will comply with the provisions pursuant to:

- a. Section 3:8 with regard to the expertise of the persons meant in that section;
- b. Section 3:9 with regard to the fit and proper qualities of the persons meant in that section;
- c. Section 3:10 (1 and 2) with regard to the policy on sound operations;
- d. Section 3:15 (1 and 2) with regard to the minimum number of persons determining the day-to-day policies and the place from which they perform their activities;
- e. Section 3:16 with regard to the participation structure;
- f. Section 3:17 (1 and 2) with regard to the organization of the operations;
- g. Section 3:19 (1 and 2) with regard to the minimum number of members of the supervisory board or any similar body as meant 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 own funds;
- j. Section 3:57 (1 and 2) with regard to the solvency; and
- k. Section 3:63 (1 and 2) with regard to the liquidity.

2. If the application concerns a bank established in the Netherlands in which a qualifying holding is held, the Netherlands Central Bank, without prejudice to the first subsection, shall grant authorization provided the holder of the qualifying holding has requested a declaration of no-objection in accordance with Section 3:95 (2) and, according to the Netherlands Central Bank, the

provisions under Sections 3:99 – 3:101 with regard to the declaration of no-objection have been complied with.

3. If the application concerns a bank established in the Netherlands in which a qualifying holding is held which is subject to Section 3:97, the Netherlands Central Bank, without prejudice to the first subsection and in derogation from the second subsection, shall grant the authorization unless the holding could or would lead to an undesired development in the financial sector or if the Netherlands Central Bank is of the opinion that one of the considerations meant in Section 3:100, opening words, (a or b) or 3:101, opening words, (a or b) forms an obstacle to the granting of a declaration of no-objection.

4. If the application concerns an electronic money institution established in the Netherlands in which a qualifying holding is held, the Netherlands Central Bank, without prejudice to the first subsection, will issue an authorization unless the intention meant in Section 3:108 (1) could or would lead to an influence on the electronic money institution concerned endangering the financial solvency of the electronic money institution.

5. Authorization shall be applied for by submitting the data to be determined under or pursuant to order in council.

6. The Netherlands Central Bank may, on application, grant a waiver, fully or in part, of the first subsection, opening words and under c, f, g, i, j or k, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objects which the sections listed in the first subsection seek to attain shall be attained otherwise.

Section 2:13

1. The Netherlands Central Bank shall, on application, grant authorization as meant in Section 2:11 to the credit institution which apart from the pursuit of the business as a bank also intends to provide investment services in the Netherlands, provided the applicant, without prejudice to Section 2:12, shows proof that it will comply with the provisions pursuant to:

- a. Section 4:14 (2) (c) (1^o - 6^o) with regard to the organization of the operations;
- b. Section 4:87 with regard to taking adequate measures to protect the clients' rights; and
- c. Section 4:88 with regard to pursuing adequate policies to preclude the conflicts of interests meant in that section.

2. The application for authorization shall state the data to be determined under or pursuant to order in council.

3. The Netherlands Central Bank may, on application, grant a waiver, fully or in part, of the first subsection, opening words and under a or c, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objects which the sections listed in the first subsection seek to attain shall be attained otherwise.

§ 2.2.2.2. Branch and provision of services by credit institutions with their registered office in another Member State

Section 2:14

1. If the Netherlands Central Bank receives a notification from a Supervisory Authority of another Member State of the intention of a credit institution established in another Member State to carry on its business from a branch

situated in the Netherlands, it shall, without delay, inform the credit institution concerned of this receipt.

2. Within two months of receiving the notification, the Netherlands Central Bank may inform the Supervisory Authority of the other Member State which conditions it should observe in the pursuit of its business from a branch situated in the Netherlands. The Netherlands Central Bank shall send a copy of this to the credit institution.

Section 2:15

1. A credit institution established in another Member State authorized to carry on its business by the Supervisory Authority of that Member State which intends to carry on its business from a branch situated in the Netherlands may do so two months after receiving the notification, meant in Section 2:14 (1), or immediately on receiving the notification, meant in Section 2:14 (2).

2. The credit institution may perform the activities, meant in Annex 1 to the Recast Banking Directive, unless the notification meant in Section 2:14 (1) expressly provides otherwise or does not list the activities.

Section 2:16

1. No person established in another Member State which according to the law of the State in which it is established does not have to be authorized by the Supervisory Authority of that Member State to carry on the business of a credit institution and has not obtained such authorization on a voluntary basis, may carry on the business of a credit institution from a branch situated in the Netherlands without being authorized by the Netherlands Central Bank.

2. The first subsection where it concerns the operations of an electronic money institution shall not concern financial undertakings established in another Member State authorized by the Supervisory Authority of that Member State to carry on the business of a bank, unless this authorization provides otherwise.

3. No person established in another Member State, which according to the law of the State in which it is established does not have to be authorized by the Supervisory Authority of that Member State to carry on the business of a credit institution and has not obtained such authorization on a voluntary basis, may carry on the business of a bank by providing services to the Netherlands unless it has informed the Netherlands Central Bank and shows proof that the provisions under Section 3:57 will be complied with. If rules are laid down under or pursuant to order in council under Section 3:57 (2), the applicant shall also show proof that these rules are complied with, where provided by that order in council.

Section 2:17

1. The Netherlands Central Bank shall grant authorization as meant in Section 2:16 (1) if the applicant shows proof that it will comply with the provisions pursuant to:

- a. Section 3:8 with regard to the expertise of the persons meant in that section;
- b. Section 3:9 with regard to the fit and proper qualities of the persons meant in that section;
- c. Section 3:10 (1 and 2) with regard to the policy on sound operations;
- d. Section 3:17 (1 and 2) with regard to the organization of the operations;

e. Section 3:21 with regard to the minimum number of persons determining the day-to-day policies of the branch and the locations 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 own funds;

h. Section 3:57 (1 and 2) with regard to the solvency;

i. Section 3:63 (1 and 2) with regard to the liquidity; and

j. Section 3:75 with regard to separate annual accounts, it being understood that for the purposes of a – d and g – i in the listed sections for “a credit institution in the Netherlands” one should read “the branch in the Netherlands of a credit institution established in another Member State”.

2. The application for authorization shall state the data to be determined under or pursuant to order in council.

3. The Netherlands Central Bank may, on application, grant a waiver, fully or in part, of the first subsection, opening words and under c, d, g, h or i, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objects which the sections listed in the first subsection seek to attain shall be attained otherwise.

Section 2:18

1. A bank established in another Member State authorized to carry on its business by the Supervisory Authority of that Member State which intends for the first time to carry on its business by providing services to the Netherlands may do so after it has notified the Supervisory Authority of the Member State in which it is established of such intention.

2. The bank may perform the activities, listed in Annex 1 to the Recast Banking Directive, unless the Netherlands Central Bank of the Supervisory Authority of the Member State in which it is established has received a notification which expressly provides otherwise or does not list the performance of those activities.

Section 2:19

An electronic money institution established in another Member State authorized by the Supervisory Authority of that Member State to carry on its business which intends for the first time to carry on its business by providing services to the Netherlands may do so after it has notified the Supervisory Authority of the Member State in which it is established of such intention.

§ 2.2.2.3. Authorization obligation and requirements for credit institutions established in a non-Member State

Section 2:20

1. No person established in a non-Member State may carry on the business of a bank or electronic money institution from a branch situated in the Netherlands without being authorized by the Netherlands Central Bank.

2. The first subsection shall not concern financial undertakings established in a non-Member State authorized by the Netherlands Central Bank under this part to carry on the business of a bank from a branch situated in the Netherlands in so far as it concerns the business of an electronic money institution.

Section 2:21

1. The Netherlands Central Bank shall grant authorization as meant in Section 2:20 (1) if the applicant shows proof that it will comply with the provisions pursuant to:

- a. Section 3:8 with regard to the expertise of the persons meant in that section;
- b. Section 3:9 with regard to the fit and proper qualities of the persons meant in that section;
- c. Sections 3:10 (1 and 2) with regard to the policy on sound operations;
- d. Section 3:17 (1 and 2) with regard to the organization of the operations;
- e. Section 3:21 with regard to the minimum number of persons determining the day-to-day policies of the branch and the locations 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 own funds;
- h. Section 3:57 (1 and 2) with regard to the solvency;
- i. Section 3:63 (1 and 2) with regard to the liquidity; and
- j. Section 3:75 with regard to separate annual accounts, it being understood that for the purposes of a – d and g – i in the listed sections for “a credit institution in the Netherlands” one should read “the branch in the Netherlands of a credit institution established in a non-Member State”.

2. Authorization shall be applied for by submitting the data to be determined under or pursuant to order in council.

3. The Netherlands Central Bank may, on application, grant a waiver, fully or in part, of the first subsection, opening words and under b, d, g, h or i, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objects which the sections listed in the first subsection seek to attain shall be attained otherwise.

Section 2:22

1. The Netherlands Central Bank shall, on application, grant authorization as meant in Section 2:20 to the credit institution which apart from the pursuit of the business as a credit institution also intends to provide an investment service, provided the applicant, without prejudice to Section 2:21, shows proof that it shall comply with the provisions pursuant to:

- a. Section 4:14 (2) (c) (1^o - 6^o) with regard to the organization of the operations;
- b. Section 4:87 with regard to taking adequate measures to protect the clients' rights; and
- c. Section 4:88 with regard to pursuing adequate policies to preclude the conflicts of interests meant in that section.

2. The application for authorization shall state the data to be determined under or pursuant to order in council.

3. The Netherlands Central Bank may, on application, grant a waiver, fully or in part, of the first subsection, opening words and under a or c, or the second sentence, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objects which the sections listed in the first subsection seek to attain shall be attained otherwise.

Section 2:23

1. An electronic money institution established in a non-Member State may not carry on the business of an electronic money institution by providing services to the Netherlands from a branch in a non-Member State.
2. The Netherlands Central Bank may, on application, grant a waiver of the first subsection if the applicant shows proof that the interests which this part and Part 2, Prudential supervision of financial undertakings seek to protect are sufficiently protected otherwise.

§ 2.2.2.4. Branch and provision of services by financial institutions established in another Member State

Section 2:24

1. If the Netherlands Central Bank receives a notification from a Supervisory Authority of another Member State of the intention of a financial institution established in another Member State to carry on its business from a branch situated in the Netherlands or by providing services to the Netherlands, it shall, without delay, inform the financial institution concerned of this receipt.
2. Within two months of receiving the notification relating to the intention to carry on the business from a branch in the Netherlands, the Netherlands Central Bank may inform the Supervisory Authority of the other Member State which conditions it should observe for reasons of public interest in the pursuit of its business from a branch situated in the Netherlands or by providing services to the Netherlands. The Netherlands Central Bank shall send a copy of this to the financial institution.

Section 2:25

1. A financial institution established in another Member State having been issued a declaration to carry on its business by the Supervisory Authority of that Member State corresponding to the certificate of supervised status meant in Section 3:110 and which intends to carry on its business from a branch situated in the Netherlands may do so two months after receiving the notification, meant in Section 2:24 (1), or immediately on receiving the notification, meant in Section 2:24 (2).
2. The financial institution may perform the activities, meant in Annex 1, under 2 – 14, to the Recast Banking Directive, unless the declaration meant in the first subsection expressly provides otherwise or the notification meant in Section 2:24 (1) does not list the performance of those activities.

Section 2:26

A financial institution established in another Member State having been issued a declaration by the Supervisory Authority of that Member State to carry on its business corresponding to the certificate of supervised status, meant in Section 3:110, and which carries on its business by providing services to the Netherlands, may perform the activities listed in Annex 1, under 2 – 14, to the Recast Banking Directive, unless the declaration issued in that Member State corresponding to the certificate of supervised status meant in Section 3:110 expressly provides otherwise or it has not informed the Supervisory Authority of the Member State in which it is established of the activities which it intends to perform by providing services to the Netherlands.

Part 2.2.3 Pursuit of the business of life insurer and non-life insurer

§ 2.2.3.1. Authorization obligation and requirements for life insurers and non-life insurers established in the Netherlands

Section 2:27

1. No person may carry on the business of a life insurer or non-life insurer without being authorized by the Netherlands 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 classes listed in the Classes Annex to this Act.
3. In relation to the prohibition to carry on the business of a life insurer, the first subsection shall not apply to financial undertakings that solely carry on the business of a funeral expenses and benefits in kind insurer holding an authorization as meant in Section 2:48 (1).
4. The first subsection shall not apply to guarantee funds as meant in Section 3:6.

Section 2:28

1. A person authorized to carry on the business of a life insurer shall not be authorized to carry on the business of a non-life insurer.
2. A person authorized to carry on the business of a non-life insurer shall not be authorized to carry on the business of a life insurer.

Section 2:29

1. The life insurer authorized to carry on the business of a life insurer in the Permanent Health Insurance class shall not be eligible for authorization to carry on the business of a life insurer in another class.
2. The life insurer authorized to carry on the business of a life insurer in a branch other than the Permanent Health Insurance class shall not be eligible for authorization to carry on the business of a life insurer in the Permanent Health Insurance class.

Section 2:30

Without prejudice to Section 2:31, the Netherlands Central Bank shall only authorize a life insurer established in the Netherlands in respect of the Capitalization Activities class or the Collective Pension Funds Management class provided the applicant is authorized for the General Life Insurance class and ensures and shows proof that:

- a. it will perform the activities listed in the aforementioned Capitalization Activities class or the Collective Pension Funds Management class to such a degree that it is of subordinate importance to its business as a whole; and
- b. in case of an application for the Collective Pension Funds Management class it shall comply with any other rules to be laid down under or pursuant to order in council.

Section 2:31

1. The Netherlands Central Bank shall, on application, grant authorization as meant in Section 2:27 (1) if the applicant shows proof that it will comply with the provisions pursuant to:

- a. Section 3:8 with regard to the expertise of the persons meant in that section;
 - b. Section 3:9 with regard to the fit and proper qualities of the persons meant in that section;
 - c. Sections 3:10 (1 and 2) with regard to the policy on sound operations;
 - d. Section 3:15 (1 and 2) with regard to the minimum number of persons determining the day-to-day policies and the place from which they perform their activities;
 - e. Section 3:16 with regard to the participation structure;
 - f. Section 3:17 (1 and 2) with regard to the organization of the operations;
 - g. Section 3:20 with regard to the legal form;
 - h. Section 3:53 (1 - 4) with regard to the minimum own funds;
 - i. Section 3:57 (1 - 4) with regard to the solvency; and
 - j. Section 3:70 with regard to the financial year.
2. If the application concerns an insurer established in the Netherlands in which a qualifying holding is held, the Netherlands Central Bank, without prejudice to the first subsection, shall issue an authorization if the holder of the qualifying holding has applied for a declaration of no-objection in accordance with Section 3:95 (2), and the Netherlands Central Bank is of the opinion that the provisions under Sections 3:99 - 3:101 with regard to the declaration of no-objection are complied with.
3. If the application concerns an insurer established in the Netherlands in which a qualifying holding is held which is subject to Section 3:97, the Netherlands Central Bank, without prejudice to the first subsection and in derogation from the second subsection, shall issue an authorization unless the unit could or would lead to an undesired development of the financial sector or in the opinion of the Netherlands Central Bank, one of the considerations, meant in Section 3:100, opening words, under a or b, or 3:101, opening words, under a or b, forms an obstacle to the granting of a declaration of no-objection.
4. The application for the authorization shall state the class or classes for which authorization is requested and any further data to be laid down under or pursuant to order in council.
5. The Netherlands Central Bank may, on application, grant a waiver, fully or in part, of the first subsection, opening words and under c, d, f, j or h, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objects which the sections listed in the first subsection seek to attain shall be attained otherwise.

Section 2:32

1. The Netherlands Central Bank shall, on application, grant authorization to carry on the business of a non-life insurers in the Motor Vehicle Liability class provided the applicant, without prejudice to Section 2:31, shows proof that it will comply with the provisions in:
- a. Section 4:70 (1) (a and b) with regard to the obligations ensuing from the Motor Vehicle Liability Insurance Act; and
 - b. Section 4:70 (2) with regard to the claims representative.
2. The application for the authorization shall state the data to be determined under or pursuant to order in council.
3. The Netherlands Central Bank may, on application, grant a waiver, fully or in part, of the first subsection, first sentence, opening words and under a or b,

if the applicant shows proof that it cannot reasonably comply with those provisions and that the objects which Section 4:70 (1) (a and b) and (2) seeks to attain shall be attained otherwise.

Section 2:33

1. The Netherlands Central Bank shall, on application, grant authorization to carry on the business of a non-life insurer in the Legal Expenses Insurance class provided the applicant, without prejudice to Section 2:31, shows proof that it will comply with the provisions in Section 4:65 relating to the preclusion of conflicts of interest.
2. The application for the authorization shall state the data to be determined under or pursuant to order in council.

§ 2.2.3.2. Branch and provision of services by life insurers and non-life insurers established in another Member State

Section 2:34

1. If the Netherlands Central Bank receives a notification from a Supervisory Authority of another Member State of the intention of a life insurer or non-life insurer established in another Member State to carry on its business from a branch situated in the Netherlands or by providing services to the Netherlands, it shall, without delay, inform the life insurer or non-life insurer concerned of this receipt.
2. Within two months of receiving the notification relating to the intention to carry on the business from a branch in the Netherlands, the Netherlands Central Bank may inform the Supervisory Authority of the other Member State which conditions the life insurer or non-life insurer should observe for reasons of public interest in the pursuit of its business from a branch situated in the Netherlands or by providing services to the Netherlands. The Netherlands Central Bank shall send a copy of this to the financial institution.

Section 2:35

A life insurer or non-life insurer established in another Member State authorized by the Supervisory Authority of that Member State to carry on its business which intends to carry on its business from a branch situated in the Netherlands, may do so within two months of receiving the notification, meant in Section 2:34 (1) or immediately on receiving the notification, meant in Section 2:34 (2).

Section 2:36

1. No person established in another Member State which according to the law of the State in which it is established does not have to be authorized by the Supervisory Authority of that Member State to carry on the business of a life insurer or non-life insurer and has not obtained such authorization on a voluntary basis, may carry on the business of a life insurer or non-life insurer from a branch situated in the Netherlands without being authorized by the Netherlands Central Bank.
2. No person established in another Member State which according to the law of the State in which it is established does not have to be authorized by the Supervisory Authority of that Member State to carry on the business of a life insurer or non-life insurer and has not obtained such authorization on a

voluntary basis, may carry on the business of a life insurer or non-life insurer by providing services to the Netherlands unless it has notified the Netherlands Central Bank and shows proof that it will comply with the provisions under:

- a. Section 3:24 with regard to the legal personality, the power to carry on the business of a life insurer or non-life insurer and the exercise of such power; and
- b. Section 3:57 (1 – 4) with regard to the solvency, it being understood that for the purposes of this part for “an insurer established in the Netherlands” one should read “an insurer established in a non-Member State”.

If rules are laid down under or pursuant to order in council under Section 3:57 (2), the applicant shall also show proof that it will comply with those rules, where provided by that order in council.

3. The notification, meant in the second subsection, shall state the data to be determined under or pursuant to order in council.

4. The insurer may carry on its business from a branch situated in the Netherlands within two months of receiving the notification, meant in Section 2:34 (1).

5. The insurer shall carry on its business by providing services to the Netherlands only in the classes regarding which it is authorized in the State in which it is established.

Section 2:37

1. The Netherlands Central Bank shall grant authorization as meant in Section 2:36 (1) if the applicant shows proof that it will comply with the provisions pursuant to:

- a. Section 3:8 with regard to the expertise of the persons meant in that section;
- b. Section 3:9 with regard to the fit and proper qualities of the persons meant in that section;
- c. Sections 3:10 (1 and 2) with regard to the policy on sound operations;
- d. Section 3:15 (1 and 2) with regard to the minimum number of persons determining the day-to-day policies and the place from which they perform their activities;
- e. Section 3:16 with regard to the participation structure;
- f. Section 3:17 (1 and 2) with regard to the organization of the operations;
- g. Section 3:24 with regard to the legal personality, the power to carry on the business of a life insurer or non-life insurer and the exercise of such power;
- h. Section 3:47 with regard to the insurer’s representative;
- i. Section 3:53 (1 - 4) with regard to the minimum own funds;
- j. Section 3:57 (1 - 4) with regard to the solvency; and
- k. Section 3:70 with regard to the financial year,

it being understood that for the purposes of a – k for “an insurer” or “life insurer or non-life insurer” one should read “the branch in the Netherlands of an insurer established in another Member State” or “the branch in the Netherlands of a life insurer or non-life insurer established in another Member State”.

2. The application for the authorization shall state the data to be determined under or pursuant to order in council.

3. The Netherlands Central Bank may, on application, grant a waiver, fully or in part, of the first subsection, first sentence, opening words and under c, d, f, or h – k, if the applicant shows proof that it cannot reasonably comply with

those provisions and that the objects which the sections listed in the first subsection seek to attain shall be attained otherwise.

Section 2:38

1. A life insurer or non-life insurer established in another Member State authorized by the Supervisory Authority of that Member State to carry on its business which intends for the first time to carry on its business by providing services to the Netherlands from a branch in another Member State, may do so after receiving the notification meant in Section 2:34 (1).
2. The insurer shall carry on its business by providing services to the Netherlands only in the classes regarding which it is authorized in the State in which it is established.
3. In case of Community co-assurance the first and second subsection shall only concern non-life insurers acting as the first non-life insurer.

Section 2:39

1. A life insurer or non-life insurer established in another Member State authorized by the Supervisory Authority of that Member State to carry on its business and which intends for the first time to provide services to the Netherlands from a branch situated in a non-Member State, shall, before commencing the provision of services, inform the Netherlands Central Bank of data to be determined under or pursuant to order in council.
2. On receiving a notification as meant in the first subsection, the Netherlands Central Bank shall, without delay, inform the insurer of its receipt. The insurer may carry on its business by providing services to the Netherlands on receiving the notification.
3. In case of Community co-assurance the first and second subsection shall only concern non-life insurers acting as the first non-life insurer.

§ 2.2.3.3. Branch and provision of services by life insurers or non-life insurers established in a non-Member State

Section 2:40

1. No person established in a non-Member State may carry on the business of a life insurer or non-life insurer from a branch in the Netherlands without being authorized by the Netherlands Central Bank.
2. The business of a life insurer and the business of a non-life insurer are distinguished into the classes listed in the Classes Annex to this Act.

Section 2:41

1. The Netherlands Central Bank shall grant authorization as meant in Section 2:40 (1) if the applicant shows proof that it will comply with the provisions pursuant to:
 - a. Section 3:8 with regard to the expertise of the persons meant in that section;
 - b. Section 3:9 with regard to the fit and proper qualities of the persons meant in that section;
 - c. Sections 3:10 (1 and 2) with regard to the policy on sound operations;
 - d. Section 3:15 (1 and 2) with regard to the minimum number of persons determining the day-to-day policies and the place from which they perform their activities;

- e. Section 3:16 (1 and 2) with regard to the participation structure;
 - f. Section 3:17 (1 and 2) with regard to the organization of the operations;
 - g. Section 3:24 with regard to the legal personality, the power to carry on the business of a life insurer or non-life insurer and the exercise of such power;
 - h. Section 3:47 with regard to the insurer's representative;
 - i. Section 3:53 (1 - 4) with regard to the minimum own funds;
 - j. Section 3:57 (1 - 4) with regard to the solvency; and
 - k. Section 3:70 with regard to the financial year,
- it being understood that for the purposes of a – k for “an insurer” or “life insurer or non-life insurer” one should read “the branch in the Netherlands of an insurer established in a non-Member State” or “the branch in the Netherlands of a life insurer or non-life insurer established in a non-Member State”.
- 2. The application for the authorization shall state the data to be determined under or pursuant to order in council.
 - 3. The Netherlands Central Bank may, on application, grant a waiver, fully or in part, of the first subsection, opening words and under c, d, f, h or k, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objects which the sections listed in the first subsection seek to attain shall be attained otherwise.

Section 2:42

- 1. The Netherlands Central Bank shall, on application, grant authorization as meant in Section 2:40 to the applicant that wishes to carry on its business in the Motor Vehicle Liability class provided the applicant, without prejudice to Section 2:41, shows proof that it will comply with the provisions in:
 - a. Section 4:70 (1) (a and b) with regard to the obligations ensuing from the Motor Vehicle Liability Insurance Act; and
 - b. Section 4:70 (2) with regard to the claims representative.
- 2. The application for the authorization shall state the data to be determined under or pursuant to order in council.
- 3. The Netherlands Central Bank may, on application, grant a waiver, fully or in part, of the first subsection, first sentence, opening words and under a or b, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objects which Section 4:70 (1) (a and b) and second sentence seek to attain shall be attained otherwise.

Section 2:43

- 1. The Netherlands Central Bank shall, on application, grant authorization as meant in Section 2:40 to the applicant that wishes to carry on its business in the Legal Assistance class provided the applicant, without prejudice to Section 2:41, shows proof that it will comply with the provisions in Section 4:65 relating to the preclusion of conflicts of interest.
- 2. The application for the authorization shall state the data to be determined under or pursuant to order in council.

Section 2:44

- 1. A person pursuing the business of both a life insurer and a non-life insurer in a non-Member State shall only be eligible for authorization to carry on the business of a non-life insurer.

2. The first subsection shall not concern the insurers that solely carry on the business of life insurers from branches situated in the Netherlands since 15 March 1979.

Section 2:45

1. A life insurer or non-life insurer established in a non-Member State may not carry on its business by providing services to the Netherlands from a branch in a non-Member State, unless it has informed the Netherlands Central Bank of this and shows proof that it will comply with the provisions under:
 - a. Section 3:24 with regard to the legal personality, the power to carry on the business of a life insurer or non-life insurer and the exercise of such power; and
 - b. Section 3:57 (1 – 4) with regard to the solvency, it being understood that for the purposes of this part for “an insurer established in the Netherlands” one should read “an insurer established in a non-Member State”.
2. The notification, meant in the second subsection, shall state the data to be determined under or pursuant to order in council.
3. The life insurer or non-life insurer may carry on its business by providing services to the Netherlands after receiving the notification, meant in Section 2:47.
4. The life insurer or non-life insurer shall carry on its business by providing services to the Netherlands only in the classes regarding which it is authorized in the State in which it is established.

Section 2:46

1. A life insurer or non-life insurer established in a non-Member State may not carry on its business by providing services to the Netherlands from a branch in another Member State unless it has informed the Netherlands Central Bank of this.
2. The notification shall state the data to be determined under or pursuant to order in council.
3. The life insurer or non-life insurer may carry on its business by providing services to the Netherlands from the branch after receiving the notification meant in Section 2:47.
4. In case of Community co-assurance the first and second subsection shall only concern non-life insurers acting as the first non-life insurer.

Section 2:47

On receiving a notification as meant in Section 2:45 (1) or 2:46 (1), the Netherlands Central Bank shall, without delay, inform the life insurer or non-life insurer of its receipt.

Part 2.2.4 Pursuit of the business of a funeral expenses and benefits in kind insurer

§ 2.2.4.1. Authorization obligation and requirements for funeral expenses and benefits in kind insurers established in the Netherlands

Section 2:48

1. No person established in the Netherlands may carry on the business of a funeral expenses and benefits in kind insurer without being authorized by the Netherlands Central Bank.
2. The first subsection shall not concern financial undertakings established in the Netherlands that are authorized by the Netherlands Central Bank to carry on the business of a life insurer under this part.

Section 2:49

1. The Netherlands Central Bank shall grant authorization as meant in Section 2:48 (1) if the applicant shows proof that it will comply with the provisions pursuant to:
 - a. Section 3:8 with regard to the expertise of the persons meant in that section;
 - b. Section 3:9 with regard to the fit and proper qualities of the persons meant in that section;
 - c. Sections 3:10 (1 and 2) with regard to the policy on sound operations;
 - d. Section 3:15 (1 and 2) with regard to the minimum number of persons determining the day-to-day policies and the place from which they perform their activities;
 - e. Section 3:16 with regard to the participation structure;
 - f. Section 3:17 (1 and 2) with regard to the organization of the operations;
 - g. Section 3:20 with regard to the legal form;
 - h. Section 3:53 (1 - 4) with regard to the minimum own funds;
 - i. Section 3:57 (1 - 4) with regard to the solvency; and
 - j. Section 3:70 with regard to the financial year.
2. The application for the authorization shall state the data to be determined under or pursuant to order in council.
3. The Netherlands Central Bank may, on application, grant a waiver, fully or in part, of the first subsection, opening words and under c, d, or h - j, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objects which the sections listed in the first subsection seek to attain shall be attained otherwise.

§ 2.2.4.2. Authorization obligation and requirements for funeral expenses and benefits in kind insurers established outside the Netherlands

Section 2:50

1. No person established outside the Netherlands may carry on the business of a funeral expenses and benefits in kind insurer from a branch situated in the Netherlands.
2. The first subsection shall not concern funeral expenses and benefits in kind insurers established in a State to be designated by Our Minister in which the supervision of the business of funeral expenses and benefits in kind insurers provides sufficient safeguards with regard to the interests which this Act seeks to protect. Further rules may be laid down by order in council with regard to the designation of States. Our Minister may revoke the designation order.
3. The first subsection shall not concern life insurers authorized within the meaning of Section 2:36 or 2:40 for the General Life Insurance class.

Section 2:51

1. The Netherlands Central Bank shall grant authorization as meant in Section 2:50 if the applicant shows proof that it will comply with the provisions pursuant to:

- a. Section 3:8 with regard to the expertise of the persons meant in that section;
- b. Section 3:9 with regard to the fit and proper qualities of the persons meant in that section;
- c. Sections 3:10 (1 and 2) with regard to the policy on sound operations;
- d. Section 3:15 (1 and 2) with regard to the minimum number of persons determining the day-to-day policies and the place from which they perform their activities;
- e. Section 3:16 (3) with regard to the participation structure;
- f. Section 3:17 (1 and 2) with regard to the organization of the operations;
- g. Section 3:24 with regard to the legal personality, the power to carry on the business of a life insurer or non-life insurer and the exercise of such power;
- h. Section 3:47 with regard to the insurer's representative;
- i. Section 3:53 (1 – 4) with regard to the minimum own funds;
- j. Section 3:57 (1 – 4) with regard to the solvency; and
- k. under Section 3:70 with regard to the financial year.

It being understood that for “an insurer” or “a funeral expenses and benefits in kind insurer” one should read: “the branch in the Netherlands of a funeral expenses and benefits in kind insurer established in a non-designated State”.

2. The notification, meant in the second subsection, shall state the data to be determined under or pursuant to order in council.

3. The Netherlands Central Bank may, on application, grant a waiver, fully or in part, of the first subsection, opening words and under c, d, f, h, or k, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objects which the sections listed in the first subsection seek to attain shall be attained otherwise.

Section 2:52

1. No person established outside the Netherlands may carry on the business of a funeral expenses and benefits in kind insurer by providing services to the Netherlands, unless it has informed the Netherlands Central Bank of this intention.

2. The first subsection shall not concern funeral expenses and benefits in kind insurers established in a State to be designated by Our Minister under Section 2:50.

3. The first subsection shall not concern life insurers established in another Member State authorized by the Supervisory Authority of that Member State to carry on the business of a life insurer.

4. On receiving a notification as meant in the first subsection, the Netherlands Central Bank shall, without delay, inform the financial undertaking of its receipt.

Section 2:53

1. The notification, meant in Section 2:52 (1), shall state the data to be determined under or pursuant to order in council.

2. The person meant in Section 2:52 (1) may provide its services after receiving the notification meant in Section 2:52 (5) from the Netherlands Central Bank.

Section 2:54

1. A funeral expenses and benefits in kind insurer, meant in Section 2:50 (2) or Section 2:52 (2) intending to carry on the business of a funeral expenses and benefits in kind insurer by providing services to the Netherlands from a branch situated in the Netherlands shall inform the Netherlands Central Bank of such intention.
2. The funeral expenses and benefits in kind insurer may carry on its intended business by providing services to the Netherlands after informing the Netherlands Central Bank unless the latter notifies the funeral expenses and benefits in kind insurer that the intention is contrary to this Act.
3. On receiving a notification as meant in the first subsection, the Netherlands Central Bank shall, without delay, inform the funeral expenses and benefits in kind insurer of its receipt.
4. Within two months of the receipt of the funeral expenses and benefits in kind insurer's notification the Netherlands Central Bank may inform the funeral expenses and benefits in kind insurer which conditions it should observe for reasons of public interest in the pursuit of its business from a branch situated in the Netherlands.

Part 2.2.5 Offering investment objects

§ 2.2.5.1. Authorization obligation and requirements

Section 2:55

1. No person may offer investment objects in the Netherlands without being authorized by the Netherlands Authority for the Financial Markets.
2. The Netherlands Authority for the Financial Markets may, on application, grant a waiver, fully or in part, of the first subsection if the applicant shows proof that it cannot reasonably fulfil that the interests which this part and Part 4, Conduct of business supervision of financial undertakings seek to protect are sufficiently protected otherwise.

Section 2:56

Section 2:55 (1) shall not concern financial undertakings which:

- a. are authorized by the Netherlands Central Bank to carry on the business of an insurer, in so far as the authorization allows for offering investment objects;
- b. have been issued a certificate of supervised status by the Netherlands Central Bank under Part 2, Prudential supervision of financial undertakings, in so far as that certificate allows them to offer investment objects; or
- c. are authorized by the Netherlands Central Bank under this part to carry on the business of a bank.

Section 2:57

Section 2:55 (1) shall not concern financial undertakings established in another Member State which:

- a. carry on their business as a bank from a branch situated in the Netherlands or by providing services to the Netherlands, in so far as part 2.2.2 allows them to offer investment objects;

- b. carry on their business as a financial institution from a branch situated in the Netherlands or by providing services to the Netherlands, in so far as part 2.2.2.4 allows them to offer investment objects; or
- c. carry on their business as an insurer from a branch situated in the Netherlands or by providing services to the Netherlands, in so far as part 2.2.3 or part 2.2.4 allows them to offer investment objects.

Section 2:58

1. The Netherlands Authority for the Financial Markets shall, on application, grant authorization as meant in 2:55 (1) if the applicant shows proof that it will comply with the provisions pursuant to:
 - a. Section 4:9 (1, 2 and 4) with regard to the expertise of the persons meant in that section;
 - b. Section 4:10 with regard to the fit and proper qualities of the persons meant in that section;
 - c. Section 4:11 (2 and 3) with regard to the policies on sound operations;
 - d. Section 4:13 with regard to the participation structure; and
 - e. Section 4:15 (1 and 2) with regard to the organization of the operations.
2. The application for authorization shall state the data to be determined under or pursuant to order in council.
3. The Netherlands Authority for the Financial Markets may, on application, grant a waiver, fully or in part, of the conditions, meant in the first subsection, opening words and under a, with regard to the second and fourth subsection of Section 4:9, c, with regard to the third subsection of Section 4:11, or e, with regard to the second subsection of Section 4:15, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objects which the sections listed in the first subsection seek to attain shall be attained otherwise.

§ 2.2.5.2. Exemption

Section 2:59

1. An exemption of Section 2:55 (1) may be granted by ministerial regulation.
2. A full or partial exemption of Section 2:58 (1) may be granted by ministerial regulation.

Part 2.2.6 Offering credit

§ 2.2.6.1. Authorization obligation and requirements

Section 2:60

1. No person may offer credit without being authorized by the Netherlands Authority for the Financial Markets.
2. The Netherlands Authority for the Financial Markets may, on application, grant a waiver, fully or in part, of the first subsection if the applicant shows proof that it cannot reasonably comply with those provisions and that the interests which this part and Part 4, Conduct of business supervision of financial undertakings seek to protect are sufficiently protected otherwise.

Section 2:61

1. Section 2:60 (1) shall not concern financial undertakings which:
 - a. are authorized by the Netherlands Central Bank to carry on the business of an insurer, in so far as the authorization allows them to offer investment objects;
 - b. have been issued a certificate of supervised status by the Netherlands Central Bank under Part 2, Prudential supervision of financial undertakings, in so far as that certificate allows them to offer investment objects; or
 - c. are authorized by the Netherlands Central Bank under this part to carry on the business of a bank.
2. Section 2:60 (1) shall not concern municipal credit banks regarding which Section 4:37 (1 and 2) is complied with.

Section 2:62

- Section 2:60 (1) shall not concern financial undertakings established in another Member State which:
- a. carry on their business as a bank from a branch situated in the Netherlands or by providing services to the Netherlands, in so far as part 2.2.2 allows them to offer credit;
 - b. carry on their business as a financial institution from a branch situated in the Netherlands or by providing services to the Netherlands, in so far as part 2.2.2 allows them to offer credit.
 - c. carry on their business as an insurer from a branch situated in the Netherlands or by providing services to the Netherlands, in so far as part 2.2.3 or 2.2.4 allows them to offer credit.

Section 2:63

1. The Netherlands Authority for the Financial Markets shall, on application, grant authorization as meant in 2:60 (1) if the applicant shows proof that it will comply with the provisions pursuant to:
 - a. Section 4:9 (1, 2 and 4) with regard to the expertise of the persons meant in that section;
 - b. Section 4:10 with regard to the fit and proper qualities of the persons meant in that section;
 - c. Section 4:11 (2 and 3) with regard to the policies on sound operations;
 - d. Section 4:13 with regard to the participation structure; and
 - e. Section 4:15 (1 and 2) with regard to the organization of the operations.
2. The application for authorization shall state the data to be determined under or pursuant to order in council.
3. The Netherlands Authority for the Financial Markets may, on application, grant a waiver, fully or in part, of the conditions, meant in the first subsection, opening words and under a, with regard to the second and fourth subsection of Section 4:9, c, with regard to the third subsection of Section 4:11, or e, with regard to the second subsection of Section 4:15, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objects which the sections listed in the first subsection seek to attain shall be attained otherwise.

§ 2.3.6.2. Exemption

Section 2:64

1. An exemption of Section 2:60 (1) may be granted by ministerial regulation.

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

Part 2.2.7. Offering units in collective investment schemes

§ 2.2.7.1. Authorization obligation and requirements

Section 2:65

1. No person may offer a unit in a collective investment scheme in the Netherlands:
 - a. without the management company of the collective investment scheme being authorized by the Netherlands Authority for the Financial Markets to manage collective investment schemes; or
 - b. if it is an investment company which has no separate management company, without the investment company being authorized by the Netherlands Authority for the Financial Markets.
2. Without prejudice to the first subsection, opening words and under a, no person may offer a unit in a undertaking for collective investment in transferable securities which is an investment company without the management company being authorized on behalf of that investment company by the Netherlands Authority for the Financial Markets.
3. The Netherlands Authority for the Financial Markets may, on application, grant a waiver, fully or in part, whether or not for a fixed term, of the conditions, meant in the first subsection, if the applicant shows proof that the interests which this part and Part 4, Conduct of business supervision of financial undertakings seek to protect are sufficiently protected otherwise.

Section 2:66

1. Section 2:65 (1) shall not concern offering units in a collective investment scheme established in a State to be designated by Our Minister in which the supervision on collective investment schemes provides sufficient safeguards with regard to the interests which this Act seeks to protect, provided Section 2:73 is complied with. Further rules may be laid down by order in council with regard to the designation of States. Our Minister may revoke a designation order.
2. A notification of the designation order as meant in the first subsection and its revocation shall be published in the Government Gazette.
3. Section 2:65 (1 and 2) shall not concern offering units in an undertaking for collective investment established in another Member State provided Section 2:71 or Section 2:72.

Section 2:67

1. The Netherlands Authority for the Financial Markets shall, on application, grant authorization as meant in 2:65 (1) if the applicant shows proof that it will comply with the provisions pursuant to:
 - a. Section 4:9 (1) with regard to the expertise of the persons meant in that section;
 - b. Section 4:10 with regard to the fit and proper qualities of the persons meant in that section;
 - c. Section 4:11 (1 and 3) with regard to the policies on sound operations;
 - d. Section 4:13 with regard to the participation structure; and

- e. Section 4:14 (1 and 2) with regard to the organization of the operations;
 - f. Section 4:39 with regard to the minimum number of persons determining the day-to-day policies and 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 the 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 description according to the articles of association of the depositaries;
 - j. Section 4:44 (2) with regard to keeping the assets of a depositary that solely acts as depositary for the common fund concerned;
 - k. Section 4:48 with regard to the registration documents meant in that section; and
 - l. Section 3:53 (1 and 3) with regard to the minimum own funds.
2. An applicant for authorization as meant in the first subsection which intends to manage undertakings for collective investment in transferable securities shall, in addition to the first subsection, also show proof that it will comply with the provisions pursuant to:
- a. Section 4:43 with regard to the contracts to be concluded between the management company and the depositaries;
 - b. Section 4:56 with regard to keeping 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 own funds; and
 - g. Section 3:57 (1 and 2) with regard to the solvency.
3. In case a qualifying holding as meant in Section 3:95 is held in the management company, the Netherlands Authority for the Financial Markets, without prejudice to the first and second subsections, shall grant authorization provided the holder of the qualifying holding in the management company complies with Section 3:95 (2) and the Netherlands Central Bank is of the opinion that the provisions under Sections 3:99 – 3:101 with regard to the notification of no objection are complied with.
4. The application for authorization shall state the data to be determined under or pursuant to order in council.
5. The Netherlands Authority for the Financial Markets may, on application, grant a waiver, fully or in part, of the conditions, meant in the first subsection, opening words and under a, with regard to the third subsection of Section 4:11, e, with regard to the third subsection of Section 4:11, j or l, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objects which the sections listed in the first subsection seek to attain shall be attained otherwise.

Section 2:68

1. The Netherlands Authority for the Financial Markets shall, on application, grant authorization as meant in 2:65 (1), opening words and under b, if the applicant shows proof that it will comply with the provisions relating to the investment company and, where applicable, to the affiliated depositary pursuant to:

- a. Section 4:9 (1) with regard to the expertise of the persons meant in that section;
 - b. Section 4:10 with regard to the fit and proper qualities of the persons meant in that section;
 - c. Section 4:11 (1 and 3) with regard to the policies on sound operations;
 - d. Section 4:13 with regard to the participation structure; and
 - e. Section 4:14 (1 and 2) with regard to the organization of the operations;
 - f. Section 4:39 with regard to the minimum number of persons determining the day-to-day policies and Section 4:40 with regard to the place from which they perform their activities;
 - g. Section 4:43 with regard to the contracts to be concluded between the investment company and the depositaries;
 - h. Section 4:44 (1) with regard to the legal form and the object description according to the articles of association of the depositaries;
 - i. Section 4:48 with regard to the registration documents meant in that section; and
 - j. Section 3:53 (1 and 3) with regard to the minimum own funds.
2. An applicant of authorization as meant in the first subsection which intends to manage undertakings for collective investment in transferable securities shall, in addition to the first subsection, also show proof that it will comply with the provisions relating to the investment company and, where applicable, the affiliated depositary pursuant to:
- a. Section 4:43 with regard to the contracts to be concluded between the investment company and the depositaries;
 - b. Section 4:56 with regard to keeping the assets by depositaries;
 - c. Section 4:57 with regard to the depositaries' registered office;
 - d. Section 4:60 (1) with regard to the investment company's object according to the articles of association;
 - e. Section 4:60 (2) with regard to the unrestricted provision of units in the Netherlands and the re-purchase or redemption of them on a unit-holder's request;
 - f. Section 4:60 (3) with regard to 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 own funds.
3. The application for authorization shall state the data to be determined under or pursuant to order in council.
4. The Netherlands Authority for the Financial Markets may, on application, grant a waiver, fully or in part, of the conditions, meant in the first subsection, opening words and under c, with regard to the third subsection of Section 4:11, under e or j, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objects which the sections listed in the first subsection seek to attain shall be attained otherwise.

Section 2:69

1. The Netherlands Authority for the Financial Markets shall, on application, grant authorization as meant in 2:65 (2) if the applicant shows proof that in relation to the investment companies and, where applicable, the related depositary it will comply with the provisions pursuant to:
 - a. Section 4:13 with regard to the participation structure;
 - b. Section 4:40 with regard to the place from which the persons determining the day-to-day policies of the investment company perform their activities;

- c. Section 4:44 (1) with regard to the legal form and the object description according to the articles of association of the depositaries;
 - d. Section 4:56 with regard to the custody of the assets by the depositary;
 - e. Section 4:57 with regard to the depositaries' registered office;
 - f. Section 4:60 (1) with regard to the investment company's object according to the articles of association;
 - g. Section 4:60 (2) with regard to the unrestricted provision of units in the Netherlands and the re-purchase or redemption of them on a unit-holder's request;
 - h. Section 4:60 (3) with regard to investment company's registered office;
 - i. Section 4:60 (4) with regard to the investment company's activities; and
2. The application for authorization shall state the data to be determined under or pursuant to order in council.

§ 2.2.7.2. *Branch and provision of services*

Section 2:70

1. On receiving a notification of a management company's intention to offer units in an undertaking for collective investment in transferable securities it manages established in another Member State from a branch situated in the Netherlands, the Netherlands Authority for the Financial Markets shall, without delay, inform the management company of its receipt.
2. Within two months of receiving the notification meant in the first subsection, the Netherlands Authority for the Financial Markets may inform the Supervisory Authority of the other Member State which conditions the management company should observe for reasons of public interest in the provision of services in the Netherlands. The Netherlands Authority for the Financial Markets shall send a copy of this to the management company.

Section 2:71

1. A management company may, for the first time, offer units from a branch situated in the Netherlands in an undertaking for collective investment in transferable securities it manages two months after the notification of the Supervisory Authority meant in Section 2:70 (1) or immediately on receiving the notification meant in Section 2:70 (2) provided Section 2:72 is also complied with.
2. The first subsection shall not concern management companies that comply with Section 2:101 (1).

Section 2:72

1. A management company intending to offer units in an undertaking for collective investments in transferable securities it manages established in another Member State in the Netherlands shall inform the Netherlands Authority for the Financial Markets of this intention.
2. The notification shall be accompanied by:
 - a. a declaration of the Supervisory Authority of the other Member State that the collective investment scheme complies with the conditions of the UCITS Directive;
 - b. the articles of association or standing orders of the collective investment scheme;
 - c. the prospectus of the collective investment scheme;

- d. the simplified prospectus of the collective investment scheme;
 - e. data on the intended method of providing information, of trading, of payments on as well as re-purchase of or redemptions on units in the Netherlands; and
 - f. where appropriate, the most recent annual accounts and 6-monthly figures of the collective investment scheme.
3. The management company may commence to provide units in the Netherlands two months after the notification meant in the first subsection, unless the Netherlands Authority for the Financial Markets has informed the management company before the lapse of those two months that:
- a. the intention, meant in the first subsection, fails to correspond to the applicable Dutch statutory provisions; or
 - b. the intended trading method is contrary to the statutory regulations relating to the area not covered by the UCITS Directive.

Section 2:73

1. A collective investment scheme established in a designated State as meant in Section 2:66 (1) intending to offer units in the Netherlands shall inform the Netherlands Authority for the Financial Markets of this intention and thereby submit a certificate of supervised status issued by the Supervisory Authority of that designated State.
2. The collective investment scheme may commence to offer units in the Netherlands, unless the Netherlands Authority for the Financial Markets has informed the management company before the lapse of those eight weeks that the intention, meant in the first subsection, fails to correspond to the applicable Dutch statutory provisions.

§ 2.2.7.3. Exemption

Section 2:74

An exemption of Section 2:65 (1) may be provided by ministerial regulation.

Part 2.2.8 Advice

§ 2.2.8.1. Authorization obligation and requirements

Section 2:75

1. No person may give advice in the Netherlands without being authorized by the Netherlands Authority for the Financial Markets.
2. The Netherlands Authority for the Financial Markets may, on application, whether or not for a fixed term, grant an exemption of the first subsection if the applicant shows proof that the interests which this part and Part 4, Conduct of business supervision of financial undertakings seek to protect shall be sufficiently protected otherwise.

Section 2:76

1. Section 2:75 (1) shall not concern financial undertakings which:
- a. are authorized to carry on the business of an insurer by the Netherlands Central Bank under this part, in so far as that authorization allows them to give advice;

- b. have a certificate of supervised status issued to carry on the business of a financial institution by the Netherlands Central Bank under Part 2, Prudential supervision of financial undertakings, in so far as that certificate allows them to give advice;
 - c. are authorized to carry on the business of a bank by the Netherlands Central Bank under this part; or
 - d. are authorized to carry on the business of an electronic money institution by the Netherlands Central Bank under this part, in so far as that authorization allows them to advise.
2. Section 2:75 (1) shall not concern financial undertakings except for undertakings for collective investment in transferable securities which are investment companies authorized by the Netherlands Authority for the Financial Markets to provide financial services other than giving advice as meant in this part, in so far as it concerns an opinion on a financial product covered by the authorization.
3. Section 2:75 (1) shall not concern municipal credit banks regarding which Section 4:37 (1 and 2) is complied with, in so far as it concerns an advice on the credit provided by the municipal credit bank itself.
4. Section 2:75 (1) shall not concern intermediaries as meant in Section 2:81 (2), in so far as it concerns an advice on financial products for which they act as affiliated intermediaries.
5. Section 2:75 (1) shall not concern intermediaries with a waiver as meant in Section 2:80 (1), in so far as it concerns an opinion on a financial product covered by that waiver.

Section 2:77

1. Section 2:75 (1) shall not concern financial undertakings established in another Member State which:
- a. carry on their business as a bank from a branch in the Netherlands or by providing services to the Netherlands, in so far as they are allowed under part 2.2.2. to give advice;
 - b. carry on their business as a financial institution from a branch in the Netherlands or by providing services to the Netherlands, in so far as they are allowed under part 2.2.2. to give advice;
 - c. carry on their business as an insurer from a branch in the Netherlands or by providing services to the Netherlands, in so far as they are allowed under part 2.2.3. or 2.2.4. to give advice; or
 - d. carry on their business as an electronic money institution from a branch in the Netherlands or by providing services to the Netherlands, in so far as they are allowed under part 2.2.2. to give advice;
2. Section 2:75 (1) shall not concern insurance intermediaries or reinsurance intermediaries that are registered in another Member State within the meaning of Section 3 of the Insurance Mediation Directive and that are allowed under Section 3 (5) of that Directive to provide their financial services in the Netherlands, in so far as Section 2:84 (2) or Section 2:90 (2) is complied with.

Section 2:78

1. The Netherlands Authority for the Financial Markets shall, on application, grant authorization as meant in Section 2:75 (1) if the applicant shows proof that it will comply with the provisions pursuant to:

- a. Section 4:9 (1, 2 and 4) with regard to the expertise of the persons meant in that section;
 - b. Section 4:10 with regard to the fit and proper qualities of the persons meant in that section;
 - c. Section 4:11 (2 and 3) with regard to the policies on sound operations;
 - d. Section 4:13 with regard to the participation structure; and
 - e. Section 4:15 (1 and 2) with regard to the organization of the operations.
2. The application for authorization shall state the data to be determined under or pursuant to order in council.
3. The Netherlands Authority for the Financial Markets may, on application, grant a waiver, fully or in part, of the conditions, meant in the first subsection, opening words and under a, with regard to the second and fourth subsection of Section 4:9, c, with regard to the third subsection of Section 4:11, or e, with regard to the second subsection of Section 4:15, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objects which the sections listed in the first subsection seek to attain shall be attained otherwise.

§ 2.2.8.2. Exemption

Section 2:79

1. An exemption of Section 2:75 (1) may be provided by ministerial regulation.
2. A full or partial exemption of Section 2:78 (1) may be provided by ministerial regulation.

Part 2.2.9 Provision of mediation services

§ 2.2.9.1. Authorization obligation and requirements

Section 2:80

1. No person may provide mediation services in the Netherlands without being authorized by the Netherlands Authority for the Financial Markets.
2. The Netherlands Authority for the Financial Markets may, on application, whether or not for a fixed term, grant a waiver of the first subsection if the applicant shows proof that the interests which this part or Part 4, Conduct of business supervision of financial undertakings seek to protect are sufficiently protected otherwise.
3. The Netherlands Authority for the Financial Markets may, on application, grant a waiver of the first subsection to:
 - a. a person who ran a joint household on a long-term basis with a deceased intermediary until the latter's decease; or
 - b. a child of the deceased intermediary not forming part of the household, if the business of the deceased intermediary is continued and the interests which this part and Part 4, Conduct of business supervision of financial undertakings seeks to protect are sufficiently protected otherwise.
4. The waiver meant in the third subsection may be granted with retroactive force to the time of death. The waiver shall be granted for not more than one year and may be extended not more than twice for a period of one year.

Section 2:81

1. Section 2:80 (1) shall not concern financial undertakings which:

- a. are authorized by the Netherlands Central Bank under this part to carry on the business of an insurer in so far as that authorization allows them to provide mediation services; or
 - b. are authorized by the Netherlands Central Bank under the certificate of supervised status issued based on Part 2, Prudential supervision of financial undertakings to carry on the business of a financial institution in so far as that certificate allows them to provide mediation services; or
 - c. are authorized by the Netherlands Central Bank under this part to carry on the business of a bank.
2. Section 2:80 (1) shall not concern the provision of mediation services by intermediaries that provide mediation services for an offeror, or, where it does not concern mutually competitive financial products, various offerors and that, where it concerns the provision mediation services in insurance, in the name and for the account of the offeror or offerors without thereby collecting premiums or amounts meant for the client, if the offerors for which the intermediaries provide mediation 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 an affiliated intermediary to the Netherlands Authority for the Financial Markets.
3. An offeror that is no longer responsible as meant in the second subsection under a for an intermediary shall notify the Netherlands Authority for the Financial Markets and the intermediary concerned of this.
4. Rules are laid down under or pursuant to order in council with regard to the manner in which the intermediary shall be reported as meant in the second subsection under b, the data thereby issued and the documents thereby submitted.

Section 2:82

1. Section 2:80 (1) shall not concern financial undertakings established in another Member State which:
 - a. carry on their business as a bank from a branch situated in the Netherlands or by providing services to the Netherlands, in so far as they are allowed to provide mediation services under part 2.2.2;
 - b. carry on their business as a financial institution from a branch situated in the Netherlands or by providing services to the Netherlands, in so far as they are allowed to provide mediation services under part 2.2.2; or
 - c. carry on their business as an insurer from a branch situated in the Netherlands or by providing services to the Netherlands, in so far as they are allowed to provide mediation services under part 2.2.3 or 2.2.4.
2. Section 2:80 (1) shall not concern insurance intermediaries that are registered in another Member State within the meaning of Article 3 of the Insurance Mediation Directive, in so far as Section 2:84 (2) has been complied with.

Section 2:83

1. The Netherlands Authority for the Financial Markets shall, on application, grant authorization as meant in Section 2:80 (1) if the applicant shows proof that it will comply with the provisions pursuant to:
 - a. Section 4:9 (1, 2 and 4) with regard to the expertise of the persons meant in that section;

- b. Section 4:10 with regard to the fit and proper qualities of the persons meant in that section;
 - c. Section 4:11 (2 and 3) with regard to the policies on sound operations;
 - d. Section 4:13 with regard to the participation structure;
 - e. Section 4:15 (1 and 2) with regard to the organization of the operations; and
 - f. Where it concerns the provision of mediation services in insurance, Section 4:75 (1 – 3) with regard to the organization of the operations; and with regard to having the disposal of a professional liability insurance or a similar provision.
2. The application for authorization shall state the data to be determined under or pursuant to order in council.
3. The Netherlands Authority for the Financial Markets may, on application, grant a waiver, fully or in part, of the conditions, meant in the first subsection, opening words and under a, with regard to the second and fourth subsection of Section 4:9, c, with regard to the third subsection of Section 4:11, or e, with regard to the second subsection of Section 4:15 or f, with regard to the second subsection of Section 4:75, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objects which the sections listed in the first subsection seek to attain shall be attained otherwise.

§ 2.2.9.2. Branch and provision of services

Section 2:84

1. Where the Netherlands Authority for the Financial Markets has received a notification from a Supervisory Authority of another Member State with regard to the provision of services in insurance from a branch situated in the Netherlands or by providing services to the Netherlands by an insurance intermediary established in that other Member State, the supervisor may disclose within a month of receiving the notification which conditions the insurance intermediary should observe for reasons of public interest in providing financial services in the Netherlands.
2. An insurance intermediary established in another Member State may provide services from a branch situated in the Netherlands or by providing services to the Netherlands one month after the notification, meant in the first subsection, of the Supervisory Authority of the other Member State to the Netherlands Authority for the Financial Markets.

§ 2.2.9.3. Exemption

Section 2:85

1. An exemption from Section 2:80 (1) may be provided by ministerial regulation.
2. A full or partial exemption from Section 2:83 (1) may be provided by ministerial regulation.

Part 2.2.10 Provision of reinsurance mediation services

§ 2.2.10.1. Authorization obligation and requirements

Section 2:86

1. No person may provide reinsurance mediation services in the Netherlands without being authorized by the Netherlands Authority for the Financial Markets.
2. The Netherlands Authority for the Financial Markets may, on application, whether or not for a fixed term, grant a waiver of the first subsection if the applicant shows proof that the interests which this part and Part 4, Conduct of business supervision of financial undertakings seek to protect shall be sufficiently protected otherwise.

Section 2:87

Section 2:86 (1) shall not concern financial undertakings which:

- a. are authorized by the Netherlands Central Bank under this part to carry on the business of an insurer in so far as that authorization allows them to provide reinsurance mediation services; or
- b. are authorized by the Netherlands Central Bank under the certificate of supervised status issued based on Part 2, Prudential supervision of financial undertakings to carry on the business of a financial institution in so far as that certificate allows them to provide reinsurance mediation services; or
- c. are authorized by the Netherlands Central Bank under this part to carry on the business of a bank.

Section 2:88

Section 2:86 (1) shall not concern reinsurance intermediaries registered in another Member State within the meaning of Article 3 of the Directive, in so far as Section 2:90 (2) is complied with.

Section 2:89

1. The Netherlands Authority for the Financial Markets shall, on application, grant authorization as meant in Section 2:86 (1) if the applicant shows proof that it will comply with the provisions pursuant to:
 - a. Section 4:9 (1, 2 and 4) with regard to the expertise of the persons meant in that section;
 - b. Section 4:10 with regard to the fit and proper qualities of the persons meant in that section;
 - c. Section 4:11 (2 and 3) with regard to the policies on sound operations;
 - d. Section 4:13 with regard to the participation structure;
 - e. Section 4:15 (1 and 2) with regard to the organization of the operations; and
 - f. Section 4:76 (1-3), with regard to having the disposal of a professional liability insurance or a similar provision.
2. The application for authorization shall state the data to be determined under or pursuant to order in council.
3. The Netherlands Authority for the Financial Markets may, on application, grant a waiver, fully or in part, of the conditions, meant in the first subsection, opening words and under a, with regard to the second and fourth subsection of Section 4:9, c, with regard to the third subsection of Section 4:11, or e, with regard to the second subsection of Section 4:15, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objects which the sections listed in the first subsection seek to attain shall be attained otherwise.

§ 2.2.10.2. *Branch and provision of services*

Section 2:90

1. If the Netherlands Authority for the Financial Markets has received a notification from a Supervisory Authority of another Member State with regard to the provision of reinsurance mediation services from a branch situated in the Netherlands or by providing services to the Netherlands by a reinsurance intermediary established in that other Member State, the supervisor may disclose within a month of receiving the notification which conditions the reinsurance intermediary should observe for reasons of public interest in providing financial services in the Netherlands.

2. A reinsurance intermediary established in another Member State may provide services from a branch situated in the Netherlands or by providing services to the Netherlands one month after the notification, meant in the first subsection, of the Supervisory Authority of the other Member State to the Netherlands Authority for the Financial Markets.

§ 2.2.10.3. *Exemption*

Section 2:91

1. An exemption from Section 2:86 (1) may be provided by ministerial regulation.

2. A full or partial exemption from Section 2:89 (1) may be provided by ministerial regulation.

Part 2.2.11 Acting as an authorized agent or sub-authorized agent

§ 2.2.11.1. *Authorization obligation and requirements*

Section 2:92

1. No person may act as an authorized agent or sub-authorized agent in the Netherlands without being authorized by the Netherlands Authority for the Financial Markets.

2. The Netherlands Authority for the Financial Markets may, on application, whether or not for a fixed term, grant a waiver of the first subsection if the applicant shows proof that the interests which this part and Part 4, Conduct of business supervision of financial undertakings seek to protect shall be sufficiently protected otherwise.

Section 2:93

Section 2:92 (1) shall not concern financial undertakings which:

a. are authorized by the Netherlands Central Bank under this part to carry on the business of an insurer in so far as that authorization allows them to act as authorized agent or sub-authorized agent; or

b. are authorized by the Netherlands Central Bank under the certificate of supervised status issued based on Part 2, Prudential supervision of financial undertakings to carry on the business of a financial institution in so far as that certificate allows them to act as an authorized agent or sub-authorized agent; or

c. are authorized by the Netherlands Central Bank under this part to carry on the business of a bank.

Section 2:94

1. The Netherlands Authority for the Financial Markets shall, on application, grant authorization as meant in Section 2:92 (1) if the applicant shows proof that it will comply with the provisions pursuant to:
 - a. Section 4:9 (1, 2 and 4) with regard to the expertise of the persons meant in that section;
 - b. Section 4:10 with regard to the fit and proper qualities of the persons meant in that section;
 - c. Section 4:11 (2 and 3) with regard to the policies on sound operations;
 - d. Section 4:13(1 and 2) with regard to the participation structure; and
 - e. Section 4:15 (1 and 2) with regard to the organization of the operations;
2. The application for authorization shall state the data to be determined under or pursuant to order in council.
3. The Netherlands Authority for the Financial Markets may, on application, grant a waiver, fully or in part, of the conditions, meant in the first subsection, opening words and under a, with regard to the second and fourth subsection of Section 4:9, c, with regard to the third subsection of Section 4:11, or e, with regard to the second subsection of Section 4:15, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objects which the sections listed in the first subsection seek to attain shall be attained otherwise.

§ 2.2.11.2. Exemption

Section 2:95

1. An exemption from Section 2:92 (1) may be provided by ministerial regulation.
2. A full or partial exemption from Section 2:94 (1) may be provided by ministerial regulation.

Part 2.2.12 Provision of investment services

§ 2.2.12.1 Authorization obligation and requirements

Section 2:96

No person may provide investment services in the Netherlands without being authorized by the Netherlands Authority for the Financial Markets.

Section 2:97

1. Section 2:96 shall not concern financial undertakings which:
 - a. are authorized by the Netherlands Central Bank under this part to carry on the business of an insurer;
 - b. are authorized by the Netherlands Central Bank under the certificate of supervised status issued based on Part 2, Prudential supervision of financial undertakings to carry on the business of a financial institution in so far as that certificate allows them to act as an authorized agent or sub-authorized agent; or
 - c. are authorized by the Netherlands Central Bank under this part to carry on the business of a bank.

2. Section 2:96, in so far as it concerns portfolio management, shall not concern municipal credit banks regarding which Section 4:37 (1 and 2) has been complied with.

3. Section 2:96, in so far as it concerns portfolio management, shall not concern financial undertakings established in the Netherlands and authorized to manage collective investments in transferable securities as meant in Section 2:65 (1) (a).

4. Section 2:96 shall not concern financial undertakings that are authorized by the Netherlands Authority for the Financial Markets pursuant to this part for the management of collective investment schemes, in so far as it concerns the sale or purchase of units in collective investment schemes managed by the management companies.

Section 2:98

1. Section 2:96 shall not concern financial undertakings established in another Member State which:

a. carry on their business as a bank from a branch situated in the Netherlands or by providing services to the Netherlands, in so far as they are allowed to provide investment services under part 2.2.2;

b. carry on their business as a financial institution from a branch situated in the Netherlands or by providing services to the Netherlands, in so far as they are allowed to provide investment services under part 2.2.2; or

c. carry on their business as an insurer from a branch situated in the Netherlands or by providing services to the Netherlands, in so far as they are allowed to provide investment services under part 2.2.3 or 2.2.4.

2. Section 2:96 shall not concern investment firms established in another Member State which:

a. provide investment services from a branch in the Netherlands, in so far as Section 2:101 is complied with; or

b. provide investment services by providing services to the Netherlands, in so far as Section 2:102 is complied with.

Section 2:99

1. The Netherlands Authority for the Financial Markets shall, on application, grant authorization as meant in Section 2:96 if the applicant shows proof that it will comply with the provisions pursuant to:

a. Section 4:9 (1) with regard to the expertise of the persons meant in that section;

b. Section 4:10 with regard to the fit and proper qualities of the persons meant in that section;

c. Section 4:11 (1 and 3) with regard to the policies on sound operations;

d. Section 4:83 (1) with regard to the minimum number of persons determining the day-to-day policies and under Section 4:84 with regard to the location from which they perform their activities;

e. Section 4:13 (1 and 2) with regard to the participation structure;

f. Section 4:14 (1 and 2) with regard to the organization of the operations;

g. Section 4:87 with regard to taking adequate measures to protect the clients' rights;

h. Section 4:88 with regard to pursuing adequate policies to preclude the conflicts of interests meant in that section;

i. Section 3:53 (1 and 3) with regard to the minimum own funds.

2. Where a qualifying holding as meant in Section 3:95 is held in the investment firm, the Netherlands Authority for the Financial Markets shall, without prejudice to the first subsection, grant authorization provided the holder of the qualifying holding in the investment firm complies with Section 3:95 (2) and the Netherlands Central Bank is of the opinion that the provisions under Sections 3:99 – 3:101 with regard to the declaration of no-objection are complied with.

3. The application for authorization shall state the data to be determined under or pursuant to order in council.

4. The Netherlands Authority for the Financial Markets may, on application, grant a waiver, fully or in part, of the conditions, meant in the first subsection, opening words and under c, with regard to the third subsection of Section 4:11, f, with regard to the second subsection of Section 4:14, h with regard to the third subsection of Section 4:88 or i, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objects which the sections listed in the first subsection seek to attain shall be attained otherwise.

§ 2.2.12.2. Branch and provision of services

Section 2:100

1. On receiving a notification from a Supervisory Authority of another Member State of the intention of an investment firm established in another Member State to provide investment services from a branch situated in the Netherlands or by providing services to the Netherlands, the Netherlands Authority for the Financial Markets shall, without delay, notify the investment firm of its receipt.

2. The Netherlands Authority for the Financial Markets may notify the Supervisory Authority of the other Member State, immediately on receiving the notification or where it concerns the provision of investment services from a branch, within two months of receiving the notification, which conditions the investment firm should observe for reasons of public interest in providing investment services in the Netherlands. The Netherlands Authority for the Financial Markets shall send a copy of this to the investment firm.

Section 2:101

1. An investment firm established in another Member State may provide investment services from a branch situated in the Netherlands two months after the notification of the Supervisory Authority of the other Member State, meant in Section 2:100 (1), or immediately on receiving the notification meant in Section 2:100 (2).

2. The first subsection shall not apply to investment firms established in another Member State, in so far as they are allowed to provide investment services from a branch situated in the Netherlands under part 2.2.2 or 3.4.1.

3. The first subsection shall not concern investment firms that comply with Section 2:71 (1).

Section 2:102

1. An investment firm established in another Member State may provide investment services by providing services to the Netherlands after the

notification of the Supervisory Authority of the other Member State, meant in Section 2:100 (1).

2. The first subsection shall not concern investment firms established in another Member State in so far as they are allowed to provide investment services by providing services to the Netherlands under part 2.2.2 or 3.4.1.

Section 2:103

An investment firm as meant in Section 2:98 (2) may not provide investment services as meant in item A of the annex to the Investment Services Directive if the notification meant in Section 2:100 (1) does not state the provision of such financial services.

§ 2.2.12.3. Exemption

Section 2:104

1. An exemption from Section 2:96 may be provided by ministerial regulation.
2. A full or partial exemption from Section 2:99 (1) may be provided by ministerial regulation.

Part 2.2.13 Special provisions

Section 2:105

1. The Netherlands Authority for the Financial Markets shall, on application, grant authorization as meant 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 also extending to undertakings affiliated with that legal person, if that legal person, without prejudice to the provisions in Sections 2:58, 2:63, 2:78, 2:83, 2:89, 2:94 and 2:99, shows proof that it:

a. by virtue of its articles of association and the articles of association of its affiliated undertakings or by virtue of a contract with the affiliated undertakings has sufficient powers vis-à-vis the affiliated companies to counteract any acts or omissions of such an undertaking in violation of the provisions under Part 4, Conduct of business supervision of financial undertakings 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 given by the Netherlands Authority for the Financial Markets;

b. has sufficient options of expert support of the affiliated undertakings at its disposal; and

c. is authorized to represent those undertakings in the application for authorization and otherwise in the application 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 in the application of the provisions under Part 4, Conduct of business supervision of financial undertakings with regard to providing financial services, with the exception of offering units in a collective investment scheme.

2. If an undertaking affiliates with the legal person following authorization of the latter, the authorization shall also extend to that undertaking, provided the legal person fulfils the conditions meant in the first subsection.

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 undertaking shall be regarded as the acts or omissions of the legal person.

4. After consulting the Netherlands Authority for the Financial Markets, Our Minister may designate undertakings that are deemed to be authorized as meant in the first subsection for the purposes of the second and third subsection, provided these undertakings are authorized by the Netherlands Central Bank under this part and fulfil the conditions meant in the first subsection. Our Minister may revoke a designation order.
5. Rules may be laid down under or pursuant to order in council with regard to the first subsection, opening words and under a and b.

CHAPTER 2.3 ACCESS TO THE FOREIGN FINANCIAL MARKETS

Section 2:106

The provisions in this Chapter, except for Sections 2:117 and 2:118, shall not concern the provision of financial services which may be qualified as a service of the information society as meant in Section 15d (3) of Book 3 of the Dutch Civil Code to another Member State by a financial undertaking established in the Netherlands.

Part 2.3.1 Pursuit of the business of a clearing institution

§ 2.3.1.1. Branch outside the Netherlands

Section 2:107

1. A clearing institution established in the Netherlands and authorized as meant in Section 2:4 (1) which intends to carry on the business of a clearing institution from a branch situated outside the Netherlands shall only proceed to do so after the Netherlands Central Bank has approved such intention.
2. The application for approval shall state the data to be determined under or pursuant to order in council.
3. The Netherlands Central Bank shall approve an intention as meant in the first subsection if the clearing institution complies with the provisions under the second subsection, unless, in view of the clearing institution's intention, its operations or financial situation are/is inadequate.
4. The Netherlands Central Bank shall render a decision within three months of receiving the application.

Part 2.3.2 Pursuit of the business of a credit institution and financial institution

§ 2.3.2.1. Branch and provision of services by a credit institution to another Member State

Section 2:108

1. A credit institution established in the Netherlands and authorized as meant in Section 2:11 (1) which intends to carry on the business of a credit institution from a branch situated in another Member State shall only proceed to do so after the Netherlands Central Bank has approved such intention.
2. The application for approval shall state the data to be determined under or pursuant to order in council.

Section 2:109

1. The Netherlands Central Bank shall approve an intention as meant in Section 2:108 (1) unless, in view of the credit institution's intention, its operations or financial situation are/is inadequate.
2. The Netherlands Central Bank shall render a decision within three months of receiving the application.
3. The Netherlands Central Bank shall notify the Supervisory Authority of the Member State in which the credit institution intends to carry on its business from a branch within one working day of rendering a decision. The Netherlands Central Bank shall send a copy of the notification to the credit institution.
4. The notification meant in the third subsection shall also include data on the size of the own funds, the solvency ratio and, where applicable, data on the applicability of a guarantee scheme in respect of the obligations of the credit institution's branch.
5. Within two months of the notification meant in the third subsection, the Netherlands Central Bank shall notify 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 established in the Netherlands and authorized as meant in Section 2:11 (1) which intends for the first time to carry on its business by providing services to another Member State, shall only proceed to do so after it has notified the Netherlands Central Bank of its intention, while stating the Member State to which it intends to provide services and of the intended activities.
2. Within one month of receiving the notification of the intention, the Netherlands Central Bank shall notify the Supervisory Authority of the Member State to which the credit institution intends to provide services. The Netherlands Central Bank shall send a copy of the notification to the credit institution.

§ 2.3.2.2. Branch and provision of services by a credit institution to a non-Member State

Section 2:111

1. A credit institution established in the Netherlands and authorized as meant in Section 2:11 (1) which intends to carry on the business of a credit institution from a branch in a non-Member State, shall only proceed to do so after the Netherlands Central Bank has approved such intention.
2. The application for approval shall state the data to be determined under or pursuant to order in council.
3. The Netherlands Central Bank shall approve the intention if the credit institution complies with the provisions under the first subsection, unless, in view of the credit institution's intention, its operations or financial situation are/is inadequate.
4. The Netherlands Central Bank shall render a decision within three months of receiving the application.

§ 2.3.2.2. Branch and provision of services by a financial institution to another Member State

Section 2:112

1. A financial institution established in the Netherlands having a certificate of supervised status as meant in Section 3:110 which intends to carry on its business from a branch situated in another Member State shall only proceed to do so after the Netherlands Central Bank has approved such intention.
2. The application for approval shall state the data to be determined under or pursuant to order in council.

Section 2:113

1. The Netherlands Central Bank shall approve the intention meant in Section 2:112 (1) unless, in view of the credit institution's intention, its operations or financial situation are/is inadequate.
2. The Netherlands Central Bank shall render a decision within three months of receiving the application.
3. The Netherlands Central Bank shall notify the Supervisory Authority of the Member State in which the financial institution intends to carry on its business from a branch within one working day of rendering a decision. The Netherlands Central Bank shall send a copy of the notification to the financial institution.
4. The notification meant in the third subsection shall also include data on the size of the own funds, the solvency ratio and, where applicable, data on the applicability of a guarantee scheme in respect of the commitments of the financial institution's branch.
5. Within two months of the notification meant in the third subsection, the Netherlands Central Bank shall notify 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 established in the Netherlands having a certificate of supervised status as meant in Section 3:110 which intends for the first time to carry on its business by providing services to another Member State shall only proceed to do so after it has notified the Netherlands Central Bank of such intention, while stating the Member State to which it intends to provide services and of the intended activities.
2. Within one month of receiving the notification of the intention, the Netherlands Central Bank shall notify the Supervisory Authority of the Member State to which the financial institution intends to provide services. The Netherlands Central Bank shall send a copy of the notification to the financial institution.

Part 2.3.3. Pursuit of the business of a life insurer and non-life insurer

§ 2.3.3.1. Branch and provision of services to another Member State

Section 2:115

1. A life insurer or non-life insurer established in the Netherlands and authorized as meant in Section 2:27 which intends to carry on the business of a life insurer or non-life insurer from a branch situated in another Member

State, shall only proceed to do so after the Netherlands Central Bank has approved such intention.

2. The application for approval shall state the data to be determined under or pursuant to order in council.

Section 2:116

The Netherlands Central Bank shall approve an intention as meant in Section 2:115 (1) unless, in view of the insurer's intention, its operations or financial situation are/is inadequate, or the fit and proper qualities or expertise of a person who determines day-to-day policies or a representative of the insurer is not beyond doubt.

2. The Netherlands Central Bank shall render a decision within three months of receiving the application.

3. The Netherlands Central Bank shall notify the Supervisory Authority of the Member State in which the insurer intends to carry on its business from a branch within one working day of rendering a decision. The Netherlands Central Bank shall send a copy of the notification to the insurer.

4. The notification meant in the third subsection shall also include data on the size of the own funds and the solvency margin.

5. Within two months of the notification meant in the third subsection, the Netherlands Central Bank shall notify 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 established in the Netherlands and authorized as meant in Section 2:27 (1) which intends for the first time to carry on its business by providing services to another Member State from a branch situated in a Member State, shall only proceed to do so after the Netherlands Central Bank has approved such intention in accordance with Section 2:116 (1).

2. In the case of Community co-assurance the first subsection shall only concern the non-life insurer acting as the first non-life insurer.

3. The application for approval shall state the data to be determined under or pursuant to order in council.

Section 2:118

1. A life insurer or non-life insurer established in a non-Member State and authorized as meant in Section 2:40 (1) which intends for the first time to carry on the business of life insurer or non-life insurer by providing services to another Member State from the Netherlands shall only proceed to do so after the Netherlands Central Bank has approved such intention.

2. The application for approval shall state the data to be determined under or pursuant to order in council.

Section 2:119

1. The Netherlands Central Bank shall approve an intention as meant in Section 2:117 (1) or 2:118 (1), unless, in view of the insurer's intention, its operations or financial situation are/is inadequate.

2. The Netherlands Central Bank shall render a decision within one month of receiving the application.

3. The Netherlands Central Bank shall notify the Supervisory Authority of the Member State to which the insurer intends to provide its services within one working day of rendering a decision. The Netherlands Central Bank shall send a copy of the notification to the insurer.

4. The notification meant in the third subsection shall also include data on 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 classes in which it may carry on the insurance business.

§ 2.3.3.2. *Branch in a non-Member State*

Section 2:120

1. A life insurer or non-life insurer established in the Netherlands and authorized as meant in Section 2:27 (1) which intends to carry on the business of a life insurer or non-life insurer from a branch situated in a non-Member State shall only proceed to do so after the Netherlands Central Bank has approved such intention.

2. The application for the authorization shall state the data to be determined under or pursuant to order in council.

3. The Netherlands Central Bank shall approve an intention if the insurer complies with the provisions in the second subsection, unless, in view of the insurer's intention, its operations or financial situation are/is inadequate, or the fit and proper qualities or expertise of a person who determines day-to-day policies or a representative of the applicant is not beyond doubt.

4. The Netherlands Central Bank shall render a decision within three months of receiving the application.

Part 2.3.4. Pursuit of the business of a funeral expenses and benefits in kind insurer

§ 2.3.4.1. *Branch outside the Netherlands*

Section 2:121

1. A funeral expenses and benefits in kind insurer established in the Netherlands and authorized as meant in Section 2:48 (1) which intends to carry on the business of a funeral expenses and benefits in kind insurer from a branch situated outside the Netherlands shall only proceed to do so after the Netherlands Central Bank has approved such intention.

2. The application for approval shall state the data to be determined under or pursuant to order in council.

3. The Netherlands Central Bank shall approve an intention if the insurer complies with the provisions in the second subsection, unless, in view of the insurer's intention, its operations or financial situation are/is inadequate, or the fit and proper qualities or expertise of a person who determines day-to-day policies or a representative of the applicant is not beyond doubt.

4. The Netherlands Central Bank shall render a decision within three months of receiving the application.

Part 2.3.5. Offering units in undertakings for collective investment in transferable securities.

§ 2.3.5.1. *Branch and provision of services to a Member State*

Section 2:122

1. A management company authorized as meant in Section 2:65 (1) opening words and under a, or second subsection, which intends for the first time to offer units in undertakings for collective investment in transferable securities it manages and which are established in the Netherlands from a branch situated in another Member State shall only proceed to do so after the Netherlands Central Bank has approved such intention.
2. The application for approval shall state the data to be determined under or pursuant to order in council.
3. The first subsection shall not concern management companies which comply with Section 2:127 (1).

Section 2:123

1. A management company authorized as meant in Section 2:65 (1) opening words and under a, or second subsection, which intends to offer in another Member State units in an undertaking for collective investment in transferable securities it manages and which is established in the Netherlands shall only proceed to do so after it has notified the Supervisory Authority of that Member State and the Netherlands Authority for the Financial Markets of this intention.
2. The Netherlands Authority for the Financial Markets shall, on application, issue a declaration that such undertaking for collective investment in transferable securities complies with the UCITS Directive to a management company intending to provide in another Member State units in an undertaking for collective investment in transferable securities it manages which is established in the Netherlands.

Section 2:124

1. The Netherlands Authority for the Financial Markets shall approve an intention as meant in Section 2:122 unless, in view of the management company's intention, its operations or financial situation are/is inadequate.
2. The Netherlands Authority for the Financial Markets shall render a decision within two months of receiving the application.
3. The Netherlands Authority for the Financial Markets shall notify the Supervisory Authority of the Member State in which the management company intends to offer, through a branch, units in undertakings for collective investment in transferable securities it manages and which are established in the Netherlands within one working day of rendering a decision. The Netherlands Authority for the Financial Markets shall send a copy of the notification to the management company.
4. The notification meant in the third subsection shall also include data on the applicability of the investor-compensation scheme.
5. Within two months of the notification meant in the third subsection, the Netherlands Authority for the Financial Markets shall notify 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. Provision of mediation services in insurance

§ 2.3.6.1. *Branch and provision of services to another Member State*

Section 2:125

1. An insurance intermediary established in the Netherlands and authorized as meant in Section 2:80 (1) which intends provide mediation services in insurance from a branch situated in another Member State or by providing services to another Member State shall only proceed to do so after it has notified the Netherlands Authority for the Financial Markets of this intention, while stating the Member State in which it intends to open a branch or to which it intends to provide services.
2. Within one month of receiving the notification meant in the first subsection, the Netherlands Authority for the Financial Markets shall notify the Supervisory Authority of the Member State in which the insurance intermediary intends to provide financial services, provided the Commission of the European Communities has communicated that such Member State deems such a notification desired. The Netherlands Authority for the Financial Markets shall send a copy of the notification to the insurance intermediary.
3. If the Commission of the European Communities has issued no communication that the Member State concerned deems such a notification desired, the Netherlands Authority for the Financial Markets shall, without delay, notify the insurance intermediary this on receiving the notification of such intention.

Part 2.3.7. Provision of reinsurance mediation services

§ 2.3.7.1. *Branch and provision of services to another Member State*

Section 2:126

1. A reinsurance intermediary established in the Netherlands and authorized as meant in Section 2:86 (1) which intends to provide reinsurance mediation services from a branch situated in another Member State or by providing services to another Member State shall only proceed to do so after it has notified the Netherlands Authority for the Financial Markets of such intention, while stating the Member State in which it intends to open a branch or to which it intends to provide services.
2. Within one month of receiving the notification meant in the first subsection, the Netherlands Authority for the Financial Markets shall notify the Supervisory Authority of the Member State in which the reinsurance intermediary intends to provide financial services, provided the Commission of the European Communities has issued a communication that such Member State deems such a notification desired. The Netherlands Authority for the Financial Markets shall send a copy of the notification to the reinsurance intermediary.
3. If the Commission of the European Communities has made no notification that the Member State concerned deems such a notification desired, the Netherlands Authority for the Financial Markets shall, without delay, notify the reinsurance intermediary of this on receiving the notification of such intention.

Part 2.3.8. Provision of investment services

§ 2.3.8.1. *Branch and provision of services to another Member State*

Section 2:127

1. An investment firm established in the Netherlands and authorized as meant in Section 2:96 or 2:65 (1) opening words and under a which intends to provide investment services from a branch situated in another Member State in respect of one or more of the instruments listed in item B of the annex to the Investment Services Directive shall only proceed to do so after the Netherlands Authority for the Financial Markets has approved such intention.
2. The application for approval shall state the data to be determined under or pursuant to order in council.
3. The first and second subsection shall not concern investment firms which comply with Section 2:122 (1).

Section 2:128

1. The Netherlands Authority for the Financial Markets shall approve an intention as meant in Section 2:127 unless, in view of the investment firm's intention, its operations or financial situation are/is inadequate.
2. The Netherlands Authority for the Financial Markets shall render a decision within three months of receiving the application.
3. The Netherlands Central Bank shall notify the Supervisory Authority of the Member State in which the investment firm intends to provide investment services from a branch within one working day of rendering a decision. The Netherlands Central Bank shall send a copy of the notification to the investment firm.
4. The notification meant in the preceding subsection shall also include data on the investor-compensation scheme.
5. Within two months of the notification meant in the third subsection, the Netherlands Central Bank shall notify 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.

Section 2:129

1. An investment firm established in the Netherlands and authorized as meant in Section 2:96 or 2:65 (1) opening words and under a which intends for the first time to provide investment services by providing services to another Member State in respect of one or more of the instruments listed in item B of the annex to the Investment Services Directive shall only proceed to do so after it has notified the Netherlands Authority for the Financial Markets of its intention, while stating the Member State to which it intends to provide services and the financial services it intends to provide.
2. Within one month of receiving the notification meant in the first subsection, the Netherlands Authority for the Financial Markets shall notify the Supervisory Authority of the Member State to which the investment firm intends to provide services. The Netherlands Authority for the Financial Markets shall send a copy of the notification to the investment firm.
3. The notification meant in the second subsection shall also include data on the applicability of the investor-compensation scheme.

§ 2.3.8.2. Branch in a non-Member State

Section 2:130

1. An investment firm established in the Netherlands and authorized as meant in Section 2:96 or 2:65 (1) which intends to provide investment services from a branch situated in a non-Member State shall only proceed to do so after the Netherlands Authority for the Financial Markets has approved such intention. The application for approval shall state the data to be determined under or pursuant to order in council.
2. The Netherlands Authority for the Financial Markets shall approve the intention, unless, in view of the investment firm's intention, the operations or financial situation of the investment firm are/is inadequate.
3. The Netherlands Authority for the Financial Markets shall render a decision within three months of receiving the application.

PART 3 – PRUDENTIAL SUPERVISION OF FINANCIAL UNDERTAKINGS

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 provide for the funeral expenses and benefits in kind of a natural person shall be deemed to have been concluded in pursuing 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 entails no investment risk for the latter;
- b. the management of a collective pension fund shall be regarded as the pursuit of the business of a life insurer where such management is conducted by a life insurer.

Section 3:2

1. The provisions in this part relating to the pursuit of the business of a bank shall not concern, without being authorized by the Netherlands Central Bank or a Supervisory Authority of another Member State to carry on the business of a bank, receiving redeemable funds, outside a restricted circle, from parties other than professional market parties as a result of the provision of securities in accordance with the provisions under Chapter 5.1, in so far as the person having the funds available provides:

- a. an unconditional guarantee regarding all liabilities arisen by receiving such funds, which unconditional guarantee was issued by an undertaking with consolidated own funds with a positive balance during the entire maturity of the guarantee, of which undertaking the person receiving the funds is a subsidiary;
- b. an agreement, concluded with an undertaking of which the person receiving the funds is a subsidiary and which has consolidated own funds with a positive balance during the entire maturity, which agreement includes the unconditional commitment on the part of that undertaking to provide the person receiving the funds at all times with sufficient funds in order to meet its obligations;

or

c. a guarantee for all liabilities arisen by receiving such funds issued by:

1^o. a bank authorized by the Netherlands Central Bank or a Supervisory Authority in another Member State; or

2^o. a bank established in a non-Member State to be designated by Our Minister where supervision of the operation of the business of a bank is exercised that offers sufficient guarantee in respect of the interests that this part seeks to protect.

2. The first subsection shall only apply in so far as the person receiving the funds shall grant at least 95 per cent of its balance-sheet total as credit within the group of which it forms part. A group shall be taken to mean the legal person and its subsidiaries collectively.

3. The Netherlands Central Bank may grant a waiver, fully or in part, whether or not for a fixed term, of this section if the applicant shows proof that it cannot reasonably comply with those provisions and that the objects which this section seeks to attain shall be attained otherwise.

Section 3:3

An exemption may be provided by ministerial regulation from the provisions pursuant to this part for management companies, collective investment schemes, investment firms and depositaries.

Section 3:4

1. Any person established in the Netherlands, not being a bank, that carries on the business of:
 - a. receiving redeemable funds from professional market parties or within a restricted circle and granting credit for its own account; or
 - b. receiving redeemable funds and making investments, other than granting credit, for its own account;may apply to the Netherlands Central Bank for authorization to carry on that business; in the application of Sections 2:12 and 2:13 the Netherlands Central Bank shall regard the applicant's activities as the pursuit of the business of a bank.
2. The provisions under this Act relating to the pursuit of the business of a bank shall, except for part 3.5.5, apply mutatis mutandis to the person having obtained authorization from the Netherlands Central Bank based on an application as meant in the first subsection.

CHAPTER 3.2 INVITING REDEEMABLE FUNDS

Section 3:5

1. Inviting, receiving or having redeemable funds in the operation of a business outside a restricted circle from parties other than professional market parties in the Netherlands is prohibited.
- 2.. The first subsection shall not concern:
 - a. banks authorized as meant in Section 2:11 (1), or 2:20 (1) by the Netherlands Central Bank, and banks established in another Member State which carry on their business from a branch situated in the Netherlands or by providing services to the Netherlands which comply with the provisions in Section 2:15 or 2:16 with regard to performing activities listed in item 1 of Annex I to the Recast Banking Directive;
 - b. banks established in another Member State authorized by the Supervisory Authority of that Member State to carry on their business which comply with the conditions imposed in that other Member State for providing services to another Member State;
 - c. the Member States as well as the regional or local authorities of those Member States; and
 - d. the persons inviting, receiving or having redeemable funds by providing securities in accordance with the provisions under Chapter 5.1.
3. An exemption from the first subsection may be provided by ministerial regulation.
4. The Netherlands Central Bank may, on application, grant a waiver of the first subsection, whether or not for a fixed term, if the applicant shows proof that the interests which this part seeks to protect are sufficiently protected otherwise. Rules may be laid down under or pursuant to order in council which the holder of a waiver should observe and with regard to granting a waiver.

Section 3:6

1. Without authorization from the Netherlands Central Bank or from a Supervisory Authority of another Member State to carry on the business of a non-life insurer in the Netherlands, no person may act as a guarantee fund.
2. The first subsection and the other provisions pursuant to this part with regard to the pursuit of the business of non-life insurer shall not apply to guarantee funds that:
 - a. are under government control or can invoke a guarantee furnished by the government; or
 - b. only offer guarantees for the benefit of natural persons within a restricted circle:
 - 1°. that is exactly defined;
 - 2°. of which the criteria of access are defined beforehand, are verifiable and do not result in easy access of natural persons not belonging to the circle; and
 - 3°. within which the members of the circle already had a legal relationship with the guarantee fund at the time at which the guarantees were offered, based on which they may in all reasonableness be aware of its financial condition.
3. Exemption may be provided by ministerial regulation from the provisions of the first subsection and the provisions pursuant to this part with regard to guarantee funds pursuing the business of a non-life insurer.
4. The Netherlands Central Bank may, on application, grant a waiver, whether or not for a fixed term, of the first subsection and the provisions pursuant to this part with regard to guarantee funds pursuing the business of a non-life insurer if the applicant shows proof that the interests which this part seeks to protect are sufficiently protected otherwise. Rules may be laid down under or pursuant to order in council which the holder of a waiver should observe and with regard to granting a waiver.

CHAPTER 3.3 RULES ON BEING ACTIVE ON THE FINANCIAL MARKETS

Part 3.3.1 Prohibition of the use of the word “bank”

Section 3:7

1. Unauthorized credit institutions shall not use the word “bank” or translations or forms thereof in their name or in the pursuit of their business, unless this is done in a context which clearly shows that the credit institution concerned is not active on the financial markets.
2. The first subsection shall not concern:
 - a. financial institutions with a certificate of supervised status as meant in Section 3:110 or which comply with the provisions in Section 2:25 or 2:26 with regard to performing activities as meant in Annex I to the Recast Banking Directive from a branch or by providing services; and
 - b. representative organizations of supervised credit institutions or financial institutions.
3. An exemption from the first subsection may be provided by ministerial regulation.
4. The Netherlands Central Bank may, on application, grant a waiver of the first subsection, whether or not for a fixed term, if the objects which this section seeks to attain may be attained otherwise. Rules may be laid down

under or pursuant to order in council which the holder of a waiver should observe and with regard to granting a waiver.

Part 3.3.2 Expertise, fit and proper qualities and integrity

§ 3.3.2.1. Financial undertakings established in the Netherlands

Section 3:8

The day-to-day policies of a clearing institution, credit institution or insurer established in the Netherlands is determined by persons with expertise as to the pursuit of the business of the financial undertaking.

Section 3:9

1. The policies of a clearing institution, credit institution or insurer established in the Netherlands are (co-)determined by persons whose fit and proper qualities are beyond doubt. Where a body within the financial undertaking is entrusted with the supervision of the policies and general course of events of the financial undertaking, such supervision is exercised by persons whose fit and proper qualities are beyond doubt.
2. A person's fit and proper qualities as meant in the first subsection are beyond doubt once a supervisor has so established for the purposes of this Act, as long as no change in the relevant facts or circumstances reasonably necessitates a new assessment.
3. Rules shall be laid down under or pursuant to order in council with regard to the manner in which to establish whether a person's fit and proper qualities are beyond doubt as meant in the first subsection and which facts and circumstances should be considered in that respect.

Section 3:10

1. A clearing institution, credit institution or insurer established in the Netherlands shall pursue adequate policies securing sound operations. This means that:
 - a. a conflict of interests should be prevented;
 - b. any involvement of the financial undertaking or its staff in violation of the law or criminal offences which may affect the public's confidence in the financial undertaking or in the financial markets should be avoided;
 - c. the confidence in the financial undertaking or in the financial markets should not be affected on account of its clients;
 - d. the financial undertaking or its staff should refrain from performing any acts that are so contrary to generally accepted standards that they seriously affect the confidence in the financial undertaking or in the financial markets.
2. Rules may be laid down under or pursuant to order in council with regard to the minimum requirements which the policies meant in the first subsection should satisfy.
3. A financial undertaking as meant in the first subsection shall supply to the Netherlands Central Bank information to be determined by order in council relating to the matters meant in the first subsection.
4. The Netherlands Central Bank may, on application, grant a waiver, fully or in part, whether or not for a fixed term, of the conditions of the second subsection if the applicant shows proof that it cannot reasonably comply with

those provisions and that the objects which this section seeks to attain shall be attained otherwise.

§ 3.3.2.2. *Financial undertakings established in a non-Member State*

Section 3:11

Sections 3:8, 3:9 and 3:10 shall apply mutatis mutandis to branches situated in the Netherlands of credit institutions established in non-Member States.

Section 3:12

Section 3:10 shall apply mutatis mutandis to branches situated in the Netherlands of life insurers or non-life insurers established in a non-Member State.

§ 3.3.2.3. *Financial undertakings established in a non-designated State*

Section 3:13

Sections 3:8, 3:9 and 3:10 shall apply mutatis mutandis to branches situated in the Netherlands of clearing institutions established in non-designated States.

Section 3:14

Section 3:10 shall apply mutatis mutandis to funeral expenses and benefits in kind insurers established in a non-designated State which carry on their business from branches situated in the Netherlands.

Part 3.3.3 Structuring and organization

§ 3.3.3.1. *Financial undertakings established in the Netherlands*

Section 3:15

1. At least two natural persons shall determine the day-to-day policies of a clearing institution, credit institution or insurer established in the Netherlands.
2. The persons determining the day-to-day policies of a financial undertaking as meant in the first subsection shall perform their activities in this respect from the Netherlands.
3. The Netherlands Central Bank may, on application, grant a waiver of the first subsection to a clearing institution or insurer if the applicant shows proof that it cannot reasonably comply with those provisions and that the objects which the first subsection seeks to attain shall be attained otherwise.

Section 3:16

1. A clearing institution, credit institution or insurer established in the Netherlands shall not be affiliated with 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 undertaking.
2. The credit institution, life insurer or non-life insurer shall not be affiliated with 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 undertaking.

3. The clearing institution or funeral expenses and benefits in kind insurer shall not be affiliated with 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 undertaking.

Section 3:17

1. A clearing institution, credit institution or insurer established in the Netherlands shall organize its operations in such a way as to safeguard controlled and sound operations.
2. Rules shall be laid down under or pursuant to order in council with regard to the first subsection. These rules shall concern:
 - a. controlling business processes and business risks;
 - b. integrity, including counteracting:
 - 1^o. a conflict of interests;
 - 2^o. any involvement of the financial undertaking or its staff in violation of the law or criminal offences which may affect the public's confidence in the financial undertaking or in the financial markets;
 - 3^o. relations with clients which may affect the confidence in the financial undertaking or in the financial markets;
 - 4^o. any acts by the financial undertaking or its staff that are so contrary to generally accepted standards that they seriously affect the confidence in the financial undertaking or in the financial markets.
 - c. the solidity of the financial undertaking, including:
 - 1^o. controlling financial risks;
 - 2^o. controlling other risks which may affect the solidity of the financial undertaking;
 - 3^o. ensuring the maintenance of the required financial safeguards; and
 - 4^o. other matters to be determined by order in council.
3. Without prejudice to Section 4:14, the second subsection, opening words and under c, shall apply mutatis mutandis to a management company of a collective investment scheme established in the Netherlands which offers units in the Netherlands, a collective investment scheme established in the Netherlands which offers units in the Netherlands, an investment firm established in the Netherlands which provides investment services in the Netherlands and a depositary affiliated with a collective investment scheme established in the Netherlands which offers units in the Netherlands.
4. The Netherlands Central Bank may, on application, grant a waiver, fully or in part, whether or not for a fixed term, of the provisions under the second subsection, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objects which the this section seeks to attain shall be attained otherwise

Section 3:18

1. If a financial undertaking established in the Netherlands delegates activities to a third party, the financial undertaking shall ensure that such third party complies with the rules applicable to the delegating financial undertaking under this part with regard to those activities.

2. A clearing institution, credit institution or insurer shall not delegate certain activities to be designated by order in council.
3. Under or pursuant to order in council:
 - a. rules shall be laid down with regard to the supervision of the compliance with the provisions under this part relating to the delegation of activities by financial undertakings;
 - b. rules shall be laid down with regard to controlling risks relating to 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 Netherlands Central Bank shall periodically evaluate, in accordance with rules to be laid down by order in council, the strategies, procedures and measures pursuant to Section 3:17 and the required capital of a bank or investment firm established in the Netherlands with a view to the magnitude and the nature of its present and possible future risks.
2. On the basis of the evaluation meant in the first subsection, the Netherlands Central Bank shall determine whether the strategies, procedures and measures and the required capital maintained by the bank or investment firm form a guarantee for proper management and a sound risk cover.
3. The Netherlands Central Bank shall gear the frequency and the scope of its evaluation to the nature, scope and complexity of the bank or investment firm and the importance of the activities of the financial undertaking concerned to the financial system.
4. The Netherlands Central Bank shall bring its evaluation up to date at least once a year.

Section 3:19

1. A clearing institution or credit institution established in the Netherlands which is a public or private limited company, or an insurer established in the Netherlands which is a public limited company or a European company, shall have a supervisory board as meant in Sections 140 or 250 of Book 2 of the Dutch Civil Code composed of at least three members.
2. A clearing institution or credit institution established in the Netherlands which is neither a public limited company nor a private limited company shall have a body composed of at least three members with a function equivalent to a supervisory board.
3. The Netherlands Central Bank may, on application, grant a waiver, fully or in part, of the conditions of the first or second subsection, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objects which this section seeks to attain shall be attained otherwise.

Section 3:20

An insurer established in the Netherlands has the legal form of a public limited company, mutual association or European company.

§ 3.3.3.2. Financial undertakings established in a non-Member State

Section 3:21

1. At least two natural persons shall determine the day-to-day policies of a branch situated in the Netherlands of a credit institution established in a non-Member State.
2. The persons determining the day-to-day policies of a branch as meant in the first subsection shall perform their activities in this respect from the Netherlands.

Section 3:22

Sections 3:17 (2) opening words and under c, fourth and fifth subsections, and Section 3:18 (1) and (3), opening words and under a shall apply mutatis mutandis to investment firms established in a non-Member State which provide investment services in the Netherlands.

Section 3:23

1. Sections 3:17 and 3:18 shall apply mutatis mutandis to branches situated in the Netherlands of life insurers or non-life insurers established in a non-Member State.
2. Sections 3:17 and 3:18 shall apply mutatis mutandis to credit institutions established in a non-Member State.

Section 3:24

A life insurer or non-life insurer established in a non-Member State which carries on its business from a branch situated in the Netherlands or provides services to the Netherlands:

- a. is a legal person according to the law of the State in which it is established;
- b. may carry on the business of a life insurer or non-life insurer in the State in which it is established; and
- c. shall effectively carry on such business from a branch situated in that State.

§ 3.3.3.3. Financial undertakings established in a non-designated State

Section 3:25

Sections 3:17 second subsection, opening words and under c, fourth and fifth subsections and 3:18 (1) and (3), opening words and under a, shall apply mutatis mutandis to management companies of a collective investment scheme established in a non-designated State which offer units in the Netherlands, collective investment schemes established in a non-designated State which offer units in the Netherlands and depositaries affiliated with a collective investment scheme established in a non-designated State which offers 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 established in a non-designated State which carry on their business from branches situated in the Netherlands.

Section 3:27

Sections 3:17, 3:18 and 3:21 shall apply mutatis mutandis to clearing institutions established in a non-designated State.

Section 3:28

Section 3:24 shall apply mutatis mutandis to funeral expenses and benefits in kind insurers established in a non-designated State which carry on their business from branches situated in the Netherlands or by providing services to the Netherlands.

Part 3.3.4 Other provisions

§ 3.3.4.1. Financial undertakings established in the Netherlands

Section 3:29

1. A clearing institution, financial institution, credit institution or insurer established in the Netherlands shall inform the Netherlands Central Bank of any changes relating to matters regarding which data should be supplied 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), 2:121 (2).
2. Without prejudice to the first subsection, a clearing institution, financial institution, credit institution or insurer established in the Netherlands shall inform the Supervisory Authority of the Member State in which the financial undertaking carries on its business from a branch of any changes relating to matters regarding which data should be supplied under Section 2:108 (2), 2:112 (2), or 2:115 (2).
3. It shall be determined under or pursuant to order in council, specifying the procedures to be followed, which data should thereby be supplied and, where applicable, subject to which conditions the changes may be implemented.

Section 3:30

1. A credit institution or insurer established in the Netherlands which has decided to dissolve or to wind up its business, fully or in part, shall consult the Netherlands Central Bank on how to dissolve or wind up at least thirteen weeks before the decision is implemented.
2. The Netherlands Central Bank may reduce the term meant in the first subsection.
3. The Netherlands Central Bank shall be regarded as an interested party within the meaning of Section 23 (2) of Book 2 of the Dutch Civil Code.
4. If a financial undertaking as meant in the first subsection decides to dissolve and has no legal personality, the provisions in 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 be regarded as managing directors and the partnership agreements shall be regarded as the articles of association.

Section 3:31

A credit institution established in the Netherlands which is a subsidiary of a credit institution established in a non-Member State shall be under sufficient consolidated supervision in the State in which the latter credit institution is established.

Section 3:32

A bank established in the Netherlands and authorized to carry on the business of a bank may at least perform the activities listed in Annex I to the Recast Banking Directive unless expressly provided otherwise.

Section 3:33

If a financial undertaking is authorized to carry on the business of a bank and such authorization does not include the provision of investment services, it may apply for authorization of such activities, provided it ensures and shows proof that it complies with the provisions under Section 4:14 (2) (c) (1^o - 6^o), 4:87 and 4:88 with regard to the application for authorization.

Section 3:34

1. An electronic money institution established in the Netherlands and authorized to carry on the business of an electronic money institution is not allowed, in addition to receiving funds in exchange for electronic money, to perform 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 meant in item 2 of Annex I to the Recast Banking Directive;
 - c. to store information on an electronic device on behalf of other undertakings.
2. An electronic money institution as meant in the first subsection shall only hold a unit in another undertaking if that undertaking performs activities relating to the business of that electronic money institution.
3. A unit as meant in the second subsection shall have the following meaning: a direct or indirect interest of 20 per cent or more in the issued share capital of an undertaking, or the ability to exercise directly or indirectly 20 per cent or more of the voting rights in an undertaking.

Section 3:35

A credit institution shall only issue electronic money against a value of not more than the value of the funds received for issue.

Section 3:36

1. An insurer established in the Netherlands and authorized to carry on the business of a life insurer, the business of a funeral expenses and benefits in kind insurer or the business of a non-life insurer is not allowed to carry on a business other than the business for which it is authorized. Notwithstanding this, an insurer established in the Netherlands may carry on trading activities arising from its insurance business and a life insurer authorized to carry on the business of a life insurer may carry on the business of a funeral expenses and benefits in kind insurer without being authorized to carry on the business of a funeral expenses and benefits in kind insurer.
2. A life insurer or a non-life insurer authorized to carry on the business of a life insurer or non-life insurer respectively is not allowed to carry on that business in a class of insurance other than the class or classes for which it is authorized.
3. The provisions with regard to the pursuit of the business of a life insurer shall apply to a life insurer established in the Netherlands authorized for the class of Life Insurance - General that exclusively carries on the business of a funeral expenses and benefits in kind insurer.

4. Notwithstanding the second subsection, it shall be determined under or pursuant to order in council which risks pertaining to a class of insurance other than the class or classes regarding which a non-life insurer is authorized to carry on its business as a non-life insurer may be insured as ancillary risks, and which risks may not be combined as ancillary risks with other classes of insurance.

Section 3:37

1. An insurer established in the Netherlands which intends to carry on its business from a branch situated in another Member State or a life insurer or non-life insurer which intends to carry on its business from a branch 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 meant in the first subsection as to the pursuit of the business of a life insurer or non-life insurer from the branches. The representative shall thereby in any event avail itself of such powers if the Netherlands Central Bank so requests with a view to compliance with the provisions under this part.
3. If the representative is a legal person, it shall in turn appoint a natural person to 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 meant in the third subsection.

Section 3:38

A non-life insurer established in the Netherlands may underwrite risks caused by armed conflict, civil war, insurrection, civil commotion, riot or mutiny. 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 Netherlands Central Bank raises no objections.

§ 3.3.4.2. Financial undertakings established in another Member State

Section 3:39

1. A bank established in another Member State which carries on its business from a branch situated in the Netherlands may at least perform the activities listed in Annex I to the Recast Banking Directive, unless the authorization granted in the Member State expressly states otherwise or the notification meant in Section 2:14 (1) does not state the performance of such activities.
2. A bank established in another Member State which carries on its business by providing services to the Netherlands may at least perform the activities listed in Annex I to the Recast Banking Directive, unless the authorization granted in the Member State expressly states otherwise or it has not informed the Supervisory Authority of the Member State in which it is established of the activities it intends to perform by providing services to the Netherlands.
3. Section 3:34 shall apply *mutatis mutandis* to electronic money institutions established in another Member State which carry on their business from a branch or by providing services in the Netherlands.

Section 3:40

Rules shall be laid down under or pursuant to order in council with regard to the address of the representative appointed by a life insurer or non-life insurer established in another Member State to which information may be supplied in a legally valid manner, and to regulate under which circumstances the representative shall cease its representative functions.

Section 3:41

Rules shall be laid down under or pursuant to order in council with regard to the conditions subject to which changes relating to matters regarding which the Netherlands Central Bank has received data by virtue of Section 2:17 (2) may be implemented.

Section 3:42

A life insurer or non-life insurer established in another Member State shall inform the Netherlands Central Bank of any changes in relation to topics for which Section 2:39 (1) stipulates an obligation to furnish information. Which details will be furnished and, if applicable, under what conditions the changes may be carried out, will be determined under or pursuant to order in council, stating the procedures to be followed.

§ 3.3.4.3. Financial undertakings established 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, non-life insurer established in a non-Member State which carries on its business from a branch situated in the Netherlands, in so far as these sections refer to the financial undertakings concerned.
2. A credit institution, life insurer or non-life insurer established in a non-Member State which carries on its business from a branch situated in the Netherlands shall inform the Netherlands Central Bank of any changes relating to matters regarding which data should be supplied under Sections 2:21 (2), 2:41 (2), 2:45 (2), 2:46 (2) or 2:51 (3). It shall be determined under or pursuant to order in council, specifying the procedures to be followed, which data should thereby be supplied and, where applicable, subject to which conditions the changes may be implemented.

Section 3:44

1. A credit institution, life insurer or non-life insurer established in a non-Member State which has decided to dissolve or to wind up its business, fully or in part, shall consult the Netherlands Central Bank on how to dissolve or wind up at least thirteen weeks before the decision is implemented.
2. Section 3:30 (2 – 4) shall apply mutatis mutandis.

Section 3:45

A financial undertaking authorized to carry on its business of a bank which intends to also provide an investment service, shall inform the Netherlands Central Bank of that intention and ensure and show proof, without prejudice to Sections 3:8, 3:9, 3:15, 3:16, 3:17, 3:18, 3:19, 3:31, 3:53 and 3:70, that the provisions under Sections 4:14 (2) (c)) (1^o - 6^o), 4:87 and 4:88 with regard to the application for authorization will be complied with.

Section 3:46

A credit institution established in a non-Member State which carries on its business from a branch situated in the Netherlands and which is a subsidiary of a credit institution established in a non-Member State shall be under sufficient consolidated supervision in the State in which the latter credit institution is established.

Section 3:47

1. A life insurer or non-life insurer established in a non-Member State which intends to carry on its business from a branch situated in the Netherlands shall appoint as its representative a person having its domicile in the Netherlands.
2. The representative shall, by operation of law, have the same powers as the life insurer or non-life insurer as to the pursuit of the business of a life insurer or non-life insurer from the branches. The representative shall thereby in any event avail itself of such powers if the Netherlands Central Bank so requests with a view to compliance with the provisions under this part.
3. An insurer's representative shall comply with the rules laid down under this Act on behalf of the insurer. The lack of a representative or a default on its part shall not release the life insurer or non-life insurer of the obligation to comply with such rules.
4. The Netherlands Central Bank may, on application, grant a waiver, fully or in part, whether or not for a fixed term, of the first sentence of the third subsection if the applicant shows proof that it cannot reasonably comply with those provisions and that the objects which this section seeks to attain shall be attained otherwise.
5. If the insurer's representative is a legal person it shall in turn appoint a natural person having his/her domicile in the Netherlands who may exclusively represent the legal person in the exercise of its powers and the obligations ensuing from this Act.
6. Rules shall be laid down under or pursuant to order in council with regard to the address of the representative appointed by a life insurer or non-life insurer established in a non-Member State to which information may be supplied in a legally valid manner, and to regulate under which circumstances the representative shall cease to perform its representative functions
7. The representative's place of domicile shall be regarded as the insurer's place of domicile in the Netherlands, it being understood that where the representative is a natural person with a place of business that this place of business shall be regarded as the insurer's place of domicile.
8. Sections 3:8 and 3:9 shall apply *mutatis mutandis* to the person who has been appointed as representative of an insurer and to the natural person meant in the fifth subsection.

Section 3:48

A life insurer or non-life insurer established in a non-Member State which carries out its business by means of providing services to the Netherlands from a location in a non-Member State shall inform the Netherlands Central Bank in relation to topics for which Section 2:45 stipulates an obligation to furnish information. What changes must be reported, which details must be furnished and, if applicable, under what conditions the changes may be

carried out, will be determined by or pursuant to order in council, stating the procedures to be followed.

§ 3.3.4.4. Financial undertakings established outside the Netherlands

Section 3:49

Section 3:29 shall apply mutatis mutandis to clearing institutions and funeral expenses and benefits in kind insurers established in a non-designated State which carry on their business from branches situated in the Netherlands.

Section 3:50

1. Section 3:44 shall apply mutatis mutandis to funeral expenses and benefits in kind insurers established in a non-designated State.
2. Section 3:47 shall apply mutatis mutandis to funeral expenses and benefits in kind insurers established outside the Netherlands.

Section 3:51

A funeral expenses and benefits in kind insurer established in a non-designated State may not carry on a business other than the business of a funeral expenses and benefits in kind insurer from a branch situated in the Netherlands.

Section 3:52

A funeral expenses and benefits in kind insurer established in a non-designated State that carries out its business by means of providing services to the Netherlands shall report changes to the Netherlands Central Bank in relation to topics for which Section 2:52 stipulates an obligation to furnish information. What changes must be reported, which details must be furnished and, if applicable, under what conditions the changes may be carried out, will be determined by or pursuant to order in council, stating the procedures to be followed.

Part 3.3.5 Minimum funds

§ 3.3.5.1. Financial undertakings established in the Netherlands

Section 3:53

1. A management company of a collective investment scheme established in the Netherlands which offers units in the Netherlands, an investment firm established in the Netherlands which provides investment services in the Netherlands, a depositary affiliated with a collective investment scheme established in the Netherlands which offers units in the Netherlands, a clearing institution, credit institution or insurer established in the Netherlands shall have a minimum amount of own funds at its disposal.
2. Without prejudice to the first subsection an insurer as meant in the first subsection shall have financial resources at its disposal to cover the costs of administrative procedures and the production net.
3. Rules shall be laid down under or pursuant to order in council with regard to the size and composition of the minimum own funds. In establishing the minimum amount of own funds it shall be determined what is meant by own funds for the respective legal forms.

4. The minimum amount of own funds for an insurer as meant in the first subsection is expressed in the minimum amount of the guarantee fund.
5. If a management company, other than a management company of an undertaking for collective investment in transferable securities or a depositary as meant in the first subsection, expects or may reasonably expect that the minimum amount of own funds does not or will not comply with the rules meant in the third subsection, it shall, without delay, inform the Netherlands Central Bank of this.
6. The Netherlands Central Bank may, on application, grant a waiver, fully or in part, whether or not for a fixed term, of the conditions of the first or third subsection to a management company, investment firm, depositary, clearing institution or credit institution as meant in the first subsection, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objects which the this section seeks to attain shall be attained otherwise.

§ 3.3.5.2. Financial undertakings established in a non-Member State

Section 3:54

1. Section 3:53 (1, 3, 4 and 6) shall apply mutatis mutandis to investment firms established in a non-Member State which provide investment services in the Netherlands, and credit institutions, life insurers and non-life insurers established in a non-Member State which carry on their business from branches situated in the Netherlands.
2. Section 3:53 (2) shall apply mutatis mutandis to life insurers and non-life insurers established in a non-Member State which carry on their business from branches situated in the Netherlands.
3. Rules shall be laid down under or pursuant to order in council with regard to the minimum amount of the guarantee fund and localization of the assets representing the solvency margin of the branch 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 be subject to the Netherlands Central Bank's permission.

§ 3.3.5.3. Financial undertakings established 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 established in a non-designated State which offers units in the Netherlands, depositaries affiliated with a collective investment scheme established in a non-designated State which offers units, and clearing institutions and funeral expenses and benefits in kind insurers established in a non-designated State which carry on their business from branches situated in the Netherlands. Section 3:53 (5) shall apply mutatis mutandis to management companies and depositaries as meant in the preceding sentence.
2. Rules shall be laid down under or pursuant to order in council with regard to the minimum amount of the guarantee fund and localization of the assets representing the solvency margin of the branch of the funeral service insurer. It may thereby be determined that certain acts of the funeral expenses and benefits in kind insurer shall be subject to the Netherlands Central Bank's permission.

Section 3:56

Section 3:53 (2) shall apply mutatis mutandis to funeral expenses and benefits in kind insurers established in a non-designated State which carry on their business from branches situated in the Netherlands.

Part 3.3.6. Solvency

§ 3.3.6.1. Financial undertakings established in the Netherlands

Section 3:57

1. A management company of an undertaking for collective investment in transferable securities established in the Netherlands which offers units in the Netherlands, an investment firm established in the Netherlands which provides investment services in the Netherlands, a clearing institution, credit institution or insurer established in the Netherlands shall be sufficiently solvent.
2. Rules shall be laid down under or pursuant to order in council with regard to the calculation of the minimum size of the 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 meant in the fourth subsection.
3. The solvency to be maintained by a management company, investment firm, clearing institution or credit institution as meant in the first subsection shall be expressed in the form of required capital. The solvency to be maintained by an insurer as meant in the first subsection shall be expressed in a solvency margin.
4. The guarantee fund shall constitute a third part of the minimum solvency margin calculated in accordance with the second subsection of an insurer meant in the first subsection.
5. If a financial undertaking as meant in the first subsection expects or may reasonably expect that the minimum amount of own funds does not or will not comply with the rules meant in the second subsection, it shall, without delay, inform the Netherlands Central Bank of this.
6. The Netherlands Central Bank may, on application, grant a waiver, fully or in part, whether or not for a fixed term, of the conditions of the first or third subsection to a management company of an undertaking for collective investment in transferable securities, investment firm, clearing institution or credit institution as meant in the first or second subsection, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objects which the this section seeks to attain shall be attained otherwise.
7. Without prejudice to the first subsection the management company, investment firm, clearing institution or credit institution, the undertaking for collective investment in transferable securities which is an investment company established in the Netherlands or the depositary affiliated with an undertaking for collective investment in transferable securities established in the Netherlands shall comply with rules with regard to maintaining balance-sheet items or off balance-sheet items to be laid down under or pursuant to order in council.

§ 3.3.6.2. Financial undertakings established in a non-Member State

Section 3:58

1. Section 3:57 shall apply mutatis mutandis to investment firms established in a non-Member State which provide investment firms in the Netherlands, and credit institutions, life insurers and non-life insurers established in a non-Member State which carry on their business from branches situated in the Netherlands.
2. Section 3:57 shall apply mutatis mutandis to life insurers and non-life insurers established in a non-Member State which carry on their business by providing services to the Netherlands from a branch in a non-Member State.

Section 3:59

1. Section 3:57 shall apply mutatis mutandis to branches situated in the Netherlands of life insurers or non-life insurers established in a non-Member State.
2. Rules shall be laid down under or pursuant to order in council with regard to the guarantee fund or the localization of the assets representing the solvency margin of the branch of a financial undertaking as meant in the first subsection.

Section 3:60

1. A waiver of the provisions laid down under or pursuant to Sections 3:54 (1 and 3) and 3:59 may be granted to a life insurer or non-life insurer established in a non-Member State which carries on its business from a branch situated in the Netherlands and from a branch situated in another Member State, meaning that:
 - a. the solvency margin shall be calculated based on the entire business of the life insurer or non-life insurer which the life insurer or non-life insurer carries on from branches situated in the Member States;
 - b. the assets representing the guarantee fund are present in the Member State from which the solvency margin of the branch is supervised; and
 - c. at least half of the minimum guarantee fund is kept in assets according to the applicable regulations in the Member State from which the solvency margin of the branch is supervised.
2. The application for a waiver shall state the reasons for choosing the Supervisory Authority that will be entrusted with the supervision of the solvency margin, meant in the first subsection under a.

§ 3.3.6.3. Financial undertakings established 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 established in a non-designated State which carry on their business from branches situated in the Netherlands.
2. Section 3:57 shall apply mutatis mutandis to funeral expenses and benefits in kind insurers established in a non-designated State which carry on their business by providing services to the Netherlands from a branch in a non-designated State.

Section 3:62

1. Section 3:57 shall apply mutatis mutandis to branches situated in the Netherlands of funeral expenses and benefits in kind insurers established in a non-designated State.
2. Rules shall be laid down under or pursuant to order in council with regard to the localization of the assets representing the solvency margin of the branch.

Part 3.3.7 Liquidity

§ 3.3.7.1. Financial undertakings established in the Netherlands

Section 3:63

1. A collective investment scheme established in the Netherlands of which the units are re-purchased or redeemed directly or indirectly at the expense of the assets, at the unit-holders' request, in the Netherlands, a clearing institution or credit institution established in the Netherlands shall be sufficiently liquid.
2. Rules shall be laid down with regard to the minimum size, the composition and the calculation of the liquidity of a financial undertaking as meant in the first subsection under or pursuant to order in council.
3. If a financial undertaking as meant in the first subsection expects or may reasonably expect that its liquidity does not or will not comply with the rules meant in the second subsection, it shall, without delay, inform the Netherlands Central Bank of this.
4. The Netherlands Central Bank may, on application, grant a waiver, fully or in part, whether or not for a fixed term, of the first or second subsection, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objects which this section seeks to attain shall be attained otherwise.

§ 3.3.7.2. Financial undertakings established in another Member State

Section 3:64

Section 3:63 shall apply mutatis mutandis to banks established in another Member State which carry on their business from branches situated in the Netherlands.

§ 3.3.7.3. Financial undertakings established in a non-Member State

Section 3:65

Section 3:63 shall apply mutatis mutandis to credit institutions established in a non-Member State which carry on their business from branches situated in the Netherlands.

§ 3.3.7.4. Financial undertakings established in a non-designated State

Section 3:66

Section 3:63 shall apply mutatis mutandis to collective investment schemes established in a non-designated State of which the units are re-purchased or redeemed directly or indirectly at the expense of the assets, at the unit-holders' request, in the Netherlands, and clearing institutions established in a non-designated State which carry on their business from branches situated in the Netherlands.

Part 3.3.8. Technical provisions

§ 3.3.8.1. Insurers established in the Netherlands

Section 3:67

1. An insurer established in the Netherlands shall have adequate technical provisions. The technical provisions are fully covered by assets.
2. A life insurer established in the Netherlands, considering all financial aspects of its undertaking, shall, adequately, fix the premiums for life insurance contracts.
3. The insurer shall fully cover the liabilities ensuing from the claims as meant in Section 3:198 (2) (b, c, d) (3) (a, b, c) or (4) (a, b, c) by assets.
4. Rules shall be laid down under or pursuant to order in council with regard to:
 - a. the provisions in the first and third subsection; and
 - b. the localization of the assets, meant in the first and third subsection, and the currency in which those assets are expressed.
5. The Netherlands Central Bank may, on application, grant a waiver, fully or in part, whether or not for a fixed term, of the provisions under the fourth subsection under a, to the extent that it concerns rules relating to the cover by assets of the technical provisions and the obligations referred to in the third subsection, or under b, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objects which this section seeks to attain may also be attained otherwise.

§ 3.3.8.2. Life insurers and non-life insurers established in a non-Member State

Section 3:68

1. A life insurer or non-life insurer established in a non-Member State shall keep adequate technical provisions for liabilities assumed from a branch situated in the Netherlands under life insurance contracts or non-life insurance contracts. The technical provisions shall be fully covered by assets.
2. Section 3:67 (2) first sentence shall apply mutatis mutandis to life insurers as meant in the first subsection.
3. The life insurer or non-life insurer shall fully cover the liabilities ensuing from claims as meant in Section 3:198 (2) (b, c, d) or (3) (a, b, c) by assets.
4. Section 3:67 (4 and 5) shall apply mutatis mutandis to life insurers and non-life insurers.

§ 3.3.8.3. Funeral expenses and benefits in kind insurers established in a non-designated State

Section 3:69

1. A funeral expenses and benefits in kind insurer established in a non-designated State shall keep adequate technical provisions for liabilities assumed from a branch situated in the Netherlands under funeral expenses and benefits in kind contracts. The technical provisions shall be fully covered by assets.

2. The funeral expenses and benefits in kind insurer shall fully cover the liabilities ensuing from claims as meant in Section 3:198 (4) (a, b, c) by assets.
3. Section 3:67 (4 and 5) shall apply mutatis mutandis to funeral expenses and benefits in kind insurers.

Part 3.3.9 Accounting and reports

§ 3.3.9.1. Financial undertakings established in the Netherlands

Section 3:70

1. The financial year of an insurer established in the Netherlands shall be equivalent to the calendar year.
2. The Netherlands Central Bank may, on application, grant a waiver, whether or not for a fixed term, of the first subsection, if the applicant shows proof that it cannot reasonably comply with that provision and that the objects which this section seeks to attain shall be attained otherwise.

Section 3:71

1. A clearing institution, reinsurer, credit institution or insurer established in the Netherlands shall supply the annual accounts, the annual report and the other data meant in Sections 361 (1) or 391 (1) and 392 (1) (under a – h) of Book 2 of the Dutch Civil Code to the Netherlands Central Bank within six months of the end of the financial year.
2. Rules shall be laid down under or pursuant to order in council with regard to the supply method of the annual account, annual report and the other data.
3. Without prejudice to the provisions in Title 9 of Book 2 of the Dutch Civil Code, the Netherlands Central Bank may, on application, grant a waiver, fully or in part, whether or not for a fixed term, of the first subsection, if the applicant shows proof that it cannot reasonably comply with that provision and that the objects which this section seeks to attain shall be attained otherwise.

Section 3:72

1. An investment firm established in the Netherlands which provides investment services in the Netherlands, a clearing institution or credit institution established in the Netherlands shall periodically, within the fixed terms, supply statements to the Netherlands Central Bank, whether or not also on a consolidated basis, which the latter requires for supervising compliance with the provisions laid down under or pursuant to this part.
2. The first subsection shall not concern financial undertakings as meant in the first subsection to which a waiver as meant in Section 3:57 (6) or 3:63 (4) has been granted.
3. An insurer established in the Netherlands shall periodically, within the fixed terms, supply statements to the Netherlands Central Bank which the latter requires for supervising compliance with the provisions laid down under or pursuant to this part.
4. If a life insurer or funeral expenses and benefits in kind insurer established in the Netherlands has concluded a new type of life insurance or funeral expenses and benefits in kind insurance contract, it shall add a statement of the technical fundamentals for the calculation of the rate and the technical provisions concerned. The life insurer or funeral expenses and benefits in kind

insurer shall also add a statement of changes in the technical principles for the calculation of its rates and technical provisions.

5. Rules shall be laid down under or pursuant to order in council with regard to the content and models of the statements and the method, periodicity and terms of the issuance, and to determine which statements shall be issued and which statements shall be made public.

6. If an event occurs or has occurred which seriously affects or may seriously affect the financial situation of a financial undertaking as meant in the first or third subsection, the Netherlands Central Bank may prescribe that one or more statements shall temporarily be issued with a higher frequency or in a shorter term than provided under the fifth subsection. These statements shall not be made public.

7. Statements, issued by a clearing institution, credit institution or insurer, shall periodically be accompanied by a declaration that they present a true and fair view, issued by an auditor. The Netherlands Central Bank may determine that statements, issued by an investment firm, shall be accompanied by a declaration as meant in the first sentence. The auditor shall certify the statements involved. Rules shall be laid down under or pursuant to order in council with regard to the audit and the certification of the statements.

8. The Netherlands Central Bank may, on application, grant a waiver, fully or in part, whether or not for a fixed term, of the first or third subsection if the applicant shows proof that it cannot reasonably comply with those provisions and that the objects which this section seeks to attain shall be attained otherwise.

9. An insurer shall make the statements, to be made public under the fifth subsection, available for inspection by the public at its offices up to eighteen months following the end of the financial year. During that period, it shall, on request, issue copies at no more than the cost price.

10. The Netherlands Central Bank shall periodically publish the most important aggregated data based on the statements it has received under the first subsection from credit institutions established in the Netherlands.

Section 3:73

One of the statements, meant in Section 3:72 (3), shall include the actuarial report. The actuarial report is accompanied by an actuary's declaration that it has ensured that the provisions listed in the actuarial report have been adequately established. The actuary shall certify the statements concerned. The actuary may provide explanatory notes to the declaration and make reservations. Rules shall be laid down with regard to 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 established in the Netherlands shall supply a statement relating to the life insurance or non-life insurance contracts concluded from the Netherlands or branches situated in other Member States, specifically stating the insurance contracts concluded by providing services to other Member States.

2. Rules shall be laid down under or pursuant to order in council with regard to the content and models of the statements and the submission method.

3. The first subsection shall not concern life insurance or non-life insurance contracts concluded from branches situated in the Netherlands which do not involve any provision of services.

4. The Netherlands Central Bank shall supply the data, meant in the first subsection, with regard to a Member State in aggregated form to the Supervisory Authority of the Member State where the latter so requests.

Section 3:74a

1. A bank or investment firm established in the Netherlands shall disclose at least once a year the information meant in Annex XII, Parts 2 and 3, of the Recast Banking Directive, that influences or could influence a decision by a person that takes said information as a basis in taking decisions of a financial nature. The financial undertaking shall disclose some or all of this information with a higher frequency if it should be necessary with a view to the nature of its activities.

2. The financial undertaking may refrain from disclosing this information if its disclosure would affect its competitive position or would decrease the value of its investments, or if the information relates to obligations in respect of customers or clients with other parties on which basis it is obliged to observe secrecy. In that case the financial undertaking shall declare in the information it discloses pursuant to the first subsection that certain information is missing, stating the reasons. In the place of the missing information, it shall disclose aggregated information in respect of the substance of the missing information.

3. The financial undertaking shall describe how it will disclose the information meant in the first subsection and how and with what frequency it will verify the accuracy of this information. It will furnish this description to the Netherlands Central Bank before the end of the financial year to which the information relates. If the information is not disclosed in the documents meant in Section 3:71, first subsection, or 4:85, first subsection, the financial undertaking shall indicate in those documents in what way the information will be disclosed.

4. Where it is necessary for the exercise of the prudential supervision, the Netherlands Central Bank may decide that a financial undertaking:

- a. shall disclose certain information as meant in the first subsection;
- b. shall disclose certain information as meant in the first subsection with a certain frequency or before a certain deadline;
- c. shall disclose information as meant in the first subsection in a certain manner; or
- d. shall verify in a certain way the accuracy of information as meant in the first subsection for which there is no statutory verification requirement.

§ 3.3.9.2. Financial undertakings established in another Member State

Section 3:75

A bank established in another Member State which carries on its business from a branch situated in the Netherlands shall keep at least one set of separate annual accounts relating to the branch situated in the Netherlands, which enable the Netherlands Central Bank to exercise supervision of its compliance with the provisions under Section 3:63 in conjunction with 3:64.

Section 3:76

1. A bank established in another Member State which carries on its business from a branch situated in the Netherlands shall supply the annual accounts, the consolidated accounts and the annual report to the Netherlands Central Bank within six months following the end of the financial year.
2. The annual accounts shall be accompanied by a declaration that they present a true and fair view, issued by an auditor or by an expert competent to audit the annual accounts according to the law of the Member State in which the bank is established.

Section 3:77

On request of the Netherlands Central Bank, a branch situated in the Netherlands of a bank established in another Member State shall, whether or not periodically, supply statements as meant in Section 3:72 (1) to the Netherlands Central Bank which requires them to exercise supervision of compliance with the provisions under Section 3:63 in conjunction with Section 3:64. Section 3:72 (5 – 8 and 10) shall apply mutatis mutandis.

Section 3:78

1. A life insurer or non-life insurer established in another Member State which carries on its business from a branch situated in a non-Member State by providing services to the Netherlands shall supply a statement relating to the life insurance or non-life insurance contracts concluded from the branches by providing services to the Netherlands to the Netherlands Central Bank within six months following the end of the financial year.
2. Rules shall be laid down under or pursuant to order in council with regard to the content and models of the statements and the submission method.

§ 3.3.9.3. Financial undertakings established in a non-Member State

Section 3:79

Section 3:70 shall apply mutatis mutandis to life insurers and non-life insurers established in a non-Member State which carry on their business from branches situated in the Netherlands.

Section 3:80

Section 3:75 shall apply mutatis mutandis to credit institutions, life insurers and non-life insurers established in a non-Member State which carry on their business from branches situated in the Netherlands.

Section 3:81

1. A credit institution, life insurer or non-life insurer established in a non-Member State which carries on its business from a branch situated in the Netherlands shall supply the annual accounts, the consolidated accounts and the annual report to the Netherlands Central Bank within six months following the end of the financial year.
2. Rules shall be laid down under or pursuant to order in council with regard to the submission method of the annual accounts, the consolidated accounts and the annual report.
3. The annual accounts shall be accompanied by a declaration that they present a true and fair view, issued by an auditor or by an expert competent to

audit the annual accounts according to the law of the Member State in which the financial undertaking, meant in the first subsection, is established.

Section 3:82

1. Section 3:72 (1 and 5 – 8) shall apply mutatis mutandis to investment firms established in a non-Member State which provide investment services in the Netherlands and in branches situated in the Netherlands of credit institutions established in a non-Member State, it being understood that the States have a declaration that the statements present a true and fair view or an equivalent declaration, issued by an auditor or by an expert competent to audit the annual accounts according to the law of the Member State in which the investment firm or credit institution is established. Section 3:72 (10) shall apply mutatis mutandis to branches situated in the Netherlands of credit institutions established in a non-Member State.

2. Sections 3:72 (3 and 5 – 9) and 3:73 shall apply mutatis mutandis to branches in the Netherlands of life insurers or non-life insurers established in a non-Member State, it being understood that the statements shall be accompanied by a declaration that the statements present a true and fair view or an equivalent declaration, issued by an auditor or by an expert competent to audit the annual accounts according to the law of the Member State in which the life insurer or non-life insurer is established. Section 3:72 (4) shall apply mutatis mutandis to branches situated in the Netherlands of life insurers established in a non-Member State.

Section 3:83

1. A life insurer or non-life insurer established in a non-Member State shall supply a statement relating to life insurance or non-life insurance contracts concluded from branches situated in the Netherlands by providing services to other Member States to the Netherlands Central Bank within six months following the end of the financial year.

2. Rules shall be laid down under or pursuant to order in council with regard to the content and models of the statements and the submission method.

3. Section 3:74 (4) shall apply mutatis mutandis.

4. Section 3:78 shall apply mutatis mutandis to life insurers and non-life insurers established in a non-Member State which provides services to the Netherlands.

§ 3.3.9.4. Financial undertakings established outside the Netherlands

Section 3:84

Section 3:70 shall apply mutatis mutandis to funeral expenses and benefits in kind insurers established in a non-designated State which carry on their business from branches 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 established in a non-designated State which carry on their business from branches situated in the Netherlands.

2. Section 3:81 shall apply mutatis mutandis to reinsurers established outside the Netherlands which carry on their business from branches situated in the Netherlands.

Section 3:86

1. Section 3:72 (1 and 5 – 8) shall apply mutatis mutandis to branches situated in the Netherlands of clearing institutions established in a non-designated State, it being understood that the statements shall be accompanied by a declaration that the statements present a true and fair view or an equivalent declaration, issued by an auditor or by an expert competent to audit the annual accounts according to the law of the Member State in which the clearing institution is established.

2. Sections 3:72 (3 – 9) and 3:73 shall apply mutatis mutandis to branches situated in the Netherlands of funeral expenses and benefits in kind insurers established in a non-designated State, it being understood that the statements shall be accompanied by a declaration that the statements present a true and fair view or an equivalent declaration, issued by an auditor or by an expert competent to audit the annual accounts according to the law of the Member State in which the funeral expenses and benefits in kind insurer is established.

Section 3:87

1. A funeral expenses and benefits in kind insurer established in a non-designated State which carries on its business by providing services to the Netherlands shall supply a statement relating to the funeral expenses and benefits in kind insurance contracts concluded by providing services to the Netherlands to the Netherlands Central Bank within six months following the end of the financial year.

2. Rules shall be laid down under or pursuant to order in council with regard to the content and models of the statements, meant in the first subsection, and the submission method.

Part 3.3.10 Reporting obligations of the auditor and the actuary

§ 3.3.10.1. Financial undertakings established in the Netherlands

Section 3:88

1. An auditor auditing the annual accounts of a management company of a collective investment scheme established 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 established in the Netherlands that provides investment services in the Netherlands, a clearing institution, credit institution or insurer established in the Netherlands, or the statements of a financial undertaking established in the Netherlands as meant in Section 3:72 (1 or 3) shall, without delay, inform the Netherlands Central Bank of any and all circumstances which have come to its knowledge in the pursuit of its activities and which:

- a. are contrary to the obligations imposed under this part; or
- b. threaten the continuity of the financial undertaking.

2. An auditor auditing the annual accounts of a clearing institution, credit institution or insurer established in the Netherlands, or the statements of a

financial undertaking established in the Netherlands as meant in Section 3:72 (1 or 3) shall, without delay, inform the Netherlands Central Bank of any and all circumstances which have come to its knowledge in the pursuit of its activities and which lead to a refusal to issue a declaration that they present a true and fair view or to making reservations.

3. The first and second subsections shall apply mutatis mutandis to an auditor that, apart from auditing the annual accounts or the statements, meant in the first and second subsection, also audits the annual accounts or the statements of a person with which a financial undertaking as meant in the first or second subsection is affiliated in a formal or actual control structure.

4. The auditor as meant in the second subsection shall, without delay, supply all information to the Netherlands Central Bank as required by order in council for supervision of the financial undertaking. Rules shall be laid down by order in council with regard to the data to be supplied and the procedures to be observed.

5. The Netherlands Central Bank shall provide the financial undertaking with the opportunity to be present when the auditor furnishes the information, meant in the first or second subsection, and when the auditor supplies the data meant in the fourth subsection.

6. The auditor that under the first, second or third subsection furnishes information or under the fourth subsection supplies data to the Netherlands Central Bank shall not be liable for subsequent third party losses, unless it is made plausible that, considering all facts and circumstances, it should not reasonably have furnished the information or supplied the data.

Section 3:89

1. The actuary auditing the actuarial report of an insurer as meant in Section 3:73 shall, without delay, supply all data to the Netherlands Central Bank as required by order in council for supervision of the insurer. Rules shall be laid down under or pursuant to order in council with regard to the data to be supplied and the procedures to be observed.

2. The Netherlands Central Bank shall provide the insurer with the opportunity to be present when the actuary supplies the data.

3. Section 3:88 (6) shall apply mutatis mutandis to actuaries that under the first subsection supplied data to the Netherlands Central Bank.

§ 3.3.10.2. Financial undertakings established in another Member State

Section 3:90

Section 3:88 shall apply mutatis mutandis to auditors auditing statements, as meant in Section 3:77, of a branch situated in the Netherlands of a bank established in another Member State.

§ 3.3.10.3. Financial undertakings established in a non-Member State

Section 3:91

Section 3:88 shall apply mutatis mutandis to auditors or other experts auditing statements, as meant in Section 3:82 (1 or 2) of a branch situated in the Netherlands of an investment firm, credit institution, life insurer or non-life insurer established in a non-Member State, or of an investment firm

established in a non-Member State which provides services to the Netherlands.

Section 3:92

Section 3:89 shall apply mutatis mutandis to actuaries auditing the actuarial report, as meant in Section 3:82(2), of a branch situated in the Netherlands of a life insurer or non-life insurer established in a non-Member State.

§ 3.3.10.4. Financial undertakings established outside the Netherlands

Section 3:93

Section 3:88 shall apply mutatis mutandis to auditors or other experts auditing statements, as meant in Section 3:86 (1 or 2) of a branch situated in the Netherlands of a clearing institution or funeral expenses and benefits in kind insurer established in a non-designated State.

Section 3:94

Section 3:89 shall apply mutatis mutandis to actuaries conducting the audit meant in 3:86 (2) of the actuarial report of a branch situated in the Netherlands of a funeral expenses and benefits in kind insurer established in a non-designated State.

Part 3.3.11 Qualifying holdings in and by financial undertakings

§ 3.3.11.1. Financial undertakings established in the Netherlands

Section 3:95

1. Except after obtaining a declaration of no-objection from the Netherlands Central Bank, or in the cases listed in Section 3:97 from Our Minister, no person may hold, obtain or increase a qualifying holding or exercise any control relating to a qualifying holding in:
 - a. a bank established in the Netherlands
 - b. a management company of an undertaking for collective investment in transferable securities established in the Netherlands;
 - c. an investment firm established in the Netherlands; or
 - d. an insurer established in the Netherlands.
2. The applicant for a declaration of no-objection shall file an application with the Netherlands Central Bank, stating data to be determined under or pursuant to order in council. The application for a declaration of no-objection for a qualifying holding in a financial undertaking meant in the first subsection under b or c may also be filed with the Netherlands Authority for the Financial Markets provided that financial undertaking is not authorized when applying for the declaration of no-objection.
3. The Netherlands Central Bank shall send an application for a declaration of no-objection regarding an act as meant in 3:97 (1) to Our Minister, accompanied by its recommendation.

Section 3:96

1. Except after obtaining a declaration of no-objection from the Netherlands Central Bank, or in the cases listed in Section 3:97 (1) from Our Minister, no bank established in the Netherlands may:

- a. reduce its own funds by redemption or distribution of reserves or make a payment from an item for reserve of all general banking risks, meant 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 where the balance-sheet total of that bank, investment firm, financial institution or insurer at the time of acquisition or increase amounts to more than one per cent of the consolidated balance-sheet total of the bank, meant in the opening words;
 - c. acquire or increase a qualifying holding in an undertaking, other than a financial undertaking as meant under b if the amount paid for the acquisition of that qualifying holding or the increase of that qualifying holding together with the amounts paid for the acquisition and previous increases of that qualifying holding amount to more than one per cent of the consolidated own funds of the bank meant in the opening words;
 - d. take over all or the major part of the assets and liabilities of another undertaking or institution, directly or indirectly, if the total amount of the assets to be taken over or the liabilities to be taken over amount to more than one per cent of the consolidated balance-sheet total of the bank, meant in the opening words;
 - e. merge with another undertaking or institution if the balance-sheet total of the merging undertaking or institution amounts to more than one per cent of the consolidated balance-sheet total of the bank, meant in the opening words;
 - f. commence a financial or company reorganization;
 - g. have a managing partner join the bank;
2. The applicant for a declaration of no-objection shall file the application with the Netherlands Central Bank, stating information to be determined under or pursuant to order in council. The Netherlands Central Bank shall send an application for a declaration of no-objection regarding an act as meant in 3:97 (1) to Our Minister, accompanied by its recommendation.
3. The first subsection shall not concern qualifying holdings in companies of which the assets consist of more than ninety per cent of liquid means when the bank acquires the qualifying holding. Rules shall be laid down under or pursuant to order in council to determine which means shall be presumed to be liquid means.
4. Further rules shall be laid down under or pursuant to order in council with regard to the first subsection under c.
5. The voting rights to the shares which a bank may exercise based on the acquired right of lien of the shares and the voting rights to the shares that depositaries of shares may not cast at their own discretion shall not be regarded as a “qualifying holding” as meant in the first subsection under b and c.

Section 3:97

1. Our Minister shall decide on an application for a declaration of no-objection for:
- a. holding, acquiring or increasing a qualifying holding as meant in Section 3:95 (1) opening words and under a or exercising any control relating to a qualifying holding, in a bank established in the Netherlands which based on the balance-sheet total at the end of the year preceding the application belonged to the five largest banks established in the Netherlands by:

- 1^o. a bank established in the Netherlands which based on the balance-sheet total at the end of the year preceding the application belonged to the five largest banks established in the Netherlands;
- 2^o. an insurer established in the Netherlands which based on the gross premium revenue in the year preceding the application belonged to the five largest insurers established in the Netherlands; or
- 3^o. any person not belonging to the categories meant under 1^o or 2^o in case of an intended interest of more than twenty per cent;
- b. holding, acquiring or increasing a qualifying holding as meant in Section 3:95 (1) opening words and under d, or exercising any control relating to a qualifying holding, in an insurer established in the Netherlands which based on the gross premium revenue in the year preceding the application belonged to the five largest insurers established in the Netherlands by:
- 1^o. a bank established in the Netherlands which based on the balance-sheet total at the end of the year preceding the application belonged to the five largest banks established in the Netherlands;
- 2^o. an insurer established in the Netherlands which based on the gross premium revenue in the year preceding the application belonged to the five largest insurers established in the Netherlands; or
- 3^o. any person not belonging to the categories meant under 1^o or 2^o in case of an intended interest of more than twenty per cent;
- c. holding, acquiring or increasing a qualifying holding as meant in Section 3:96 (1) opening words and under b, or exercising any control relating to a qualifying holding, by an insurer established in the Netherlands which based on the gross premium revenue in the year preceding the application belonged to the five largest banks established in the Netherlands by:
- 1^o. a bank established in the Netherlands which based on the balance-sheet total at the end of the year preceding the application belonged to the five largest banks established in the Netherlands;
- 2^o. a bank established in another Member State or in a non-Member State, if the balance-sheet total of that bank at the end of the year preceding the application amounted to more than five per cent of the balance-sheet total of the acquiring bank at the end of the year preceding the application; or
- 3^o. an insurer established in the Netherlands which based on the gross premium revenue in the year preceding the application belonged to the five largest insurers established in the Netherlands; and
- d. a merger as meant in Section 3:96 (1) under e by a bank established in the Netherlands which based on the balance-sheet total at the end of the year preceding the application belonged to the five largest banks established in the Netherlands with:
- 1^o. a bank established in the Netherlands which based on the balance-sheet total at the end of the year preceding the application belonged to the five largest banks established in the Netherlands; or
- 2^o. a bank established in another Member State or in a non-Member State, if the balance-sheet total of that bank at the end of the year preceding the application amounted to more than five per cent of the balance-sheet total of the acquiring bank at the end of the year preceding the application.
2. Our Minister may issue a declaration of no-objection for an act as meant in the first subsection, unless such act might lead to an undesirable development of the financial sector or according to the Netherlands Central Bank one or more of the considerations, meant in Section 3:100 opening

words under a or b, or 3:101 opening words under a or b, might impede the renewal of a declaration of no-objection.

3. If Our Minister renders a decision under the first subsection on an application for a declaration of no-objection he/she may exercise all powers conferred on the Netherlands Central Bank under parts 1.4.1 and 1.4.2 as well as all powers conferred on the Netherlands Central Bank under this part in respect of the compliance with the provisions under this part.

Section 3:98

1. Section 3:95 (1) opening words and under c shall not concern acts regarding which no declaration of no-objection has been issued under Section 3:95 (1) opening words and under a or 3:96 (1).

2. Section 3:95 (1) opening words and under c shall not concern acts regarding which no declaration of no-objection is required under Section 3:96 (1) opening words and under b or c.

Section 3:99

1. The fit and proper qualities of the applicant and the holder of a declaration of no-objection that might determine or co-determine the policies of the undertaking concerned based on the qualifying holding shall be beyond doubt.

2. The fit and proper qualities shall be beyond doubt once a supervisor has so established for the purposes of this Act, as long as no change in the relevant facts or circumstances reasonably necessitates a new assessment.

3. Rules shall be laid down under or pursuant to order in council with regard to the way in which it is determined whether the fit and proper qualities of a person as meant in the first subsection are beyond doubt and which facts and circumstances have been taken into consideration in this respect.

Section 3:100

The Netherlands Central Bank shall issue a declaration of no-objection for an act meant in Section 3:95 (1) unless:

a. the act might lead or would lead to an influence on the financial undertaking concerned which might jeopardize sound and prudent operations;

b. in the case of an act as meant in Section 3:95 under a or d the act means or might mean that the financial undertaking concerned is affiliated with persons in a formal or actual control structure that lacks such transparency that it might impede the adequate exercise of supervision of that financial undertaking; or

c. in the case of an act as meant in Section 3:95 under a or d that act leads or might lead to an undesirable development of the financial sector.

Section 3:101

The Netherlands Central Bank shall issue a declaration of no-objection for an act as meant in Section 3:96 (1) unless:

a. the act is or may be in violation of the solvency provisions regarding the bank concerned under Section 3:57 (1 and 2);

b. the act is otherwise or may be otherwise contrary to sound and prudent operations; or

c. the act leads or may lead to an undesirable development of the financial sector.

Section 3:102

1. If a declaration of no-objection is issued permission may also be granted, on application, to the applicant to increase its qualifying holding, whereby 20, 33, 50 or 100 per cent may apply as maximums.
2. If a declaration of no-objection is issued for a qualifying holding as meant in Section 3:95 (1) it may be determined, on application, that such declaration of no-objection shall apply to all group companies collectively.
3. If a declaration of no-objection as meant in Section 3:96 (1) is issued, it may concern:
 - a. indirect units acquired or to be acquired by the applicant through a subsidiary; or
 - b. indirect units acquired or to be acquired by the applicant, not being units as meant under a, in so far as such units have been or shall be acquired beyond the applicant's scope of influence.

Section 3:103

1. The Netherlands Central Bank shall be informed beforehand of any changes in a qualifying holding in a financial undertaking as meant in Section 3:95 (1):
 - a. as a result of which the size of such unit exceeds 20, 33, 50 or 95 per cent, becomes 100 per cent or as a result of which the financial undertaking concerned becomes a subsidiary; or
 - b. as a result of which the size of such unit falls below 10, 20, 33, 50, 95 or 100 per cent or as a result of which the financial undertaking concerned ceases to be a subsidiary.
2. A financial undertaking as meant in Section 3:95 (1) shall, in so far as known to it, inform the Netherlands Central Bank in the month July of every year of the identity of any person that holds a qualifying holding in this financial undertaking. The financial undertaking shall, as soon as it becomes known to it, inform the Netherlands Central Bank of any acquisition of, disposal of or change in a qualifying holding in this financial undertaking:
 - a. as a result of which the size of such unit exceeds 20, 33, 50 or 95 per cent, becomes 100 per cent or as a result of which the financial undertaking concerned becomes a subsidiary; or
 - b. as a result of which the size of such unit falls below 10, 20, 33, 50, 95 or 100 per cent or as a result of which the financial undertaking concerned ceases to be a subsidiary.
3. If the size of a unit regarding which a declaration of no-objection is issued falls below 10 per cent, the issued declaration of no-objection shall cease to be valid 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 Netherlands Central Bank may attach restrictions or regulations to a declaration of no-objection as meant in Section 3:95 (1) or 3:96 (1) based on the considerations listed in Section 3:100 or 3:101.
2. If any control relating to a qualifying holding in a financial undertaking as meant in Section 3:95 (1) is exercised without having obtained a declaration of no-objection or without observing the restrictions attached to such declaration, the resolution adopted owing in part to the control exercised shall be liable to nullification. The resolution may be declared null and void on

petition of the Netherlands Central Bank. In that event, the resolution shall be declared null and void by the court within whose area of jurisdiction the financial undertaking is established if, but for the exercise of the control concerned, the resolution would have been different or would not have been adopted, unless a declaration of no-objection is issued or the non-observed restrictions are revoked before the date of the judgment. The district court shall, where necessary, make arrangements for the consequences of the nullification.

3. The Netherlands Central Bank may, by issuing an instruction, order any person failing to comply with Section 3:95 (1) to adhere to a certain line of conduct in regard to the points to be indicated in the order within a term to be fixed by the Netherlands Central Bank.

Section 3:105

1. The Netherlands Central Bank shall inform the financial undertaking in which the qualifying holding is held, acquired or increased of the issuance of the declaration of no-objection meant in Section 3:95.(1). If the application for a declaration of no-objection is filed with the Netherlands Authority for the Financial Markets in accordance with Section 3:95 (2) second sentence, the Netherlands Central Bank shall send the declaration of no-objection issued to the Netherlands Authority for the Financial Markets. The Netherlands Authority for the Financial Markets shall inform the financial undertaking concerned of the declaration of no-objection issued.

2. The Netherlands 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 Netherlands Central Bank may withdraw the declaration of no-objection, 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 a line of conduct prescribed by the Netherlands Central Bank under Section 1:75.

4. Without prejudice to Sections 1:104 and 1:105 (1) opening words and under c, the Netherlands Central Bank may attach further restrictions or regulations to a declaration of no-objection or revoke such declaration if circumstances occur or facts become known in respect of the act regarding which the declaration of no-objection is issued which:

a. in the case of an act as meant in Section 3:95 (1) under a or d lead or might lead to an influence on the financial undertaking concerned which might jeopardize sound and prudent operations;

b. in the case of an act as meant in Section 3:95 (1) under a or d the act means or might mean that the financial undertaking concerned is affiliated with persons in a formal or actual control structure that lacks such transparency that it might impede the adequate exercise of supervision of that financial undertaking; or

c. in the case of an act as meant in Section 3:95 (1) under a or d or an act as meant in Section 3:96 (1) leads or might lead to an undesirable development of the financial sector.

5. The Netherlands Central Bank shall inform the financial undertaking concerned of any change in or of the withdrawal of a declaration of no-objection.

6. The Netherlands Central Bank shall publish a notification of any change in or of the withdrawal of a declaration of no-objection in the Government Gazette, unless the publication leads or might lead to a disproportionate advantage or disadvantage for interested parties.

Section 3:106

1. Rules may be laid down under or pursuant to order in council with regard to holders of a declaration of no-objection of which at least one subsidiary is an investment firm authorized as meant in Section 2:96 to preclude that the act regarding which the declaration of no-objection is issued leads or might lead to an influence on the investment firm contrary to the financial solidity of such investment firm.

2. The rules meant in the first subsection may solely concern financial safeguards, data and information to be supplied as well as the form in which such data and information shall be supplied.

3. The Netherlands Central Bank shall, on application, grant a waiver, fully or in part, whether or not for a fixed term, of the first subsection, if the applicant shows proof that it cannot reasonably comply with those rules and that the objects which these rules seek to attain shall be attained otherwise.

Section 3:107

Once a year, the Netherlands Central Bank shall supply the data at its disposal under Section 3:103 (1 and 2) to Our Minister.

Section 3:108

1. Any person intending to hold, acquire or increase a qualifying holding in an electronic money institution established in the Netherlands to such an extent that the size of this unit would exceed 20, 33, or 50 per cent or that the electronic money institution would become a subsidiary, or to exercise any control relating to a qualifying holding in that electronic money institution, shall inform the Netherlands Central Bank of its intention in writing prior to doing so. No person may implement such intention before the notification meant in the fourth subsection has been made.

2. Any person whose qualifying holding in an electronic money institution, meant in the first subsection, changes to such an extent that the size of the unit falls below 10, 20, 33, or 50 per cent, or that the electronic money institution, meant in the first subsection, ceases to be a subsidiary, shall inform the Netherlands Central Bank of this.

3. In the month July of every year, the electronic money institution shall inform the Netherlands Central Bank of the identity of any person holding a qualifying holding in that electronic money institution, in so far as known to it. The electronic money institution shall also, as soon as it becomes known to it, inform the Netherlands Central Bank of any acquisition, disposal or change of a qualifying holding in this electronic money institution as a result of which the size of this unit exceeds or falls below 10, 20, 33, or 50 per cent or the electronic money institution becomes or ceases to be a subsidiary.

4. If the intention, meant in the first subsection, could not lead or would not lead to an influence on the electronic money institution concerned thereby

jeopardizing the financial solidity of the electronic money institution, the Netherlands Central Bank shall inform the person having made the notification meant in the first subsection that no objections shall be raised against such intention.

5. If any control relating to a qualifying holding in an electronic money institution as meant in the first subsection is exercised without making the notification meant in the first subsection in respect of holding, acquiring or increasing the qualifying holding, a resolution owing in part to the control exercised shall be liable to nullification. The resolution may be declared null and void on petition of the Netherlands Central Bank. In that event, the resolution shall be declared null and void by the court within whose area of jurisdiction the electronic money institution is established if, but for the exercise of the control concerned, the resolution would have been different or would not have been adopted. The district court shall, where necessary, make arrangements for the consequences of the nullification.

§ 3.3.11.2. Banks established in a non-Member State

Section 3:109

Sections 3:96, 3:97 (1) opening words and under c and d, second and third subsection, 3:99, 3:101, 3:102 (1 and 3), 3:104 (1), 3:105 (2, 3 and 4) opening words under a and c and sixths subsection shall apply mutatis mutandis to branches situated in the Netherlands of banks established in a non-Member State authorized as meant in Section 2:20.

CHAPTER 3.4 RULES FOR CERTAIN UNDERTAKINGS ACTIVE ON THE FINANCIAL MARKETS

Part 3.4.1 Supervised status of financial institutions

§ 3.4.1.1. Financial institutions established in the Netherlands

Section 3:110

1. A financial institution established in the Netherlands which is a subsidiary of one or more banks authorized as meant in Section 2:11 (1) and which intends to carry on its business, which it carries on in the Netherlands, from a branch situated in another Member State or by providing services to another Member State may obtain a certificate of supervised status from the Netherlands Central Bank.

2. The application shall state the data to be determined under or pursuant to order in council.

3. The Netherlands Central Bank shall issue the certificate of supervised status if:

- a. the applicant is permitted to perform these activities, in so far as other statutory provisions apply to its activities;
- b. at least 90 per cent of the voting rights in the applicant are held by the bank or banks meant in the first subsection;
- c. the bank or banks meant in the first subsection guarantee the commitments of the applicant and the Netherlands Central Bank has consented to such guarantee;

d. the bank or banks meant in the first subsection ensure that the financial institution shall organize its operations in such a manner as to safeguard controlled and sound operations.

4. The applicant of a certificate of supervised status which intends to provide investment services shall inform the Netherlands Central Bank of this and show proof that it will comply with the provisions under:

- a. Section 3:8 with regard to the expertise of the persons meant in that section;
- b. Section 3:9 with regard to the fit and proper qualities of the persons meant in that section;
- c. Section 3:15 (1 and 2) with regard to the minimum number of persons determining the day-to-day policies and the place from which they perform their activities;
- d. Section 3:16 with regard to the participation structure;
- e. Section 3:53 (1 and 3) with regard to the minimum own funds;
- f. Section 4:14 (2) (c) (1^o - 6^o) with regard to the organization of the operations;
- g. Section 4:87 with regard to taking adequate measures to protect the clients' rights; and
- h. Section 4:88 with regard to pursuing adequate policies to preclude the conflicts of interests meant in that section.

5. A financial institution having obtained a certificate of supervised status under the third subsection which intends to provide investment services shall inform the Netherlands Central Bank of such intention and show proof that it will comply with the provisions under:

- a. Section 3:8 with regard to the expertise of the persons meant in that section;
- b. Section 3:9 with regard to the fit and proper qualities of the persons meant in that section;
- c. Section 3:15 (1 and 2) with regard to the minimum number of persons determining the day-to-day policies and the place from which they perform their activities;
- d. Section 3:16 with regard to the participation structure;
- e. Section 3:53 (1 and 3) with regard to the minimum own funds;
- f. Section 4:14 (2) (c) (1^o - 6^o) with regard to the organization of the operations;
- g. Section 4:87 with regard to taking adequate measures to protect the clients' rights; and
- h. Section 4:88 with regard to pursuing adequate policies to preclude the conflicts of interests meant in that section.

6. Sections 3:8, 3:9, 3:10, 3:15, 3:16, 3:17, 3:18, 3:33, 3:53, 3:57, 3:95 first subsection, opening words and under a, second subsection, first sentence, third subsection, 3:99, 3:100, 3:102 (1 and 2), 3:103 and 3:105 shall apply mutatis mutandis to financial institutions with certificate of supervised status.

7. Section 1:48 shall apply mutatis mutandis.

Part 3.4.2. Regime for banks affiliated with a central credit institution

Section 3:111

1. A group of banks which on 15 December 1977 affiliated with a central credit institution on a permanent basis which monitors the operations, delegation,

solvency and liquidity of those banks may, by ministerial regulation, be exempted from supervision by the Netherlands Central Bank of the provisions under Section 3:10, 3:17, 3:18, 3:57, and 3:63, if:

- a. the central credit institution and the affiliated banks are jointly and severally liable for their mutual commitments or the central credit institution guarantees the commitments of the affiliated banks;
- b. the central credit institution is adequately empowered to give instructions to the affiliated banks required for compliance with this Act; and
- c. the supervision of the central credit institution and the affiliated banks under Sections 3:57 and 3:63 is exercised on a consolidated basis.

2. The Netherlands Central Bank may provide in respect of a bank forming part of a group exempted under the first subsection 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 monitors the affiliated banks by virtue of its articles of associations and the articles of association of the affiliated bank or by virtue of an agreement with the affiliated banks. Such monitoring includes:

- a. giving instructions which correspond, in terms of substance and intent, with the rules provided under Sections 3:10, 3:17, 3:18, 3:57 and 3:63 for the affiliated banks;
- b. assessing whether the affiliated banks comply with the instructions meant under a;
- c. determining for the group of affiliated banks how the statements meant in Section 3:72 shall be drawn up, the denomination and description of the items included in those statements, the subsequent periods to which those statements refer, the terms within which those statements should be filed and the bases for the valuation of the items to be applied;
- d. filing the statements meant in Section 3:72 by the affiliated banks with the central credit institution; and
- e. obtaining data from the affiliated banks to monitor the compliance with the instructions given by the central credit institution under this section.

CHAPTER 3.5 SPECIAL RULES AND MEASURES RELATING TO FINANCIAL UNDERTAKINGS ACTIVE ON 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 under or pursuant to this Act with regard to the business operations and the required capital, the Netherlands Central Bank may impose the following measures on that bank or investment firm:

- a. require it to maintain a higher amount in required capital than that laid down pursuant to Section 3:57;
- b. require it, in connection with the solvency requirements, to pursue a certain 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, on the basis of the evaluation meant in Section 3:18a, the Netherlands Central Bank is of the opinion that the strategies, procedures and measures pursuant to Section 3:17 or the required capital of the financial undertaking concerned do not guarantee a controlled and sustainable cover of its risks,

the Netherlands Central Bank shall require the bank or investment firm to maintain a higher amount in required capital if other measures cannot, in reasonableness, ensure that the requirements pursuant to Section 3:17 are satisfied within a reasonable period.

3. The Netherlands Central Bank shall lift the measures meant in the first and second subsections as soon as the bank or investment firm again satisfies the requirements under or pursuant to this Act with regard to business operations and required capital.

Part 3.5.1a Portfolio transfer

§ 3.5.1a.1. Insurers established in the Netherlands

Section 3:112

1. A life insurer established in the Netherlands that wishes to transfer rights and obligations under a life insurance contract shall require the Netherlands Central Bank's permission where it concerns:

- a. the transfer of rights and obligations under a life insurance contract, concluded from a branch situated in a Member State, to another life insurer established in a Member State within the scope of the pursuit of its business from a branch situated in a Member State;
- b. the transfer of rights and obligations under a life insurance contract, concluded from a branch in the Netherlands, to another life insurer established in a non-Member State within the scope of the pursuit of its business from a branch situated in the Netherlands;
- c. the transfer of rights and obligations under a life insurance contract, concluded from a branch situated in another Member State, to another life insurer established in a non-Member State within the scope of the pursuit of its business from a branch situated in a Member State.

2. In the case meant in the first subsection under c, the Netherlands Central Bank shall only consent to the transfer provided the Supervisory Authorities concerned have also consented to this at the Netherlands Central Bank's request.

3. Notwithstanding the first subsection, life insurers established in the Netherlands shall not require the Netherlands Central Bank's permission for the transfer of their rights and obligations under an individual insurance contract at the policy-holder's request.

Section 3:113

1. A funeral expenses and benefits in kind insurer established in the Netherlands that wishes to transfer the rights and obligations under a funeral expenses and benefits in kind insurance contract shall require the Netherlands Central Bank's permission where it concerns:

- a. the transfer of rights and obligations under a funeral expenses and benefits in kind insurance contract, concluded from a branch situated in the Netherlands, to another funeral expenses and benefits in kind insurer established in the Netherlands within the scope of the pursuit of its business from a branch situated in the Netherlands;
- b. the transfer of rights and obligations under a life insurance contract, concluded from a branch situated outside the Netherlands, to another funeral

expenses and benefits in kind insurer or a life insurer within the scope of the pursuit of its business from a branch situated in the Netherlands.

2. A life insurer established in the Netherlands that wishes to transfer the rights and obligations under a funeral expenses and benefits in kind insurance contract shall require the Netherlands Central Bank's permission where it concerns:

a. the transfer of rights and obligations under a funeral expenses and benefits in kind insurance contract, concluded from a branch situated in the Netherlands, to another funeral expenses and benefits in kind insurer established in the Netherlands within the scope of the pursuit of its business from a branch situated in the Netherlands;

b. the transfer of rights and obligations under a funeral expenses and benefits in kind insurance contract, concluded from a branch situated outside the Netherlands, to another funeral expenses and benefits in kind insurer within the scope of the pursuit of its business from a branch situated in the Netherlands.

3. In the case meant in the first subsection under b and the second subsection under b, the Netherlands Central Bank shall only consent to the transfer provided the Supervisory Authority concerned has also consented to this at the Netherlands Central Bank's request.

3. Notwithstanding the first subsection, the funeral expenses and benefits in kind insurer established in the Netherlands may transfer its rights and obligations under an individual funeral expenses and benefits in kind insurance contract at the policy-holder's request.

Section 3:114

1. A non-life insurer established in the Netherlands that wishes to transfer the rights and obligations under a non-life insurance contract may transfer such rights and obligations subject to the Netherlands Central Bank's permission 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 branch situated in a Member State, to another non-life insurer established in a Member State within the scope of the pursuit of its business from a branch situated in a Member State;

b. the transfer of rights and obligations under a non-life insurance contract, concluded from a branch situated in the Netherlands, to another non-life insurer established in a non-Member State within the scope of the pursuit of its business from a branch situated in the Netherlands;

c. the transfer of rights under a non-life insurance contract, concluded from a branch situated in another Member State, to a non-life insurer established in a non-Member State within the scope of the pursuit of its business from a branch situated in a Member State.

2. In the case meant in the first subsection under c, the Netherlands Central Bank shall only consent to the transfer provided the Supervisory Authorities concerned have also consented to this at the Netherlands 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 pursuant to all

non-life insurance contracts shall be equivalent to the transfer of such rights and obligations in the event of a merger as meant in Section 309 of Book 2 of the Dutch Civil Code or a split-off as meant 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 – 4) shall apply mutatis mutandis to a transfer as meant in the first subsection with regard to a life insurer established in the Netherlands, in so far as those sections refer to a transfer by a life insurer.

3. Sections 3:113 (1) opening words (a), 3:116, 3:118 (6), 3:119 and 3:120 (1 – 3) shall apply mutatis mutandis to a transfer as meant in the first subsection with regard to a funeral expenses and benefits in kind insurer, in so far as those sections refer to a transfer by a funeral expenses and benefits in kind insurer.

4. Sections 3:114 (1) opening words (a), 3:116, 3:117 (2), 3:118 except for (6), and 3:120 (1 – 3 and 5 – 9) shall apply mutatis mutandis to a transfer as meant in the first subsection with regard to a non-life insurer established in the Netherlands, in so far as those sections refer to a transfer by a non-life insurer.

Section 3:116

The application for granting permission to a transfer as meant in Section 3:112 (1), 3:113 (1 and 2) or 3:114 (1) shall state the data to be determined under or pursuant to order in council.

Section 3:117

1. If an intended transfer as meant in Section 3:112 (1) (a) concerns life insurance contracts, concluded from a branch situated in another Member State, and in the event of a transfer as meant in Section 3:112 (1) (c), the Netherlands Central Bank shall, on receiving the data meant in Section 3:116, submit those data for an opinion to the Supervisory Authority of the Member States concerned.

2. If an intended transfer as meant in Section 3:114 (1) (a) concerns non-life insurance contracts, concluded from a branch situated in another Member State, and in the event of a transfer as meant in Section 3:114 (1) (c), the Netherlands Central Bank shall, on receiving the data meant in Section 3:116, submit those data for an opinion to the Supervisory Authority of the Member State concerned.

Section 3:118

1. The Netherlands Central Bank shall only grant its permission to the transfer as meant in Section 3:112 (1) or Section 3:114 (1) to:

- a. a life insurer or non-life insurer established in the Netherlands provided that life insurer or non-life insurer, also in view of the intended transfer, has the minimum solvency margin at its disposal and the Netherlands Central Bank has required no restoration plan under Section 3:132 from that life insurer or non-life insurer;
- b. a life insurer or non-life insurer established in another Member State, provided the Supervisory Authority of that Member State has declared, on the request of the Netherlands Central Bank, that this life insurer or non-life

insurer, also in view of the intended transfer, has the minimum solvency margin at its disposal; and

c. a life insurer or non-life insurer established in a non-Member State within the scope of the pursuit of its business from a branch situated in the Netherlands, provided the branch concerned, also in view of the intended transfer, has the minimum solvency margin at its disposal and the Netherlands Central Bank has not required a restoration plan under Section 3:132 from that life insurer or non-life insurer.

2. If a Supervisory Authority of a Member State is entrusted with the supervision of the solvency margin of the branch, meant in the first subsection under c, the Netherlands Central Bank shall only grant its permission after that Supervisory Authority has declared, on the Netherlands Central Bank's request, that the branch, also in view of the intended transfer, has the minimum solvency margin at its disposal, and that, where applicable, no plan equivalent to the restoration plan as meant in Section 3:132 is required from the branch.

3. The Netherlands Central Bank shall only grant its permission to a transfer as meant in Section 3:114 (1) to a non-life insurer established in a non-Member State within the scope of the pursuit of its business from a branch situated in another Member State if:

a. the Supervisory Authority of that Member State or, if another Supervisory Authority of a Member State is entrusted with the supervision of the solvency margin of the branch concerned, the latter body, on the Netherlands Central Bank's request, has communicated, also in view of the intended transfer, that the branch has the minimum solvency margin at its disposal;

b. the Supervisory Authority of that Member State has required no plan equivalent to a restoration plan as meant in Section 3:132 from the branch; and

c. the Supervisory Authority concerned consents to the transfer on the Netherlands Central Bank's request.

4. In so far as a transfer concerns non-life insurance contracts in the conclusion of which risks situated in another Member State were underwritten or life insurance contracts concluded by providing services to another Member State, the Netherlands Central Bank shall only grant its permission after the Supervisory Authority of that Member State has declared that it consents to the transfer on the Netherlands Central Bank's request.

5. If the Supervisory Authority, meant in the fourth subsection or in Section 3:117, has not responded within three months of receiving such request from the Netherlands Central Bank, the absence of any response shall be considered equivalent to a favourable opinion or tacit consent.

6. The Netherlands Central Bank shall only grant its permission to a transfer as meant in Section 3:113 (1 or 2) to:

a. a life insurer established in the Netherlands, established in another Member State or established in a non-Member State, provided that life insurer, also in view of the intended transfer, has the minimum solvency margin at its disposal, and, in so far as it concerns a life insurer established in a Member State, the Netherlands Central Bank or a Supervisory Authority of a Member State has not required a restoration plan under Section 3:132 or a restoration plan equivalent to the restoration plan meant in Section 3:132 from that life insurer;

b. a funeral expenses and benefits in kind insurer established in the Netherlands, provided that funeral expenses and benefits in kind insurer, also in view of the intended transfer, has the minimum solvency margin at its disposal and the Netherlands Central Bank has required no restoration plan under Section 3:132 from that funeral expenses and benefits in kind insurer; and

c. a funeral expenses and benefits in kind insurer established outside the Netherlands within the scope of the pursuit of its business from a branch situated in the Netherlands provided the branch concerned, also in view of the intended transfer, has the minimum solvency margin at its disposal and the Netherlands Central Bank has required no restoration plan under Section 3:132 from that funeral expenses and benefits in kind insurer.

Section 3:119

1. If the data, meant in Section 3:116, suffice for the preparation of the order, the Netherlands Central Bank shall instruct the life insurer or funeral service insurer to publish a notification of its intention to transfer the rights and obligations in the Government Gazette and in any other way to be determined by the Netherlands Central Bank. The Netherlands Central Bank shall thereby communicate the term within which the policy-holders concerned may file a written objection against the transfer with the Netherlands Central Bank.

2. If a quarter or more of the policy-holders file an objection against the intended transfer by a life insurer or funeral expenses and benefits in kind insurer within the term meant in the first subsection fixed by the Netherlands Central Bank, the latter shall withhold its permission.

3. If the Netherlands Central Bank has reservations about the transfer, it shall communicate such reservations to the life insurer or funeral expenses and benefits in kind insurer following the end of the fixed term.

4. If a quarter or more of the policy-holders has not filed an objection against the intended transfer within the term, meant in the first subsection, fixed by the Netherlands Central Bank and the Netherlands Central Bank has no reservations about the transfer, the latter shall grant its permission to the transfer to the life insurer or funeral expenses and benefits in kind insurer. The rights and obligations may then be transferred and shall be valid against all parties concerned.

5. For the purposes of this section, the policy-holder shall be taken to mean the policy-holder or its legal successor, but where an insurance payment is due and demandable, the party entitled to the payment. In the event of the transfer by a life insurer, where a policy-holder is absent from an agreement as meant in Section 2 (4) part B or Section 9 of the Pension and Savings Funds Act, the policy-holder shall be taken to mean the person who on account of terminating the ties with the undertaking of his/her employer has obtained a premium-free claim to payments. Notwithstanding the first and second sentence, the number of policy-holders shall be considered in the event of a collective life insurance contract for the purposes of the second subsection.

Section 3:120

1. The insurer that has transferred rights and obligations with the Netherlands Central Bank's permission shall publish a notification of that 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 meant in the first subsection. A non-life insurer shall also publish a notification of the transfer in any other way to be determined by the Netherlands Central Bank.

3. The content of the notifications, meant in the first and second subsection, shall be subject to the prior permission of the Netherlands Central Bank.

4. If life insurance contracts are involved in the transfer that were concluded by providing services to another Member State, the life insurer of the transfer shall also publish a notification in that Member State. In that case the third subsection shall apply *mutatis mutandis*.

5. If non-life insurance contracts underwriting risks situated in another Member State are involved in the transfer, the non-life insurer of the transfer shall also publish a notification in that Member State. In that case the third subsection shall apply *mutatis mutandis*.

6. The transfer by a non-life insurer shall be valid against all other parties involved other than the non-life insurers involved from the second day following on the publication date of the Government Gazette in which the notification is published.

7. The policy-holders 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 is published from the date following the end of this term. In that case the non-life insurer shall refund the premium paid in advance and the premium tax paid in proportion to the part of the term regarding which the premium and premium tax were paid not yet expired on the aforementioned date.

8. If a policy-holder that is a member of a mutual association established in the Netherlands or a mutual association established in a non-Member State no longer has an insurance contract with that insurer as a result of the transfer, its membership shall be cancelled by operation of law from the second day following on the publication date of the Government Gazette in which the notification is published.

9. If the membership of a mutual association established in the Netherlands or a mutual association established outside the Netherlands is acquired upon the transfer, this membership and the ensuing liability for a deficit shall end by operation of law where the insurance contract is cancelled in accordance with the seventh subsection from the day following the term meant in that subsection.

Section 3:121

This paragraph, in so far as it concerns a transfer by a life insurer or non-life insurer, shall not concern the transfer of rights and obligations under reinsurance.

§ 3.5.1a.2. Life insurers and non-life insurers established 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 established in that Member State regarding the transfer of rights and obligations under a life insurance contract, concluded from a branch situated in the Netherlands, to another life insurer established

in a non-Member State, within the scope of the pursuit of its business from a branch situated in the Netherlands, the rights and obligations may be transferred subject to the Netherlands Central Bank's permission.

2. If the legislation of another Member State does not provide for an approval procedure for a non-life insurer established in that Member State regarding the transfer of rights and obligations under a non-life insurance contract, concluded from a branch situated in the Netherlands, to another non-life insurer established in a non-Member State, within the scope of the pursuit of its business from a branch situated in the Netherlands, the rights and obligations may be transferred subject to the Netherlands Central Bank's permission and without the cooperation or permission of the parties that may derive rights from those non-life insurance contracts.

3. The Netherlands Central Bank shall not grant permission before the Supervisory Authority of the Member State in which the transferring insurer is established has declared that it approves that transfer on the Netherlands Central Bank's request.

Section 3:123

1. If a Supervisory Authority body of another Member State asks the Netherlands Central Bank for its advice on or permission to an intended transfer of rights and obligations under a life insurance contract or under a non-life insurance contract, it shall give its advice or grant its permission within three months of receiving the request.

2. If the rights and obligations are transferred to a life insurer or non-life insurer within the scope of the pursuit of its business from a branch situated in another Member State, the Netherlands Central Bank shall withhold its permission to:

a. a transfer by a life insurer to a life insurer established in another Member State, if the transfer concerns a life insurance contract concluded from a branch 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 established in another Member State if the transfer concerns a non-life insurance contract concluded from a branch situated in the Netherlands of which 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 rights and obligations are transferred to a life insurer or non-life insurer established in a non-Member State within the scope of the pursuit of its business from a branch situated in another Member State, the Netherlands Central Bank shall withhold its permission to:

a. a transfer by a life insurer to a life insurer established in a non-Member State, if the transfer concerns a life insurance contract concluded from a branch 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 established in a non-Member State, if the transfer concerns a non-life insurance concluded from a branch situated in the Netherlands of which 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 permission, granted by a Supervisory Authority of another Member State to a life insurer or non-life insurer established in that Member State to transfer rights and obligations under a life insurance or non-life insurance contract within the scope of the pursuit of its business from a branch situated in the Netherlands or within the scope of providing services to the Netherlands from a branch situated 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 under the first subsection shall publish a notification of that transfer in the Government Gazette and in any other way to be determined by the Netherlands Central Bank. The content of such publications shall be subject to the prior permission of the Netherlands Central Bank.
3. The transfer shall become effective vis-à-vis all parties involved other than the life insurers or non-life insurers concerned, at a time to be determined by the law of the Member State concerned, or, in the absence of regulations to that effect in that Member State, from the second day following the publication date of the Government Gazette in which the notification is published.
4. In the event of a transfer by a non-life insurer, the policy-holders involved in the transfer may cancel the non-life insurance contract in the manner provided for 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 established in the Netherlands or of a mutual association established outside the Netherlands is obtained by the transfer by a non-life insurer, that membership as well as the ensuing liability for a deficit shall end where the insurance contract is cancelled under the fourth subsection by operation of law in a manner provided for by the law of the Member State concerned or, in the absence of regulations to that effect in that Member State, from the day following the end of the term meant in Section 3:120 (7).
6. If a policy-holder and member of a mutual association 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 for by the law of the Member State or, in the absence of regulations to that effect in that Member State, from the second day following the publication date of the Government Gazette in which the notification is published.

Section 3:125

1. If a life insurer established in another Member State requests permission from the Supervisory Authority of the Member State in which it is established to transfer rights and obligations under a life insurance contract within the scope of the pursuit of its business from a branch situated in the Netherlands to another life insurer, it shall, without delay, publish a notification of the intended transfer in the Government Gazette and in other ways to be determined by the Netherlands Central Bank. The notification shall state the term within which the policy-holders concerned may file an objection against the transfer with the Netherlands Central Bank to be fixed by the latter.

2. If a quarter or more of the policy-holders file an objection against the transfer within the fixed term, the Netherlands Central Bank shall withhold its permission.

3. Section 3:119 (5) shall apply mutatis mutandis.

§ 3.5.1a.3. Life insurers and non-life insurers established in a non-Member State

Section 3:126

1. A life insurer established in a non-Member State that wishes to transfer the rights and obligations under a life insurance contract shall require the permission of the Netherlands Central Bank where it concerns:

a. the transfer of rights and obligations under a life insurance contract, concluded from a branch situated in the Netherlands, to another life insurer established in a Member State within the scope of the pursuit of its business from a branch situated in a Member State;

b. the transfer of rights and obligations under a life insurance contract, concluded from a branch situated in the Netherlands, to another life insurer established in a non-Member State within the scope of the pursuit of its business from a branch situated in the Netherlands;

2. Where life insurance contracts as meant in the first subsection are concluded by providing services to another Member State, the life insurer may also transfer rights and obligations, subject to the condition stated in the opening words of the first subsection, to another life insurer established in a non-Member State within the scope of the pursuit of its business from a branch situated in that Member State.

3. Notwithstanding the first and second subsection life insurers established in a non-Member State may transfer their rights and obligations under an individual life insurance contract at the written request of the policy-holder.

Section 3:127

1. A non-life insurer established in a non-Member State that wishes to transfer rights and obligations under a non-life insurance contract may do so subject to the Netherlands Central Bank's permission 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 established in a Member State within the scope of the pursuit of its business from a branch in a Member State;

b. the transfer to another non-life insurer established in a non-Member State within the scope of the pursuit of its business from a branch situated in the Netherlands.

2. Where risks situated in another Member State are underwritten by concluding the non-life insurance contracts meant in the first subsection, the non-life insurer may also transfer rights and obligations, subject to the condition stated in the opening words of that subsection, to another non-life insurer established in a non-Member State within the scope of the pursuit of its business from a branch situated in the Member State in which the risk is situated.

Section 3:128

1. The Netherlands Central Bank shall only grant permission to a transfer as meant in Section 3:126 (1 and 2) or 3:127 (1) to:
 - a. a life insurer or non-life insurer established in the Netherlands if that life insurer or non-life insurer, also in view of the intended transfer, has the minimum solvency margin at its disposal and the Netherlands Central Bank has required no restoration plan under Section 3:132 from the insurer;
 - b. a life insurer or non-life insurer established in another Member State, provided the Supervisory Authority of that Member State has declared, on the Netherlands Central Bank's request, that the life insurer or non-life insurer, also in view of the intended transfer, has the minimum solvency margin at its disposal;
 - c. a life insurer or non-life insurer established in a non-Member State, in the course of the pursuit of its business from a branch situated in the Netherlands, provided the branch concerned, also in view of the intended transfer, has the minimum solvency margin at its disposal and the Netherlands Central Bank requires no restoration plan under Section 3:132 required from the life insurer or non-life insurer.
2. If another Supervisory Authority of a Member State is entrusted with the supervision of the solvency margin of the branch concerned, meant in the first subsection under c, the Netherlands Central Bank shall only grant its permission after that Supervisory Authority has declared, on the request of the Netherlands Central Bank, that the branch, also in view of the intended transfer, has the minimum solvency margin at its disposal and that, where applicable, no plan equivalent to the restoration plan as meant in Section 3:132 is required from the branch.

Section 3:129

1. A life insurer or non-life insurer established 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 providing services to the Netherlands, with the permission of the competent Supervisory Authority to another life insurer or non-life insurer, shall inform the Netherlands Central Bank of that transfer in the manner to be determined by the Netherlands Central Bank.
2. The content of the notification, meant in the first subsection, shall be subject to the prior permission of the Netherlands Central Bank.

Section 3:130

This paragraph, in so far as it concerns a transfer by a life insurer or non-life insurer established in a non-Member State, shall not concern the transfer of rights and obligations under reinsurance.

§ 3.5.1a.4. Funeral expenses and benefits in kind insurers established in a non-designated State

Section 3:131

1. A funeral expenses and benefits in kind insurer established in a non-designated State that wishes to transfer the rights and obligations under a funeral expenses and benefits in kind insurance contract shall require the permission of the Netherlands Central Bank where it concerns the transfer of rights and obligations under a funeral expenses and benefits in kind insurance

contract concluded from a branch situated in the Netherlands to another funeral expenses and benefits in kind insurer or to a life insurer within the scope of the pursuit of its business from a branch situated 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 established in that Member State regarding the transfer of rights and obligations under a funeral expenses and benefits in kind insurance contract, concluded from a branch situated in the Netherlands, to another funeral expenses and benefits in kind insurer or life insurer within the scope of the pursuit of its business from a branch situated in the Netherlands, the rights and obligations may be transferred subject to the Netherlands Central Bank's permission.

3. The Netherlands Central Bank shall only grant its permission to a transfer as meant in the first subsection to:

a. a funeral expenses and benefits in kind insurer within the scope of the pursuit of its business from a branch situated in the Netherlands provided this funeral expenses and benefits in kind insurer, also in view of the intended transfer, has the required solvency margin at its disposal and the Netherlands Central Bank has required no restoration plan under Section 3:132 or 3:134 from the funeral expenses and benefits in kind insurer.

b. a life insurer within the scope of the pursuit of its business from a branch situated in the Netherlands provided this life insurer, also in view of the intended transfer, has the required solvency margin at its disposal and, where it concerns a life insurer established in a Member State, the Netherlands Central Bank or a Supervisory Authority of a Member State has required no restoration plan under Section 3:132 or a restoration plan equivalent to the restoration plan meant in Section 3:132 from that life insurer.

4. The Netherlands Central Bank shall grant its permission to a transfer as meant in the first subsection after the Supervisory Authority, where present, in the State where the transferring funeral expenses and benefits in kind insurer is established, has declared that it grants its permission to that transfer.

5. Notwithstanding the second and fourth subsection, a funeral expenses and benefits in kind insurer established in a non-designated State may transfer its rights and obligations under an individual funeral expenses and benefits in kind insurance contract at the request of the policy-holder.

Part 3.5.2. Restoration plan

§ 3.5.2.1. Insurers established in the Netherlands

Section 3:132

1. Where the rights of those parties involved in insurance contracts as policy-holders, insured parties or parties entitled to payments, concluded by an insurer established in the Netherlands, are threatened, the Netherlands Central Bank may require a restoration plan from the insurer that shall be subject to its approval within eight weeks or earlier as determined by the Netherlands Central Bank, unless Section 3:136 applies.

2. Rules shall be laid down under or pursuant to order in council with regard to the restoration plan.

3. Where the Netherlands Central Bank has required a restoration plan and the financial situation of an insurer deteriorates, the Netherlands Central Bank

may instruct that insurer to have a higher required minimum solvency margin than prescribed under or pursuant to order in council in order to ensure that the insurer is able to fulfil the minimum solvency margin requirements prescribed under or pursuant to order in council in the near future. The level of this higher required minimum solvency margin shall be based on a restoration plan, as meant in the first subsection, and a term may be fixed within which the higher minimum amount should be attained.

§ 3.5.2.2. Life insurers and non-life insurers established in a non-Member State

Section 3:133

Section 3:132 shall apply mutatis mutandis to life insurers and non-life insurers established in a non-Member State.

§ 3.5.2.3. Funeral expenses and benefits in kind insurers established in a non-designated State

Section 3:134

Section 3:132 shall apply mutatis mutandis to funeral expenses and benefits in kind insurers established in a non-designated State.

Part 3.5.3. Restriction of the power of disposal, recovery plan and finance scheme

§ 3.5.3.1. Insurers established in the Netherlands

Section 3:135

1. Where an insurer established in the Netherlands fails to comply with the requirements in respect of technical provisions laid down under or pursuant to Section 3:67, the Netherlands Central Bank may restrict the insurer's free disposal of its assets, irrespective of where they are situated, or prohibit the insurer from disposing of those assets other than by authorization of the Netherlands Central Bank.
2. Before taking a decision as meant in the first subsection, the Netherlands 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 or to which it provides services from its branches situated in a Member State.
3. If it has taken a decision as meant in the first subsection, the Netherlands Central Bank may request the Supervisory Authorities, meant in the second subsection, 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 violation of the restriction or prohibition, where the other party knew or could not have been unaware of the measure.
5. The Netherlands Central Bank shall lift the restriction or repeal the prohibition as soon as the insurer once again complies with the requirements laid down under or pursuant to Section 3:67.

6. The Netherlands Central Bank shall communicate the decision, meant in the first and fifth subsection, to the Supervisory Authorities meant in the second subsection.

Section 3:136

1. Where an insurer established in the Netherlands no longer complies with the requirements laid down under or pursuant to Section 3:57 (1 – 3) with regard to the minimum solvency margin, it shall submit a recovery plan for approval to the Netherlands Central Bank at the latter's request, unless the second subsection applies, within eight weeks or earlier as determined by the Netherlands Central Bank.
2. If the solvency margin has fallen below the guarantee fund, meant in Section 3:57 (4), the insurer shall submit a finance scheme for approval to the Netherlands Central Bank at the latter's request.
3. Rules shall be laid down under or pursuant to order in council with regard to the content of the recovery plan and the finance scheme, meant in the first or the second subsection.
4. The Netherlands Central Bank may, on the insurer's request, allow for changes in an approved plan and/or scheme. The Netherlands Central Bank may also require changes in the plan and/or scheme or withdraw its permission in the event of changed circumstances.
5. Where the first or second subsection is applied and the Netherlands 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 or to which it provides services from its branches in a Member State.

Section 3:137

An insurer established in the Netherlands whose solvency fails to meet the requirements laid down under or pursuant to Section 3:57 shall submit to the Netherlands Central Bank a list of assets meant in Section 3:67 and of any changes in such assets within the term fixed by and in the manner determined by the Netherlands Central Bank.

Section 3:138

1. In exceptional circumstances as meant in Section 3:136 (1) on the basis of which the financial situation of the insurer is expected to deteriorate further, just as in the case meant in Section 3:136 (2), the Netherlands Central Bank may restrict the insurer's free disposal of its assets, irrespective of where they are situated, or prohibit the insurer from disposing of those assets other than by authorization of the Netherlands Central Bank.
2. Where it concerns a life insurer or non-life insurer, the Netherlands Central Bank shall communicate its decision, where possible before it becomes effective, to the Supervisory Authority of another Member State in which the insurer has a branch or to which it provides services from its branches situated in a Member State. It may request this Supervisory Authority to take measures accordingly with regard to the assets present in the Member States concerned with reference to those assets.
3. Section 3:135 (4) shall apply mutatis mutandis.
4. The Netherlands Central Bank shall lift the restriction or repeal the prohibition as soon as the insurer once again complies with the requirements

laid down under or pursuant to this Act with regard to the solvency margin. The Netherlands Central Bank shall communicate the decision to the Supervisory Authorities meant in the second subsection.

Section 3:139

1. Where a higher minimum solvency margin is required from an insurer under Section 3:132 (3) and that insurer does not or no longer has this minimum solvency margin, the Netherlands Central Bank may, in exceptional circumstances on the basis of which the financial situation of the insurer is expected to deteriorate further, restrict the insurer's free disposal of its assets, irrespective of where they are situated, or prohibit the insurer from disposing of those assets other than by authorization of the Netherlands Central Bank.
2. Sections 3:135 (4) and 3:138 (2 and 4) shall apply mutatis mutandis.

§ 3.5.3.2. Life insurers and non-life insurers established in another Member State

Section 3:140

1. The Netherlands Central Bank shall take a decision as meant in Section 3:135 (1) or 3:138 (1) if the Supervisory Authority of another Member State in which a life insurer or non-life insurer is established so requests.
2. In urgent cases the Netherlands Central Bank may take the measures meant in the first subsection without a request to that end by the Supervisory Authority meant in that subsection where the life insurer or non-life insurer violates the regulations laid down under or pursuant to this Act.
3. The restriction or prohibition shall concern the assets present in the Netherlands. If the measure is taken at the request of the Supervisory Authority of the Member State in which the insurer is established and that body has listed those assets, the Netherlands Central Bank shall take this into consideration.
4. Section 3:135 (4) shall apply mutatis mutandis.
5. The Netherlands Central Bank shall lift the restriction or repeal the prohibition as soon as the Supervisory Authority, meant in the first subsection, so requests or if there is reason to do so.
6. The Netherlands Central Bank shall communicate the decision regarding the restriction or prohibition and the decision meant in the fifth subsection to the Supervisory Authority meant in the first subsection.
7. Where a life insurer or non-life insurer established in another Member State has a branch in the Netherlands or provides services to the Netherlands and the Supervisory Authority of the Member State has informed the Netherlands Central Bank of the withdrawal of that insurer's authorization, the Netherlands Central Bank shall publish a notification of this in the Government Gazette. This publication shall also state the restriction or prohibition imposed under the first subsection.

§ 3.5.3.3. Life insurers and non-life insurers established in a non-Member State

Section 3:141

1. Where a life insurer or non-life insurer established in a non-Member State fails to comply with the requirements in respect of technical provisions laid

down under or pursuant to Section 3:68, the Netherlands Central Bank may restrict the free disposal of the life insurer or non-life insurer of its assets relating to the business carried on by the life insurer or the non-life insurer, or prohibit the life insurer or non-life insurer from disposing of those assets other than by authorization of the Netherlands Central Bank.

2. Before taking a decision as meant in the first subsection, the Netherlands Central Bank shall communicate its intention to the Supervisory Authority of another Member State entrusted with the supervision of the solvency margin of the life insurer or non-life insurer, meant in Section 3:60 (2).

3. Section 3:135 (4) shall apply mutatis mutandis.

4. The Netherlands Central Bank shall lift the restriction or repeal the prohibition as soon as the life insurer or non-life insurer meant in the first subsection once again complies with the requirements meant in the first subsection.

5. The Netherlands Central Bank shall communicate the decision regarding the restriction or prohibition and the lifting or repealing thereof to the Supervisory Authority meant in the second subsection as well as the Supervisory Authorities of the Member States to which the life insurer or non-life insurer meant in the first subsection provides services from the Netherlands.

Section 3:142

Section 3:136 shall apply mutatis mutandis to life insurers and non-life insurers established in a non-Member State.

Section 3:143

A life insurer or non-life insurer established in a non-Member State whose solvency margin does not meet the requirements laid down under or pursuant to the provisions in this Act, or requirements laid down in another Member State if a waiver is granted in accordance with Section 3:60, shall submit a list of the assets meant in Section 3:68 any changes in them to the Netherlands Central Bank within a term fixed and in a manner determined by the latter.

Section 3:144

1. In exceptional circumstances as meant in Section 3:136 (1) on the basis of which the financial situation of the life insurer or non-life insurer is expected to deteriorate further, just as in the case meant in Section 3:136 (2), the Netherlands Central Bank may restrict the free disposal of the life insurer or non-life insurer of its assets relating to its business carried on from the Netherlands or prohibit the insurer from disposing of those assets other than by authorization of the Netherlands Central Bank.

2. The Netherlands Central Bank shall communicate its decision, where possible before it becomes effective, to the Supervisory Authority of another Member State in which the life insurer or non-life insurer has a branch or to which it provides services from its branch in a Member State. It may request this Supervisory Authority to take measures accordingly with regard to the assets present in the Member States concerned with reference those assets.

3. As regards a life insurer or non-life insurer of which the solvency margin is supervised by the Supervisory Authority of another Member State based on Section 3:60 (2), the Netherlands Central Bank shall take a decision as meant in the first subsection with regard to the assets present in this country, where

that Supervisory Authority so requests based on the fact that the life insurer or non-life insurer faces circumstances similar to those meant in the first subsection.

4. Section 3:135 (4) shall apply mutatis mutandis.

5. The Netherlands Central Bank shall lift the restriction or repeal the prohibition as soon as the life insurer or non-life insurer once more complies with the requirements laid down under or pursuant to this Act with regard to the solvency margin, or, where the decision is solely based on the third subsection, as soon as the Supervisory Authority meant in that subsection so requests. The Netherlands Central Bank shall communicate the decision to lift the restriction or repeal the prohibition to the Supervisory Authority meant in the second subsection.

Section 3:145

1. If a higher minimum solvency margin is required from a life insurer or non-life insurer established in a non-Member State under Section 3:132 (3) and the life insurer or non-life insurer does not or no longer has this minimum solvency margin at its disposal, the Netherlands Central Bank may, in exceptional circumstances on the basis of which the financial situation of the life insurer or non-life insurer will deteriorate further, restrict the free disposal of the life insurer or non-life insurer of its assets irrespective of where they are situated, or prohibit the life insurer or non-life insurer from disposing of those assets other than by authorization of the Netherlands Central Bank.

2. Section 3:144 (2 – 5) shall apply mutatis mutandis.

§ 3.5.3.4. Funeral expenses and benefits in kind insurers established in a non-designated State

Section 3:146

1. If a funeral expenses and benefits in kind insurer established in a non-designated State fails to comply with the requirements in respect of technical provisions laid down under or pursuant to Section 3:69, the Netherlands Central Bank may restrict the funeral expenses and benefits in kind insurer's free disposal of its assets relating to its business carried on from the Netherlands, or prohibit the funeral expenses and benefits in kind insurer from disposing of those assets other than by authorization of the Netherlands Central Bank.

2. Section 3:135 (4) shall apply mutatis mutandis.

3. The Netherlands Central Bank shall lift the restriction or repeal the prohibition as soon as the funeral expenses and benefits in kind insurer once more complies with the provisions laid down under or pursuant to Section 3:69.

Section 3:147

Sections 3:136, 3:137 and 3:138 (1 – 4) first sentence shall apply mutatis mutandis to funeral expenses and benefits in kind insurers established in a non-designated State.

Section 3:148

1. In exceptional circumstances on the basis of which the financial situation of the funeral expenses and benefits in kind insurer established in a non-

designated State will deteriorate further, as in the case meant in Section 3:136 (1), the Netherlands Central Bank may restrict the free disposal of the funeral expenses and benefits in kind insurer of its assets relating to its business carried on from the Netherlands, or prohibit the funeral expenses and benefits in kind insurer from disposing of those assets other than by authorization of the Netherlands Central Bank.

2. Section 3:135 (4) shall apply mutatis mutandis.

3. The Netherlands Central Bank shall lift the restriction or repeal the prohibition as soon as the funeral expenses and benefits in kind insurer once more complies with the requirements laid down under 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 established in the Netherlands

Section 3:149

1. This paragraph shall concern life insurers established in the Netherlands authorized as meant in Section 2:27 (1).

2. This paragraph 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 – 1:88 shall apply mutatis mutandis to relief institutions solely pursuing the business of a life insurer as reinsurer within the meaning of Section 3:152 (2).

Section 3:150

There shall be a fiduciary committee composed of a chair and a minimum of two and a maximum of four other members who shall:

- a. advise the Netherlands Central Bank in cases prescribed by this paragraph;
- b. on request advise the Netherlands Central Bank on decisions to be taken by the latter under this paragraph;
- c. on request assist the Netherlands Central Bank in examining opportunities of cooperation between a life insurer to which relief may be provided and another insurer, or a take-over by the latter.

2. Our Minister shall appoint, suspend and dismiss the chair and the other members of the fiduciary committee according to a procedure to be laid down by ministerial regulations which at least provides for a recommendation right by the Netherlands Central Bank and the representing organizations of the joint life insurers.

3. Rules shall be laid down by ministerial regulation on the fiduciary committee's working method.

Section 3:151

1. The Netherlands Central Bank may, having heard the fiduciary committee, decide to provide relief if:

- a. Section 3:136 (2) applies;
- b. permission has been withheld in respect of the finance scheme meant in Section 3:136 (2) of the life insurer; and
- c. the life insurer's portfolio still has a chance to survive.

2. Withholding permission in respect of the finance plan meant in the first subsection under b shall, for the purposes of this paragraph, be considered equivalent to withdrawing the permission granted to a finance plan, failing to

submit a finance plan within a term fixed by the Netherlands Central Bank, or failing to implement indicated changes in an authorized finance plan within a term fixed by the Netherlands Central Bank.

3. Relief shall be based on a plan of relief to be drawn up by the Netherlands Central Bank having heard the fiduciary committee. The life insurer and the relief institution shall act according to the plan of relief.

4. The Netherlands Central Bank shall communicate the commencement of the relief and the ancillary plan of relief to the life insurer and the relief institution.

5. The Netherlands Central Bank may, having heard the fiduciary committee, alter the plan of relief.

Section 3:152

1. The relief regulated in the plan of relief may consist of reinsurance by a relief institution or transfer of the portfolio to a relief institution.

2. In the event of reinsurance of the portfolio, the life insurer's liabilities under direct insurance shall, either fully or in part, be reinsured with a relief institution to be designated by the Netherlands Central Bank. The relief institution shall draw up the conditions of reinsurance subject to the approval of the Netherlands Central Bank.

3. In the event of transfer of the portfolio, the rights and obligations of the life insurer under direct insurance shall be transferred to a relief institution to be designated by the Netherlands Central Bank. The relief institution shall thereby increase the solvency margin to the level required under Section 3:57.

4. The relief institution's articles of association, including any amendments, shall be subject to the prior permission of the Netherlands Central Bank.

Section 3:153

The Netherlands Central Bank may give 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 Netherlands Central Bank. The instructions shall not concern the reinsurance conditions, meant in Section 3:152 (2) final sentence.

Section 3:154

1. The portfolio of the life insurer under the plan of relief shall only be transferred after the district court within whose area of jurisdiction the life insurer is established has authorized the transfer on the request of the Netherlands Central Bank.

2. The Netherlands Central Bank may file an application to grant or withdraw authorization with the district court without the intervention of a local counsel.

3. The district court shall authorize the transfer unless the Netherlands Central Bank in all reasonableness has been unable to conclude that the life insurer's portfolio has a chance to survive.

4. The Netherlands Central Bank shall send a copy of its application for authorization to the life insurer.

5. The district court shall hear the Netherlands Central Bank's petition for authorization with the utmost despatch in a closed hearing based on a civil procedure.

6. The district court may inspect or have inspected the business information and records of the life insurer.

7. The district court shall issue no order before the life insurer and the Netherlands 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 district court may withdraw the authorization on the request of the Netherlands Central Bank.
10. The Netherlands Central Bank shall inform the life insurer and the relief institution that the transfer has been authorized.
11. The order is solely open to an appeal in cassation. Apart from the Netherlands Central Bank, the life insurer, regardless of whether it appeared before the district court, may lodge an appeal in cassation against the court order under this paragraph.
12. Appeal in cassation against the order shall be lodged within fourteen days of the date of the court order. The appeal in cassation shall be heard in chambers and with the utmost despatch. The judgment shall not be pronounced in open court.

Section 3:155

1. The life insurer implementing the plan of relief shall transfer to the relief institution the assets serving to cover the technical provisions in so far as those provisions concern the liabilities that will be reinsured or transferred.
2. The life insurer shall transfer no more than the assets required for reinsurance or transfer of the portfolio.
3. If more assets are required for the relief than those meant in the first subsection the life insurer shall also transfer to the relief institution supplementary assets 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 concern the portfolio transfer by the life insurer to the relief institution.

Section 3:156

1. An amount of not more than €213,610,176 shall be made available for providing relief, it being understood that:
 - a. a maximum amount of € 106,805,088 may be made available per relief situation; and
 - b. the available amount regarding which, according to the Netherlands Central Bank on effecting the relief, having heard the fiduciary committee, there is a significant risk that it shall not be redeemed, may at no time exceed € 106,805,088.
2. Every year, Our Minister shall adjust the amounts meant in the first subsection to the percentage development of the total of the minimum amounts of the solvency margin of the life insurers, meant in Sections 3:149 (1) and 3:159 as evidenced by the most recent annual financial reporting of the Netherlands Central Bank.
3. Our Minister shall publish the amounts meant in the first subsection in the Government Gazette in January of the year to which they refer.
4. If as a result of the relief provided no maximum amounts, meant in the first subsection, are available for subsequent relief, the Netherlands Central Bank shall determine the maximum amounts that will be available.
5. The Netherlands Central Bank, having heard the fiduciary committee, shall determine the amount to be made available, where appropriate, for providing

relief. The Netherlands Central Bank shall, per life insurer, determine to what extent that amount shall be issued by subscribing for shares in the relief institution and to what extent it shall be issued to the relief institution in the form of a subordinated loan. The life insurers to which this paragraph applies shall subscribe for the shares and issue the subordinated loan. No declaration of no-objection as meant in Section 3:95 opening words and first subsection under d is required for subscribing for shares, holding them or exercising the control pertaining to those shares. The Netherlands Central Bank shall determine the conditions to be attached to the subordinated loan.

6. The life insurers to which this paragraph applies shall provide the amount determined under the fifth subsection. To that end the Netherlands Central Bank shall impose an assessment on the life insurers.

7. The sixth subsection shall not concern relief institutions and life insurers to which relief is provided or has been provided and still have commitments on that account.

8. The Netherlands Central Bank may grant a waiver to a life insurer of the sixth subsection, first sentence, if the contribution means that the solvency margin of that life insurer falls below the level required under Section 3:57 and the life insurer does not seem able to increase the solvency margin to the required size within a reasonable period.

9. Where a life insurer no longer complies with its commitments ensuing from the sixth subsection, the Netherlands Central Bank may issue a writ of execution, which the preliminary relief judge of the district court of the area of jurisdiction within which the Netherlands Central Bank is established may declare enforceable and which may then be enforced by applying the regulations of the Dutch Code of Civil Procedure by the Netherlands Central Bank.

10. Further rules shall be laid down under or pursuant to order in council with regard to relief under this paragraph.

Section 3:157

1. Section 3:119 (1 – 4) first sentence shall not apply if the relief institution transfers the portfolio to another life insurer.

2. The Netherlands Central Bank shall grant permission to the transfer to the relief institution if it has no reservations in respect of the transfer.

Section 3:158

1. The Netherlands Central Bank, having heard the fiduciary committee, shall determine when the provision of relief will be terminated.

2. The Netherlands Central Bank shall inform the life insurer and the relief institution of the termination of the provision of relief.

3. If a credit balance remains after terminating the provision of relief, whereby a portfolio has been transferred, the relief institution shall pay this to the life insurer to which the relief has been provided.

4. After terminating the provision of relief the relief institution shall in any event cancel the shares that do not represent the minimum capital, meant 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 established in a non-Member State

Section 3:159

Paragraph 3.5.4.1. shall apply mutatis mutandis to life insurers established in a non-Member State which carry on the business of a life insurer from branches situated in the Netherlands, in so far as it concerns direct insurance contracts concluded from a branch situated in the Netherlands, unless a waiver has been granted to the branch within the meaning of Section 3:60.

Part 3.5.5 Emergency regulations and reorganization measures and winding-up procedures according to foreign law

§ 3.5.5.1. Financial undertakings established in the Netherlands

Section 3:160

1. Where the solvency or liquidity of a credit institution established in the Netherlands authorized as meant in Section 2:11 (1) shows signs of a dangerous development and no improvement of that development may in all reasonableness be expected, the district court within whose area of jurisdiction the credit institution is established may, on petition of the Netherlands Central Bank, declare the credit institution to be in a situation requiring emergency regulations in the interest of the combined creditors.
2. Where the solvency or liquidity of a credit institution is such that it is in all reasonableness to be expected that it will be unable to honour all or part of its obligations in respect of the funds received by it, the district court within whose area of jurisdiction the credit institution is established may, on petition of the Netherlands Central Bank, declare the credit institution to be in a situation requiring emergency regulations 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 established in the Netherlands, the district court within whose area of jurisdiction the insurer is established may, on petition of the Netherlands Central Bank, declare the credit institution to be in a situation requiring special measures.

Section 3:162

1. The Netherlands Central Bank shall send a copy of the petition to the credit institution or insurer established in the Netherlands and communicate the substance of the petition to the Supervisory Authorities of the other Member States in which the branch of the credit institution or insurer is situated or to which it provides services from its branches situated in another Member State.
2. The district court shall hear the petition of the Netherlands Central Bank to declare emergency regulations applicable with the utmost despatch in a closed hearing based on civil procedures, unless provided otherwise by this Act.
3. The district court shall issue no order as meant in Section 3:160 (1) or 3:161 until the financial undertaking, meant in the first subsection, and the Netherlands Central Bank have been heard, or at least properly summoned.
4. On declaring the emergency regulations applicable, the district 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 Netherlands Central Bank may nominate candidates for the appointment of the administrator or administrators.

5. If the petition is allowed, 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 national newspapers to be designated by the district court and at least two daily newspapers of each Member State to be designated by the district court in which a branch of the undertaking concerned is situated or to which it provides services. The extract shall state the name and registered office of the financial undertaking, meant in the first subsection, the place of domicile or the offices of the administrators as well as the date of the order. The publication in daily national newspapers shall be in the official language or languages of the Member State concerned. The publication in the Official Journal of the European Union and the daily national newspapers of each Member State in which the undertaking concerned has a branch or to which it provides services shall furthermore state that the emergency regulations, barring exceptions, shall be governed by Dutch law, the legal basis, that the Netherlands 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 thereafter, the district court may authorize the administrators to:

- a. transfer all or part of the obligations of the credit institution, which it has assumed in the pursuit of the business of a credit institution to acquire funds or of all or part of the obligations of the insurer under the insurance contracts;
- b. wind up in full or in part the business of the credit institution or the insurer's portfolio; or
- c. carry out both the transfer as meant under a and the winding-up as meant under b.

2. In the event of authorization with regard to an insurer, the authorization, meant under b and c, shall also cover the winding-up of the own funds of the undertaking of the insurers, as long as it has not appeared that the insurer has negative own funds.

3. The Netherlands Central Bank may state in the petition, meant in Sections 3:160 (1 or 2) and 3:161, which of the authorizations meant in the first subsection is most appropriate in its opinion.

Section 3:164

1. If the authorization covers the transfer as meant in Section 3:163 (1) opening words and under a, it may, on recommendation of the delegated judge or on the request of the administrators, be extended to an authorization as meant in Section 3:163 (1) opening words and under c.

2. The court registrar shall send a copy of the recommendation or the request to the credit institution and the insurer established in the Netherlands and, where it concerns a recommendation, also to the Netherlands Central Bank.

3. Before rendering a decision on a recommendation or a request as meant in the first subsection, the district court shall provide the Netherlands Central

Bank with the opportunity to express its view in that respect. The Netherlands Central Bank shall express its view with the utmost despatch.

4. After the Netherlands Central Bank has expressed its view under the third subsection, or, where it has not availed itself of the opportunity meant in the third subsection, the district court shall hear the recommendation or the request, meant in the first subsection, with the utmost despatch in a closed hearing on the basis of civil procedure, unless otherwise provided by this Act.

Section 3:165

1. The district court shall be competent to take cognizance or to appoint experts to take cognizance of business data and records of the credit institution or insurer concerned.

2. The person having the data at its disposal shall issue the data or information within a term to be fixed by the court.

Section 3:166

The Netherlands Central Bank shall send a copy of the recommendation or the request meant in Section 3:164 (1) to the credit institution or the insurer established in the Netherlands and communicate the substance of it to the Supervisory Authorities of the other Member State in which the financial undertaking concerned has a branch or to which it provides services from its branches situated in other Member States.

Section 3:167

The orders meant 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 district court grants authorization as meant in Section 3:163 (1), it shall fix the period of validity at eighteen months at most. If an authorization to transfer is extended to an authorization to transfer and wind up, the district court shall determine the period of validity of the authorization to transfer and wind up in respect of the remaining period of validity of the authorization to transfer. Prior to the expiry of that term the administrators may once or more than once extend the period of validity up to eighteen months at most. The petition shall be heard in the same manner as the petition to declare emergency regulations applicable. So long as, upon expiry of the period of validity of the authorization, no decision has been rendered on a petition for extension, the authorization shall remain in full force and effect.

Section 3:169

1. The court registrar shall, without delay, inform the Netherlands Central Bank of an order as meant in Section 3:160 (1 or 2), 3:161 or 3:164 (1).

2. The Netherlands Central Bank shall, without delay, after being informed of the order, inform the Supervisory Authorities of all other Member States as well as of the possible consequences in the case concerned. The Netherlands Central Bank shall also, without delay, inform the systems designated by Our Minister under Section 212d of the Bankruptcy Act of the order.

Section 3:170

1. The administrators shall, without delay, inform all known creditors in writing of an authorization as meant in Section 3:163 (1) opening words and under b or c.
2. The notification to the creditors with a claim under the insurance contract shall also state the most important consequences of the authorization for the insurance contracts and the rights and obligations of the creditor with a claim under the insurance contract.
3. Each creditor may submit its claim and written comments concerning its claim to the administrators.

Section 3:171

1. The notification, meant in Section 3:170 (1), to a known creditor with its habitual place of residence or domicile in a Member State, that has a claim under the insurance contract, shall be in the official language or languages of that Member State.
2. The notification, meant in Section 3:170 (1), to a known creditor with its habitual place of residence or domicile in a Member State that has a claim other than the claim, meant in the first subsection, shall be in the Dutch language by means of a form with a heading in all official languages of the Member States stating “Notification to submit comments on claims. Deadlines”.
3. Each creditor with its habitual place of residence or domicile in a Member State may submit its claim and written comments on its claim in an official language of that Member State with explanatory notes with a heading which reads “Submission of a claim”, or “Submission of comments on a claim”.
4. In the event of emergency regulations with regard to a credit institution, the administrators may demand the translation into the Dutch language of the submission of the claim and the accompanying comments.

Section 3:172

If an authorization is granted as meant in Section 3:163 (1) opening words and under b or c:

- a. the administrators shall on a regular basis and in an appropriate manner inform all known creditors of in any event the course of the emergency regulations; and
- b. the Netherlands Central Bank shall inform the Supervisory Authorities of the other Member States that so request of the course of the emergency regulations.

Section 3:173

1. The delegated judge shall supervise the transfer or the winding-up, meant in Section 3:163 (1) and the administration of the estate.
2. As regards the orders of the delegated judge, issued in the implementation of the provisions of the first subsection, Sections 66 and 67 (1) of the Bankruptcy Act shall apply mutatis mutandis. Section 67 (2) of the Bankruptcy Act shall apply mutatis mutandis in so far as the sections listed there are declared applicable mutatis mutandis under Section 3:180 (2). The provisions in those sections with regard to the liquidator or the bankrupt shall apply mutatis mutandis to the administrators or the insurer.

Section 3:174

1. An order as meant in Section 3:160 (1 or 2), 3:161, 3:163 (1) or 3:164 (1) is immediately enforceable. An order as meant in Section 3:160 (1 or 2) or 3:161 shall have retroactive effect to the start of the date on which it was pronounced. The enforceability and retroactive effect meant in this subsection shall be valid notwithstanding any provision against them.
2. Notwithstanding the first subsection an order as meant in the first subsection shall not have retroactive effect in respect of:
 - a. a given transfer instruction, settlement instruction 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 meant in Section 212a under b of the Bankruptcy Act issued by a credit institution or insurer established in the Netherlands; or
 - b. a financial security contract as meant in Section 51 of Book 7 of the Dutch Civil Code or a transfer or establishment of a lien or any payment, delivery or other legal act based on that or ensuing from any such contract which is required for the full performance of the contract concluded by a credit institution or insurer established in the Netherlands, where this transfer instruction or financial security contract is given or concluded prior to the time at which the district court issued the order.
3. The first subsection and Section 3:175 (1) may not be invoked against third parties in respect of:
 - a. a transfer instruction a settlement instruction or any payment, delivery, settlement or other legal act ensuing from such instruction and issued by a financial undertaking as meant in the second subsection which is required for the full execution of the instruction, where the transfer instruction is issued after the time at which the district court issued an order as meant in the first subsection, if the instruction is executed in a system as meant in Section 212a under 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 meant in Section 212a of the Bankruptcy Act may show proof that at the time of executing the instruction it was not aware or did not need to be aware of the order issued by the district court; or
 - b. a financial security contract as meant in Section 51 of Book 7 of the Dutch Civil Code or a transfer or establishment of a lien or any payment, delivery or other legal act based on that or ensuing from any such contract concluded by the financial undertaking as meant in the second subsection, if the financial security contract is concluded after the time at which the district court issued an order as meant in the first subsection, if the party being granted security may show proof that at the time of concluding that contract it was not aware or did not need to be aware of the order issued by the district court.
4. The second and third subsection shall apply mutatis mutandis to security rights established under the law of property granted by financial undertakings as meant in the second subsection in relation to participation in a system as meant in Section 212a under b of the Bankruptcy Act on behalf of a central bank as meant in Section 212a under h of the Bankruptcy Act or on behalf of a financial undertaking participating in the system.
5. Notwithstanding the first subsection an order meant in that subsection shall not have retroactive effect in respect of a financial security contract as meant in Section 51 of Book 7 of the Dutch Civil Code or a transfer or establishment of a lien on the basis of that or any payment, delivery, settlement or other legal act ensuing from such a contract which is required for the full

performance of that contract, concluded by financial undertakings as meant in the second subsection prior to the time at which the district court issued the order.

6. The first subsection may not be invoked against third parties in respect of a financial security contract as meant in Section 51 of Book 7 of the Dutch Civil Code or any payment, delivery, settlement or other legal act ensuing from such a contract which is required for the full performance of that contract, concluded by a financial undertaking as meant in the second subsection after the time at which the district court issued the order, if the party being granted security may show proof that it was not aware and did not need to be aware of the order issued by the district 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 directors, supervisory board members of the credit institution or insurer established in the Netherlands or, in the event of an insurer established in the Netherlands, representatives of the insurer.

2. The administrators shall safeguard the interests of the combined creditors.

3. The managing directors and the supervisory board members of the credit institution or insurer or the representatives of the insurer shall provide all assistance requested by the administrators.

4. If more than one administrator has been appointed, their acts, to be valid, shall require the consent of the majority, or, in the event of a tie, an order of the administrative section of the district court. The administrator who has, in the order of the district court as meant in Section 3:163 (1), been assigned a particular range of duties shall have power to act independently within the limits of said range.

5. The district court may at any time, after having heard or in any event having properly summoned the credit institution or insurer established in the Netherlands and the Netherlands Central Bank, dismiss and replace a management company, add one or more associate administrators to that administrator, all this at the request of the administrator himself/herself, the other administrators, the Netherlands Central Bank or one or more creditors or *ex officio*.

6. The administrators may authorize the managing directors of a credit institution or insurer or the representative of an insurer to perform certain acts.

7. A resolution of shareholders or members of the financial undertaking, meant in the first subsection, shall only be valid subject to the approval of the administrators.

8. The administrators may adopt a resolution if a resolution of shareholders or members required for an act under the articles of association or rules of the financial undertaking meant in the first subsection is not adopted or approved according to the articles of association or rules.

9. The administrators may authorize persons to exercise all or part of the powers conferred on them under the first subsection. The administrators may petition the district court to determine the remuneration for the authorized persons. The administrators shall publish a notification of the name and domicile of the authorized persons as well as the withdrawal of authorization in the Government Gazette.

10. The district court shall determine fees of the persons designated under Section 3:165 (1), the fees and disbursements of the administrators as well as the other costs of the emergency regulations and they shall constitute a debt of the estate.

11. The administrators may dismiss the managing directors, supervisory board members and representatives on behalf of the financial undertaking meant in the first subsection. The agreed or statutory notice periods shall be observed for this dismissal, it being understood 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 means that the credit institution or insurer established in the Netherlands cannot be required to fulfil its obligations existing prior to declaring the emergency regulations applicable.

2. Executions that commenced prior to declaring the emergency regulations applicable shall be suspended.

3. Attachments made prior to declaring the emergency regulations applicable shall lapse.

4. Section 36 of the Bankruptcy Act shall apply mutatis mutandis to the obligations meant in the first subsection.

5. The provision in the first subsection shall not concern:

a. claims covered by a lien or mortgage on property of the financial undertaking, meant in the first subsection;

b. instalments of hire-purchase; and

c. claims regarding the performance of financial security contracts as meant in Section 51 of Book 7 of the Dutch Civil Code.

6. Where claims covered by a lien or a mortgage cannot be recovered from property subject to those rights the order shall be valid against those claims.

Section 3:177

1. Sections 52 and 234 – 241a of the Bankruptcy Act shall apply mutatis mutandis.

2. Notwithstanding the first subsection, a payment made after adoption of the emergency regulations in respect of a credit institution which is not a natural person has been published shall release the estate from its obligations if the party that made the payment shows proof that it was not aware of the adoption of the emergency regulations, in case authorization was granted as meant in Section 3:163 (1) opening words and under b, or, in case authorization was granted as meant in Section 3:163 (1) opening words and under c, from the time at which the assets of the financial undertaking concerned were converted into cash with a view to distributing the proceeds among the creditors, shareholders or members of the financial undertaking concerned.

Section 3:178

1. The administrators may make payments in respect of the claims not ensuing from acts with the credit institution or insurer established in the Netherlands after the emergency regulations are declared applicable, to the

extent that this is to be deemed justified considering the liquidity position of the financial undertaking concerned and provided the provisions in the second subsection and Sections 3:179 – 3:184 are observed.

2. Section 3:171 shall apply mutatis mutandis, it being understood that the reference to the notification meant in Section 3:170 should read: the notification meant in Section 3:179 (2) second sentence.

Section 3:179

1. The administrators shall draw up a list showing the nature and the amount of the assets and liabilities of the financial undertaking, the names and places of domicile of the creditors as well as the amount of the claims of each creditor. A copy of this list, certified by the administrators, shall be deposited at the registry of the district court.

2. On request of the administrators the delegated judge shall fix the day on which the claims shall be presented at the latest and, furthermore, the day, hour and place of the meeting for verification of the claims. Once the delegated judge has rendered a decision on the petition, meant in the first sentence, the administrators shall, without delay, inform the known creditors of this in writing. This notification shall in any event also include the consequences of filing a claim after the term, meant in the first sentence, the statement that the claim must be filed with the administrators and, where appropriate, the statement that a claim is laid to a preferential right or a property right. In the case of creditors with an insurance claim the notification shall furthermore 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.

3. In the case of a credit institution, non-life insurer or life insurer established 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 newspapers and two national newspapers to be designated by the district court of the each Member State where the undertaking concerned has a branch or to which it provides services and, in the case of a funeral expenses and benefits in kind insurer established in the Netherlands, in the Government Gazette and in at least two Dutch newspapers to be designated by the district court.

4. Sections 110 – 113 and 213l (e) of the Bankruptcy Act shall apply mutatis mutandis.

Section 3:180

1. The administrators shall deposit the list of provisionally recognized claims and the list of disputed claims at the registry of the district court, where they shall be available for free inspection by anyone for a period of fourteen days prior to the meeting for verification of the claims. Before the commencement of this period, the administrators shall inform in writing all known creditors of this depositing, accompanied by an invitation to the meeting for verification of the claims. The administrators shall also publish a notification of the depositing in one or more newspapers to be designated by the delegated judge.

2. Sections 59, 119 – 122, 123 – 127, 129, 132 – 137, 260 (1), 261 and 262 (1 and 3) of the Bankruptcy Act shall apply mutatis mutandis to the verifications.

The provisions relating to the liquidator and the bankrupt shall apply to the administrators and the financial undertaking meant in the first subsection. Notwithstanding the period mentioned in Section 127 (1) of the Bankruptcy Act, the period for presenting claims as fixed under Section 3:179 (2) shall apply. The claims which become due and demandable on or after the date of the order meant in Sections 3:160 (1 and 2) and 3:161 shall be verified at the amount which they represent at the time when these claims become due and demandable, provided that in respect of claims which are subject to Section 3:195 (1) this shall only apply where said provision has not already been applied to these claims.

Section 3:181

1. The managing directors of the financial undertaking meant in Section 3:178 shall attend the meeting for verification of the claims in order to furnish any and all information regarding the reasons for the position meant in Section 3:160 or 3:161 and the position of the estate which the delegated judge asks them to give. 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 asked of the managing directors and the answers given by them shall be recorded in the minutes.
3. Notwithstanding the provision in Section 121 (4) of the Bankruptcy Act, the minutes of the meeting for verification of the claims shall, in respect of the obligations of the financial undertaking meant in the first subsection, which shall be transferred under Section 3:194 (1) or Section 3:195 (1), shall only be final and conclusive where the relevant conditions remain unchanged.

Section 3:182

1. After the verification of the claims, the administrators shall draw up a list of 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 verified 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 dividends, an amount of liquid assets shall be segregated in respect of the claims which are disputed or the preferential nature of which is disputed or which have been verified conditionally, which amount shall be at least equal to the total of the amounts which, upon application of this section, may be paid in respect of these claims, or, alternatively, these dividends shall be secured in another manner.

Section 3:183

1. The administrators shall deposit the list of dividends approved by the delegated judge at the registry of the district court, where it shall be available for free inspection by the creditors for a period of fourteen days. The administrators shall publish a notification of the depositing in one or more newspapers to be designated by the delegated judge and, where it concerns a credit institution, life insurer or non-life insurer established in the Netherlands, in the Official Journal of the European Union. The administrators

shall also inform in writing each of the recognized and conditionally admitted creditors, stating the amounts reserved for them.

2. Sections 184 – 186, 187 (1, 2 and 3), 189 and 191 of the Bankruptcy Act shall apply mutatis mutandis, it being understood that any provision relating to the liquidator shall apply to the administrators and that, notwithstanding the period meant in Section 184 of the Bankruptcy Act, the period mentioned in the first subsection, first sentence of this section shall apply.

3. Where as a result of the objections raised under Section 184 or Section 186 of the Bankruptcy Act a verification dispute arises, Section 3:182 shall apply mutatis mutandis to the claims relating to these objections and the dividends may subsequently be paid after, where necessary, the amounts of dividends included in the list deposited for inspection have been modified accordingly, with due observance of the other provisions in Section 3:178 – 3:184. Where the objections raised do not lead to a verification dispute, the dividends may be paid, with due observance of the provisions of the order issued in respect of the objections, as soon as the order has become final.

Section 3:184

Notwithstanding Section 3:182 (2) final sentence, dividends may only be paid in respect of verified claims which become due and demandable on or after the date of the order as meant in Sections 3:160 (1 and 2) and 3:161 to the extent that Section 3:163 (1) has not already been applied to these claims. Until that time, an amount of liquid assets shall be segregated which shall at least equal the total of the amounts which, upon application of this section, may be paid in respect of these claims, or, alternatively, these dividends shall be secured in another manner.

Section 3:185

According to their authorization meant in Section 3:163 (1), the administrators, irrespective of any stipulations in the articles of association of the credit institution or insurer established 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 established in the Netherlands and the guarantee capital of an insurer established in the Netherlands; and
- b. impose and collect assessments up to the maximum stipulated in the articles of association of an insurer established in the Netherlands which is a mutual association established in the Netherlands.

Section 3:186

During the period of the emergency regulations, the administrators shall, without delay, report their activities to the district court at the end of every three months, and on terminating the emergency regulations. The administrators shall send a copy of this report to Our Minister and to the Netherlands Central Bank.

Section 3:187

For the purposes of Sections 194, 342 and 343 of the Dutch Penal Code, the bankruptcy shall be considered equivalent to the legal position of a credit institution or insurer established in the Netherlands as long as the emergency regulations are valid in respect of this financial undertaking.

Section 3:188

Repealed.

Section 3:189

1. The district court may terminate the emergency regulations on petition of the administrators or ex officio.
2. The administrators may file a petition to terminate the emergency regulations with the district court without the intervention of a local counsel.
3. The district court shall only issue an order after having heard, or at least properly summoned, the credit institution or insurer established in the Netherlands and the Netherlands Central Bank.
4. The administrators shall publish a notification of the termination of the emergency regulations in the Government Gazette and, where it is a credit institution, life insurer or non-life insurer established in the Netherlands, in the Official Journal of the European Union and in one or more newspapers to be designated by the district court.
5. The Netherlands Central Bank shall communicate the termination of the emergency regulations to the Supervisory Authorities of other Member State in which the financial undertaking meant in the first subsection has a branch or to which it provides services from its branches situated in other Member States.

Section 3:190

Where the notification meant in Section 3:189 (4), 3:194 (3) or Section 212o (1) of the Bankruptcy Act concerns all commitments of the credit institution or insurer established in the Netherlands, the powers conferred on the administrators by declaring the emergency regulations applicable shall cease by operation of law by this notification.

Section 3:191

1. The Netherlands Central Bank may lodge an appeal against orders of the district court under Sections 3:160 (1 or 2), 3:161, 3:163 (1) and 3:194, where the petition to declare the emergency regulations applicable is dismissed, within eight days of the date of the dismissal.
2. The credit institution or insurer established in the Netherlands may either lodge an appeal, where it has been heard in respect of the petition to declare the emergency regulations applicable, within eight days of the date of said declaration, or, where it has not been heard, lodge an objection against the orders of the district court under 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. Upon allowing the petition, the order shall be pronounced in open court and an extract shall, without delay, be published in the Government Gazette, the Official Journal of the European Union, and in at least two Dutch newspapers to be designated by the Court of Appeal and at least two national newspapers to be designated by the Court of Appeal in the Member States in which the undertaking concerned has a branch or to which it provides services. The extracts shall state the name and registered office of the financial undertaking concerned, the place of domicile or the offices of the administrators and the date of the order. The publication in the national newspapers shall be in the official language or languages of the Member State concerned. The

publication in the Official Journal of the European Union and the national newspapers of each Member State in which the undertaking concerned has a branch or to which it provides services shall furthermore state that the emergency regulations, barring exceptions, shall be governed by Dutch law, the legal basis, that the Netherlands 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 Netherlands Supreme Court, the subject of the decision and the legal basis.

5. An appeal in cassation against this decision in appeal or on opposition must be lodged within fourteen days of the date of the judgment. The third subsection shall apply *mutatis mutandis*.

6. Where the order to declare the emergency regulations applicable is set aside by the judgment on opposition, on appeal or on appeal in cassation, the acts performed by the administrators prior to or on the day on which the publication requirement in the Government Gazette under Section 3:192 (1) is satisfied shall nevertheless be valid and binding *vis-à-vis* the credit institution or insurer.

Section 3:192

1. As soon as a decision declaring the emergency regulations applicable is set aside by a judgment on opposition, on appeal or on appeal in cassation, and, in the first two cases, the period within which to lodge an appeal or appeal in cassation has expired without having used such legal remedy, the registrar of the court having set aside the judgment shall communicate that judgment to the administrators. The administrators shall publish a notification of it in the journals meant 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 per cent of:

- a. the creditors with a claim against the credit institution established in the Netherlands under the contract concluded by the credit institution in the pursuit of its business as a credit institution to receive funds; or
- b. the creditors with an insurance claim;

are members, may present claims to the administrators.

2. The administrators shall hear the association before exercising the powers meant in Sections 3:194 or 3:195, where it has shown, at a time to be fixed by the administrators, to the satisfaction of the administrators that it satisfies the requirements laid down in the first subsection.

Section 3:194

1. The district court, upon granting authorization as meant in Section 3:163 (1) or thereafter, may grant a special authorization to the administrators, on petition, to change, upon transfer of rights and obligations under contracts assumed by the credit institution established in the Netherlands in the pursuit of its business as a credit institution to receive funds, those contracts, it being understood that the clauses in the contracts from which claims ensue as meant in Section 3:176 (5), claims covered by a lien or a mortgage on property of the credit institution or instalments of hire-purchase cannot be changed.

2. As regards the special authorizations meant in the first subsection, Sections 3:162 (1 – 3 and 5) first sentence, 200, 203, 204 (1 and 2) first sentence, and 209 (1) shall apply mutatis mutandis.
3. As soon as the obligations 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 newspapers to be designated by the district court.
4. The transfer and the change shall be valid against all other interested parties other than the credit institutions from the second day following on the date of the Government Gazette in which the notification is published.
5. The Netherlands Central Bank shall communicate the transfer to the Supervisory Authorities of the other Member State in which the credit institution has a branch or to which it provides services from its branches situated in other Member States.
6. The changes as meant in the first subsection shall not affect the payments made under Section 3:178 prior to the day of filing the petition for authorization meant in the first subsection.
7. During the winding-up, meant in Section 3:163 (1) opening words and under b or c, the district court shall arrange, where required, the particulars and consequences of the winding-up, including a reduction of the validity of current contracts, after obtaining the opinion of the administrators and the Netherlands Central Bank.

Section 3:195

1. The district court, upon granting authorization as meant in Section 3:163 (1) or thereafter, may grant a special authorization to the administrators, on petition:
 - a. to change the insurance contract upon the transfer of rights and obligations under the insurance contract concluded by the insurer established in the Netherlands; or
 - b. to reduce the period of validity of the insurance contract.
2. Sections 3:162 (1 – 3 and 5) first sentence, 3:165, 3:168, 3:169 (1 and 2) first sentence and 3:174 (1) shall apply mutatis to the special authorization meant in the first subsection.
3. As soon as the rights and obligations have been transferred under the authorization meant in Section 3:163 (1), the administrators shall publish a notification of the transfer and, where they have performed acts under the special authorization meant in the first subsection of those acts, in the Government Gazette and in at least two newspapers to be designated by the district court and, where it is a life insurer or non-life insurer established in the Netherlands, in the Official Journal of the European Union. The administrators may, where they deem it to be in the interest of policy-holders, insured persons or persons entitled to payments, also publish the transfer and acts meant in any other way.
4. The transfer and the change meant in the first subsection under a shall be valid against all other interested parties other than the insurer concerned from the second day following on the date of the Government Gazette in which the notification is published. Sections 3:112 – 3:114, 3:116 and 3:120 shall not concern transfers.

5. Where it is a life insurer or non-life insurer, the Netherlands Central Bank shall communicate the transfer to the Supervisory Authorities of the other Member State in which the financial undertaking concerned has a branch or to which it provides services from its branches situated in other Member States.

6. The changes as meant in the first subsection under a shall not affect the payments made under Section 3:178 prior to the day of filing the petition for authorization meant in the first subsection.

7. The changes as meant in the first subsection under a concerning a life insurance contract may not result in additional obligations on the part of policy-holders.

Section 3:196

In the event of the transfer of rights and obligations under an authorization as meant in Section 3:163 (1) or a special authorization as meant in Section 3:195 (1) the insurer established in the Netherlands shall transfer the assets serving to represent the technical provisions in so far as those provisions relate to the obligations which are transferred.

Section 3:197

A transfer of rights and obligations under an authorization as meant 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 estate debts, in accordance with the provisions of the Bankruptcy Act, shall, according to the nature of the estate debt concerned, be apportioned to each part of the estate or solely be deducted from a certain asset of the estate. Estate debts shall in any event include the registration fees in a public register in another Member State.

2. Without prejudice to the provision in the first subsection and except for claims covered by a lien or a mortgage, in the event of emergency regulations in respect of a non-life insurer established in the Netherlands the following claims shall be recovered from the estate in the following sequence:

a. the insurance claims with respect to periodic payments relating to sickness, injury or the death of natural persons, arisen under a non-life insurance contract, except for payments, owed under a reinsurance contract to another insurer, and of payments relating to pensions, pledged to employees or former employees of the insurer or their surviving dependants;

b. the claims of employees and former employees and the claims of their surviving dependants as well as the claims of their surviving dependants with regard to the instalments of pensions already matured, in so far 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 the instalments of pensions maturing in the future;

d. the claims of employees with regard to the wages of the preceding year and all they are owed over the current year, as well as the amount of the increase of those wages under 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

under Title 10, Book 7 of the Dutch Civil Code in connection with the termination of the employment contract;

e. the insurance claims with respect to non-periodic payments relating to sickness, injury or the death of natural persons, arisen under a non-life insurance contract, except for payments owed under a reinsurance contract to another insurer;

f. the insurance claims with respect to payments relating to loss or damage other than meant under a and e, arisen under non-life insurance contracts;

g. the claims to refund amounts paid without a legal basis or the payment of which the legal basis has fallen away, which payment was made presumably as payment of premiums.

3. Without prejudice to the provision in the first subsection and except for claims covered by a lien or a mortgage, in the event of emergency regulations in respect of a life insurer established in the Netherlands the following claims shall be recovered from the estate in the following sequence:

a. the claims of employees and former employees and the claims of their surviving dependants as well as the claims of their surviving dependants with regard to the instalments of pensions already matured, in so far 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 the instalments of pensions maturing in the future;

c. the claims of employees with regard to the wages of the preceding year and all they are owed over the current year, as well as the amount of the increase of those wages under 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 under Title 10, Book 7 of the Dutch Civil Code in connection with the termination of the employment contract;

d. the insurance claims and rights relating to payments that have arisen or shall arise from a life insurance contract;

e. the claims to refund amounts paid without a legal basis or the payment of which the legal basis has fallen away, which payment was made presumably as payment of premiums.

4. Without prejudice to the provision in the first subsection and except for claims covered by a lien or a mortgage, in the event of emergency regulations in respect of a funeral expenses and benefits in kind insurer established in the Netherlands the following claims shall be recovered from the estate in the following sequence:

a. the claims of employees and former employees and the claims of their surviving dependants as well as the claims of their surviving dependants with regard to the instalments of pensions already matured, in so far 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 the instalments of pensions maturing in the future;

c. the claims of employees with regard to the wages of the preceding year and all they are owed over the current year, as well as the amount of the increase of those wages under 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 under Title

10, Book 7 of the Dutch Civil Code in connection with the termination of the employment contract;

d. the insurance claims and rights relating to payments that have arisen or shall arise from a funeral expenses and benefits in kind insurance contract concluded from a branch situated in the Netherlands;

5. Any claims not mentioned in the second, third and fourth subsections shall be paid after the claims meant in the second, third and fourth subsections have been paid and, in the event of claims meant in the second and third subsections, where it is established that such claims shall not arise in the future, in proportion to every claim, except for rules of preference recognized by law.

6. The rules of preference meant in the fifth subsection shall apply to both claims of creditors with their habitual place of residence, domicile or registered office in the Netherlands and to similar claims of creditors with their habitual place of residence, domicile or registered office in another Member State.

Section 3:199

1. Where the relief meant in Section 3:152 (1) has already commenced when the emergency regulations are declared applicable, the Netherlands Central Bank may continue to provide the relief in the form meant in Section 3:152 (3).
2. The administrators shall provide assistance in this respect.

Section 3:200

1. The Netherlands Central Bank may, having heard the fiduciary committee, commence the relief meant in Section 3:152 (1) during the emergency regulations provided the portfolio of the life insurer has an opportunity to survive.
2. The administrators shall provide assistance in this respect.
3. In the case meant in the first subsection the relief shall be restricted to the mandatory transfer of the portfolio meant in Section 3:152 (3).
4. Section 3:151 (1 and 2) does not apply.

Section 3:201

1. The Netherlands Central Bank shall inform the administrators if the mandatory transfer of the portfolio cannot be realized after commencing the relief in accordance with Section 3:151 (2) or 3:200.
2. As long as the Netherlands Central Bank has not informed the administrators, the district court shall not grant a special authorization to the administrators as meant in Section 3:195 (1).
3. The district court shall also refrain from granting the special authorization as long as the Netherlands Central Bank has not commenced the relief, unless the Netherlands Central Bank has informed the administrators of the circumstance that there is no reason to commence such relief.

§ 3.5.5.2. Financial undertakings established in another Member State

Section 3:202

Where the solvency or liquidity of a branch situated in the Netherlands of an unauthorized credit institution established in another Member State is such that it is in all reasonableness to be expected that it will be unable to honour

all or part of its obligations in respect of the funds received by it, the district court within whose area of jurisdiction the credit institution is established or the branch is situated may, on petition of the Netherlands Central Bank, declare the credit institution to be in a situation requiring emergency regulations in the interest of the combined creditors.

Section 3:203

If special measures are required in the interest of the combined creditors in winding up the business of a branch of an unauthorized life insurer or non-life insurer established in another Member State, the district court within whose area of jurisdiction the insurer is established may, on petition of the Netherlands Central Bank, declare the credit institution to be in a situation requiring special measures.

Section 3:204

Sections 3:162 – 3:201 shall apply mutatis mutandis to credit institutions as meant in Section 3:202 and insurers as meant in Section 3:203 in so far as those sections refer to the financial undertakings concerned.

Section 3:205

1. The court registrar shall inform the Netherlands Central Bank where the district court deems it necessary to adopt a reorganization measure in relation to a branch situated in the Netherlands of a credit institution established in another Member State authorized to carry on the business of a credit institution under Section 2:15.
2. After being informed in accordance with the first subsection, the Netherlands Central Bank shall inform the Supervisory Authorities of all other Member States.

§ 3.5.5.3. Financial undertakings established in a non-Member State with a branch situated in the Netherlands

Section 3:206

1. Where the solvency or liquidity of a credit institution with a branch situated in the Netherlands and established in a non-Member State authorized as meant in Section 2:20 (1) or the solvency or liquidity of a branch situated in the Netherlands of a credit institution established in a non-Member State authorized as meant in Section 2:20 (1) shows signs of a dangerous development and no improvement of that development may in all reasonableness be expected, the district court within whose area of jurisdiction the branch is situated may, on petition of the Netherlands Central Bank, declare the credit institution to be in a situation requiring emergency regulations in the interest of the combined creditors.
2. Where the solvency or liquidity of a credit institution with a branch situated in the Netherlands and established in a non-Member State or of a branch situated in the Netherlands of a credit institution established in a non-Member State is such that it is in all reasonableness to be expected that it will be unable to honour all or part of its obligations in respect of the funds received by it, the district court within whose area of jurisdiction the branch is situated may, on petition of the Netherlands Central Bank, declare the credit institution

to be in a situation requiring emergency regulations 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 situated in the Netherlands of such an insurer, the district court within whose area of jurisdiction the insurer is established may, on petition of the Netherlands Central Bank, declare the life insurer or non-life insurer to be in a situation requiring special measures.

Section 3:208

1. The Netherlands Central Bank shall send a copy of the petition to the credit institution meant in Section 3:206 (1 and 2), life insurer and non-life insurer, meant in Section 3:207, and to the branch and communicate the substance of the petition to:
 - a. the Supervisory Authorities of the other Member States to which it provides services from a branch situated in the Netherlands;
 - b. where it is a life insurer or non-life insurer and a Supervisory Authority of another Member State is entrusted with the supervision of the solvency margin of the insurer concerned, that Supervisory Authority.
2. Section 3:162 (2 – 4) shall apply mutatis mutandis.
3. The registrar of the district court shall send a copy of the summons meant in Section 3:162 (3) to a financial undertaking as meant in the first subsection and the branch.
4. If the petition is allowed, 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 national newspapers to be designated by the district court. The extract shall state the name and registered office and the branch of the financial undertaking, the registered office and the place of domicile or the offices of the administrators as well as the date of the order.

Section 3:209

Where authorization is granted as meant in Section 3:163 (1) opening words and under b or c, the administrators shall on a regular basis and in an appropriate manner inform all known creditors whose claim is the result of an obligation ensuing from the operation of a branch situated in the Netherlands of in any event the course of the emergency regulations.

Section 3:210

1. As regards a credit institution, life insurer or non-life insurer established in a non-Member State with a branch situated in the Netherlands, the authorization shall concern the business carried on from the branches situated in the Netherlands.
2. For the purposes of the first subsection it may be determined under or pursuant to order in council which assets and liabilities should be considered to belong to that business.

Section 3:211

1. Sections 3:163 – 3:168, 3:171, 3:173 and 3:174, 3:175 (1 – 6 and 9 – 13), 3:176 – 3:201 shall apply mutatis mutandis to emergency regulations declared applicable under Section 3:206 or 3:207, it being understood that for “creditors” one should read “creditors whose claim is the result of an obligation ensuing from the operation of the branch situated in the Netherlands”.
2. Notwithstanding the first subsection, no publication of a notification of the orders meant in Section 3:179 (3) or the depositing meant in Section 3:183 (1) is required in the Official Journal of the European Union.

Section 3:212

1. Where authorization as meant in Section 3:163 (1) opening words and under b is granted, the registrar of the district court shall, without delay, inform the Netherlands Central Bank of the substance of the order and of its possible consequences in the case concerned. Thereupon, the Netherlands Central Bank shall, without delay, inform the Supervisory Authorities of the other Member States in which a branch is situated of the credit institution, meant in Section 3:206 (1 or 2) or of the insurer, as meant in Section 3:207, of the order and of its possible consequences in the case concerned. The Netherlands Central Bank shall inform the Supervisory Authorities of the other Member States of the order.
2. Where authorization as meant in Section 3:163 (1) opening words and under c is granted, and the administrator proceeds to wind up, the latter shall, without delay, inform the Netherlands Central Bank of the substance of the order and of its possible consequences in the case concerned. Thereupon, the Netherlands Central Bank shall, without delay, inform the Supervisory Authorities of the other Member States in which a branch of the credit institution, meant in Section 3:206 (1 or 2) or of the insurer, as meant in Section 3:207, is situated of the order and of its possible consequences in the case concerned. The Netherlands Central Bank shall inform the Supervisory Authorities of the other Member States of the order.
3. The district court shall seek to coordinate the joint actions with the judicial or administrative bodies of the other Member States.

Section 3:213

1. Where a credit institution, life insurer or non-life insurer established in a non-Member State has a branch situated in the Netherlands and one or more branches situated in other Member States, the district court and the Netherlands Central Bank shall seek to coordinate their actions with the administrative and judicial bodies competent to take reorganization measures and the Supervisory Authorities of the other Member States.
2. In the case meant in the first subsection the administrators appointed in the Netherlands shall seek to coordinate their actions with the administrators in the other Member States having authorized the credit institution.

Section 3:214

Without prejudice to Section 3:166, the Netherlands Central Bank shall also send a copy as meant in that section to the branch situated in the Netherlands.

Section 3:215

1. The administrators shall, without delay, inform in writing the creditors meant in Section 3:209 of an authorization as meant in Section 3:163 (1) opening words and under b and c.
2. The notification to the creditors as meant in Section 3:209 with an insurance claim shall also state the most important consequences of the authorization for the insurance contracts and the rights and obligations of the creditor with an insurance claim.
3. Each creditor as meant in Section 3:209 may present its claim and written comments relating to its claim to the administrators.

Section 3:216

Where authorization is granted as meant in Section 3:163 (1) opening words and under b or c, the administrators shall on a regular basis and in an appropriate manner inform the creditors meant in Section 3:209 of in any event the course of emergency regulations, and the Netherlands Central Bank shall inform the Supervisory Authorities of the other Member States, at their request, of the course of the emergency regulations.

Section 3:217

The administrators, under the authorization as meant in Section 3:163 (1), irrespective of any stipulations in that respect in the articles of association of the credit institution, life insurer or non-life insurer established 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 assessments up to the maximum stipulated in the articles of association of an insurer or non-life insurer which is a mutual association established in the Netherlands.

Section 3:218

The assessment of the size of the own funds of a credit institution, life insurer or non-life insurer established in a non-Member State shall solely be based on the assets and liabilities that should be regarded as part of the business carried on from its branches situated in the Netherlands.

Section 3:219

The Netherlands 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 established in a non-Member State provides services from a branch situated in the Netherlands; and
- b. where it is a life insurer or non-life insurer and another Supervisory Authority of another Member State is entrusted with the supervision of the solvency margin of the insurer concerned: that Supervisory Authority.

Section 3:220

1. The district court, upon granting authorization as meant in Section 3:163 (1) or thereafter, may grant a special authorization to the administrators, on petition, to change, upon transfer of rights and obligations under contracts

assumed by the credit institution established in a non-Member State in the pursuit of its business as a credit institution to receive funds from a branch situated in the Netherlands, those contracts, it being understood that the clauses in the contracts from which claims ensue as meant in Section 3:176 (5), claims covered by a lien or a mortgage on property of the credit institution or instalments of hire-purchase cannot be changed.

2. As regards the special authorizations meant in the first subsection, Sections 3:162 (1 – 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 obligations have been transferred, the administrators shall publish a notification of the transfer and, where clauses in the contracts have been changes, of those changes, in the Government Gazette, in the Official Journal of the European Union and in at least two newspapers to be designated by the district court.

4. Section 3:194 (4 – 7) shall apply mutatis mutandis.

Section 3:221

1. The district court, upon granting authorization as meant in Section 3:163 (1) or thereafter, may grant a special authorization to the administrators, on petition, to:

a. change the insurance contract concluded by the transfer of rights and obligations under that insurance contract by the insurer established in the Netherlands;

b. reduce the period of validity of that insurance contract.

2. As regards the special authorizations meant in the first subsection, Sections 3:162 (1 – 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 under the authorization meant in Section 3:163 (1) have been transferred, the administrators shall publish a notification of the transfer and, where they have performed acts under the special authorization meant in the first paragraph, of such acts in the Government Gazette, and in at least two newspapers to be designated by the district court.

4. Section 3:195 (4 – 7) shall apply mutatis mutandis.

§ 3.5.5.4. Funeral expenses and benefits in kind insurers established outside the Netherlands and with a branch 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 obligation ensuing from the operation of the branch situated in the Netherlands of such an insurer, the district court within whose area of jurisdiction the funeral expenses and benefits in kind insurer is established may, on petition of the Netherlands Central Bank, declare the life insurer or non-life insurer to be in a situation requiring special measures.

2. If the petition is allowed, 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 district court. The extract shall state the name and

registered office of the funeral expenses and benefits in kind insurer and the branch, the registered office and the place of domicile or the offices of the administrators as well as the date of the order.

Section 3:223

1. The Netherlands Central Bank shall send a copy of the petition to the funeral expenses and benefits in kind insurer meant in Section 3:222 (1) and to the branch.
2. Section 3:162 (2 – 4) shall apply mutatis mutandis.
3. The registrar of the district court shall send a copy of the summons meant in Section 3:162 (3) to the branch.
4. If the petition is allowed, 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 district court. The extract shall state the name and registered office of the funeral expenses and benefits in kind insurer and the branch, the registered office and the place of domicile or the offices of the administrators as well as the date of the order.

Section 3:224

1. Sections 3:163 – 3:168, 3:171, 3:173, 3:174, 3:175 (1 – 6 and 9 – 11), and 3:176 – 3:198 (1) shall apply mutatis mutandis to the emergency regulations declared applicable under Section 3:222, it being understood that for “creditors” one should read “creditors whose claim is the result of an obligation ensuing from the operation of the branch situated in the Netherlands”.
2. Notwithstanding the first subsection, no notification of the orders meant in Section 3:179 (3) or the depositing meant in Section 3:183 (1) has to be published in the Official Journal of the European Union.

Section 3:225

1. As regards a funeral expenses and benefits in kind insurer established outside the Netherlands and with a branch situated in the Netherlands, the authorizations meant in Sections 3:163 (1) and 3:194 (1) relate to the business carried on from a branch situated in the Netherlands.
2. For the purposes of the first subsection, it may be determined under or pursuant to order in council which assets and liabilities should be regarded as forming part of that business.

Section 3:226

The assessment of the size of the own funds of a funeral expenses and benefits in kind insurer established in a non-Member State shall solely be based on the assets and liabilities that should be regarded as forming part of the business carried on from its branches situated in the Netherlands.

Section 3:227

Without prejudice to Section 3:166 the Netherlands Central Bank shall also send a copy as meant in that section to the branch situated in the Netherlands, and, where it is known to the Netherlands Central Bank that the funeral expenses and benefits in kind insurer has a supervised status in the

country in which it is established, it shall communicate the substance of the petition to the Supervisory Authorities of that State.

Section 3:228

1. The administrators shall, without delay, inform all known creditors whose claim is the result of an obligation ensuing from the operation of the branch situated in the Netherlands in writing of an authorization as meant in Section 3:163 (1) opening words (b and c).
2. The notification to the creditors with a claim under the funeral expenses and benefits in kind insurance contract shall also state the most important consequences of the authorization for the funeral expenses and benefits in kind insurance contracts and the rights and obligations of the creditor with a claim under the funeral expenses and benefits in kind insurance contract.
3. Each creditor as meant in the first subsection may submit its claim and written comments concerning its claim to the administrators.

Section 3:229

1. The administrators may make payments in respect of claims not ensuing from acts with the funeral expenses and benefits in kind insurer established outside the Netherlands after the emergency regulations have been declared applicable, in so far as this is deemed justified considering the liquidity position of the funeral expenses and benefits in kind insurer and provided the provisions in the second subsection and Sections 3:230 – 3:235 are observed.
2. Section 3:171 shall apply mutatis mutandis, it being understood that the reference to the notification meant in Section 3:170 should read: the notification meant in Section 3:230 (2) second sentence.

Section 3:230

1. The administrators shall draw up a statement showing the nature and the amount of the assets and liabilities of the funeral expenses and benefits in kind insurer, the names and places of domicile of the creditors meant in Section 3:228 as well as the amount of the claims of each creditor. A copy of this statement certified by the administrators shall be deposited at the registry of the district court.
2. On request of the administrators the delegated judge shall fix the date by which the claims should be presented at the latest and, furthermore, the day, hour and place of the meeting for verification of the claims. Once the delegated judge has rendered a decision on the petition, meant in the first sentence, the administrators shall, without delay, inform the known creditors meant in Section 3:228 of this in writing. This notification shall in any event include the consequences of filing a claim after the deadline, meant in the first sentence, the statement that the claim must be filed with the administrators and, where appropriate, the statement that claim is laid to a preferential right or a property right. In the case of creditors meant in Section 3:228 with a funeral expenses and benefits in kind insurance claim the notification shall furthermore 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 newspapers to be designated by the district court.

4. Sections 110 – 113 of the Bankruptcy Act shall apply mutatis mutandis, it being understood that any provisions relating to the liquidator and the bankrupt shall apply to the administrators and the funeral expenses and benefits in kind insurer.

Section 213l (1) under e of the Bankruptcy Act shall apply mutatis mutandis.

Section 3:231

1. The administrators shall deposit a copy of the list of conditionally admitted creditors and of the list of disputed claims at the registry of the district court and they shall be available there for free inspection by the creditors for a period of fourteen days prior to the meeting for verification of the claims. The administrators shall inform in writing all creditors meant in Section 3:228 prior to the commencement of that period of the depositing accompanied by a further invitation to the meeting for verification of the claims. The administrators shall also publish a notification in one or more newspapers to be designated by the delegated judge.

2. Sections 59, 119 – 122, 123 – 127, 129, 132 – 137, 260 (1), 261 and 262 (1 and 3) of the Bankruptcy Act shall apply mutatis mutandis to the verification. The provisions relating to the liquidator and the bankrupt shall apply mutatis mutandis to the administrators and the funeral expenses and benefits in kind insurer. Notwithstanding the period mentioned in Section 127 (1) of the Bankruptcy Act, the period provided under Section 3:230 (2) shall apply to the presentation of claims. The claims that become due and demandable on or after the date of the order meant in Section 3:222 (1) shall be verified in terms of the value they represent at the time at which the claims become due and demandable, it being understood that this shall only apply to claims falling under the scope of Section 3:194 in so far as that provision has not already been applied to those claims.

Section 3:232

1. The directors of the funeral expenses and benefits in kind insurer or the actual managers of the branch situated in the Netherlands shall attend the meeting for verification of the claims in order to furnish any and all information regarding the reasons for the position meant in Sections 3:222 (1) and the position of the estate which the delegated judge asks them to give. Each of the creditors meant in Section 3:228 may request the delegated judge to ask the directors or the actual managers for information in respect of certain points to be specified by it.

2. The questions asked of the directors and the answers given by them shall be recorded in the minutes.

3. Notwithstanding the provision in Section 121 (4) of the Bankruptcy Act, the minutes of the meeting for verification of the claims shall, in respect of the obligations of the funeral expenses and benefits in kind insurer, meant in the first subsection, which shall be transferred under Section 3:195 (1), only be final and conclusive where the relevant conditions remain unchanged.

Section 3:233

1. Following the verification of the claims the administrators shall draw up a list of 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 meant in Section 3:228, and also the verified 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 dividends, an amount of liquid assets shall be segregated in respect of the claims which are disputed or the preferential nature of which is disputed or which have been verified conditionally, which amount shall be at least equal to the total of the amounts which, upon application of this section, may be paid in respect of these claims, or, alternatively, these dividends shall be secured in another manner.

Section 3:234

1. The administrators shall deposit the list of dividends approved by the delegated judge at the registry of the district court and they shall be available there for free inspection by the creditors for a period of fourteen days. The administrators shall publish a notification of the depositing in one or more newspapers to be designated by the delegated judge. The administrators shall also inform in writing each of the recognized and conditionally admitted creditors, stating the amounts reserved for them.
2. Sections 184 – 186, 187 (1, 2 and 3), 189 and 191 of the Bankruptcy Act shall apply mutatis mutandis, it being understood that any provision relating to the liquidator shall apply to the administrators and that, notwithstanding the period meant in Section 184 of the Bankruptcy Act the period mentioned in the first subsection, first sentence of this section shall apply.
3. Where as a result of the objections raised under Section 184 or Section 186 of the Bankruptcy Act a verification dispute arises, Section 3:233 shall apply mutatis mutandis to the claims relating to these objections and the dividends may subsequently be paid after, where necessary, the amounts of dividends included in the list deposited for inspection have been modified accordingly, with due observance of the other provisions in Section 3:229 – 3:235. Where the objections raised do not lead to a verification dispute, the dividends may be paid, with due observance of the provisions of the order issued in respect of the objections, as soon as the order has become final.

Section 3:235

Notwithstanding Section 3:233 (2) final sentence, dividends may only be paid in respect of verified claims which become due and demandable on or after the date of the order as meant in Sections 3:206 (1 and 2) and 3:207 to the extent that Section 3:194 (1) has not already been applied to these claims. Until that time, an amount of liquid assets shall be segregated which shall at least equal the total of the amounts which, upon application of this section, may be paid in respect of these claims, or, alternatively, these dividends shall be secured in another manner.

Section 3:236

Where an authorization has been granted as meant in Section 3:163 (1) opening words and under b or c, the administrators shall on a regular basis

and in an appropriate manner inform all known creditors meant in Section 3:228 of in any event the course of the emergency regulations.

Section 3:237

As soon as the emergency regulations are terminated, the administrators shall publish a notification thereof in the Government Gazette.

§ 3.5.5.5. Provisions of private international law

Section 3:238

The references in this paragraph to a Member State in which a financial undertaking is established shall also be considered as references to a Member State in which a branch of a financial undertaking established in a non-Member State is situated.

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 recognized by operation of law, provided the credit institution, life insurer or non-life insurer is established in that Member State.
2. The decision shall have legal effects within the Netherlands from the time that it has legal effects in the Member States in which the credit institution, life insurer or non-life insurer is established.

Section 3:240

The decision to adopt a reorganization measure, the reorganization measure itself and the legal effects of the reorganization measure shall be governed by the law of the Member State in which the reorganization measure was adopted, unless otherwise provided by law.

Section 3:241

1. The decision to adopt a reorganization 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, belonging to the credit institution or insurer and which are situated within the territory of a Member State other than the Member State in which the credit institution, life insurer or non-life insurer is established at the time of opening the reorganization proceedings.
2. For the purposes of the first subsection property rights shall in any event be taken to mean:
 - a. the right to dispose of goods or have them disposed of and to obtain satisfaction from the proceeds of or income from those goods, in particular by virtue of a lien or a mortgage;
 - b. the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;
 - 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 the first subsection a property right shall be considered equivalent to the right, recorded in a public register and enforceable against third parties, under which a property right as meant in the first subsection may be obtained.

4. For the purposes of this subsection the Member State in which the good is situated shall be:

- a. the Member State under whose authority the register concerned is kept in respect of assets subject to registration and rights to goods subject to registration;
- b. the Member State within which territory the asset is situated in respect of items of property, in so far as not falling under the scope of a; and
- c. the Member State within which territory the third party-debtor is established in respect of claims.

Section 3:242

1. In case a credit institution or insurer has purchased an item of property, the decision to adopt a reorganization measure shall not affect the seller's rights based on a reservation of title, if 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 in which the credit institution, life insurer or non-life insurer is established at the time at which the decision to adopt the reorganization measure has legal effects.

2. In case the financial undertaking has sold an item of property, the decision to adopt a reorganization measure shall not constitute grounds for rescinding or terminating the sale, and shall not prevent the purchaser from acquiring title where at the time at which the adoption of the reorganization measure has legal effects the item of property is situated within the territory of a Member State other than the Member State in which the credit institution, life insurer or non-life insurer is established.

3. Section 3:241 (4) shall apply mutatis mutandis.

Section 3:243

The decision to adopt the reorganization measure shall not affect the right of a person that is both creditor and debtor of a credit institution or insurer to set off its debt with the claim against the credit institution or insurer under the right applicable to the claim of the credit institution or insurer.

Section 3:244

Sections 3:241 – 3:243 shall not preclude any action for voidness, voidability or unenforceability of a legal act for being detrimental to all creditors.

Section 3:245

Notwithstanding Section 3:240 the effects of a reorganization measure for employment contracts and other legal relationships relating to labour shall be governed solely by the law of the Member State applicable to that contract or legal relationship.

Section 3:246

Notwithstanding Section 3:240 the effects of a reorganization measure for a contract entitling a party to enjoy or obtain immovable property shall be

governed solely by the law of the Member State within which territory the immovable property is situated.

Section 3:247

Notwithstanding Section 3:240 the effects of a reorganization measure for the rights of a credit institution or insurer to a good subject to registration shall be governed by the Member State under whose authority the register is kept.

Section 3:248

1. Notwithstanding Section 3:240, without prejudice to Section 3:241, the effects of a reorganization measure for the rights and obligations of the parties to a regulated market as meant in Article 1 under 13 of the Investment Services Directive shall be governed solely by the right applicable to the market.

2. The first subsection shall not preclude an action for the voidness, voidability or unenforceability of a legal act for being detrimental to all creditors.

Section 3:249

Notwithstanding Section 3:240 the legal validity of a legal act carried out for a consideration by the credit institution or insurer after adopting a reorganization measure through which the former disposes of a good subject to registration, transferable or other securities whose existence or transfer presupposes entry in a register or account laid down by law or which are placed in a central deposit system governed by the law of the Member State under whose authority the register, the account or the deposit system is kept or, where it is immovable property, by the law of the Member State in which the immovable property is situated.

Section 3:250

Notwithstanding Section 3:240 the effects of the reorganization measure for a pending lawsuit relating to a good of which the credit institution or insurer has been divested shall be governed solely 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 creditors where a person who has benefited from a legal act shows proof that:

- a. the said act is governed by the law of a Member State other than the Member State in which the credit institution, life insurer or non-life insurer is established; and
- b. that law does not allow any means of challenging that act in the relevant case.

Section 3:252

Notwithstanding Section 3:240 the effects of a reorganization measure, adopted in respect of a credit institution, for the effects of a set-off contract as meant in Section 212a (m) of the Bankruptcy Act and novation shall be governed solely by the law applicable to that contract.

Section 3:253

Notwithstanding 3:240, without prejudice to Section 3:254, the consequences of a reorganization measure, adopted in respect of a credit institution, for a contract whereby one party, i.e. the purchaser, binds itself to the subsequent transfer of an equal amount of assets of the same kind to the seller, shall be governed solely by the law of the Member State applicable to the contract.

Section 3:254

Notwithstanding Section 3:240 the effects of a reorganization measure, adopted in respect of a credit institution, for exercising rights on financial instruments whose existence or transfer presupposes the entry in a register, an account or in a central securities deposit system kept or situated in a Member State, shall be governed solely by the law of the Member State in which the register, the account or the central securities deposit system in which such rights are recorded is kept or is situated.

Section 3:255

1. The administrator from a Member State other than the Netherlands in which the credit institution, life insurer or non-life insurer is established shall, in the Netherlands, be entitled to exercise all the powers it has in the Member State in which the credit institution, life insurer or non-life insurer is established, except for the right of the use of force or the right to rule on legal proceedings or disputes. The manner in which such rights shall be exercised in the Netherlands shall be governed by Dutch law.

2. Where under the law of the Member State in which the credit institution, life insurer or non-life insurer is established persons are appointed to represent the administrator or otherwise assist the latter, they may exercise the powers they are entitled to 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 judicial or administrative authorities competent in respect of the reorganization measures of the Member State.

2. The administrator from another Member State shall, on demand of anyone vis-à-vis whom it wishes to exercise its powers, show a translation of the copy in the Dutch language.

Section 3:257

The registrar of the district court of The Hague, shall, on request of an administrator from another Member State, enter the data relating to a reorganization measure, adopted in another Member State, in the register meant in Section 19a (1) of the Bankruptcy Act.

Part 3.5.6 Investor-compensation scheme and deposit-guarantee scheme

§ 3.5.6.1. Financial undertakings established in the Netherlands

Section 3:258

1. This paragraph shall concern:
 - a. banks authorized as meant in Section 2:11;
 - b. investment firms authorized as meant in Section 2:96; and
 - c. financial institutions with a certificate of supervised status as meant in Section 3:110 and which may provide investment services.
2. The withdrawal of an authorization as meant in the first subsection shall not affect the applicability of this paragraph to claims of investors against the financial undertaking relating to investment acts that were carried out at the time of withdrawing the authorization and shall not affect the applicability of this paragraph to existing claims of creditors against the financial undertaking at the time of withdrawing the authorization.

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 Article 1 under item 1 of the Investment Services Directive, or a service as mentioned in the annex, part C, item 1 to that Directive, where the undertaking concerned is unable to comply with its obligations ensuing from claims relating to that investment service or that service. Banks to which Section 2:13 or 3:33 applies, investment firms and financial institutions shall bear the costs of the investor-compensation system.
2. There is a deposit-guarantee scheme which seeks to compensate deposit holders where a bank is unable to comply with its obligations ensuing from claims of deposits. Banks shall bear the costs of the deposit-guarantee scheme.
3. Rules shall be laid down under or pursuant to order in council with regard to:
 - a. categories of financial undertakings and persons falling under the scope of the guarantee scheme or excluded from such scheme;
 - b. categories of claims falling under the scope of a guarantee scheme, the way in which they should be presented and determined, the conditions for compensation of such claims, the amount of the compensation, the payments to investors or creditors and the way in which financial undertakings furnish information in that respect.
4. Further rules shall be laid down under or pursuant to order in council with regard to:
 - 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 Netherlands Central Bank shall decide to apply a guarantee scheme where a financial undertaking as meant in Section 3:258 (1) is unable to make payments. This decision shall be rendered:
 - a. as soon as possible and not later than 21 days after the Netherlands Central Bank has, for the first time, signalled that the financial undertaking has omitted to redeem a deposit that is due and demandable or to comply with an obligation that is due and demandable ensuing from a claim of an investor, relating to an investment service or service as meant in Section 3:259 (1); or

b. as soon as possible after a judicial body in a Member State, for reasons directly relating to the financial situation of the financial undertaking, has rendered a decision leading to the suspension of the opportunity for investors or deposit holders to recover their claim from the financial undertaking concerned.

2. A financial undertaking is unable to pay where the Netherlands Central Bank signals that that financial undertaking for reasons directly relating to its financial situation does not appear to be able to redeem deposits of deposit holders or to comply with obligations ensuing from claims of investors relating to an investment service or service as meant in Section 3:259 (1) and is not expected to be able to do so within the foreseeable future.

3. The Netherlands Central Bank shall publish a notification of the decision in the Government Gazette.

Section 3:261

1. In the application of a guarantee scheme the Netherlands Central Bank shall, with due regard to the provision under 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 Netherlands Central Bank shall ensure payment of the claims of investors and deposit holders eligible for compensation by virtue of this paragraph. Payment shall not be made later than three months after the time at which an investor or deposit holder has presented to the Netherlands Central Bank its claims against the financial undertaking unable to pay. In special cases the Netherlands Central Bank may extend the term, not more than three times and each time for a period of not more than three months.

3. The Netherlands Central Bank shall assume the rights which an investor or deposit holder has by virtue of its claim against the financial undertaking unable to pay to the extent that it has paid the claim of that investor or deposit holder.

Section 3:262

The Netherlands Central Bank shall, with due regard to the provision under Section 3:259 (4) (b), determine the contributions of the financial undertakings, meant in Section 3:258 (1) to the guarantee scheme. The financial undertakings obliged to contribute shall make these contributions within a term fixed by the Netherlands Central Bank.

Section 3:263

1. A financial undertaking as meant in Section 3:258 (1) shall, on request, make available information on the applicable guarantee scheme. Where a scheme similar to a guarantee scheme is applicable to a branch situated in another Member State, the financial undertaking shall, on request, also make available information on that scheme.

2. The information must be such that whether or not potential investors and deposit holders shall be enabled 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 is a similar scheme applicable to a branch, in the official language or one of the official languages of the Member State in which the branch concerned is situated.

Section 3:264

1. A financial undertaking may not use information on a guarantee scheme for advertising purposes.
2. The first subsection shall not concern financial undertakings which state in an advertisement that a guarantee scheme applies to them.

Section 3:265

1. The Netherlands Central Bank shall recover the claims against the financial undertaking unable to pay which it has assumed under Section 3:261 (3) from that financial undertaking.
2. Where a credit balance remains after the application of a guarantee scheme, the Netherlands Central Bank shall, with due regard to the provision under Section 3:259 (4) (b), make that available to the financial undertakings which have made a contribution as meant in Section 3:262.

§ 3.5.6.2. Financial undertakings established in another Member State

Section 3:266

1. Paragraph 3.5.6.1 shall apply mutatis mutandis to:
 - a. investment firms established in another Member State which provide investment services from a branch situated in the Netherlands and which under the second subsection have opted for additional membership of the investor-compensation scheme;
 - b. banks established in another Member State which carry on their business from a branch situated in the Netherlands and which under the third subsection have opted for additional membership of the deposit-guarantee scheme.
2. An investment firm established in another Member State which provides investment services from a branch situated in the Netherlands may, where the cover of a investor-compensation scheme 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 addition to the cover of the scheme in the Member State in which it is established.
3. A bank established in another Member State which carries on its business from a branch situated in the Netherlands may, where the cover of a deposit-guarantee scheme applicable in that Member State is more limited than the cover of the deposit-guarantee scheme, opt for membership of the deposit-guarantee scheme in addition to the cover of the scheme in the Member State in which it is established.
4. A bank or a financial institution established in another Member State which carries on its business from a branch situated in the Netherlands authorized to provide investment services under Section 2:15 and Section 2:112 may, where the cover of an investor-compensation scheme in that Member State is more limited than the cover of the investor-compensation scheme, opt for membership of the investor-compensation scheme in addition to the cover of the scheme in the Member State in which it is established.
5. Further rules shall be laid down under or pursuant to order in council regarding membership of a guarantee scheme by a bank or investment firm established in another Member State which has a branch situated in the Netherlands.

§ 3.5.6.3. *Financial undertakings established in a non-Member State*

Section 3:267

1. The Netherlands Central Bank may, whether or not on application, decide that the provisions under paragraph 3.5.6.1 relating to the investor-compensation scheme shall apply mutatis mutandis to an investment firm established in a non-Member State which carries on its business from a branch situated in the Netherlands authorized as meant in Section 2:96 or to a bank established in a non-Member State which carries on its business from a branch situated in the Netherlands, authorized under 2:22 to provide investment services and where no investor-compensation scheme is applicable to the claims of investors against those investment firms in relation to investment acts whose cover is equivalent to the cover meant in Section 11 (1) of Directive no. 97/9/EC of the European Parliament and the Council of 3 March 1997 on investor-compensation schemes (OJ L 84).
2. The Netherlands Central Bank may, whether or not on application, decide that the provisions under paragraph 3.5.6.1 relating to the deposit-guarantee scheme shall apply mutatis mutandis to banks established in a non-Member State which carry on their business from a branch situated in the Netherlands, where the claims of creditors against those banks are not covered by a deposit-guarantee scheme whose cover is equivalent to the cover meant in Section 6 (1) of Directive no. 94/19/EC of the European Parliament and the Council of 30 May 1994 on the deposit-guarantee schemes (OJ L 135).
3. A bank or investment firm established in a non-Member State which carries on its business and provides investment services from a branch situated in the Netherlands shall, on application, make available information on the applicable guarantee scheme.
4. The information meant in the third subsection shall be made available in the Dutch language and must be such that investors or potential investors and creditors or potential creditors are enabled to check whether the claim is covered by a guarantee scheme or a similar foreign scheme.

CHAPTER 3.6 ADDITIONAL PROVISIONS REGARDING FINANCIAL GROUPS

Section 3.6.1 Definitions and general

Section 3:268

1. In this chapter and the provisions based on this chapter the following shall be taken to mean:
 - a. participating undertaking: a parent undertaking, an undertaking which holds a unit or an undertaking linked with another undertaking by being managed on a unified central basis by that undertaking pursuant to contract entered into by these undertakings or a provision in the articles of association of one or more of these undertakings, or by the fact that administrative, management or Supervisory Authorities of these undertakings are composed for the majority of the same persons during the financial year and until the consolidated accounts are drawn up;
 - b. unit:

- 1^o. a unit as meant in Section 24c (1) first sentence, or second subsection of Book 2 of the Dutch Civil Code; or
- 2^o. a direct or indirect interest of twenty per cent or more in the issued share capital of an undertaking, or being able to exercise, directly or indirectly, twenty per cent or more of the voting rights in an undertaking;
- c. subsidiary: a subsidiary as meant in Articles 1 and 2 of the Consolidated Accounts Directive, or an undertaking over which, in the opinion of the Netherlands Central Bank, a parent undertaking effectively exercises a dominant influence;
- d. financial holding company: a financial holding company which, exclusively or mainly, has investment firms, credit institutions or financial institutions as subsidiaries, which includes 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 undertaking other than a financial holding company, credit institution or mixed financial holding company which includes at least one credit institution among its subsidiaries;
- f. mixed financial holding company: a parent undertaking which is not a regulated entity as meant 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 other undertakings, forms a financial conglomerate as meant in Section 3:290;
- g. mixed-activity insurance holding company: a parent company other than an insurance undertaking, non-life insurer, reinsurer, insurance holding company or mixed financial holding company, and which has a life insurer or non-life insurer established in the Netherlands or a life insurer or non-life insurer established in another Member State as a subsidiary;
- h. undertaking which provides ancillary services: an undertaking which carries out activities which have the character of support activities in relation to the main activities of an investment firm or credit institution;
- i. related undertaking: a subsidiary, another undertaking in which a unit is held or an undertaking relating to another undertaking by being managed on a unified central basis by that other undertaking pursuant to a contract entered into by those undertakings or a provision in the articles of association of one or more of those undertakings, or by the fact that the administrative, management or Supervisory Authorities of those undertakings are composed for the majority of the same persons during the financial year and until the consolidated accounts are drawn up;
- j. insurance holding company: a parent undertaking whose main business is to acquire and hold units in subsidiaries which are, exclusively or mainly, life insurers, non-life insurers or reinsurers, and which has a life insurer or non-life insurer established in the Netherlands or a life insurer or non-life insurer established in another Member State as a subsidiary, which parent undertaking is not a mixed financial holding company.
2. For the purposes of this chapter a subsidiary of a subsidiary shall be considered a subsidiary of a parent undertaking.

Section 3:269

1. A Dutch investment firm or Dutch credit institution that is a parent undertaking or a subsidiary of another investment firm or credit institution shall satisfy, on a consolidated or subconsolidated basis, the provisions pursuant to 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 so that it can furnish the information meant in Section 1:52.

2. A life insurer or non-life insurer established in the Netherlands that is involved in the supplementary supervision of life insurers and non-life insurers in an insurance group shall organize its business operations as meant 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 so that it is able to furnish the information meant in Section 1:52.

Section 3:270

1. The Netherlands Central Bank may decide not to involve an undertaking in the supervision meant in parts 3.6.2 and 3.6.3 if:
 - a. the undertaking is established in a non-Member State with statutory impediments to providing the information required for the supervision;
 - b. the undertaking to be involved in the supervision in the light of the objectives of that supervision is only of negligible importance; or
 - c. considering the financial situation of that undertaking in the light of the objectives of that supervision would be misplaced or misleading.
2. Rules shall be laid down under or pursuant to order in council with regard to the first subsection under b.

Section 3:271

The day-to-day policies of a mixed financial holding company, financial holding company or insurance holding company established in the Netherlands shall be determined by persons expert in relation to the pursuit of the business of the regulated entities as meant in Section 3:289 (e) belonging to the group as meant in Section 3:289 (d) and of the mixed financial holding company, financial holding company or insurance holding company.

Section 3:272

1. The policies of a mixed financial holding company, financial holding company or insurance holding company established in the Netherlands shall be (co-)determined by persons whose fit and proper qualities are beyond doubt.
2. A person's fit and proper qualities as meant in the first subsection are beyond doubt once a supervisor has so established for the purposes of this Act, as long as no change in the relevant facts or circumstances reasonably necessitates a new assessment.
3. The provisions under Section 3:9 (3) shall apply mutatis mutandis to persons that (co-)determine the policy of a mixed financial holding company, financial holding company or insurance holding company established in the Netherlands.

Section 3:273

1. A mixed financial holding company, financial holding company or insurance holding company established in the Netherlands shall submit to the Netherlands Central Bank any changes relating to matters regarding which data must be supplied under Section 3:271 or 3:272.
2. The provisions under Section 3:29 (3) shall apply mutatis mutandis to mixed financial holding companies, financial holding companies and

insurance holding companies established in the Netherlands to the extent that they concern reporting changes as meant in the first subsection.

Part 3.6.2 Consolidated supervision of investment firms and credit institutions

Section 3:274

Repealed.

Section 3:275

1. The Netherlands Central Bank shall exercise supervision on a consolidated basis as meant in Section 3:279 of Dutch parent investment firms, Dutch parent credit institutions, Dutch EU parent investment firms and Dutch EU parent credit institutions.

2. If a Dutch investment firm or Dutch credit institution has as its parent undertaking a financial Dutch parent holding company or a Dutch financial EU parent holding company, the Netherlands Central Bank shall exercise supervision of that investment firm or credit institution on a consolidated basis, without prejudice to the third, fourth and fifth subsections.

3. If a Dutch investment firm or Dutch credit institution has as its parent undertaking a financial Dutch parent undertaking or a Dutch financial EU parent undertaking and that holding company has a European investment firm or European credit institution as its subsidiary, the Netherlands Central Bank shall exercise 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 undertakings both a financial Dutch parent undertaking 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 supervision shall be exercised on a consolidated basis by the Netherlands Central Bank 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 undertaking a financial holding company established in another Member State and that financial holding company has as its subsidiary a European investment firm or European credit institution in another Member State than the Member State where it is established, the supervision shall be exercised on a consolidated basis by the Netherlands Central Bank 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 the third through fifth subsections, the Netherlands Central Bank may permit, after consulting the Supervisory Authorities of other Member States, one of the other Supervisory Authorities to exercise the supervision on a consolidated basis if the relative importance of carrying on the business of the financial undertaking concerned in a certain Member State so necessitates.

7. Before taking a decision as meant in the sixth subsection, the Netherlands Central Bank shall give 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 an opportunity to submit its view.

8. If, according to the Recast Banking Directive, supervision is to be exercised of a Dutch investment firm or Dutch credit institution on a consolidated basis by a Supervisory Authority of another Member State, the Netherlands Central Bank may choose, after consulting the Supervisory Authorities of other Member States concerned and having heard the view of the financial undertaking concerned, to exercise the supervision on a consolidated basis if the relative importance of carrying on 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 subsidiaries, and that credit institution is established in the Netherlands, the Netherlands Central Bank shall exercise the supervision of all subsidiaries on a consolidated basis.

Section 3:276

1. The Netherlands Central Bank shall exercise 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 includes the supervision of compliance with provisions pursuant to Sections 3:17, first and second subsections, under c, 3:57 and 3:96, first subsection, under c.

2. The Netherlands Central Bank shall exercise 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 includes the supervision of compliance with the provisions pursuant to Sections 3:17, first and second subsections, under c, 3:57 and 3:96, first subsection, under c.

3. The second subsection shall apply mutatis mutandis to Dutch investment firms or Dutch credit institutions that are subsidiaries of a financial Dutch parent holding company if the Netherlands Central Bank exercises 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 subsidiary, the first sentence shall only concern the credit institution.

4. Rules shall be laid down under or pursuant to order in council with regard to the calculation of the solvency on a consolidated basis of the investment firms or credit institutions as meant in the first and second subsections.

Section 3:277

1. This part shall apply mutatis mutandis to Dutch investment firms or Dutch credit institutions which have a parent company which is a non-European investment firm or non-European credit institution or a financial holding company established in a non-Member State if:

a. those investment firms or credit institutions are already subject to supervision equivalent to the supervision on a consolidated basis, meant in Articles 125 and 126 of the Recast Banking Directive; and

b. the Netherlands Central Bank on the basis of the mutatis mutandis application of Section 3:275 would be responsible for the supervision on a consolidated basis of those investment firms or credit institutions.

2. In order to determine whether the first subsection (b) applies, the Netherlands Central Bank shall consult the Supervisory Authorities of other Member States entrusted with the supervision of regulated entities as meant in Section 3:289 (d) which have the same parent undertaking meant in the first subsection, opening words. It shall consider the general guidelines drawn up under Article 143 of the Recast Banking Directive by the Banking Advisory Committee, meant in Article 151 of that Directive. The Netherlands Central Bank shall consult the Committee before determining the results of its audit.

3. The Netherlands Central Bank may, in accordance with the Supervisory Authorities involved of other Member States, apply different supervision methods to the Dutch investment firms or Dutch credit institutions meant in the first subsection to attain the supervision objectives on a consolidated basis. The Netherlands 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 undertaking, shall satisfy the provisions pursuant to Sections 3:17, first and second subsections, under c, 3:57 and 3:96, first subsection, under c on a consolidated basis if the Dutch investment firm, Dutch credit institution or the financial holding company:

a. has a management company of an undertaking for collective investment in transferable securities, investment firm, financial institution or credit institution established in a non-Member State as a subsidiary; or

b. holds a unit in a management company of an undertaking for collective investment in securities, investment firm, financial institution or credit institution established in a non-Member State.

2. If the financial holding company has both an investment firm and a credit institution as subsidiaries, the first subsection shall only concern the credit institution.

Section 3:278

1. Supervision on an individual basis of compliance with the provisions pursuant to Sections 3:17, first and second subsections, under c, and 3:57 shall not concern Dutch investment firms or Dutch credit institutions that are subsidiaries of a Dutch parent investment firm or Dutch parent credit institution if:

a. supervision is exercised of that Dutch parent investment firm or Dutch parent credit institution on a consolidated basis and that supervision includes the subsidiary; and

b. the required 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 is present or to be anticipated that could prevent an immediate transfer of required 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 by the subsidiary and with the consent of the Netherlands Central Bank, it guarantees the obligations of the subsidiary, or the risks with regard to the subsidiary are negligible;

3°. the risk assessment, measurement and verification 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 has attached more than fifty per cent of the voting rights to the units in the capital of the subsidiary, or has the right to appoint or dismiss the majority of the persons who determine the day-to-day policy of the subsidiary.

2. The first subsection shall apply mutatis mutandis to Dutch investment firms and Dutch credit institutions that are subsidiaries of a financial holding company established in the Netherlands which is subject to supervision of compliance with the provisions pursuant to Sections 3:17, first and second subsections, under c, 3:57 and 3:96, first subsection, under c similar to that exercised of investment firms or credit institutions.

3. The supervision on an individual basis with regard to Sections 3:17, first and second subsections, under c, and 3:57 shall not concern Dutch parent investment companies and Dutch parent credit institutions if:

a. supervision is exercised of those Dutch parent investment firms and Dutch parent credit institutions on a consolidated basis; and

b. the required capital is adequately divided between the Dutch parent investment companies and Dutch parent credit institutions and the subsidiaries in that:

1°. no factual or legal obstacles are present or to be anticipated that could prevent an immediate transfer of required capital or repayment of debts by the subsidiary; and

2°. the risk assessment, measurement and verification procedures that are relevant for the consolidated supervision also include the Dutch parent investment firms and Dutch parent credit institutions.

4. The Netherlands Central Bank shall make public the following information:

a. the criteria it uses to determine that no factual or legal obstacles are present or to be anticipated that could prevent an immediate transfer of required capital or repayment of debts;

b. the number of Dutch parent investment firms and Dutch parent credit institutions subject to the application of the third subsection, and how many parent undertakings include in this subsidiaries in a non-Member State; and

c. if the third subsection does not apply, the aggregated information for the Netherlands with regard to:

1°. the total amount in required capital on a consolidated basis of the Dutch parent investment firms and Dutch parent credit institutions that is maintained in subsidiaries established in a non-Member State;

2°. the required capital that is maintained by Dutch parent investment firms and Dutch parent credit institutions in subsidiaries established in a non-Member State as a percentage of the total required capital of those parent companies on a consolidated basis;

3°. the required capital that is maintained by Dutch parent investment firms and Dutch credit institutions in subsidiaries in a non-Member State as a percentage of the required total minimum amount of the required capital of the parent undertakings on a consolidated basis pursuant to Section 3:57.

Section 3:278a

1. The Netherlands Central Bank may, on application, decide that it will, whether or not for a fixed term, in the context of the supervision on an individual basis exercised of it, permit a Dutch parent investment firm or Dutch parent credit institution to involve its subsidiaries on a consolidated basis in the business operations as meant in Section 3:17, first and second subsections, under c, in the calculation of its required capital and in maintaining balance-sheet items and off balance-sheet items as meant in Section 3:57 if:

1°. the risk assessment, measurement and verification 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 has attached more than fifty per cent of the voting rights to the units in the capital of the subsidiary, or has the right to appoint or dismiss the majority of the persons who determine the day-to-day policy of the subsidiary;

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 shows proof that on the basis of the circumstances and agreements, including legal agreements, no factual or legal obstacles are present or to be anticipated that could prevent the subsidiary from making an immediate transfer of required capital or from repaying debts to it.

2. At least once a year, the Netherlands Central Bank shall notify the Supervisory Authorities concerned in other states of the cases in which use has been made of the first subsection and of the circumstances and agreements meant in that subsection, under 4°.

3. The Netherlands Central Bank shall make public the following information:

a. the criteria it uses to determine that no factual or legal obstacles are present or to be anticipated that could prevent an immediate transfer of required 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 the first subsection, and how many parent undertakings involve subsidiaries established in a non-Member State;

c. if the first subsection applies, the aggregated information for the Netherlands with regard to:

1°. the total amount in required capital of Dutch parent investment firms and Dutch parent credit institutions maintained in subsidiaries established in a non-Member State;

2°. the required capital maintained by Dutch parent investment firms and Dutch parent credit institutions in subsidiaries established in a non-Member State as a percentage of the total required capital of those parent undertakings;

3°. the required capital maintained by Dutch parent investment firms and Dutch parent credit institutions in subsidiaries established in a non-Member State as a percentage of the required total minimum amount of the required capital of the parent undertakings pursuant to Section 3:57.

Artikel 3:278b

1. If the Netherlands Central Bank exercises 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 to the Supervisory Authorities concerned of other Member States of information that is relevant or essential in ordinary circumstances and in emergency situations;
 - b. it shall plan and coordinate the supervisory activities in ordinary circumstances and in emergency situations, and the cooperation with the Supervisory Authorities concerned of other Member States in the context of Section 3:18a.
2. If the Netherlands Central Bank exercises 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 for consent for the use of the internal models and approaches shall be submitted to the Netherlands Central Bank.
3. The application meant in the second subsection 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 Netherlands Central Bank shall furnish all relevant documents with regard to the application to the Supervisory Authorities concerned of other Member States for their consent without delay.
4. The Netherlands Central Bank shall decide on the application and any provisions to be attached to its consent after consulting the other Supervisory Authorities concerned.
5. Without prejudice to Article 3:47 of the General Administrative Law Act, the decision meant in the fourth subsection shall comprise the standpoints of the Supervisory Authorities concerned.
6. If the consultation has not led to agreement by six months after receipt of the complete application at the latest, the Netherlands Central Bank shall take a decision without delay in which it shall give consideration to the standpoints and reservations of the Supervisory Authorities concerned. The Netherlands Central Bank shall notify the Supervisory Authorities concerned of this decision without delay.
7. If a Dutch financial EU parent holding company has an investment firm and a credit institution as subsidiaries, and the credit institution is established in the Netherlands, the Netherlands Central Bank shall exercise the supervision of all subsidiaries on a consolidated basis.

Section 3:279

1. A Dutch investment firm, Dutch credit institution or financial holding company established in the Netherlands of which supervision on a consolidated basis is exercised under this part, shall provide for full consolidation of investment firms, credit institutions and financial institutions which are its subsidiaries.
2. The Netherlands Central Bank may allow a proportional consolidation where the parent undertaking which holds part of the capital shows proof, if necessary by contracts explicitly 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 of the adequate solvency of those shareholders or partners.

3. Where a Dutch investment firm, Dutch credit institution or financial holding company established in the Netherlands is related to another undertaking by a function as meant in Article 12 (1) of the Consolidated Accounts Directive, the Netherlands Central Bank shall determine for every investment firm, credit institution or financial holding company how the consolidation should be implemented.

4. Units in investment firms, credit institutions or financial institutions managed jointly by an undertaking involved in the consolidation and an undertaking not included therein, shall be consolidated proportionally where a restriction of the liability of those undertakings ensues from those units which depends on the share of the capital held by them.

5. In case of types of capital binding other than meant in the second and fourth subsections, the Netherlands Central Bank shall determine whether and in what form the annual accounts shall be consolidated.

6. Where the Netherlands Central Bank exercises supervision on a consolidated basis, it shall, without prejudice to the first – fifth subsections, determine whether and in what form the annual accounts shall be consolidated in the following cases:

- a. an investment firm or credit institution exercises a significant influence on one or more credit institutions or financial institutions, without holding a unit in it/them or having any other kind of capital binding with it/them; and
- b. two or more investment firms, credit institutions or financial institutions are managed on a unified central basis without this being provided for in a contract or articles of association.

7. Where in a case meant in the sixth subsection the annual accounts are consolidated, the Netherlands Central Bank shall also determine whether the use of the method, meant in Article 12 of the Consolidated Accounts, is permitted or prescribed.

8. Where supervision on a consolidated basis under Section 3:276 (1 or 2) is prescribed, the undertakings providing ancillary services and management companies of undertakings for collective investment in transferable securities shall be involved in the consolidation in the cases and in the manners meant in the second – fifth subsections.

Section 3:280

1. Where a Dutch investment firm or Dutch credit institution has a mixed-activity holding company as a parent undertaking, the Netherlands Central Bank shall supervise the intra-group contracts and situations with the mixed-activity holding company and its subsidiaries.

2. The investment firm or credit institution shall see to the calculation and safeguarding of its intra-group contracts and situations with the mixed-activity holding company and its subsidiaries.

3. The investment firm or credit institution shall, periodically, within the terms fixed to that end, submit to the Netherlands Central Bank a report including significant intra-group contracts and positions with the mixed-activity holding company and its subsidiaries.

4. Rules shall be laid down under or pursuant to order in council with regard to the content, the supply, the models and the periodicity of the reports.

5. Where the intra-group contracts and situations show that the financial situation of the investment firm or credit institution is or might be jeopardized, the Netherlands Central Bank shall take measures in respect of that credit 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 complies 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 established in another Member State shall disclose the information meant in Section 3:74a, first subsection, on an individual or subconsolidated basis.
3. If the Netherlands Central Bank exercises consolidated supervision of a Dutch investment firm or Dutch credit institution that is a subsidiary of an undertaking established in a non-Member State, it may, upon application, grant that financial undertaking, whether or not for a fixed term, a waiver in full or in part from the obligation to disclose information on a consolidated basis, if the undertaking of which it is a subsidiary discloses information about it that corresponds to the information meant in the first subsection.
4. If a Dutch financial EU parent holding company has both an investment firm and a credit institution as subsidiaries, this section shall only concern the credit institution.

Section 3:280b

The Netherlands Central Bank may, on application, whether or not for a fixed term, grant investment firms a waiver from the provisions pursuant to this part with regard to consolidated supervision, as well as pursuant to Section 3:269, first subsection. Rules shall be laid down under or pursuant to order in council to be met by the holder of a waiver and rules shall be laid down with regard to the granting of a waiver.

Part 3.6.3 Supplementary supervision of life insurers and non-life insurers in an insurance group

Section 3:281

Repealed.

Section 3:282

1. Supplementary supervision as meant in Sections 3:284, 3:286 and 3:287 shall be exercised of a Dutch life insurer or non-life insurer which is a participating undertaking 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 meant in Sections 3:284, 3:286 and 3:287 shall be exercised of a Dutch life insurer or non-life insurer which 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 meant in Section 3:284 and 3:286 shall be exercised of a Dutch life insurer or non-life insurer of which the parent undertaking is a mixed-activity holding company.

Section 3:283

The following shall be included in the supplementary supervision meant in Section 3:282:

- a. undertakings related to the Dutch life insurer or non-life insurer;
- b. undertakings participating in the Dutch life insurer or non-life insurer;
- c. undertakings related to undertakings meant under b.

Section 3:284

1. The Netherlands Central Bank shall include in the supplementary supervision, meant in Section 3:282, intra-group contracts and situations between the Dutch life insurer or non-life insurer subject to that supervision and:

- a. undertakings related to that life insurer or non-life insurer;
 - b. undertakings participating in that life insurer or non-life insurer;
 - c. undertakings related to the undertakings meant under b; and
 - d. natural persons which have a unit in:
 - 1^o. that life insurer or non-life insurer or a related undertaking;
 - 2^o. an undertaking participating in that life insurer or non-life insurer;
 - 3^o. an undertaking related to an undertaking as meant under 2^o.
2. The life insurer or non-life insurer shall, periodically within the terms fixed, submit to the Netherlands Central Bank a report including contracts and situations where they are of significant importance.
3. Rules shall be laid down under or pursuant to order in council with regard to the content, the supply, the models and the periodicity of the reports.
4. Where the intra-group contracts and situations show that the financial situation of the life insurer or non-life insurer is or might be jeopardized, the Netherlands 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 to which supervision meant in Section 3:282 (1) applies shall calculate the adjusted solvency. Rules shall be laid down under or pursuant to order in council with regard to the calculation of the adjusted solvency and the manner, the periodicity and the deadlines of the reporting.
2. The calculation shall be based on all related undertakings, participating undertakings and undertakings related to a participating undertaking.
3. Where the calculation shows that the adjusted solvency is negative, the Netherlands 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 to which the supervision meant in Section 3:282 (2) applies shall calculate the adjusted solvency. Rules shall be laid down under or pursuant to order in council in relation to the calculation of the adjusted solvency and the manner, the periodicity and the deadlines of the reporting.

2. The calculation shall be based on all undertakings related to the insurance holding company, reinsurer or non-European life insurer or non-life insurer.
3. Where the calculation, meant in the second subsection, shows that the solvency of a life insurer or non-life insurer which is a subsidiary of the insurance holding company, of the reinsurer, of the non-European life insurer or non-life insurer, is or might be jeopardized, the Netherlands Central Bank shall take measures in respect of that life insurer or non-life insurer.

Section 3:287

1. The Netherlands Central Bank shall only demand the information required for the supervision regulated in this part directly from the undertakings involved, meant in Section 3:283, where that information has first been demanded from the Dutch life insurer or non-life insurer and has not been supplied.
2. The Netherlands Central Bank may carry out, either themselves or through the intermediary of persons meant 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 meant in Section 3:282;
 - b. the subsidiaries of that life insurer or non-life insurer;
 - c. the parent undertakings of that life insurer or non-life insurer; or
 - d. the subsidiaries of a parent undertaking of that life insurer or non-life insurer.
3. Where the Supervisory Authority of another Member State wishes to carry out a verification of important information regarding an undertaking established in the Netherlands which is a related life insurer or non-life insurer, a subsidiary, a parent undertaking or a subsidiary of a parent undertaking of the Dutch life insurer or non-life insurer subject to the supervision meant in Section 3:282, the Netherlands 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 is not carrying out the verification itself.

Section 3:288

Where a Dutch life insurer or non-life insurer and one or more European life insurers or European non-life insurers have the same parent undertaking as an insurance holding company, reinsurer, mixed-activity insurance holding company, non-European life insurer or non-European non-life insurer, the Netherlands Central Bank may, after consulting the Supervisory Authorities of the Member States concerned, permit one of the other Supervisory Authorities to exercise the supplementary supervision meant in Section 3:282 (1).

Part 3.6.4 Prudential control of financial conglomerates

§ 3.6.4.1. Introductory provisions

Section 3:289

In this part and the provisions ensuing from this part the following shall be taken to mean:

- a. investment firm: Dutch investment firm, European investment firm or non-European investment firm;
- b. subgroup: the collection of undertakings within a group formed by all of the following forming part of the group:
 - 1^o. credit institutions, undertakings which provide ancillary services, investment firms and financial institutions, which subgroups shall be referred to as the credit institution and investment firm sector; or
 - 2^o. life insurers, non-life insurers, reinsurers and insurance holding companies, which subgroup shall be referred to as the insurer sector;
- c. financial market sector: the collection of undertakings within a group formed by the joint subgroups;
- d. regulated entity: a credit institution, life insurer, non-life insurer or investment firm;
- e. group: the combination of a parent undertaking, its subsidiaries, other undertakings in which the parent undertaking or one or more of its subsidiaries holds a unit, as well as undertakings related to one of the aforementioned undertakings by management on a unified central basis pursuant to a contract concluded with those undertakings or a provision in the articles of association of one or more of those undertakings, or by the fact that the administrative, management or Supervisory Authorities of those undertakings were for the majority composed of the same persons during the financial year and until the consolidated accounts were drawn up;
- f. group member: an undertaking belonging to a group as meant under e;
- g. intra-group contracts and situations: any contract and ensuing financial relationships between a regulated entity in a financial conglomerate and either another group member or a person relating to a group member in a formal or effective 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^o. the Supervisory Authority of another Member State entrusted with the supervision, under the Financial Conglomerates Directive, of the regulated entities as part of a subgroup belonging to the financial conglomerate concerned, as meant in Section 3:290;
 - 2^o. the coordinator, meant in Section 3:293 (1) provided it is not the Supervisory Authority meant under 1^o;
 - 3^o. other Supervisory Authorities of other Member States where they are relevant in the opinion of the Supervisory Authorities meant under 1^o and 2^o;
- k. Financial Conglomerates Directive: Directive no. 2002/87 of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 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 of the Council (OJ L 35);
- l. risk concentration: all exposures with a loss potential borne by entities within a financial conglomerate, which are large enough to threaten the solvency or the financial situation in general of the regulated entities in the financial conglomerate;

m. sectoral rules: the legislation laid down by the Member States under Directives as meant in Article 249 of the Treaty establishing the European Community relating to the supervision of regulated entities belonging to one of the subgroups listed under b.

Section 3:290

1. In this part and the provisions ensuing from this part a financial conglomerate shall be taken to mean a group which fulfils the following conditions:

a. the head of the groups shall be:

1^o. a regulated entity established in a Member State which is:

- a parent undertaking of an undertaking in the financial sector;
- a holder of a unit in an undertaking in the financial market sector; or
- related to an undertaking in the financial market sector by management on a unified, central basis or by the fact that the administrative, management or Supervisory Authorities were for the majority composed of the same persons during the financial year; or

2^o. an undertaking which is not a regulated entity, in which case the balance-sheet total of the undertakings in the financial sector amounts to more than forty per cent of the balance-sheet total of the group as a whole;

b. at least one of the regulated entities in the group belongs to the credit institution and investment firm sector, and at least one of the regulated entities in the group belongs to the insurer sector;

c. as regards any subgroup in the group the average of the ratio between the balance-sheet total of that subgroup 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 subgroup and the total required capital under the solvency requirements of the financial market on the other hand, exceeds ten per cent.

2. A group which fulfils the conditions, meant in the first subsection under a and b, and which does not fulfil the condition, meant in the first subsection under c, shall also be a financial conglomerate where the balance-sheet total of the smallest subgroup exceeds EUR 6,000,000,000. Notwithstanding that, the Netherlands Central Bank may, after consulting the relevant Supervisory Authorities, decide that a group shall not be considered a financial conglomerate, or may decide not to apply Sections 3:297 – 3:299, where it considers including the group or the application of said sections unnecessary, inappropriate or misleading in the light of the supervision objectives.

3. Notwithstanding the first subsection the Netherlands Central Bank may, after consulting the relevant Supervisory Authorities, decide:

a. not to include a regulated entity in the calculation of the ratios meant in the first subsection under c in the cases meant in Section 3:296 (5);

b. in special cases to replace the criterion based on the balance-sheet total, or to supplement it by a criterion based on income structure or off-balance-sheet activities, where the Netherlands Central Bank is of the opinion that these criteria are particularly relevant with a view to the supervision meant in this part.

4. Notwithstanding the first subsection under a under 2^o and under c, where at a financial conglomerate already subject to supervision the ratios meant in those parts fall below forty per cent and ten per cent, during the following year the percentages shall be fixed at 35 per cent and eight per cent listed in those

parts. Notwithstanding the second subsection, where at a financial conglomerate already subject to supervision the balance-sheet total of the smallest subgroup falls below EUR 6,000,000,000, the requirement, meant in the second subsection, shall be fixed at a minimum of EUR 5,000,000,000 for the smallest subgroup during the following three years.

5. If the Netherlands Central Bank is the coordinator, it may, after consulting the relevant Supervisory Authorities, decide to reduce the period of three years meant in the fourth subsection.

6. The calculations relating to the balance-sheet shall be made based on the aggregated balance-sheet total of the group members belonging to the group, according to their annual accounts. As regards that calculation, undertakings in which a group member holds a unit, shall be included in the amount of their balance-sheet total corresponding to the aggregated proportional share of the group. Where consolidated accounts are available, the calculations shall be made based on those consolidated accounts. The solvency requirements shall be calculated based on the rules laid down in this Act.

7. The Netherlands Central Bank shall communicate a decision meant in the second, third or fifth subsection to the other Supervisory Authorities of other Member States concerned.

Section 3:291

Where the Netherlands Central Bank under Section 3:293 (1) is appointed as the coordinator, it shall communicate the decision that the group has been qualified as a financial conglomerate and that the Netherlands Central Bank is appointed as the coordinator to the undertaking at the head of the group, or in the absence thereof, to the regulated entity with the highest balance-sheet total in the most important subgroup. It shall also communicate the decision to the Supervisory Authorities of other Member States which have authorized the regulated entities in the group, the Supervisory Authorities of the Member State in which the mixed financial holding company is established and to the Commission of the European Communities. It shall also communicate the decision to the Netherlands Authority for the Financial Markets where the latter has authorized a regulated entity of the financial conglomerate.

Section 3:292

1. This part shall concern Dutch credit institutions, Dutch life insurers or non-life insurers, Dutch investment firms and management companies of undertakings for collective investment in transferable securities authorized as meant in Section 2:65 (1) under a or (2) and forming part of a financial conglomerate.

2. Where the Netherlands Central Bank is appointed as the coordinator, the supervision in accordance with Sections 3:293 – 3:299 shall concern any regulated entity of the financial conglomerate. For the purposes of the preceding sentence, a regulated entity shall also be taken to mean a management company of an undertaking for collective investment in transferable securities authorized as meant in Section 2:65 (1) under a or (2) or a management company established abroad which, if it were established in the Netherlands, would be a management company of an undertaking for collective investment in transferable securities which could be authorized under Section 2:65 (2).

3. Notwithstanding the first and second subsections, the Netherlands Central Bank shall not supervise, in accordance with Sections 3:293 – 3:299, regulated entities of a financial conglomerate of which the parent undertaking is a regulated entity or a mixed financial holding company established in a non-Member State where it has assessed 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 meant in the second subsection. Nor shall the Netherlands Central Bank supervise a regulated entity established in the Netherlands which forms part of a financial conglomerate as meant in the first sentence where it is not the coordinator and the coordinator has made an assessment corresponding to an assessment as meant in the first sentence.

4. The Netherlands Central Bank may, in the case of a financial conglomerate as meant in the third subsection and where there is no equivalent supervision as meant in that subsection, exercise supervision of the regulated entities of that financial conglomerate established in the Netherlands in any way other than meant in the second subsection, where that is appropriate, shall ensure that the supervision objective shall be attained and, where the Netherlands Central Bank is not the coordinator, subject to the permission of the coordinator.

5. In the assessment meant in the third subsection, the Netherlands 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, meant in Section 21 (1) of that Directive. The Netherlands Central Bank shall consult the Committee before determining the results of its audit.

6. Where the Netherlands Central Bank is appointed as the coordinator, it shall grant permission corresponding to the permission meant in the fourth subsection, after consulting the relevant Supervisory Authorities. It shall communicate that permission to the other Supervisory Authorities of other Member States concerned and to the Commission of the European Communities.

7. Where a regulated entity as meant in the first subsection forms part of a group which meets the requirements meant in Section 3:196 (1) (b and c), (2 and 6), and is related to a person through a formal or effective control structure, the Netherlands Central Bank shall, in collaboration with the relevant Supervisory Authorities, determine to what extent the supervision as meant in this part shall be exercised of the regulated entity.

8. Where another financial conglomerate forms part of a financial conglomerate, the supervision meant in this part shall only concern the entire financial conglomerate.

§ 3.6.4.2. The coordinator, collaboration and enforcement

Section 3:293

1. In the case of a financial conglomerate of which a regulated entity or a mixed financial holding company established in the Netherlands is part, the Netherlands Central Bank shall, in agreement with the Supervisory Authorities of other Member States concerned, including the body of the Member State other than the Netherlands in which the mixed financial holding

company is established, appoint a coordinator that is responsible for the coordination and for exercising supervision of the financial conglomerate.

2. The Netherlands Central Bank shall thereby apply the criteria meant in Article 10 (2 and 3) of the Financial Conglomerates Directive, whereby for the purposes of the aforementioned paragraphs the Netherlands Central Bank shall be considered the supervisor having authorized an investment firm or a management company as meant in Section 3:292 (1).

Section 3:294

1. Where the Netherlands Central Bank is appointed as the coordinator as meant 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 which is important to the prudential control 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 the compliance with the rules regarding capital adequacy, risk concentration and intra-group contracts and situations meant in Sections 3:296 – 3:298;
 - d. it shall supervise the compliance with the rules regarding the operations of the financial conglomerate meant in Section 3:299; and
 - e. it shall plan and coordinate the supervisory activities in normal circumstances and in emergency situations, in collaboration with the relevant Supervisory Authorities.
2. Where the Netherlands Central Bank, as a coordinator or a 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 Netherlands Central Bank, as a coordinator or a supervisor, requires information which is already supplied to another Supervisory Authority of another Member State, it shall first address that Supervisory Authority.

Section 3:295

1. The Netherlands Central Bank may apply Sections 1:75 and 1:79 – 1:88 to a mixed financial holding company which forms part of a financial conglomerate regarding which the Netherlands Central Bank has been appointed as the coordinator, where, notwithstanding compliance with Sections 3:296 – 3:299 or corresponding provisions of other Member States, the solvency might be jeopardized or the intra-group contracts and situations or the risk concentrations threaten or may threaten the financial situation of a regulated entity belonging to the financial conglomerate.
2. If, notwithstanding the compliance of a regulated entity established in the Netherlands with Sections 3:296 – 3:299, the solvency might be jeopardized or the intra-group contracts and situations or the risk concentrations threaten or may threaten the financial situation of that regulated entity, the Netherlands Central Bank may take measures in respect of that regulated entity.
3. Where the Netherlands Central Bank is not a coordinator, it may apply Sections 1:75 and 1:79 – 1:88 to a mixed financial holding company established in the Netherlands which forms part of a financial conglomerate

where that holding company or a regulated entity belonging to that financial conglomerate acts in violation of Sections 3:296 – 3:299 or of corresponding provisions of other Member States. Sections 1:75 and 1:79 – 1:88 shall also apply where said provisions are complied with but the solvency might nevertheless be jeopardized or the intra-group contracts and situations or the risk concentrations threaten or may threaten the financial situation of a regulated entity belonging to the financial conglomerate.

§ 3.6.4.3. *Rules for being active as a financial conglomerate*

Section 3:296

1. An undertaking which, solely or with another undertaking, is at the head of a financial conglomerate which includes a regulated entity established in the Netherlands, shall ensure that it complies, on a consolidated basis or on an aggregated basis, with rules to be laid down under or pursuant to order in council with regard to the capital adequacy of the conglomerate, where the Netherlands Central Bank is the coordinator. Those rules concern the manner, the periodicity and the deadlines of the reporting, as well as the calculation of the capital adequacy.
2. Where a regulated entity established in the Netherlands forms part of a financial conglomerate, the undertaking meant in the first subsection shall ensure sufficient capital adequacy strategies for the conglomerate as a whole.
3. Where the undertaking fails to comply (in time) with the obligation meant in the first or second subsection, such obligation shall also lie with the regulated entity meant in that subsection.
4. Where the Netherlands Central Bank is the coordinator, the undertaking meant in the first subsection or a regulated entity belonging to the group appointed by the Netherlands Central Bank after consulting the relevant Supervisory Authorities and with the financial conglomerate, shall furnish to the Netherlands Central Bank at least once a year a calculation accompanied by the data on which that calculation is based showing whether the first subsection is complied with.
5. Where the Netherlands Central Bank is appointed as the coordinator, it may decide not to include a group member in the calculation of the capital adequacy if:
 - a. the group member is established in a non-Member State with statutory impediments to furnishing the required information; or
 - b. the group member is of negligible importance in the light of the supervision objectives as meant in this part; or
 - c. including the group member would be misplaced or misleading in the light of the supervision objectives as meant in this part.
6. The fifth subsection (b) shall not apply if it is more than one group member and the combined group members concerned are of non-negligible importance.
7. In the case meant in the fifth subsection (c) the Netherlands Central Bank shall, except in urgent cases, consult the relevant Supervisory Authorities before rendering a decision.
8. Rules may be laid down under or pursuant to order in council with regard to the group's capital adequacy with regard to a group which is not a financial conglomerate, including apart from an investment firm or a credit institution established in the Netherlands a life insurer, non-life insurer or funeral

expenses and benefits in kind insurer, while one of those financial undertakings is established in the Netherlands. An undertaking which, alone or with another undertaking, is at the head of a group shall ensure that these rules are complied with.

Section 3:297

1. An undertaking which, alone or with another undertaking, is at the head of a financial conglomerate which includes a regulated entity established in the Netherlands shall report regularly and at least once a year all significant risk concentrations at financial conglomerate level to the Netherlands Central Bank where the latter is the coordinator.
2. Notwithstanding the first subsection the Netherlands Central Bank may, after consulting the other relevant Supervisory Authorities and the financial conglomerate, determine that a regulated entity forming part of the financial conglomerate it designates shall submit the report to the Netherlands Central Bank.
3. Rules shall be laid down under or pursuant to order in council with regard to the reporting meant in the first subsection. Those rules concern the content, the manner, the periodicity and the deadlines of the reporting.
4. Rules may be laid down under or pursuant to order in council with regard to the quantitative limits or other measures to restrict the risk concentration.
5. Where a mixed financial holding company is at the head of a financial conglomerate and a regulated entity established in the Netherlands belongs to that financial conglomerate, any sectoral rules regarding risk concentrations applicable to the most important subgroup of the financial conglomerate shall concern the financial market sector as a whole, including the mixed financial holding company. Where a management company as meant in Section 3:292 (1) forms part of a financial conglomerate, the Netherlands Central Bank shall determine to which subgroup that management company must be allocated.

Section 3:298

1. An undertaking which, alone or with another undertaking, is at the head of a financial conglomerate which includes a regulated entity established in the Netherlands shall report regularly and at least once a year all significant intra-group contracts and situations of regulated entities in the financial conglomerate to the Netherlands Central Bank where the latter is the coordinator.
2. Notwithstanding the first subsection the Netherlands Central Bank may, after consulting the other relevant Supervisory Authorities and the financial conglomerate, determine that a regulated entity it designates shall submit the report to the Netherlands Central Bank.
3. Rules shall be laid down under or pursuant to order in council with regard to the reporting meant in the first subsection. Those rules concern the content, the manner, the periodicity and the deadlines of the reporting.
4. Rules may be laid down under or pursuant to order in council with regard to the quantitative or qualitative limits for intra-group contracts or situations or with regard to measures seeking to attain the same objective.
5. Where a mixed financial holding company is at the head of a financial conglomerate and a regulated entity established in the Netherlands belongs to that financial conglomerate, any sectoral rules regarding intra-group contracts and situations applicable to the most important subgroup of the financial

conglomerate shall concern the financial market sector as a whole, including the mixed financial holding company. Where a management company as meant in Section 3:292 (1) forms part of a financial conglomerate, the Netherlands Central Bank shall determine to which subgroup that management company must be allocated.

Section 3:299

1. An undertaking which, alone or with another company, is at the head of a group which includes a regulated entity established in the Netherlands, shall ensure such operations that the financial solidity of the regulated entities and the undertaking itself are not jeopardized by:
 - a. the risk management of the group as a whole and of the separate group members;
 - b. the strategy and the policy of the group as a whole and of the separate group members;
 - c. possible conflicts of interests and relationships between the regulated entities, the undertaking meant in the opening words and the other group members; or
 - d. activities carried out by group members which 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 under or pursuant to order in council with regard to the first subsection.
3. The group members listed below shall organize their operations in such a way that all data relevant to the supervision meant in this part may be furnished:
 - a. the regulated entity established in the Netherlands;
 - b. the undertaking which, alone or with another company, is at the head of the group;
 - c. group members other than the group members meant under a and b which carry out activities which 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 undertakings meant in the first subsection, opening words.

PART 4 - CONDUCT OF BUSINESS SUPERVISION OF FINANCIAL UNDERTAKINGS

CHAPTER 4.1 INTRODUCTORY PROVISIONS

Part 4.1.1 Scope

Section 4:1

This part, with the exception of Section 4:3, shall solely concern:

- a. investment firms and financial service providers authorized under Chapter 2.2 to carry on their business or to provide financial services in the Netherlands, respectively that hold a certificate of supervised status as meant in Section 3:110;
- b. collective investment schemes authorized under part 2.2.7 to offer units in the Netherlands, management companies of those collective investment

schemes and depositaries affiliated with those collective investment schemes;
and

c. clearing institutions authorized under part 2.2.1 to carry on their business in the Netherlands to the extent that they act for clients established in the Netherlands.

Section 4:2

1. Except for Sections 4:36 and 4:37 this part shall not concern offers of credit by a municipal credit bank where rules are laid down and approved for the operations of that municipal credit bank under Section 4:37 (1 and 2).

2. Sections 4:9 (1) and 4:10 shall not concern persons that determine the day-to-day policies of a municipal credit bank, that (co-)determine the policy and general course of events of a municipal credit bank or that are a member of a body responsible for supervision of policy and the general course of events of a municipal credit bank.

Section 4:2a

The provisions under this part with regard to offering non-life insurance contracts do not concern guarantee funds as meant in Section 3:6.

Part 4.1.2 Special provisions

Section 4:3

1. No-one may carry out activities as a service of the information society as meant in Section 15d (3) of Book 3 of the Dutch Civil Code in the pursuit of a profession or business as a middleman to acquire or receive, outside a closed circle, redeemable funds from parties other than professional market parties.

2. The first subsection shall not concern:

a. banks authorized by the Netherlands Central Bank as meant in Section 2:11 (1) or 2:20 (1) and banks established in another Member State which carry on their business from a branch situated in the Netherlands or by providing services to the Netherlands, which comply with the provisions in Section 2:15 or 2:16 with regard to carrying out activities listed under 1 in Annex I to the Recast Banking Directive;

b. banks established in another Member State authorized by the Supervisory Authority of that Member State to carry on their business and which comply with the obligations applicable in that other Member State for providing services to another Member State;

c. the Member States, as well as the regional or local authorities of the Member States;

d. international institutions governed by public law in which one or more Member States participate;

e. investment firms authorized by the Netherlands Authority for the Financial Markets as meant in Section 2:96;

f. investment firms established in another Member State which provide investment services from a branch situated in the Netherlands or by providing services to the Netherlands which comply with Section 2:101 or 2:102; and

g. intermediaries authorized by the Netherlands Authority for the Financial Markets to provide mediation services in a current account or savings account as meant in Section 2:80 (1).

3. An exemption of the first subsection may be provided by ministerial regulation.
4. The Netherlands Authority for the Financial Markets may, on application, whether or not for a fixed term, grant a waiver of the first subsection if the applicant shows proof that the interests which this part seeks to protect are sufficiently protected otherwise. Rules may be laid down under or pursuant to order in council which the holder of an authorization must satisfy and which relate to the granting of an authorization.

Section 4:4

1. Where a financial undertaking without authorization from the Netherlands Authority for the Financial Markets does not comply with the applicable rules laid down under this part, the Netherlands Authority for the Financial Markets may prohibit that financial undertaking from carrying out any activities contrary to those rules.
2. The first subsection shall not concern the settlement of contracts concluded before the time at which the prohibition is imposed.
3. Where the financial undertaking meant in the first subsection is established in another Member State, the Netherlands Authority for the Financial Markets shall communicate the prohibition it has imposed to the Supervisory Authority of that other State.
4. The first through third subsections shall not concern:
 - a. management companies of an undertaking for collective investment in transferable securities established in another Member State;
 - b. investment firms established in another Member State;
 - c. intermediaries as meant in Section 2:81 (2);
 - d. insurance intermediaries established in another Member State;
 - e. financial service providers established in another Member State that carry on the business of a financial institution, credit institution or insurer; and
 - f. reinsurance intermediaries established in another Member State.

Section 4:5

1. For the purposes of the provisions under this part with regard to providing financial services, except for offering units in a collective investment scheme, any act or omission of a related undertaking as meant in Section 2:105 (1 and 2) shall be considered as an act or omission of the legal person meant in Section 2:105 (1) and the legal person meant in Section 2:105 (4) respectively.
2. The legal person as meant in Section 2:105 (1) shall, without delay, inform the Netherlands Authority for the Financial Markets of the connection with an undertaking as meant in Section 2:105 (2) and of the termination of such connection with a related undertaking as meant in Section 2:105 (1 or 2).
3. Rules may be laid down under or pursuant to order in council with regard to the manner in which the report, meant in the second subsection, shall be submitted, the data that must be furnished and the documents that must be submitted.

Section 4:6

1. An offeror which is no longer responsible for an intermediary as meant in Section 2:81 (2) shall, without delay, inform the Netherlands Authority for the Financial Markets and the intermediary involved.

2. Rules may be laid down under or pursuant to order in council with regard to the manner in which the report, meant in the second subsection, shall be submitted, the data that must be furnished and the documents that must be submitted.

Section 4:6a

1. An undertaking which, alone or with another undertaking, is at the head of a group including a financial undertaking to which the provisions under this part apply, shall refrain from actions or policies which may result in that financial undertaking acting in violation of the provisions under this part.

2. Section 1:75 shall apply mutatis mutandis to the undertaking meant in the first subsection.

Part 4.1.3 Exemption

Section 4:7

An exemption of the provisions under this part and paragraph 4.3.1.5. may be provided by ministerial regulation.

CHAPTER 4.2 RULES ON BEING ACTIVE ON THE FINANCIAL MARKETS REGARDING ALL FINANCIAL SERVICES

Part 4.2.1 Expertise, fit and proper qualities, integrity

Section 4:8

1. This part shall not concern:

- a. management companies of undertakings for collective investment in transferable securities established in another Member State, undertakings for collective investment in transferable securities established in another Member State and any depositaries affiliated with those undertakings;
- b. management companies of collective investment schemes established in a designated State and collective investment schemes established in a designated State and any depositaries affiliated with those collective investment schemes;
- c. investment firms established in another Member State;
- d. insurance intermediaries established in another Member State;
- e. financial service providers established in another Member State or a designated State that carry on the business of a financial institution, credit institution or insurer; and
- f. reinsurance intermediaries established in another Member State.

2. This part shall not concern investment firms authorized by the Netherlands Central Bank to carry on the business of a bank or which have a certificate of supervised status from the Netherlands Central Bank to carry on the business of a financial institution.

3. This part, except for Section 4:9 (2), shall not concern financial service providers authorized by the Netherlands Central Bank to carry on the business of credit institution or insurer or that hold a certificate of supervised status issued by the Netherlands Central Bank for the pursuit of the business of a financial institution.

Section 4:9

1. The day-to-day policies of a management company, investment company, investment firm, depositary or financial service providers shall be determined by persons expert in relation to the pursuit of the business of the financial undertaking.
2. A financial service provider shall ensure the expertise of its employees and of other natural persons directly involved under its auspices with providing financial services to consumers or, where it concerns financial services with regard to insurance or the provision of reinsurance mediation services, clients. To this end at least such a number of actual managers shall have sufficient expertise as to safeguard the quality of the financial services to the consumer or the client.
3. Rules may be laid down under or pursuant to order in council with regard to the expertise of the persons meant in the second subsection. It may be determined by order in council that Our Minister, in accordance with rules to be laid down for this purpose, recognizes examination institutes that are competent to confer certificates with which expertise can be demonstrated. Rules may thereby also be laid down with regard to the supervision of compliance with those rules.
4. The Netherlands Authority for the Financial Markets may, on application, grant a waiver, fully or in part, whether or not for a fixed term, of the second subsection and the provisions under the third subsection, if the applicant shows proof that it cannot comply with those provisions and that the objects which this section seeks to attain shall be attained otherwise

Section 4:10

1. The policies of a management company, investment company, investment firm, depositary or financial service provider shall be (co-)determined by persons whose fit and proper qualities are beyond doubt. Where a body within a financial undertaking is entrusted with the supervision of the policies and the general course of events of the financial undertaking, such supervision shall be exercised by persons whose fit and proper qualities are beyond doubt.
2. The fit and proper qualities of a person as meant in the first subsection shall be beyond doubt once a supervisor has so established for the purposes of this Act, as long as no change in the relevant facts or circumstances reasonably necessitates a new assessment.
3. Rules shall be laid down under or pursuant to order in council with regard to the manner in to establish whether a person's fit and proper qualities are beyond doubt as meant in the first subsection and which facts and circumstances should thereby be considered.

Section 4:11

1. A management company, collective investment scheme, investment firm, or depositary shall conduct adequate policies safeguarding fair business operations. This shall be taken to mean:
 - a. preventing a conflict of interests;
 - b. counteracting any involvement of the financial undertaking or its staff in violation of the law or criminal offences which may affect the public's confidence in the financial undertaking or in the financial markets;
 - c. avoiding relations with clients which may affect the confidence in the financial undertaking or in the financial markets; and

- d. avoiding any acts by the financial undertaking or its staff that are so contrary to generally accepted standards that they seriously affect the confidence in the financial undertaking or in the financial markets.
2. A financial service provider shall conduct adequate policies safeguarding fair business operations. This shall be taken to mean that the financial service provider or its staff act in violation of the law or criminal offences which may affect the public's confidence in the financial undertaking or the financial markets. Other matters may be designated by order in council which may be regarded as fair business operations of a financial service provider.
3. Rules shall be laid down under or pursuant to order in council with regard to the minimum requirements which the policies meant in the first and second subsection must satisfy.
4. A financial undertaking as meant in the first or second subsection shall supply to the Netherlands Authority for the Financial Markets information on incidents relating to the issues meant in the first and second subsection.
5. The Netherlands Authority for the Financial Markets may, on application, grant a waiver, fully or in part, whether or not for a fixed term of the provisions in the third subsection, if the applicant shows proof that it cannot comply with those provisions and that the objects which this section seeks to attain shall be attained otherwise.

Part 4.2.2 Structuring and organization

Section 4:12

1. Sections 4:13, 4:14 and 4:17 shall not concern:
- a. management companies of undertakings for collective investment in transferable securities established in another Member State, undertakings for collective investment in transferable securities established in another Member State and any depositaries related to those undertakings;
 - b. management companies of collective investment schemes established in a designated State, collective investment schemes established in a designated State and any depositaries affiliated with those collective investment schemes; and
 - c. investment firms established in another Member State.
2. Sections 4:13, 4:15 and 4:17 shall not concern:
- a. insurance intermediaries established in another Member State;
 - b. financial service providers established in another Member State or a designated State that carry on the business of a financial institution, credit institution or insurer; and
 - c. reinsurance intermediaries established in another Member State.
3. Section 4:17 shall not concern clearing institutions established in a designated State.
3. Sections 4:13 and the provisions under 4:14 (2) opening words and under a and b, shall not concern investment firms authorized by the Netherlands Central Bank to carry on the business of a bank or which have a certificate of supervised status issued by the Netherlands Central Bank to carry on the business of a financial institution.
5. Section 4:13 shall not concern financial service providers authorized by the Netherlands Central Bank to carry on the business of a credit institution or insurer or which have a certificate of supervised status issued the Netherlands Central Bank to carry on the business of a financial institution.

Section 4:13

1. A management company, investment company, investment firm, depository or financial service provider shall not be affiliated with 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 the management company, the collective investment schemes managed by the management company, the investment company, the investment firm, the depository or the financial service provider.

2. A management company, investment company, investment firm, , depository or financial service provider shall not be affiliated with 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 managed by the management company, the investment company, the investment firm, the depository or the financial service provider.

Section 4:14

1. A management company, collective investment scheme, investment firm, or depository shall organize the operations in such a way as to safeguard controlled and fair business operations.

2. Rules shall be laid down under or pursuant to order in council with regard to the first subsection. These rules shall concern:

a. controlling business processes and business risks;

b. integrity, including counteracting:

1^o. a conflict of interests;

2^o. any involvement of the financial undertaking or its staff in violation of the law or criminal offences which may affect the public's confidence in the financial undertaking or in the financial markets;

3^o. relations with clients which may affect the confidence in the financial undertaking or in the financial markets;

4^o. any acts by the financial undertaking or its staff that are so contrary to generally accepted standards that they seriously affect the confidence in the financial undertaking or in the financial markets.

c. Orderly and transparent financial market processes, clear relationships between market parties and exercising due care in handling clients and unit-holders, which shall be taken to mean:

1^o. safeguarding the supply of information to clients or unit-holders;

2^o. safeguarding the recording of the relationship with clients or unit-holders;

3^o. safeguarding the exercise of due care in handling clients or unit-holders;

4^o. preventing a conflict of interests between the financial undertaking and clients or unit-holders and among clients and unit-holders;

5^o. safeguarding the rights of clients and unit-holders; and

6^o. any other issues to be determined by order in council.

3. Without prejudice to Sections 3:17 and 3:27, rules may be laid down under or pursuant to order in council with regard to clearing institutions established in the Netherlands and branches of clearing institutions established in a non-designated State in relation to the topics as meant in the second subsection under c.

4. The Netherlands Authority for the Financial Markets may, on application, grant a waiver, fully or in part, whether or not for a fixed term, of the provisions

in the second subsection, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objectives which this section seeks to attain shall be attained otherwise.

Section 4:15

1. A financial service provider that does not carry on the business of a financial institution, credit institution or insurer shall organize its operations in such a way as to safeguard controlled and fair business operations.
2. Rules shall be laid down under or pursuant to order in council with regard to the first subsection. These rules shall concern:
 - a. integrity, including counteracting:
 - 1^o. any involvement of the financial undertaking or its staff in violation of the law or criminal offences which may affect the public's confidence in the financial undertaking or in the financial markets;
 - 2^o. taking measures relating to other issues to be designated by order in council which may be regarded as the sound operations of a financial service provider; and
 - b. orderly and transparent financial market processes, clear relationships between market parties and exercising due care in handling clients and customers, which shall be taken to mean:
 - 1^o. safeguarding the supply of information to customers or clients;
 - 2^o. safeguarding the exercise of due care in handling customers or clients.
3. The provisions under the second subsection, opening words and under b, shall apply mutatis mutandis to financial service providers that carry on the business of a financial institution, credit institution or insurer.
4. The Netherlands Authority for the Financial Markets may, on application, grant a waiver, fully or in part, whether or not for a fixed term, of the provisions in the second subsection, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objectives which this section seeks to attain shall be attained otherwise.

Section 4:16

1. Where a financial undertaking delegates its activities to a third party, it shall ensure that such third party complies with the rules applicable to the delegating financial undertaking under this part with regard to those activities.
2. A management company shall not delegate certain activities to be designated by order in council.
3. Under or pursuant to order in council:
 - a. rules shall be laid down with regard to the supervision of the compliance with the provisions laid down under or pursuant to this part with regard to the delegation of activities by management companies and depositaries; and
 - b. rules shall be laid down with regard to the agreement to be concluded between a management company or depositary and the third party with regard to the delegation of activities.

Section 4:17

1. A management company, investment firm, clearing institution or financial service provider shall ensure the adequate handling of complaints of clients, consumers or unit-holders in respect of financial services or financial products of the financial undertaking. To that end:

- a. the financial undertaking shall have internal complaints proceedings focused on the expeditious handling of complaints with due care; and
 - b. the financial undertaking shall be a member of a dispute settlement body recognized by Our Minister which handles disputes relating to financial services or financial products of the financial undertaking, unless no such dispute settlement body exists.
2. The first subsection (b) shall not concern financial undertakings in so far as they:
- a. offer units in collective investment schemes;
 - b. provide investment services and advise about financial instruments in that context; or
 - c. act as a clearing institution.
3. Rules shall be laid down under or pursuant to order in council with regard to handling complaints and rules shall be laid down with regard to the recognition of dispute settlement bodies, the handling of disputes by recognized dispute settlement bodies and the information furnished to Our Minister by recognized dispute settlement bodies.

Part 4.2.3 Provision of services with due care

Section 4:18

1. This part shall not concern:
 - a. reinsurance intermediaries; and
 - b. financial services with regard to the insurance of large risks.
2. For the purposes of the provisions under Sections 4:19, 4:20, 4:21 and 4:22, funeral expenses and benefits in kind insurance will be deemed to include a contract to accrue a fund to provide for the funeral expenses and benefits in kind 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 4:19

1. A financial undertaking shall ensure that the information supplied or made available by or on behalf of itself with regard to a financial product or a financial service, including advertisements, shall not affect the information to be supplied or made available under this part.
2. The information supplied under this part shall be factually accurate, comprehensible and not misleading.

Section 4:20

1. Prior to the advising about, providing an investment service or concluding a contract regarding a financial product or financial service, an investment firm or financial service provider shall supply information to the consumer or, where it concerns a financial instrument or insurance, the client in so far as such information is in all reasonableness relevant to an adequate assessment of such product or service. Rules may be laid down under or pursuant to order in council with regard to the information meant in the preceding sentence. Those rules may, inter alia, concern information supplied in relation to exercising the rights meant in Section 4:28 (1 and 2).
2. It may be determined by order in council that a financial undertaking, in cases to be listed in such order in council, notwithstanding the first sentence

of the first subsection, supplies the information meant in that subsection, fully or in part, after the conclusion of the contract.

3. During the term of a contract relating to a financial product or a financial service, the investment firm or financial service provider shall, in a timely fashion, supply to the consumer or, where it concerns a financial instrument or insurance, the client, information on:

a. essential changes in the information meant in the first subsection, in so far as those changes are in all reasonableness relevant to the consumer or the client; and

b. any other matters to be designated under or pursuant to order in council.

4. Rules may be laid down under or pursuant to order in council with regard to the cases and the manner in which a financial undertaking must supply information during the term of the contract.

5. It may be determined by order in council that the information meant in the third subsection shall, in cases specified in that order in council, be supplied solely at the request of the consumer or the client.

6. The Netherlands Authority for the Financial Markets may, on application, grant a waiver, fully or in part, whether or not for a fixed term, of the provisions under this section, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objectives which this section seeks to attain shall be attained otherwise.

7. The first through sixth subsections shall not concern the advice on financial instruments or the provision of an investment service to professional investors.

Section 4:21

If a financial services provider provides a financial service through an intermediary, authorized agent or sub-authorized agent, the information meant in Section 4:20 (1 and 3) shall be supplied by this intermediary, authorized agent or sub-authorized agent, unless the financial services provider in question and the intermediary, authorized agent or sub-authorized agent have agreed that the financial undertaking itself shall comply with Section 4:20 (1 and 3).

Section 4:22

1. Rules may be laid down under or pursuant to order in council with regard to the supply of information by a financial undertaking in relation to a financial product or financial service.

2. The Netherlands Authority for the Financial Markets may, on application, grant a waiver, fully or in part, whether or not for a fixed term, of the provisions in the first subsection, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objectives which this section seeks to attain shall be attained otherwise.

Section 4:23

1. Where a financial undertaking advises a consumer or, where it concerns a financial instrument or insurance, a client:

a. it shall obtain information in the consumer's interests on its financial situation, knowledge, experience, objectives and risk willingness, in so far as this is in all reasonableness relevant to its advice;

- b. it shall ensure that its advice shall, in so far as reasonably possible, take account of the information meant under a; and
 - c. it shall state reasons for the considerations on which its advice is based, in so far as necessary for a proper understanding of its advice.
2. Where a financial undertaking, in providing a financial service does not advise a consumer or, where it concerns a financial instrument or insurance, a client, it shall make this known to the consumer or the client upon commencing its activities on behalf of the consumer or the client.
3. Further rules may be laid down under or pursuant to order in council with regard to:
- a. the information meant in the first subsection (a) and the manner in which that information should be obtained;
 - b. the manner in which the reasons meant in the first subsection (c) should be provided; and
 - c. the manner in which the financial undertaking shall inform the consumer or the client that it shall not advise the consumer or the client.
4. The Netherlands Authority for the Financial Markets may, on application, grant a waiver, fully or in part, whether or not for a fixed term, of the provisions under the provisions in the third subsection, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objectives which this section seeks to attain shall be attained otherwise.
5. The first through fourth subsections shall not concern the advice on financial instruments to professional investors.

Section 4:24

1. Where a financial undertaking, without thereby also advising, provides an investment service other than the management of individual own funds or another financial service to be designated by order in council, it shall obtain information on the knowledge and experience of the consumer or, where it concerns a financial instrument or insurance, the client with regard to the financial service concerned, in order to be able to assess whether that service is suitable for the consumer or the client.
2. Where the financial undertaking, based on the information meant in the first subsection, 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.
3. Where the consumer or the client fails to provide (sufficient) information on its knowledge and experience, the financial undertaking shall warn the consumer or the client that it shall thus be unable to verify whether the financial service is suitable for the consumer or the client.
4. The first through the third subsections shall not concern the provision of an investment service as meant under a, b or d of the definition of to provide an investment service in Section 1:1 at the initiative of a client with regard to:
- a. shares admitted to trading on a market in financial instruments;
 - b. instruments usually traded on the money market;
 - c. transferable bonds or other debt instruments, in so far as they are not convertible bonds or convertible debt instruments;
 - d. units in an undertaking for collective investments in transferable securities, or;
 - e. other financial instruments to be designated by order in council;

where the financial undertaking, prior to providing the investment service, makes it known to the client that it has not assessed the suitability of this financial service to the client.

5. Rules may be laid down by order in council with regard to the manner in which the suitability of the financial service to the consumer or the client is verified.

6. The first through the fifth subsections shall not concern the provision of investment services to professional investors.

Section 4:25

1. In handling the participant, the consumer or, where it concerns a financial instrument or insurance, the client, a financial undertaking shall observe the further rules to be laid down under or pursuant to order in council with regard to the due care to be exercised.

2. The Netherlands Authority for the Financial Markets may, on application, grant a waiver, fully or in part, whether or not for a fixed term, of the provisions under the first subsection, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objectives which this section seeks to attain shall be attained otherwise.

3. The recommendation for an order in council to be laid down under the first subsection seeking to amend an order in council already laid down under that subsection, shall not be made before four weeks after the bill has been presented to both Houses of Parliament, except where the order in council is of an urgent nature according to Our Minister.

Part 4.2.4 Obligations to report

Section 4:26

1. A financial undertaking shall report any changes regarding issues on which data must be supplied to the Netherlands Authority for the Financial Markets under Section 2:13 (2), 2:22 (2), 2:32 (2), 2:33 (2), 2:42 (2), 2:43 (2), 2:58 (2), 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 regarding issues on which the Netherlands Authority for the Financial Markets and the Supervisory Authority of the Member State in which that financial undertaking provides financial services must supply data under Section 2:122 (2), 2:127 (2) or 2:129 (1).

3. It shall be determined under or pursuant to order in council, stating the procedures to be followed, which changes shall be reported, which data shall thereby be supplied and, where applicable, under which conditions the changes may be implemented.

Section 4:27

1. An auditor auditing the annual accounts of a management company of a collective investment scheme established in the Netherlands, a collective investment scheme established in the Netherlands, an investment firm, clearing institution, credit institution or insurer established in the Netherlands shall, without delay, report to the Netherlands Authority for the Financial

Markets any circumstance that becomes known to him/her in the course of the audit which is in violation of the obligations imposed under this part.

2. An auditor auditing the annual accounts of a management company of a collective investment scheme established in the Netherlands, a collective investment scheme established in the Netherlands or an investment firm established in the Netherlands shall, without delay, report to the Netherlands Authority for the Financial Markets any circumstance that becomes known to him/her in the course of the audit which leads to a refusal to issue a declaration of the accuracy of the documents or to making reservations.

3. The first and the second subsection shall apply mutatis mutandis to an auditor who, apart from the audit of the financial undertaking's annual accounts, meant in the first and the second subsection, also audits the annual accounts of another person with which the financial undertaking is affiliated in a formal or actual control structure.

4. The auditor meant in the first subsection shall, without delay, issue to the Netherlands Authority for the Financial Markets all information required under or pursuant to order in council for the supervision of the financial undertaking. Rules shall be laid down under or pursuant to order in council with regard to the procedures to be followed.

5. The Netherlands Authority for the Financial Markets shall provide the financial undertaking with the opportunity to be present at the reporting meant in the first or second subsection and at the supply of information meant in the fourth subsection by the auditor.

6. The auditor who, based on the first, second or third subsection, has notified the Netherlands Authority for the Financial Markets or based on the fourth subsection has supplied any data to the Netherlands Authority for the Financial Markets, shall not be liable for any loss sustained by a third party as a result, unless it is made plausible that, in view of all facts and circumstances, in all reasonableness, no report should have been submitted or no data should have been supplied.

7. The second and the fourth subsections shall not concern auditors who audit the annual accounts of an investment firm authorized by the Netherlands Central Bank to carry on the business of a bank.

Part 4.2.5

Section 4:28

1. A consumer shall have a period of 14 calendar days to dissolve a distance contract without penalty and without giving any reason from the day of the conclusion of the contract or, where this is a later date, for a period of 14 calendar days from the day on which the consumer receives the information which the financial undertaking must supply to him/her under Section 4:20 (1).

2. Notwithstanding the first subsection a customer shall have a period of thirty calendar days to dissolve a distance contract regarding life insurance without penalty and without giving any reason from the day on which the consumer is informed that the contract has been concluded, or, where this is a later date, for a period of thirty calendar days from the date on which the consumer receives the information which the financial undertaking must supply to him/her under Section 4:20 (1).

3. Where a consumer wishes to make use of the right meant in the first or second subsection, he/she shall inform the financial undertaking of this before

the deadline meant in that subsection expires, following the instructions given to him/her in accordance with Section 4:20 (1). The deadline shall be deemed to have been observed if the notification, if it is on paper or on another durable medium available and accessible to the financial undertaking, has been dispatched before the deadline expires.

4. The first and second subsections shall not concern:

a. contracts regarding financial products of which the value during the period meant in the subsection concerned depends on developments on the financial markets or other markets;

b. insurance contracts with maturity of less than one month;

c. contracts whose performance has been fully completed by both parties at the consumer's express request before the consumer exercises the right meant in the first or second subsection;

d. credit contracts that are dissolved in accordance with Sections 7:46e and 7:48e of the Dutch Civil Code;

e. contracts regarding credit secured by mortgage; and

f. other contracts regarding financial products to be designated by order in council.

5. If to a distance contract another contract has been attached regarding property or a service provided by the financial undertaking or by a third party on the basis of an agreement between the financial undertaking and that third party, that attached contract shall be cancelled by operation of law and without any penalty on the part of the consumer upon cancelling the distance contract in accordance with the first or second subsection.

Section 4:29

1. The performance of the distance contract may only begin after the consumer has given his/her approval.

2. Where the consumer exercises the right meant in Section 4:28 (1 or 2), the financial company may only require payment for the financial product provided for the performance of the distance contract. The amount payable:

a. shall not exceed an amount which is in proportion to the extent of the product already provided in comparison with the full coverage of the distance contract; and

b. shall in no event be such that it could be construed as a penalty.

3. The financial undertaking may only require payment of the amount meant in the second subsection if:

a. it can show proof that the consumer was informed in accordance with Section 4:20 (1) of the payment meant in the second subsection; and

b. it had commenced performance of the contract at the consumer's express request before the deadline meant in Section 4:28 (1 or 2) had expired.

4. Where the consumer exercises the right meant in Section 4:28 (1 or 2), the financial undertaking shall, without delay and in any event not later than thirty calendar days after it has received notification of the cancellation, pay the consumer any sums it has received from the consumer in accordance with the distance contract, except for the amount meant in the second subsection.

5. Where the consumer exercises the right meant in Section 4:28 (1 or 2) it shall, without delay and in any event not later than thirty calendar days after it has received notification of the cancellation, return to the consumer any sums of money and goods it has received from the financial undertaking on the basis of the distance contract.

Section 4:30

Sections 4:28 and 4:29 may not be derogated from to the detriment of the consumer.

CHAPTER 4.3 SUPPLEMENTARY RULES ON BEING ACTIVE ON THE FINANCIAL MARKETS REGARDING CERTAIN 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. At a consumer's request, the offeror shall, without delay, issue a free investment object prospectus to him/her.
2. Where an investment object is offered through an intermediary, the latter shall issue the investment object prospectus meant in the first subsection, unless the offeror and the intermediary have agreed that the offeror itself shall fulfil that obligation. The first subsection shall apply mutatis mutandis.
3. The investment object prospectus meant in the first subsection shall solely contain the data to be determined under or pursuant to order in council and to be included in the investment object prospectus in a way to be determined under or pursuant to order in council. Rules may be laid down under or pursuant to an order in council with regard to the way in which the investment object prospectus is furnished.
4. The obligation to have available and to issue an investment object prospectus may be derogated from subject to rules to be determined by virtue of order in council.
5. Section 4:19 (2) shall apply mutatis mutandis to the investment object prospectus meant in the first subsection.

§ 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 by payment of the electronic money in notes and coins or by payment into a current or savings account, solely charging the cost necessary for the exchange.
2. Rules may be laid down under or pursuant to order in council with regard to the exchange meant in the first subsection.

§ 4.3.1.3. Credit

Section 4:32

1. An offeror of credit shall participate in a credit registration system.
2. Rules may be laid down by order in council under which it is possible to derogate from the first subsection.

Section 4:33

1. An offeror of credit with a website shall have a credit prospectus available on its website and shall, without delay, issue a free credit prospectus at the consumer's request. In the absence of a website, the offeror shall issue a free credit prospectus to a consumer prior to the conclusion of a credit contract.
2. Where a credit is offered through an intermediary, the latter shall issue the credit prospectus meant in the first subsection, unless the offeror and the intermediary have agreed that the offeror itself shall fulfil that obligation. The first subsection shall apply mutatis mutandis.
3. The credit prospectus meant in the first subsection shall solely contain the data to be determined under or pursuant to order in council and to be included in the credit prospectus in a way to be determined under or pursuant to order in council. Further rules may be laid down under or pursuant to order in council with regard to the way in which the credit prospectus will be issued.
4. The obligation to have available and to issue a credit prospectus may be derogated from subject to rules to be determined by virtue of order in council, and forms of credit may be designated by order in council for which the obligation to have available and to issue a credit prospectus does not apply.
5. Section 4:19 (2) shall apply mutatis mutandis to the credit prospectus meant in the first subsection.

Section 4:34

1. Before concluding a credit contract, a credit provider shall, in the consumer's interests, obtain information on the latter's financial situation and assess, in order to prevent overcrediting of 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 in view of overcrediting of the consumer.
3. Rules may be laid down under or pursuant to order in council with regard to the first and second subsection.

Section 4:35

Rules may be laid down under or pursuant to order in council with regard to the maximum permitted credit compensation.

Section 4:36

A municipal credit bank shall be incorporated and wound up by an order to that effect of the local council or by the arrangement of a municipal scheme by local councils of one or more municipalities. The order or the municipal scheme shall be subject to the approval of the Provincial Executive.

Section 4:37

1. Rules shall be laid down for the operations of a municipal credit bank by the Municipal Executive or, where the municipal bank has been set up by the arrangement of a municipal scheme, by the local councils of the municipalities which are members of the scheme, which for the provision of credit within the course of the performance of its public function at least includes regulations corresponding to the provisions under part 4.2.1, part 4.2.2, part 4.2.3, part 4.2.5, Section 4:32, Section 4:33, paragraph 4.3.8.1. and Chapters IV and V of the Consumer Credit Act.
2. The rules shall be subject to the approval of the Provincial Executive.

3. The supervision of the compliance with the rules by the municipal credit bank:
- a. shall be exercised by the general management of the municipal credit bank, in case the municipal credit bank is incorporated by the arrangement of a municipal scheme and has no legal form under private law;
 - b. shall be safeguarded where the municipal credit bank has a legal form under private law as:
 - 1^o. the majority of the management is appointed upon the recommendation of the local council or the Municipal Executive of one or more municipalities for which the municipal credit bank carries out activities;
 - 2^o. the majority of the Supervisory Board is appointed upon the recommendation of the local council or the Municipal Executive of one or more municipalities for which the municipal credit bank carries out activities
 - 3^o. the annual accounts and the budget of the municipal credit bank are approved by a local council or by the Municipal Executive of one or more municipalities for which the municipal credit bank carries out activities; or
 - c. shall, where points a and b do not apply, be exercised by the Municipal Executive.
4. The requirements listed in the third paragraph (b) (1^o - 3^o) shall not concern a municipal credit bank with a legal form under private law where a negative operating balance is settled by one or more municipalities for which the municipal credit bank is active.

§ 4.3.1.4. *Units in an investment undertaking*

Section 4:38

1. This paragraph, except for Sections 4:53 opening words and under b and 4:62, shall not concern management companies of undertakings for collective investment in transferable securities established in another Member State, undertakings for collective investment in transferable securities established in another Member State and any depositaries affiliated with those undertakings.
2. This paragraph, except for Sections 4:46, 4:49, 4:50 (2 and 3), 4:51, 4:52 and 4:53, shall not concern management companies of collective investment schemes established in a designated State, collective investment schemes established in a designated State and any depositaries affiliated with those collective investment schemes.

Section 4:39

At least two natural persons shall determine the day-to-day policies of a management company, investment company or depositary.

Section 4:40

The persons determining the day-to-day policies of a management company or investment company established in the Netherlands shall carry out their activities in that respect from the Netherlands.

Section 4:41

A management company is a director under the articles of association of any of the investment company it manages.

Section 4:42

A management company administrating a common fund shall take measures to ensure that:

- a. the assets of the common fund shall be acquired on behalf of the unit-holders by a depositary independent from the management company; and
- b. the depositary may solely dispose of the common fund assets and liabilities with the cooperation of the management company.

Section 4:43

1. Where a depositary keeps the assets of a collective investment scheme, the management company of the collective investment scheme shall conclude a written agreement on administration and depositing with the depositary.
2. Rules may be laid down by order in council with regard to the content of the agreement on administration and depositing to be concluded between the management company and a depositary.

Section 4:44

1. Only a legal person with as the sole object under the articles of association keeping the assets and administrating the goods in which a collective investment scheme invests shall act as a depositary.
2. The assets of a common fund shall be kept by a depositary that solely keeps the assets on behalf of the common fund, where there is a real risk based on the investment policies of the common fund concerned that the assets and liabilities of the common fund shall not suffice to pay off the claims meant in Section 4:45 (1) and the own funds of the depositary shall not suffice to pay off such claims.
3. The Netherlands Authority for the Financial Markets may, on application, grant a waiver, fully or in part, whether or not for a fixed term, of the second subsection, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objectives which that subsection seeks to attain shall be attained otherwise.

Section 4:45

1. The assets of a common fund shall solely serve to pay off the claims ensuing from:
 - a. liabilities relating to the administration and depositing of the fund; and
 - b. units.
2. Where the assets of the common fund do not suffice upon settlement to pay off the claims, the assets of the common fund shall serve to pay off the claims in order of the first subsection.
3. Notwithstanding the first subsection, other claims may be recovered from the assets of the common fund if it is established that the claims meant in the first subsection may be paid and that such claims shall not arise in the future.
4. Where the claims meant in the first subsection cannot be fully paid off by the assets of the common fund, the funds of the depositary shall first serve as payment of the claims in order of the first subsection followed by the other claims, except for other reasons of preference recognized by law.

Section 4:46

1. A management company shall have a website.
2. The management company shall classify information on the website, where relevant, per separate collective investment scheme it manages.

3. The management company shall state the website address in the prospectus, meant in Section 4:49 (1), in the half-yearly figures and in the annual report of the management company and the collective investment schemes it manages as meant in Section 4:51 (1 and 2).

4. Where the management company publishes or otherwise makes available in an electronic form on its website information that must be made available or supplied, it shall thereby state that, on request, a copy of such information shall be supplied and, where applicable, which costs that shall entail.

Section 4:46a

Whenever a collective investment scheme offers, purchases or redeems units, the management company shall determine the intrinsic value of the units and it shall publish this value on its website without delay, stating the date on which the intrinsic value was determined.

Section 4:47

1. A management company shall publish a proposal to amend the conditions applicable between a collective investment scheme it manages and the unit-holders in an advertisement in a Dutch newspaper with a national distribution or dispatch it to the address of each unit-holder and publish it on its website. Upon publication of the proposal to amend, the management company shall inform the Netherlands Authority for the Financial Markets of this.

2. A management company shall publish an amendment to the conditions applicable between the collective investment fund it manages and the unit-holders in an advertisement in a Dutch newspaper with a national distribution or dispatch it to the address of each unit-holders and publish it on its website. Upon publication of the amendment, the management company shall inform the Netherlands Authority for the Financial Markets of this.

3. Where the amendment to the conditions meant in the second subsection reduces the rights and securities of the unit-holders or imposes costs on the unit-holders, the amendment shall not be invoked against the unit-holders before the expiry of three months after the publication, meant in the second subsection, and within this period the unit-holders may retire under the usual conditions.

4. Where the amendment to the conditions meant in the second subsection changes the investment policies of the collective investment scheme, the amendment shall not be introduced before the expiry of three months after the publication meant in the second subsection, and within this period the unit-holders may retire under the usual conditions.

Section 4:48

1. A management company shall have a registration document available on its website including data on the management company, the collective investment schemes it manages or intends to manage and any affiliated depositaries.

2. Rules shall be laid down by order in council with regard to the data which the registration document must in any event include.

Section 4:49

1. A management company shall have available on its website a prospectus of any collective investment scheme it manages.

2. The prospectus shall in any event state:
 - a. the data required for investors to make an informed judgement of the collective investment scheme and the ancillary costs and risks;
 - b. an attestation by the management company that it, the collective investment scheme and any depositary affiliated fulfil the conditions imposed under or pursuant to this Act and that the prospectus includes the data prescribed under this Act;
 - c. a statement of an auditor, stating his/her name and office address, that the prospectus includes the data prescribed by this Act;
 - d. the registration document of the administrator meant in Section 4:48 (1); and
 - e. other data to be determined under or pursuant to order in council to be included in the prospectus in a way to be determined under or pursuant to order in council.
3. A management company shall, if need be, update the data included in the prospectus.
4. The Netherlands Authority for the Financial Markets may require the prospectus to be made available in one or more languages of its choice where this is necessary, in view of the intended dissemination of the prospectus, for an adequate supply of information to the public.
5. The Netherlands Authority for the Financial Markets may, on application, grant a waiver, fully or in part, whether or not for a fixed term, of the provisions under the second subsection and of the third subsection, if the applicant shows proof that it cannot reasonably comply with its provisions and that the objectives which this sections seeks to attain shall be attained otherwise.
6. This section shall not concern collective investment schemes of which the units are transferable and are not on request of the unit-holder re-purchased or redeemed, directly or indirectly, at the expense of the assets.

Section 4:50

1. At least two weeks before units in a collective investment schemes it manages are offered to the Netherlands Authority for the Financial Markets on behalf of entering the collective investment scheme in the register meant in Section 1:107, a management company shall issue the following data:
 - a. the name and the address of the management company;
 - b. the name and the address of the collective investment scheme;
 - c. where applicable: the names of the persons who (co-)determine the day-to-day policies of the investment company and the names of the persons who are members of a body charged with the supervision of the policy and the general course of events of the investment company;
 - d. the name and the address of any depositary affiliated with the investment undertaking;
 - e. the re-purchase and sale method of the units;
 - f. a description of the investment policies of the collective investment scheme;
 - g. any listing on a regulated market;
 - h. the intended date of the provision of the units; and
 - i. the fund rules of a common fund where it concerns units in an undertaking for collective investment in transferable securities.
2. Upon providing the units or the written announcement that the units shall be provided, the management company shall make generally available, free of charge, the prospectus meant in Section 4:49, the fund rules or the articles of

association of the investment undertaking and, where published, the annual accounts of the investment undertaking regarding the two preceding years and it shall publish that information on its website. Any publication in which those units are provided shall state the locations where the prospectus is available to the public.

3. The second subsection shall not concern collective investment schemes of which the units are transferable and are not at the request of the unit-holder re-purchased or redeemed, directly or indirectly, at the expense of the assets.

Section 4:51

1. A management company, collective investment scheme or depositary shall, within four months of the end of the financial year, submit to the Netherlands Authority for the Financial Markets the annual accounts, an annual report and the other data as meant in Sections 361 (1), 391 (1) and 392 (1) (a – h) 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, submit to the Netherlands Authority for the Financial Markets the half-yearly figures.

3. The management company, the collective investment scheme or the depositary shall draw up the annual accounts, the annual report and the other data as meant in the first subsection, and the half-yearly figures as meant in the second subsection, in accordance with Title 9 of Book 2 of the Dutch Civil Code, except for Section 403 of Book 2 of the Dutch Civil Code where it concerns a management company.

4. Rules shall be laid down under or pursuant to order in council with regard to the submission and the content of the annual accounts, the annual report and the other data meant in the first subsection and of the half-yearly figures meant in the second subsection.

5. Without prejudice to the provisions in Title 9 of Book 2 of the Dutch Civil Code, the Netherlands Authority for the Financial Markets may, on application, grant a waiver, fully or in part, whether or not for a fixed term of the first, second or third subsection or of the provisions under the fourth subsection, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objectives which this section seeks to attain shall be attained otherwise.

Section 4:52

1. A management company, collective investment scheme or depositary shall, within four months of the end of the financial year, publish the annual accounts, an annual report and the other data as meant in Section 4:51 (1).

2. A management company or collective investment scheme shall, within nine weeks of the end of the first half of the financial year, publish the half-yearly figures meant in Section 4:51 (2).

3. Rules shall be laid down under or pursuant to order in council with regard to the publication of the annual accounts, the annual report and the other data meant in the first subsection and of the half-yearly figures meant in the second subsection.

4. The Netherlands Authority for the Financial Markets may, on application, grant a waiver, fully or in part, whether or not for a fixed term, of the first or second subsection or of the provisions under the third subsection, if the applicant shows proof that it cannot reasonably comply with those provisions

and that the objectives which this section seeks to attain shall be attained otherwise.

Section 4:52a

At least once a year an independent expert shall carry out a valuation of the assets of a collective investment scheme that are not financial instruments admitted to trading in a regulated market or another market in financial instruments.

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 Netherlands 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. An investment company managed by a management company whose authorization is withdrawn or an investment company whose authorization is withdrawn, may on request of the Netherlands Authority for the Financial Markets be dissolved by the district court.
2. The assets and liabilities of a common fund managed by a management company whose authorization is withdrawn, may on request of the Netherlands Authority for the Financial Markets be liquidated by one or more liquidators to be appointed by the district court within a term to be fixed by the district court.
3. An investment company or the assets and liabilities of a common fund may also, on request of the Netherlands Authority for the Financial Markets, be dissolved by the district court or liquidated by one or more liquidators to be appointed by the district court within a term to be fixed by the district court, if:
 - a. the authorization of the management company of the collective investment scheme has changed to such an extent that the authorization no longer covers the administration of the common fund or the investment company;
 - b. the collective investment scheme or its management company:
 - 1^o. has not engaged in any activities within a term of twelve months of its incorporation;
 - 2^o. has expressly made it known that the collective investment scheme shall not engage in any activities;
 - 3^o. has ceased to engage in any activities during a term of more than six months;
 - 4^o. has manifestly ceased to be a collective investment scheme;
 - 5^o. fails to comply with the provisions of this Act; or
 - 6^o. has failed to (satisfactorily) carry out an instruction as meant in Section 1:75.
4. The dissolution meant in the first or third subsection and the liquidation meant in the second or third subsection shall not be implemented until the decision to withdraw or change the authorization has become final and conclusive.

Section 4:55

Where a management company suspends the re-purchase or redemption of units in a collective investment scheme undertaking it manages, it shall, without delay, inform the Netherlands Authority for the Financial Markets and, where it concerns a management company of an undertaking for collective investment in transferable securities, the Supervisory Authority of every Member State in which the units in the collective investment scheme are traded.

Section 4:56

1. The assets of an undertaking for collective investment in transferable securities which is an investment company shall be kept by a depositary independent from the former for safe-keeping. Derogation from this requirement is permitted subject to conditions to be laid down by order in council.
2. Section 4:42 opening words and under b shall apply mutatis mutandis.

Section 4:57

A depositary of an undertaking for collective investment in transferable securities established in the Netherlands shall be established in a Member State and, where it is not established in the Netherlands, in a branch situated in the Netherlands.

Section 4:58

An undertaking for collective investment in transferable securities which is an investment company shall have a separate depositary unless the investment company has own funds of at least € 300,000.

Section 4:59

1. A management company of an undertaking for collective investment in transferable securities shall be established in the Netherlands.
2. The activities of the management company of an undertaking for collective investment in transferable securities shall be confined to the administration of collective investment schemes, the administration of individual funds and the provision of services as meant under 1 and 6 of part C of the annex to the Investment Services Directive.

Section 4:60

1. The object under the articles of association of an undertaking for collective investment in transferable securities shall exclusively be the investment in accordance with the principle of risk-spreading in:
 - a. securities;
 - b. instruments that are usually negotiated on the money market;
 - c. units in collective investment schemes that are, directly or indirectly, repurchased or repaid on request of the unit-holders and at the expense of the assets;
 - d. financial futures or equivalent instruments focused on settlement in money;
 - e. interest rate futures contracts;
 - f. interest swaps, currency swaps or share swaps;
 - g. options for the acquisition or alienation of instruments as meant under a through f, including equivalent instruments that are focused on settlement in money; or

- h. credit balances with banks that must be repaid immediately and of which the interest instalment is at most twelve months.
2. The units in an undertaking for collective investment in transferable securities shall be provided without restrictions in the Netherlands and shall, on request of one unit-holder, be re-purchased or redeemed, directly or indirectly, at the expense of the assets of the investment undertaking.
 3. An undertaking for collective investment in transferable securities shall be established in the Netherlands.
 4. The activities of an undertaking for collective investment in transferable securities which is an investment firm shall be confined to the management of its assets and liabilities.
 5. An undertaking for collective investment in transferable securities may not amend its articles of association or rules to such an extent that they no longer comply with the provisions of the first through the fourth subsection.
 6. Amending the articles of association or rules as meant in the fifth subsection shall be void. On request of the Public Prosecution Service, the court shall appoint an administrator authorized to cancel the effects of a void act.
 7. In cancelling the effects of the void act the administrator shall also act in the interests of the unit-holders in the collective investment scheme.

Section 4:61

1. Further rules shall be laid down under or pursuant to order in council with regard to the business operations and the supply of information by undertakings for collective investment in transferable securities and rules shall be laid down under or pursuant to order in council with regard to the investments of undertakings for collective investment in transferable securities.
2. It may be determined by order in council that the Netherlands Authority for the Financial Markets, pursuant to rules to be laid down therein, may grant a waiver of the provisions under the first subsection with regard to the investments by undertakings for collective investment in transferable securities.

Section 4:62

1. A management company which in the Netherlands provides units in an undertaking for collective investment it manages established in another Member State shall make available in the Netherlands the data and documents relating to that undertaking 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 Netherlands Authority for the Financial Markets.
2. The management company meant in the first subsection shall, with due regard to the applicable Dutch statutory provisions, see to the payments relating to the re-purchase or redemption of the units in the Netherlands.

§ 4.3.1.5. Insurance contracts

Section 4:63

1. A life insurer or funeral expenses and benefits in kind insurer shall ensure that an individual insurance contract with maturity of more than six months or

a funeral expenses and benefits in kind insurance contract shall expressly state that the policy holder within a period of thirty calendar days from the day on which it is informed of the conclusion of the insurance contract may cancel the insurance contract with immediate effect, either on paper or on another durable medium available and accessible to the insurer.

2. The notification of the conclusion of the insurance contract meant in the first subsection shall be made on paper or on another durable medium available and accessible within four weeks of the conclusion of the insurance contract.

3. The cancellation by the policy holder means that the policy holder and the life insurer or funeral expenses and benefits in kind insurer with effect from the date on which the insurer received the notification shall be released from all obligations ensuing from this insurance contract.

4. This section shall apply mutatis mutandis to contracts intended for the accrual of a fund to pay for the funeral expenses and benefits in kind of a natural person.

Section 4:64

Sections 4:65 – 4:69 shall not concern:

- a. legal expenses insurers established in another Member State;
- b. legal assistance granted by an insurer where they concern risks relating to the use of sea-going vessels; and
- c. legal assistance granted by an insurer as an ancillary risk within the Assistance class in a State other than the State in which the insured person has its domicile, in so far as:
 - 1^o. this legal assistance forms part of an insurance contract solely covering assistance; and
 - 2^o. the contract separately states that the legal expenses coverage is confined to legal assistance in a State other than the State in which the insured person has its domicile and is only ancillary to the assistance.

Section 4:65

1. A legal expenses insurer that solely carries on the insurance business in the Legal Expenses class:

- a. shall organize its operations in such a way that the staff members which are engaged in legal assistance claims settlement or providing legal advice with regard to that claims settlement, shall not at the same time be engaged in the same or similar activities on behalf of another insurer having financial, commercial or economic links with the first insurer and the pursuit of one or more of the other classes of insurance;
- b. shall entrust the activities with regard to the legal assistance claims settlement to a legally independent claims settlement office and it shall refer to this claims settlement office in the contract regarding the legal expenses coverage; or
- c. shall include in the contract regarding the legal expenses coverage the stipulation that the insured person, as soon as it is entitled to legal assistance under the insurance contract, may entrust the defence of its interests to a lawyer or another expert competent by law of its choice.

2. A legal expenses insurer that, apart from the Legal Expenses class, also carries out another class:

- a. shall entrust the activities with regard to the legal assistance claims settlement to a legally independent claims settlement office and shall refer to

this claims settlement office in the contract regarding the legal expenses coverage; or

b. shall include in the contract regarding the legal expenses coverage the stipulation that the insured person, as soon as it is entitled to legal assistance under the insurance contract, may entrust the defence of its interest to a lawyer or another expert competent by law of its choice.

3. A legal expenses insurer shall only entrust activities with regard to the legal assistance claims settlement to a claims settlement office as meant in the first subsection (b) and the second subsection (b) which organizes its operations in such a way that the staff members and the members of the managerial body involved in the legal assistance claims settlement or providing legal advice with regard to that claims settlement shall not at the same time be engaged in the same or similar activities for another class of an insurer having financial, commercial or administrative links with the first insurer.

Section 4:66

Where an insurance contract also covers risks of another class, the legal expenses insurer shall ensure that the substance of the legal expenses coverage is included in a separate contract or in a separate chapter of the contract.

Section 4:67

1. A legal expenses insurer shall ensure that the contract regarding the legal expenses coverage shall expressly stipulate that the insured person is free to choose a lawyer or another expert competent by law if:

a. a lawyer or another expert competent by law is requested to defend or to represent the interest of the insured person in court or administrative proceedings; or

b. a conflict of interests arises.

2. This section shall not apply to the legal expenses insurers which apply Section 4:65 (1) (c) or 4:65 (2) (b).

Section 4:68

1. A legal expenses insurer shall ensure that the contract regarding the legal expenses coverage expressly provides for arbitration proceedings or other proceedings providing guarantees similar in terms of objectivity to arbitration proceedings, in order to assess which line of conduct shall be followed in case of a difference of opinion between the insurer or the legally independent claims settlement office and the insured person in respect of the settlement of the dispute regarding which the legal expenses insurance contract is invoked.

2. This section shall not concern legal expenses insurers which apply Section 4:65 (1) (c) or 4:65 (2) (b).

Section 4:69

1. A legal expenses 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 shall be informed of the right meant in Section 4:67 or of the opportunity to follow the proceedings meant in Section 4:68.

2. This section shall not concern the legal expenses insurers which apply Section 4:65 (1) (c) or 4:65 (2) (b).

Section 4:70

1. A non-life insurer carrying out the Motor Vehicle Liability class from a branch situated in the Netherlands:
 - a. shall be affiliated with the office meant in Section 2 (6) of the Motor Vehicle Liability Insurance Act;
 - b. shall fulfil its obligations vis-à-vis the Dutch Motor Traffic Guarantee Fund under Sections 24 (1) and 24a (1) of the Motor Vehicle Liability Insurance Act;
 - c. shall fulfil its obligation to inform under Section 13 (1) of the Motor Vehicle Liability Insurance Act vis-à-vis the public body mentioned in that subsection; and
 - d. shall ensure that the terms of its insurance contract comply with the requirements laid down by the Motor Vehicle Liability Insurance Act.
2. A non-life insurer established in the Netherlands carrying out the Motor Vehicle Liability class or a non-life insurer established in a non-Member State carrying out the Motor Vehicle Liability class from a branch situated in the Netherlands shall appoint a person as loss adjuster in every other Member State. The loss adjuster shall, on behalf of the non-life insurer, handle and settle the claims of injured parties claiming compensation as a result of facts caused by participation in the traffic of motor vehicles usually kept and insured in a Member State other than the Netherlands and which occurred in a Member State other than the one in which the injured party has its domicile, or in a non-Member State in which a national office is active similar to the office meant in Section 2 (6) of the Motor Vehicle Liability Insurance Act.
3. The loss adjuster has its branch in the Member State in which it is appointed. It shall handle and settle claims from injured parties as meant in the second subsection in the official language or official languages of that Member State.
4. The loss adjuster shall not engage in the pursuit of the business of an insurer on behalf of the non-life insurer. Nor shall it be considered a branch of the non-life insurer in the sense 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 (OJ L 12), or within the meaning of the Brussels Convention of 27 September 1968 on the jurisdiction and enforcement of judgments in civil and commercial matters (OJ C 27).
5. The non-life insurer meant in the second subsection shall, within two weeks of commencing to carry out the Motor Vehicle Liability class, inform the Information Centre meant in Section 27b of the Motor Vehicle Liability Insurance Act, and the Information Centre in every other Member State of the name and address of the loss adjuster it has appointed in each Member State. The non-life insurer shall, within two weeks, inform the information centres meant in the first sentence of any change in the name or address of the loss adjuster concerned.
6. The non-life insurer of the party having caused the loss or damage or the latter's loss adjuster shall, within three months of the date on which an injured party filed a claim for compensation, present:
 - a. a reasoned proposal for compensation where the liability is not contested and the scope of the loss or damage has been established; or
 - b. a reasoned reply to all points in the request for compensation where the liability is contested or the scope of the loss or damage has not yet been established.

Section 119 of Book 6 of the Dutch Civil Code shall apply.

7. The non-life insurer meant in the opening words of the first subsection shall, within two weeks of commencing to carry out the Motor Vehicle Liability class, submit to the Netherlands Authority for the Financial Markets a signed statement that the terms of its insurance contract comply with the requirements laid down by the Motor Vehicle Liability Insurance Act.

8. The Netherlands Authority for the Financial Markets may, on application, grant a waiver of the first or second subsection to a non-life insurer that covers no liabilities in regard of which the Motor Vehicle Liability Insurance Act applies and solely covers the risks of the Motor Vehicle Liability class as ancillary risks.

Section 4:71

1. A non-life insurer established outside the Netherlands carrying out the Motor Vehicle Liability class by providing services to the Netherlands:

- a. shall be affiliated with the office meant in Section 2 (6) of the Motor Vehicle Liability Insurance Act;

- b. shall fulfil its obligations vis-à-vis the Dutch Motor Traffic Guarantee Fund under Sections 24 (1) and 24a (1) of the Motor Vehicle Liability Insurance Act;

- c. shall fulfil its obligation to inform under Section 13 (1) of the Motor Vehicle Liability Insurance Act vis-à-vis the public body mentioned in that subsection;

- d. shall ensure that the terms of its insurance contract comply with the requirements laid down by the Motor Vehicle Liability Insurance Act; and

- e. shall appoint a person as a loss adjuster that has its branch in the Netherlands and is entrusted on behalf of the non-life insurer with handling claims of injured parties as meant in Section 1 of the Motor Vehicle Liability Insurance Act.

2. The loss adjuster shall have sufficient powers to represent the non-life insurer at law and otherwise. The loss adjuster shall not carry on the business of an insurer on behalf of the non-life insurer.

3. Within two weeks of commencing the provision of services in the Motor Vehicle Liability class, the non-life insurer shall submit to the Netherlands Authority for the Financial Markets the deed of the appointment of the loss adjuster which shows proof of the latter's name, address and powers.

4. Rules shall be laid down under or pursuant to order in council with regard to:

- a. the circumstances under which the loss adjuster ceases to be a loss adjuster; and

- b. the succession of the loss adjuster.

5. Within two weeks of commencing the provision of services in the Motor Vehicle Liability class, the non-life insurer shall submit to the Netherlands Authority for the Financial Markets a signed statement that the terms of its insurance contract satisfy the requirements laid down by the Motor Vehicle Liability Insurance Act.

6. The Netherlands Authority for the Financial Markets may, on application, grant a waiver of the first subsection to the non-life insurer that does not cover liability in regard of which the Motor Vehicle Liability Insurance Act applies and that solely covers the risks of the Motor Vehicle Liability class as ancillary risks.

7. In the case of Community co-assurance this section shall only concern the non-life insurer acting as the first non-life insurer.

Part 4.3.2 Advice

Section 4:72

1. An advisor that does not also offer the recommended financial product or does not also provide an investment service, provides mediation services or act as an authorized agent or sub-authorized agent in respect of the recommended financial product shall inform the consumer or, where it concerns insurance, the client, at the latest together with his/her advice, on the following matters:
 - a. that it:
 - 1^o. gives advice on the basis of an objective assessment;
 - 2^o. has a contractual obligation to solely give advice for one or more offerors, in which case it shall also inform the consumer or the client, on request, of the names of such offerors; or
 - 3^o. has no contractual obligation to solely give advice for one or more offerors and that it does not give advice on the basis of an objective assessment, in which case it shall inform the consumer or the client, on request, of the names of the offerors for which it gives advice or may give advice;
 - b. how it receives remuneration;
 - c. whether it holds a qualifying holding unit in a certain offeror;
 - d. whether a certain offeror or a certain parent company of an offeror holds a qualifying holding unit in himself; and
 - e. other matters to be designated by order in council.
2. An objective assessment as meant in the first subsection shall be an assessment of an adequate number of similar financial products available on the market which enables the advisor to recommend a financial product which meets the needs of the consumer or, where it concerns insurance, the client.
3. Rules may be laid down under or pursuant to order in council with regard to:
 - a. the form and method of supplying the information meant in the first subsection;
 - b. the objective assessment; and
 - c. the remuneration or compensation 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 on the basis of the first subsection.
5. The first through fourth subsections shall not concern advisors in large risk insurance contracts.
6. The Netherlands Authority for the Financial Markets may, on application, grant a waiver, fully or in part, whether or not for a fixed term, of the provisions in the third subsection, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objectives which this section seeks to attain shall be attained otherwise.

Part 4.3.3 Provision of mediation services

§ 4.3.3.1. General

Section 4:73

1. Before concluding a contract regarding a financial product, an intermediary shall inform the consumer or, where it concerns insurance, the client on the following matters:

a. that it:

1^o. gives advice on the basis of an objective assessment;

2^o. has a contractual obligation to solely provide mediation services for one or more offerors, in which case it shall also inform the consumer or the client, on request, of the names of such offerors; or

3^o. has no contractual obligation to solely provide mediation services for one or more offerors and that it does not give advice on the basis of an objective assessment, in which case it shall inform the consumer or the client, on request, of the names of the offerors for which it provides mediation services or may provide mediation services;

b. how it receives remuneration;

c. whether it holds a qualifying holding in a certain offeror;

d. whether a certain offeror or a certain parent company of an offeror holds a qualifying holding in himself; and

e. other matters to be designated by order in council.

2. An objective assessment as meant in the first subsection shall be an assessment of an adequate number of similar financial products available on the market which enables the intermediary to recommend a financial product which meets the needs of the consumer or, where it concerns insurance, the client.

3. Rules may be laid down under or pursuant to order in council with regard to:

a. the form and method of supplying the information meant in the first subsection;

b. the objective assessment; and

c. the remuneration or compensation for the provision of mediation services in financial products, in whatever form, and the payment method.

4. Section 4:19 (2) shall apply mutatis mutandis to the information supplied on the basis of the first subsection.

5. The first through fourth subsections shall not concern advisors in large risk insurance contracts.

6. The Netherlands Authority for the Financial Markets may, on application, grant a waiver, fully or in part, whether or not for a fixed term, of the provisions in the third subsection, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objectives which this section seeks to attain shall be attained otherwise.

§ 4.3.3.2. *Credit*

Section 4:74

1. An intermediary in credit or a sub-intermediary in credit may not negotiate or accept a remuneration or compensation, in whatever form, in relation to the credit or charge any such remuneration or compensation to a party other than the credit offeror or the intermediary in credit for whom the sub-intermediary acts respectively.

2. In order to promote the exercise of due care in the provision of mediation services in credit, rules may be laid down by order in council with regard to

the remuneration or compensation meant in the first subsection and the payment method.

3. The provisions in the first subsection may be derogated from subject to rules to be determined by virtue of order in council.

4. Legal acts performed contrary to the first subsection may be nullified.

§ 4.3.3.3. *Insurance contracts*

Section 4:75

1. An insurance intermediary shall have a professional liability insurance contract or a similar provision.

2. Rules may be laid down under or pursuant to order in council with regard to the professional liability insurance contract and the similar provision.

3. The amount of the cover of the professional liability insurance contract and the similar provision shall be laid down by ministerial regulation.

4. The first through third subsections shall not concern:

a. insurance intermediaries authorized by the Netherlands Central Bank to carry on the business of a bank;

b. insurance intermediaries authorized by the Netherlands Central Bank to carry on the business of an insurer;

c. insurance intermediaries as meant in Section 2:81 (2), in so far as the insurers for whom they provide mediation services are authorized by the Netherlands Central Bank to carry on the business of an insurer; and

d. insurance intermediaries established in another Member State.

5. The Netherlands Authority for the Financial Markets may, on application, grant a waiver, fully or in part, whether or not for a fixed term of the provisions in the second subsection, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objectives which this section seeks to attain shall be attained otherwise.

Part 4.3.4 Provision of reinsurance mediation services

Section 4:76

1. A reinsurance intermediary shall have a professional liability insurance contract or a similar provision.

2. Rules may be laid down under or pursuant to order in council with regard to the professional liability insurance contract and the similar provision.

3. The amount of the cover of the professional liability insurance contract and the similar provision shall be laid down by ministerial regulation.

4. The first through third subsections shall not concern:

a. reinsurance intermediaries authorized by the Netherlands Central Bank to carry on the business of a bank;

b. reinsurance intermediaries authorized by the Netherlands Central Bank to carry on the business of an insurer; and

c. reinsurance intermediaries established in another Member State.

5. The Netherlands Authority for the Financial Markets may, on application, grant a waiver, fully or in part, whether or not for a fixed term, of the provisions in the second subsection, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objectives which this section seeks to attain shall be attained otherwise.

Part 4.3.5 Acting as a clearing institution

Section 4:77

1. The conditions used by a clearing institution for admitting clients are objective and public.
2. A clearing institution shall pursue adequate policies to prevent a conflict 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 interests appears to be inevitable.
4. Further rules may be laid down under or pursuant to order in council with regard to the first and second subsection.
5. The Netherlands Authority for the Financial Markets may, on application, grant a waiver, fully or in part, whether or not for a fixed term, of the provisions in the first or second subsection, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objectives which this section seeks to attain shall be attained otherwise

Section 4:78

1. Rules may be laid down by order in council with regard to the supply of information by a clearing institution to the client for the duration of a contract.
2. Rules may be laid down under or pursuant to order in council with regard to the supply of information by a clearing institution to the Netherlands Authority for the Financial Markets on behalf of the supervision of the compliance with this part.

Part 4.3.6 Acting as an authorized agent or sub-authorized agent

Section 4:79

1. The authority or sub-authority to be granted to an authorized agent or sub-authorized agent shall be drawn up in writing according to a model to be laid down by ministerial regulation.
2. An authority may be restricted by the insurer granting the authority.
3. A sub-authority may be restricted both by the insurer granting the authority and its authorized agent, as long as the authorized agent's authority is valid. The sub-authorized agent shall not be regarded as a third party vis-à-vis the insurer.
4. Restrictions of the authority or sub-authority may not be invoked against third parties.

Section 4:80

1. Terminating the authority of an authorized agent shall have no effect on third parties until the time at which the insurer or the authorized agent have informed the Netherlands Authority for the Financial Markets and the Netherlands Authority for the Financial Markets has adjusted the register meant in Section 1:107.
2. Where an authority is terminated, the insurer may entrust the authorized agent whose authority has lapsed with the management and settlement of the insurance portfolio the latter has accrued. The insurer may also provide otherwise for the management and settlement of that portfolio.
3. Sections 1:104 (3) and 4:4 (2) shall not concern the authorized agent where the insurer, in the case of the termination of the authorization, exercises the

right meant in the second subsection to provide for the management and settlement of the insurance portfolio accrued by the authorized agent other than by entrusting it to the authorized agent.

Section 4:81

1. The provisions in Section 4:80 with regard to an authorized agent shall apply mutatis mutandis to a sub-authorized agent.
2. For the purposes of the first subsection, the insurer meant in Section 4:80 shall also be taken to mean the authorized agent in its capacity as provider of sub-authorities.

Part 4.3.7 Provision of investment services

Section 4:82

1. Sections 4:83, 4:84 and 4:87 (2) (b) shall not concern investment firms authorized by the Netherlands Central Bank to carry on the business of a bank or which have a certificate of supervised status issued by the Netherlands Central Bank to carry on the business of a financial institution. Section 4:85 (1) shall not concern investment firms authorized by the Netherlands Central Bank to carry on the business of a bank.
2. Sections 4:83 and 4:87 shall not concern investment firms established in another Member State.

Section 4:83

1. At least two natural persons shall determine the day-to-day policies of an investment firm.
2. The Netherlands Authority for the Financial Markets may, on application, grant a waiver of the first subsection to the 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 otherwise defend the interests of his/her clients.
3. The second subsection shall apply mutatis mutandis to legal persons and companies managed by a natural person.

Section 4:84

1. The persons determining the day-to-day policies of an investment firm established in the Netherlands shall carry out their activities in that respect from the Netherlands.
2. The persons determining the day-to-day policies of a branch situated in the Netherlands of an investment firm established in a non-Member State shall carry out their activities in that respect from that branch.

Section 4:85

1. An investment firm established in the Netherlands shall, within six months of the end of the financial year, submit to the Netherlands Authority for the Financial Markets annual accounts, an annual report and other data as meant in Sections 361 (1), 391 (1) and 392 (1) (a – h) of Book 2 of the Dutch Civil Code.
2. Where the investment firm, meant in the first subsection, is not subject to Title 9 of Book 2 of the Dutch Civil Code, this title shall apply mutatis mutandis to the annual accounts, the annual report and the other data meant in the first subsection.

3. Rules shall be laid down under or pursuant to order in council with regard to the supply of the annual accounts, the annual report and the other data meant in the first subsection.

4. An investment firm established in a non-Member State shall, within six months of the end of the financial year, supply annual accounts and an annual report to the Netherlands Authority for the Financial Markets. The third subsection shall apply mutatis mutandis.

5. The annual accounts of the investment firm meant in the fourth subsection shall be accompanied by a declaration that the annual accounts present a fair and true view or a similar statement, issued by an auditor or an expert which, according to the law of the State in which the investment firm is established, may audit the annual accounts.

6. Without prejudice to the provisions in Title 9 of Book 2 of the Dutch Civil Code, the Netherlands Authority for the Financial Markets may, on application, grant a waiver, fully or in part, whether or not for a fixed term, of this section if the applicant shows proof that it cannot reasonably comply with it and that the objectives which this section seeks to attain shall be attained otherwise.

Section 4:86

Rules may be laid down under or pursuant to order in council with regard to the supply of information by an investment firm to the Netherlands Authority for the Financial Markets on behalf of the supervision of the compliance with this part.

Section 4:87

1. An investment firm which 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, except with the express permission of the client, for its own account.

2. An investment firm which holds monies belonging to a client shall take adequate measures:

- a. to protect the client's rights to those monies; and
- b. to prevent the use by the investment firm of those monies for its own account.

3. Further rules may be laid down under or pursuant to order in council with regard to:

- a. the measures to protect the client's rights and to prevent the use of financial instruments or monies of the client; and
- b. the manner in which that permission may be obtained from the client for the use by the investment firm of the client's financial instruments for its own account.

Section 4:88

1. An investment firm shall pursue adequate policies to prevent a conflict of interests 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 interests appears to be inevitable.

3. Rules may be laid down under or pursuant to order in council with regard to the policies meant in the first subsection.

4. Without prejudice to the provisions in Section 4:12 (1) (c), an investment firm established in another Member State shall organize the operations of a branch situated in the Netherlands in such a way that it is not contrary to the first and second subsection.

5. The Netherlands Authority for the Financial Markets may, on application, grant a waiver, fully or in part, whether or not for a fixed term, of the provisions based on the third subsection, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objectives which this section seeks to attain shall be attained otherwise.

Section 4:89

1. An investment firm shall conclude with each client a contract on paper or on another durable medium. This contract shall be the sole basis for the financial services which the investment firm provides to the client and shall in any event state the mutual rights and obligations of the client and the investment firm.

2. Further rules may be laid down by order in council with regard to the content of the contract.

3. The first and second subsections shall not concern the provision of investment services to professional investors.

Section 4:90

1. Within the context of portfolio management:

a. a portfolio manager shall, in the client's interests, obtain information on the latter's financial situation, knowledge, experience, objectives and risk willingness where this is in all reasonableness relevant to the management of the portfolio assets; and

b. the portfolio manager shall ensure that in the portfolio management, where reasonably possible, it shall take account of the information meant under a.

2. Further rules may be laid down under or pursuant to order in council with regard to:

a. the information meant in the first subsection (a) and the manner in which such information must be obtained; and

b. the manner in which the explanation meant in the first subsection (c) must be given.

3. The first and second subsections shall not concern the portfolio management on behalf of professional investors.

Section 4:91

Where an investment firm which is admitted to the regulated market in the Netherlands under the rules to be used based on Section 5:26 must supply personal data as meant in the Personal Data Protection Act to cooperate with the check of the compliance with such rules, the investment firm shall not require the permission of the persons to whom the personal data refer.

Part 4.3.8 Relationship between financial firms

§ 4.3.8.1 Relationship between offeror, (sub-)intermediary and (sub-)authorized agent

Section 4:92

1. Except for Section 4:93, the provisions under this paragraph with regard to the relationship between an offeror and an intermediary shall apply mutatis mutandis to:

- a. the relationship between an authorized agent and an intermediary;
- b. the relationship between a sub-authorized agent and an intermediary; and
- c. the relationship between an intermediary and a sub-intermediary.

2. The provisions in this paragraph with regard to the relationship between an offeror and an authorized agent shall apply mutatis mutandis to:

- a. the relationship between an authorized agent and a sub-authorized agent; and
- b. the relationship between a sub-authorized agent and another sub-authorized agent to which it has granted a sub-authority.

Section 4:93

1. An offeror shall ensure that an intermediary as meant in Section 2:81 (2) through which it concludes contracts with consumers or, where it concerns insurance contracts, clients complies with the provisions under this Act.

2. Rules may be laid down by order in council with regard to the manner in which the offeror ensures that the intermediary complies with the provisions under this Act.

3. The Netherlands Authority for the Financial Markets may, on application, grant a waiver, fully or in part, whether or not for a fixed term, of the provisions under the second subsection, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objectives which this section seeks to attain shall be attained otherwise.

Section 4:94

1. An offeror which for the first time concludes a contract regarding a financial product through a certain intermediary shall only do so after ensuring that the intermediary in providing mediation services in that financial product does not act in violation of the prohibition meant in Section 2:80 (1) and that no prohibition as meant in Section 1:58 (2) or 4:4 (1) has been imposed on the intermediary.

2. The offeror shall check once every twelve months and where it receives signals in the normal course of operations that raise doubts as to whether the intermediary through whom the offeror concludes contracts regarding financial products or that assists the offeror in respect of this act, whether the intermediary does not act in violation of the prohibition meant in Section 2:80 (1) and that no prohibition as meant in Section 1:58 (2) or 4:4 (1) has been imposed on the intermediary.

3. Where the intermediary meant in the second subsection acts in violation of the prohibition meant in Section 2:80 (1) or where a prohibition as meant in Section 1:58 (2) or 4:4 (1) has been imposed on the intermediary, the offeror shall cease to conclude contracts regarding financial products through the intermediary. The intermediary may assist the offeror in the management and implementation of existing contracts regarding a credit or insurance in so far as the intermediary is allowed to settle contracts under Section 1:58 (2), 1:104 (3) or 4:4 (2).

Section 4:95

1. An offeror shall only grant an authority after ensuring that the authorized agent is not acting in violation of the prohibition meant in Section 2:92 (1) and no prohibition as meant in Section 4:4 (1) has been imposed on the authorized agent.
2. The offeror shall check once every twelve months and where it receives signals in the normal course of operations that raise doubts as to whether the authorized agent which it has granted an authority does not act in violation of the prohibition meant in Section 2:92 (1) and that no prohibition as meant in Section 4:4 (1) has been imposed on the authorized agent.
3. Where the authorized agent meant in the second subsection acts in violation of the prohibition meant in Section 2:92 (1) or where a prohibition as meant in Section 4:4 (1) has been imposed on the authorized agent, the offeror shall terminate the authority. The offeror may entrust the authorized agent with the management and settlement of the insurance portfolio it has accrued in so far as the authorized agent is allowed to settle contracts under Section 1:104 (3) or 4:4 (2).

Section 4:96

1. Where a intermediary in the course of the normal operations receives signals that an offeror for whom provides mediation services in offering that financial product acts in violation of a prohibition imposed by Chapter 2.2 on the pursuit of a business or providing a financial service without authorization or that a prohibition as meant in Section 1:58 (2), 1:104 (3) or 4:4 (1) has been imposed on the offeror, it shall cease to provide mediation services for the offeror, except where the offeror is allowed to settle contracts under Section 1:58 (2) or Section 4:4 (2).
2. Where an authorized agent in the course of the normal operations receives signals that an offeror for whom it acts as an authorized agent acts in violation of a prohibition imposed by Chapter 2.2 on the pursuit of a business or providing a financial service without authorization or that a prohibition as meant in Section 1:58 (2), or 4:4 (1) has been imposed on the offeror, it shall cease to act as an authorized agent for the offeror, except where the offeror is allowed to settle contracts under Section 1:58 (2), 1:104 (3) or 4:4 (2).

Section 4:97

1. Where an offeror in the course of normal operations observes that a intermediary or an authorized agent acts in violation of the provisions under Section 4:9, 4:10, 4:15 or 4:75, the offeror shall, without delay, report the observed violation to the Netherlands Authority for the Financial Markets.
2. Where an offeror in the course of normal operations observes that a intermediary or an authorized agent systematically acts in violation of the provisions under this Act, except for the provisions under Section 4:9, 4:10, 4:15 or 4:75, the offeror shall, without delay, report the observed violations to the Netherlands Authority for the Financial Markets.
3. Further rules may be laid down by order in council with regard to the cases in which the offeror reports a violation as meant in the first and second subsections. Further rules may be laid down under or pursuant to order in council with regard to the manner in which the offeror reports a violation.

Section 4:98

The person submitting a report under Section 4:97 shall not be liable for any loss suffered by a third party as a result, unless it is made plausible that in view of all facts and circumstances no report should in all reasonableness have been submitted.

Section 4:99

1. Financial undertakings shall enable one another to comply with the provision under this part, in so far as they depend on one another in that respect.
2. Further rules may be laid down under or pursuant to order in council with regard to the cases in which and the manner in which financial undertakings enable one another to comply with this part.
3. The Netherlands Authority for the Financial Markets may, on application, grant a waiver, fully or in part, whether or not for a fixed term, of the provisions under the second subsection if the applicant shows proof that it cannot reasonably comply with those provisions and the objectives which this section seeks to attain shall be attained otherwise.

§ 4.3.8.2. Relationship between investment firms

Section 4:100

1. An investment firm providing an investment service as meant under a, b or d of the definition of to provide an investment service in Section 1:1 for the first time to another investment firm or to clients acquired by another investment firm shall only proceed to do so after ensuring that the other investment firm does not act in violation of the prohibition meant in Section 2:96 (1) or that no prohibition as meant in Section 1:58 (2) or 4:4 (1) has been imposed on the other investment firm.
2. The investment firm shall check once every twelve months and where it receives signals in the normal course of operations that raise doubts as to whether the other investment firm meant in the first subsection does not act in violation of the prohibition meant in Section 2:96 (1) and that no prohibition as meant in Section 1:58 (2) or 4:4 (1) has been imposed on the other investment firm.
3. Where the other investment firm meant in the second subsection acts in violation of the prohibition meant in Section 2:96 (1) or where a prohibition as meant in Section 1:58 (2) or 4:4 (1) has been imposed on the other investment firm, from the moment it takes cognizance of the violation or the prohibition respectively, the investment firm shall cease to provide investment services to the other investment firm or to clients acquired by the other investment firm.

§ 4.3.8.3. Relationship between financial undertakings in respect of financial services regarding insurance contracts.

Section 4:101

The provisions in this paragraph with regard to the relationship between an insurer and an intermediary shall apply mutatis mutandis to:

- a. the relationship between an authorized agent and an intermediary;
- b. the relationship between a sub-authorized agent and an intermediary; and
- c. the relationship between an intermediary and a sub-intermediary.

Section 4:102

An insurance contract concluded through an intermediary or transferred to an intermediary's portfolio shall belong to the portfolio of that intermediary in relation to 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 the portfolio of the intermediary or its legal successors to the portfolio of another intermediary without their permission.
2. Notwithstanding the first subsection the insurer shall, at the written request of a client, transfer the latter's insurance contract from the portfolio of an intermediary to that of another intermediary, unless the insurer has well-founded objections against that intermediary.
3. The first and second subsection shall apply mutatis mutandis to self-insurance by an insurer.
4. The insurer shall, at the written request of an intermediary, lend its cooperation to the full or partial transfer of the portfolio of that intermediary to another intermediary, unless the insurer has well-founded objections against that intermediary.

Section 4:104

1. Unless otherwise agreed or unless the intermediary has undertaken vis-à-vis the insurer in the insurance contract to pay the premiums and costs as if they were its own debt, the intermediary shall provide for the collection of the premiums for the insurer. As regards the collection of the premiums, the intermediary shall at all times be held accountable vis-à-vis the insurer.
2. Unless otherwise agreed between an insurer and an intermediary, the insurer may determine that the intermediary may no longer collect the premiums if:
 - a. the intermediary is no longer listed in the register meant in Section 1:107;
 - b. the intermediary seriously neglects the collection of the premiums;
 - c. the intermediary fails to pay the premiums collected on the insurer's behalf to the insurer in a timely fashion; or
 - d. the intermediary has committed acts which justify the fear that it will not comply with its obligations ensuing from the collection of the premiums.
3. In the cases in which the collection of premiums by an intermediary is terminated under the second subsection, the insurer shall proceed to collect the premiums.

PART 5 - FINANCIAL MARKETS CONDUCT SUPERVISION

CHAPTER 5.1 RULES FOR OFFERING SECURITIES

Part 5.1.1 Introductory provisions

Section 5:1

For the purposes of the provisions under this chapter the following shall be taken to mean:

- a. offering securities to the public: making a sufficiently determined offer addressed to more than one person as meant 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 those securities to the public;
 - c. offering programme: a plan which would permit the issuance of non-equity securities or of the securities meant under d under 2^o having a similar type and/or class, in a continuous and repeated manner during a specified period;
 - d. equity security:
 - 1^o. transferable share or equivalent transferable security issued by a legal person, company or institution, or any other equivalent negotiable paper or right;
 - 2^o. any other transferable security issued by a legal person, company or institution by which, by exercising the right conferred by this security, by converting or exchanging, another equity security as meant under 1^o may be acquired, provided the transferable security is issued by the legal person, company or institution, or by a group company forming part of a group, which also issued the equity security to be acquired;
 - e. non-equity security: security that is not an equity security, to be divided into the following categories:
 - 1^o. transferable security issued by a legal person, company or institution, by which through exercising the right conferred by this security, by converting or exchanging, another security may be acquired, and which is not issued by the legal person, company or institution, or by a group company forming part of a group which also issued the equity security to be acquired;
 - 2^o. a transferable security issued by a legal person, company or institution which by exercising the right conferred by this security gives the right to a settlement in money;
 - 3^o. any other security that is not an equity security.

Section 5:1a

The provisions under this chapter shall not concern money market instruments with a term of less than 12 months.

Part 5.1.2 Prohibition and exceptions

Section 5:2

No-one 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 relating to the offer or the admission is available to the public which is approved by the Netherlands Authority for the Financial Markets or by a Supervisory Authority of another Member State.

Section 5:3

1. Section 5:2 shall not concern offering securities to the public if:
 - a. the securities are solely offered to qualifying investors;
 - b. securities are offered to less than 100 persons, other than qualifying investors;
 - c. the securities offered may only be acquired at a consideration of at least € 50,000 per investor;
 - d. the nominal value per security is at least € 50,000; or
 - e. the total consideration of the offer of securities to the public is less than € 100,000, which limit shall be calculated over a period of twelve months.

2. The prohibition meant in Section 5:2 shall furthermore not concern offering the following categories of securities to the public:
- a. shares or depositary receipts for shares issued in substitution of shares or depositary receipts for shares of the same category or class already issued, if the issuance of those new securities does not involve any increase in the issued share capital;
 - b. securities which are offered in connection with a takeover by a public exchange offer, provided a document is available to the public which contains information equivalent to the information in a prospectus;
 - c. securities which are offered or allotted or to be allotted by a merger or split-off, provided a document is available which contains information equivalent to the information in a prospectus;
 - d. shares or depositary receipts for shares offered, allotted or to be allotted free of charge to shareholders, and dividends which shall be paid out in the form of shares or depositary receipts for shares of the same category or class as the securities in respect of which such dividends are paid out, provided a document is made available which contains information on the number of securities on offer, the nature of the securities, the reasons for and the details of the offer; or
 - e. securities admitted or allotted or to be allotted by an employer which has securities already admitted to trading on a regulated market, or by a legal person, company or institution forming part of the same group as the employer, to existing or former directors, existing or former members of the supervisory board or existing or former employees, provided a document is made available which contains information on the number of securities on offer, the nature of the securities, the reasons for and the details of the offer.

Section 5:4

Section 5:2 shall not concern 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 twelve months, represent less than ten per cent 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 issued in substitution of shares or depositary receipts for shares of the same category or class already admitted to trading on the same regulated market, and of which the issuance shall not involve an increase in the issued share capital;
- c. securities offered in connection with a takeover by a public exchange offer, provided a document is available containing information equivalent to the information in the prospectus;
- d. securities offered, allotted or to be allotted in connection with a merger or split-off, provided a document is available containing information equivalent to the information in the prospectus;
- e. shares or depositary receipts for shares offered, allotted or to be allotted free of charge to the shareholders or paid out as dividend in the form of shares or depositary receipts for shares thereof of the same category or class as the securities in respect of which they are paid out, provided such 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 containing information on the number of securities on offer, the nature of the securities, the reasons for and the details of the offer;

f. securities offered, allotted or to be allotted by an employer or a legal person, company or institution forming part of the same group as the employer, to existing or former directors, existing or former members of the supervisory board or existing or former employees, provided 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 nature of the securities, the reasons for and the particulars 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 conferred on other securities, provided those shares or depositary receipts for shares are already admitted to trading on the same regulated market; or

h. securities already admitted to trading on another regulated market if:

- 1^o. those securities, or securities of the same category or class, are admitted to trading on that other regulated market for a period of more than eighteen months;
- 2^o. those securities were first admitted to trading on a regulated market after the date of entry into force of the Prospectus Directive and the admission to trading on that other regulated market was associated with an approved prospectus made available to the public in conformity with Section 5:21;
- 3^o. the prospectus for those securities where they were first admitted to listing after 30 June 1983 is approved in conformity with Directive no. 80/390/EEC of the European Parliament and of the Council of 17 March 1980 coordinating the requirements for the drawing up, scrutiny and the distribution of the listing particulars to be published for the admission of securities to official stock exchange listing (OJ L 100) or Directive no. 2001/34/EC of the European Union and of the Council of 28 May 2001 on the admission of securities to the official listing on a stock exchange and on information to be published on those securities (OJ L 184) unless the provision under 2^o applies;
- 4^o. the applicable obligations for trading on that other regulated market have been fulfilled;
- 5^o. the person seeking the admission of securities to trading on the regulated market shall make a summary document available to the public in a language accepted by the Netherlands Authority for the Financial Markets;
- 6^o. the summary document shall be made available to the public in the manner meant in Section 5:21; and
- 7^o. the contents of the summary shall comply with Section 5:14 and the document shall state where the most recent prospectus can be obtained and where the financial information published by the issuer pursuant to its ongoing disclosure obligation is available.

Section 5:5

An exemption of this chapter may be provided 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 to approve

Section 5:6

1. The Netherlands Authority for the Financial Market may approve a prospectus, where the issuer is established in the Netherlands and it concerns offers 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 meant in Section 5:1 (e) (1^o and 2^o);
- c. in the Netherlands or in another Member States of non-equity securities as meant in Section 5:1 (e) (3^o), with a nominal value per security of less than € 1,000; or
- d. in the Netherlands of non-equity securities as meant in Section 5:1 (e) (3^o) with a nominal value per security of at least € 1,000.

2. The Netherlands Authority for the Financial Markets may also approve a prospectus where it concerns offers 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 meant in Section 5:1 (e) (3^o) with a nominal value per security of less than € 1,000:
 - 1^o. in the Netherlands by an issuer established in a non-Member State;
 - 2^o. in the Netherlands or another Member State by an issuer established in a non-Member State where upon an earlier offer of those securities to the public or the admission of those securities to trading on a regulated market the approval by the Netherlands Authority for the Financial Markets was opted for; or
 - 3^o. in the Netherlands or another Member State by an issuer established in a non-Member State where upon an earlier offer of those securities to the public or the admission of those securities to trading on a regulated market another party had opted for approval by a Supervisory Authority of another Member State and the issuer in respect of the offer of those securities to the public or the admission of those securities to trading on a regulated market opts for approval by the Netherlands Authority for the Financial Markets;
- b. of non-equity securities as meant in Section 5:1 (e) (1^o and 2^o) or non-equity securities as meant in Section 5:1 (e) (3^o) with a nominal value per security of at least € 1,000:
 - 1^o. in another Member State by an issuer established in the Netherlands;
 - 2^o. in the Netherlands by an issuer established in another Member State; or
 - 3^o. in the Netherlands or in another Member State by an issuer established in a non-Member State.

3. Where the first subsection opening words and under c or d or the second subsection concerns non-equity securities of which the nominal value is not expressed in euros, the nominal value of the securities shall be converted into euros for the purposes of the limits mentioned in those provisions, whereby a converted value of almost € 1,000 shall be equivalent to € 1,000.

Section 5:7

The Netherlands Authority for the Financial Markets may also approve a prospectus where a Supervisory Authority of another Member State entitled to approve the prospectus has requested the Netherlands Authority for the Financial Markets to approve the prospectus and the Netherlands Authority for the Financial Markets has agreed.

Section 5:8

1. Where the Netherlands Authority for the Financial Markets may approve a prospectus under Section 5:6 (1 or 2), it may request a Supervisory Authority of another Member State to take a decision with regard to the approval of the prospectus. Where that body agrees, the Netherlands Authority for the Financial Markets shall decide to disregard the application and inform the applicant. From the time of the notification the Netherlands Authority for the Financial Markets may no longer approve the prospectus.
2. The Netherlands Authority for the Financial Market shall inform the applicant and Our Minister of the request it has made under the first subsection within three working days.
3. Where the Supervisory Authority of the other Member State agrees to take a decision regarding the approval of the prospectus, the Netherlands Authority for the Financial Markets shall, without delay, dispatch the documents relating to the application to that body.

§ 5.1.3.2. Approval of the prospectus

Section 5:9

1. The Netherlands Authority for the Financial Markets shall approve a prospectus where it complies with:
 - a. Articles 5:13 – 5:19; and
 - b. Articles 3 – 23, 25, 26, except for the fifth paragraph, and 28 of the Prospectus Regulation.
2. The Netherlands Authority for the Financial Markets may, where it is competent under Section 5:6 or 5:7, grant approval of the prospectus to an issuer established in a non-Member State if:
 - a. that institution has drawn up the prospectus in conformity with the legislation of the State in which it is established;
 - b. that institution has drawn up the prospectus in conformity with international standards, including standards for the supply of information, drawn up by international organizations of security supervisors; and
 - c. the continuous information requirements regarding the business of the issuer, including information of a financial nature, are equivalent to the provisions of the Prospectus Directive.
3. The meaning of equivalent as meant in the second subsection under c may be determined by order in council.

Section 5:9a

1. Upon receiving an application for approval, the Netherlands Authority for the Financial Markets shall inform the applicant of its decision regarding the approval within ten working days.
2. The deadline meant in the first subsection shall not exceed twenty 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. Where the documents submitted by the applicant are incomplete or additional information is required under Article 3 third paragraph, 22 (1) third paragraph, 23 (1 or 3) second paragraph of the Prospectus Regulation for the assessment of the assets and liabilities, the financial situation, the profit and losses and prospects of the institution or the rights and obligations pertaining

to the securities, the Netherlands Authority for the Financial Markets shall inform the applicant within the time-limit meant in the first or, where applicable, the second subsection and provide it with an opportunity to supplement the application within a time-limit fixed by the former. Where the applicant fails to supplement the application within the fixed time-limit, the Netherlands Authority for the Financial Markets may decide to disregard the application.

4. Where the Netherlands Authority for the Financial Markets has provided the applicant with the opportunity to supplement the application in accordance with the third subsection, first sentence, the time-limits meant in the first and second subsection shall recommence from the time at which the applicant issued the additional information.

5. Section 4:5 of the General Administrative Law Act shall not be applicable.

Section 5:10

1. Where the Netherlands Authority for the Financial Markets has approved a prospectus, it shall, on request of the issuer or the person entrusted with drawing up the prospectus, issue to the Supervisory Authority of every other Member State in which the securities concerned are offered to the public or where admission of those securities to trading on a regulated market is requested a notification that the prospectus is drawn up in accordance with the Prospectus Directive, as well as a copy of the approved prospectus. The notification shall, on request, be accompanied by a translation of the summary document.

2. The Netherlands Authority for the Financial Markets shall issue the notification meant in the first subsection and the copy of the approved prospectus within three working days of receipt. Where the application is filed before approval has been granted, the Netherlands Authority for the Financial Markets shall issue the notification within one working day of the approval being granted.

3. Where applicable, the notification meant in the first subsection shall also mention that the Netherlands Authority for the Financial Markets, with due regard to 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. The first through the third subsections shall apply *mutatis mutandis* to a document approved by the Netherlands Authority for the Financial Markets in addition to the prospectus as meant 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 party applying for the admission of securities to trading on a regulated market having a prospectus which is 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, where the Netherlands Authority for the Financial Markets has received a notification that the prospectus is 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. The notification meant in the first subsection shall, where applicable, state that Article 8 (2 or 3) of the Prospectus Directive or the regulations of a Member State in implementation of the Directive has been applied and the reasons for such application.

§ 5.1.3.4. Procedure regarding the drawing up of the prospectus and the data to be included in the prospectus

Section 5:12

Sections 5:13 – 5:18, 5:20 and 5:21 shall solely concern offers of securities to the public and admissions of securities to trading on a regulated market regarding which the Netherlands Authority for the Financial Markets may approve the prospectus under Section 5:6 or 5:7.

Section 5:13

1. The prospectus shall contain all information which, according to the particular nature of the issuer and of the securities admitted to trading on the regulated market, is necessary to enable investors to make an informed assessment of the assets and liabilities, financial situation, profit and losses, and prospects of the issuer and of any guarantor, and of the rights attaching to such securities, including the data meant in Articles 3 – 23 of the Prospectus Regulation and the annexes pertaining to those articles.

2. The data meant in the first subsection shall not be contrary to or in conflict with other information present at the Netherlands Authority for the Financial Markets with regard to the issuer, offeror or party applying for the admission of securities to trading on the regulated market and it shall be presented in a form comprehensible to a reasonably informed person exercising due care.

Section 5:14

1. The summary shall, in a brief manner and in a language comprehensible to a reasonably well-informed person exercising due care, convey the essential characteristics 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 shall contain a warning that:

- a. the summary should be read as an introduction to the prospectus;
- b. any decision to invest in the securities should be based on consideration of the prospectus as a whole by the investor;
- c. where a claim relating to the information contained in a 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 including any translation thereof, and applied for a notification as meant in Section 5:10, but only if the summary 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, apart from a summary in accordance with Section 5:14, shall at least contain the data meant in the first subsection of Section 5:13; or

b. the three following separate documents:

1^o. a registration document containing data on the issuer;

2^o. a securities note containing information concerning the securities offered to the public or to be admitted to trading on a regulated market.

3^o. a summary note complying with Section 5:14.

2. The issuer having a registration document which forms part of a prospectus already approved shall only draw up a new securities note and a summary note if the 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 document supplementing the prospectus in accordance with Section 5:23 which might influence the assessment of the offer by the investor, the securities note meant in the second subsection shall contain the data which should be stated in a registration document. The securities note and the summary note together with the registration document meant in the second subsection shall jointly constitute a new prospectus.

Section 5:16

1. An issuer, offeror or party applying 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 meant in Section 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^o. where the sums deriving from the issue of said securities, under national legislation, are placed in assets which provide sufficient coverage for the liability deriving from securities until their maturity date; and

2^o. where, in the event of the insolvency of the related credit institution, 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 reorganization and winding up of credit institutions (OJ L 125).

2. Where the issuer has included the final terms of the offer of securities to the public neither in the base prospectus nor in a supplement to the prospectus it shall, in connection with every offer of securities to the public or admission of securities to trading on a regulated market, provide the final terms to the public and file them with the Netherlands Authority for the Financial Markets as soon as possible, where possible in advance of the beginning of the offer of the securities or the admission to trading on a regulated market. Section 5:18 (1) shall thereby apply mutatis mutandis.

Section 5:17

1. Where the prospectus includes information by means of a reference, the reference shall be made to documents made available to the public previously to or simultaneously with the prospectus which the Netherlands Authority for the Financial Markets or where applicable, which have been approved or have been filed with the Netherlands Authority for the Financial Markets or with a competent Supervisory Authority of another Member State in conformity 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 the official listing on a stock exchange and on the information to be published on these securities (OJ L 184).

2. The information to which the prospectus refers shall be the latest information made available to the public by the issuer.
3. The summary shall not contain information by reference.
4. Where information is incorporated in the prospectus 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 offer price or exchange ratio against which the securities shall be offered to the public and the final amount of securities which will be offered to the public, the prospectus shall state the criteria or the conditions based on which those data shall be determined or, in the case no final price is mentioned, a maximum price.
2. The issuer or the offeror shall file with the Netherlands Authority for the Financial Markets the data with regard to the final price against which the securities shall be offered to the public and the final amount of securities to be offered to the public and it shall make those data available to the public in accordance with Section 5:21 (3).
3. The Netherlands Authority for the Financial Markets may grant an exemption of the information to be included in the prospectus under this chapter or the Prospectus Regulation if:
 - a. the disclosure of such information is contrary to the public interest;
 - b. the disclosure of such information would be seriously detrimental to the issuer, and the omission of the information would not mislead the public with regard to facts and circumstances essential for an informed assessment of the issuer, the offeror or the party applying for admission to trading on a regulated market or, where appropriate, the guarantor, or of the rights attached to the securities to which the prospectus relates; or
 - c. such information is of minor importance only for a specific offer to the public or admission to trading on a regulated market and is not such as will influence the assessment of the financial situation and prospectus of the issuer, the offeror, the party applying for admission of securities to trading on a regulated market or, where appropriate, the guarantor.
4. Where the data to be mentioned in the prospectus under Articles 3 – 22 of the Prospectus Regulation is inappropriate to the issuer's sphere of activity or to the legal form of the issuer or to the securities to which the prospectus relates, the issuer shall, where it has such data, incorporate data equivalent to the required data in the prospectus, without affecting the adequate supply of information to investors.

Section 5:19

1. A prospectus on behalf of offering securities to the public in the Netherlands or the admission of securities to trading on a regulated market situated or operating in the Netherlands subject to the approval of the Netherlands Authority for the Financial Markets shall be drawn up in the Dutch language or in a language customary in international financial circles,

irrespective of whether those securities are also offered in other Member States.

2. A prospectus on behalf of offering securities to the public in the Netherlands or the admission of securities to trading on a regulated market situated or operating in the Netherlands subject to the approval of a Supervisory Authority in another Member State shall be drawn up in the Dutch language or in a language customary in international financial circles. Where the prospectus is drawn up in a language other than the Dutch language, the Netherlands Authority for the Financial Markets may require a translation of the summary in the Dutch language.

3. A prospectus on behalf of offering 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 subject to the approval of the Netherlands Authority for the Financial Markets shall be drawn up in the Dutch language or in a language customary in international financial circles.

4. A prospectus on behalf of the admission of non-equity securities with a nominal value per unit of at least €50,000 to trading on a regulated market situated or operating in the Netherlands subject to the approval of the Supervisory Authority of another Member State shall be drawn up in a language accepted by the Netherlands Authority for the Financial Markets and the Supervisory Authority of the other Member State or in a language customary in international financial circles.

§ 5.1.3.5. Advertisements, availability of the prospectus to the public and validity of the prospectus

Section 5:20

1. An issuer, offeror or party applying for the admission of securities to trading on a regulated market shall ensure that advertising concerning the offer of securities to the public or the admission of securities to trading on a regulated market:

- a. shall state that a prospectus is or will be made available to the public and where the prospectus may be obtained; and
- b. shall be recognizable as advertising and shall not contain misleading or inaccurate information and shall contain information consistent with the information which is or will be published in the prospectus.

2. An issuer, offeror or party applying for the admission of securities to trading on a regulated market shall not disclose, either in an oral or written form, information relating to the offer of securities to the public or the admission of securities to trading on a regulated market which is inconsistent with information contained in the prospectus.

3. An issuer, offeror or party applying for the admission of securities to trading on a regulated market shall incorporate the material information addressed to qualifying investors and other persons, including information supplied in the context of meetings regarding offers of securities to the public or admissions of securities to trading on a regulated market necessary for the assessment of the assets and liabilities, the financial situation, the profit and losses, and the prospects of the issuer and rights attached to the securities in the prospectus or, in conformance with Section 5:23, in a document supplementing the prospectus.

4. Where no prospectus is required to be made available to the public in respect of an offer of securities to the public or an admission of securities to trading on a regulated market under Section 5:3, 5:4 or 5:5 or, where applicable, under the law of another Member State, the provisions in the first through the third subsections shall not be applicable and the information meant in the third subsection shall be supplied to the persons to which the offer of securities to the public is addressed.

Section 5:21

1. Following the approval by the Netherlands Authority for the Financial Markets, the issuer, offeror or party applying for the admission of securities to trading on a regulated market may make the prospectus available to the public. The prospectus shall be made available to the public within a reasonable term in advance of and not later than the beginning of the offer of securities to the public or the admission of the securities concerned to trading on the regulated market.
2. In the case of an initial offer or admission to trading on a regulated market of securities as meant in Section 5:1 (d) (1^o) not yet admitted to trading on a regulated market and which shall be admitted to trading on a regulated market for the first time, the offeror or party applying for the admission of securities to trading on a regulated market shall make the prospectus available to the public at least six working days before the end of the offer or admission.
3. The issuer, offeror or party applying for the admission of securities to trading on a regulated market shall make the prospectus available to the public:
 - a. by publication in a national newspaper in the Member State in which the securities are offered to the public or where the application to admit securities to trading on the regulated market is filed;
 - b. in a printed form to be made available, free of charge, at the office of the issuer and at the office of the investment firm placing the securities or otherwise active in the conclusion of transactions relating to the securities concerned;
 - c. posting on the website of the issuer and, where appropriate, on the website of the investment firm placing the securities or otherwise active in the conclusion of transactions relating to the securities concerned;
 - d. posting on the website of the holder of the regulated market where the admission of the securities to trading was applied for; or
 - e. posting on the website of the Netherlands Authority for the Financial Markets where this service is offered.
4. Where the prospectus is drawn up in the manner meant in Section 5:15 (1) (b), the different documents making up the prospectus may be made separately available to the public in the manner determined in the third subsection. Each document shall indicate where the other constituent documents of the full prospectus may be obtained.
5. The text and format of the prospectus made available to the public or the documents supplementing the prospectus shall at all times be identical to the text and format of the prospectus approved by the Netherlands Authority for the Financial Markets.
6. Where the prospectus is solely made available to the public in an electronic form, the issuer, offeror or party applying for the admission of securities to

trading on a regulated market or the securities institution shall deliver a paper copy of the prospectus, free of charge, to any person.

7. Where the prospectus contains information by reference as meant in Section 5:17, the documents to which reference is made, without prejudice of the provisions in the first through the fifth subsections, shall be made separately available to the public. Each document made available to the public shall indicate where the other constituent documents of the full prospectus may be obtained.

Section 5:22

1. A prospectus shall be valid for 12 months after its publication for offers to the public or admissions of securities to trading on a regulated market, provided, where applicable, the prospectus is completed by any supplements required under 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 its publication.
3. In the case of non-equity securities meant in Section 5:16 (1) (b) the base prospectus shall be valid from the date of publication until no more of the securities concerned are issued in a continuous or repeated manner.
4. A registration documents as meant in Section 5:15 (1) (b), previously filed, shall be valid for a period of up to 12 months after its publication, provided it has been updated in accordance with Section 5:23. The registration document accompanied by a securities note, updated if applicable in accordance with Section 5:15 (3), and the summary note shall be considered to constitute a valid prospectus.

Section 5:23

1. Every significant new development occurring between the time of the approval of a prospectus and the time at which trading of 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 which relates to the information in the approved prospectus, or any material mistake or inaccuracy noted in the prospectus which is capable of affecting the assessment of the securities, shall be mentioned by the issuer, offeror or party applying for the admission of securities to trading on the regulated market in a supplement to the prospectus.
2. Such a supplement shall be subject to the approval of the Netherlands Authority for the Financial Markets or of a Supervisory Authority in another Member State.
3. If the Netherlands Authority for the Financial Markets has approved a prospectus pursuant to Section 5:6 or 5:7, it is competent to approve a supplement to the prospectus. The Netherlands Authority for the Financial Markets shall take a decision in respect of the application for approval of the supplement to the prospectus within seven working days of its receipt and it shall, without delay, inform the applicant of the supplement of its decision. After approval by the Netherlands Authority for the Financial Markets, the supplement shall be an integral part of the prospectus.
4. The summary note meant in Section 5:14 and any translation thereof shall also be supplemented, if necessary, by the issuer, offeror or party applying for the admission of the securities to trading on the regulated market so as to take into account the new information included in the supplement.

5. The supplement to the prospectus meant in the first subsection shall be made available to the public in the Netherlands in conformity with Section 5:21 (3).

6. Where a supplement to the prospectus is made available to the public in the Netherlands in respect of an offer of securities to the public, the person having concluded a contract to purchase or acquire those securities or that has addressed an offer to conclude a contract to purchase or acquire those securities shall have the right to cancel the contract or revoke the offer within two working days after the publication of the supplement to the prospectus.

7. Where a supplement to the prospectus is made available to the public in regard of the admission of securities to trading on a regulated market situated or operating in the Netherlands, the right mentioned in the sixth subsection may also be exercised by the person having concluded a contract to purchase or acquire those securities.

9. Where a prospectus is approved by the Netherlands Authority for the Financial Markets and the securities in regard of which the prospectus is approved are offered to the public or admitted to trading on a regulated market in another Member State, the Netherlands Authority for the Financial Markets shall grant a request of the Supervisory Authority of that other Member State to have a supplement to the prospectus drawn up.

§ 5.1.3.7. Continuous obligation to supply information

Section 5:24

1. An issuer of which securities are admitted to trading on a regulated market situated and operating in the Netherlands shall at least once a year make a document available to the public.

2. The document meant in the first subsection shall contain or refer to:

a. the information which the issuer has drawn up and made available to the public in the twelve months preceding the publication of the annual accounts with due regard to 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 (OJ 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 the official listing on a stock exchange and on the information to be published on these securities (OJ L 184) and (EC) Regulation 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243);

and

b. the other information which the issuer under legislation concerning the supervision of the securities transactions made available to the publication in any State in the twelve months preceding the publication of the annual accounts.

3. Where the issuer incorporates information by reference in the document meant in the first subsection, it shall indicate where and how that information may be obtained.

4. Each year, an issuer whose securities have been admitted to trading on a regulated market and whose prospectus concerning the admission of those securities has been approved by the Netherlands Authority for the Financial Markets shall file a document to be made available to the public with the

Netherlands Authority for the Financial Markets after publication of its annual accounts.

5. The first through the fourth subsection shall not concern issuers of which solely non-equity securities with a nominal value per unit of at least € 50,000 are offered.

6. The fourth subsection shall apply mutatis mutandis to issuers of which securities were admitted to trading on a regulated market in advance of the time of the entry into force of the Act of 23 June 2005 amending the Securities Transactions Supervision Act 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 (OJ L 345) and implementing Commission Regulation 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 advertising (OJ L 149), and of which the Netherlands Authority for the Financial Markets would have been entitled to approve the prospectus under Section 5:6 if the admission had occurred after that time of entry into force.

§ 5.1.3.8. Supplementary powers of the Netherlands Authority for the Financial Markets in connection with offers of securities

Section 5:25

1. The Netherlands Authority for the Financial Markets may apply Section 1:75 (1) regarding an issuer, offeror or party applying for the admission of securities to trading on a regulated market mutatis mutandis where that issuer, offeror or applicant fails to comply with the provisions under this chapter or the Prospectus Regulation.

2. An instruction issued pursuant to the first subsection shall not affect contracts between the issuer, offeror or party applying for the admission of securities to trading on a regulated market receiving the instruction and third parties.

CHAPTER 5.2 RULES FOR HOLDING A MARKET IN FINANCIAL INSTRUMENTS

Part 5.2.1 Recognition of a market in financial instruments

Section 5:26

1. No-one may hold a market in financial instruments in the Netherlands without being recognized by Our Minister.

2. Our Minister shall, on application, grant recognition to the holder of a market in financial instruments if the latter shows proof that:

a. it is established in the Netherlands;

b. holding the market in financial instruments as well as applying rules to that market and its subsidiaries, their application and the control of the compliance with those rules shall comply with all that is necessary with a view to the interests which this Act seeks to protect;

- c. the persons determining the day-to-day policies of the holder are sufficiently expert in connection with the holder's operations;
 - d. the fit and proper qualities of the persons (co-)determining the holder's policies is beyond doubt;
 - e. there are adequate financial safeguards; and
 - f. there is an adequate securities settlement system.
3. A notification of the decision to grant recognition as meant in the second subsection and of the withdrawal of such recognition shall be published in the Government Gazette.
4. The first subsection shall not concern holding a regulated market, other than a regulated market in the Netherlands, where the holder complies with rules to be laid down by ministerial regulation with a view to the orderly and transparent financial market processes and clear relationships between market parties.

Section 5:27

- 1. An exemption of Section 5:26 (1) may be provided by ministerial regulation.
- 2. Our Minister may, on application, whether or not for a fixed term, grant a waiver of Section 5:26 (1) if the applicant shows proof that the interests which this chapter seeks to protect shall be sufficiently protected otherwise.

Part 5.2.2 Holding a regulated market in the Netherlands

Section 5:28

- 1. A holder of a regulated market in the Netherlands shall ensure that rules governing that market may be applied to the investment firms admitted to trading on that market and to the issuers whose securities have been admitted to trading on that market.
- 2. The Netherlands Authority for the Financial Markets may give the holder of a regulated market in the Netherlands an instruction with regard to the rules applying for this market, if they are in any part in violation of that which is provided under or pursuant to this act with regard to orderly and transparent financial market processes and clear relationships between market parties.

Section 5:29

- 1. The Netherlands Authority for the Financial Markets may, by giving an instruction, oblige the holder of a regulated market in the Netherlands to adhere to a certain line of conduct within a reasonable term fixed by the former with regard to matters to be laid down in the designation order vis-à-vis an issuer whose securities are admitted to trading on that market, where that issuer does not comply with the provisions laid down in the rules for that market.
- 2. The Netherlands Authority for the Financial Markets may, by giving an instruction, oblige the holder of a regulated market in the Netherlands to adhere to a certain line of conduct within a reasonable term fixed by the former with regard to matters to be laid down in the designation order vis-à-vis an investment firm whose securities are admitted to trading on that market, where that investment firm does not comply with the provisions laid down in the rules for that market.
- 3. Our Minister may, by giving an instruction, oblige the holder of a regulated market in the Netherlands to adhere to a certain line of conduct within a

reasonable term fixed by the former with regard to matters to be laid down in the designation order vis-à-vis an issuer whose securities are admitted to trading on that market, where that issuer does not comply with the provisions laid down in the rules for that market with regard to protection constructions and their application.

Section 5:30

1. A holder of a regulated market in the Netherlands shall ensure that the rules applicable to that market are in conformity with the Council Directives and the Directives of the Council and of the European Parliament applicable to holding that market.
2. Our Minister may, by giving an instruction, oblige the holder of a regulated market in the Netherlands to act in accordance with the Directives meant in the first subsection. Section 1:75 (1) shall apply mutatis mutandis.
3. An amendment to the rules meant in the first subsection shall be submitted to Our Minister beforehand in order to check whether the Directives meant in the first subsection are complied with and whether that amendment might result in a violation of those Directives.

Section 5:31

The holder of a regulated market in the Netherlands shall inform the Netherlands Authority for the Financial Markets of any amendment to the rules meant in Section 5:26 (2) (b) or in monitoring their compliance.

Section 5:32

1. A qualifying holding may only be held, acquired or increased and any control relating to a qualifying holding in a holder of a regulated market in the Netherlands may only be exercised subject to a declaration of no-objection issued by Our Minister.
2. Our Minister shall, on application, issue a declaration of no-objection for an act as meant in the first subsection, unless:
 - a. the act might or would lead to a situation in which the holder involved is affiliated with persons in a formal or actual control structure that lacks such transparency that it would impede the adequate exercise of control of the compliance with the rules applicable for the regulated market in the Netherlands; or
 - b. the act might or would lead to an influence on the holder involved which is contrary to the interests which this Act seeks to protect.
3. Our Minister shall inform the holder of the regulated market in the Netherlands in which a unit is held, acquired or increased that it has issued or withdrawn a declaration of no-objection as meant in the second subsection. Our Minister shall publish a notification of the issuance and withdrawal of a declaration of no-objection in the Government Gazette, unless the publication would or might lead to the disproportionate advantage or disadvantage of interested parties.
4. Where a qualifying holding as meant in the first subsection is held, acquired or increased without obtaining a declaration of no-objection for such act, the party having performed the act shall undo the act within a term to be fixed by Our Minister. This obligation shall lapse when and where a declaration of no-objection is issued in respect of the act concerned.

5. Where any control relating to a qualifying holding in a holder of a regulated market in the Netherlands is exercised without observing the restrictions laid down in the declaration of no-objection, a resolution adopted inter alia by the exercise of control may be annulled. The resolution may be annulled on request of Our Minister. In such a case the district court within whose jurisdiction the holder of the regulated market in the Netherlands is established shall annul the decision where the resolution would have been different or would not have been adopted without the exercise of said control, unless prior to the time of the judgment a declaration of no-objection is issued or the restrictions not observed are withdrawn. The district court shall, where necessary, provide for the effects of the annulment.

CHAPTER 5.3 RULES FOR NOTIFYING, VOTING RIGHTS, SHARE CAPITAL, CONTROL AND SHARE CAPITAL INTEREST IN ISSUERS

Part 5.3.1 Introductory provision

Section 5:33

1. In this chapter and the ensuing provision the following shall be taken to mean, where applicable in derogation from Section 1:1:

- a. issuer: a public limited company incorporated under Dutch law whose shares as meant under b under 1^o or 2^o are admitted to trading on a regulated market or a legal person incorporated under the law of a non-Member State whose shares as meant under b under 1^o or 2^o are admitted to trading on a regulated market in the Netherlands;
- b. share:
 - 1^o. a transferable share as meant in Section 79 (1) of Book 2 of the Dutch Civil Code;
 - 2^o. a depositary receipt of a share or another transferable security equivalent to a depositary receipt of a share;
 - 3^o. any other transferable security other than an option as meant under 4^o, to acquire a share meant under 1^o or a security meant under 2^o;
 - 4^o. an option to acquire a share meant under 1^o or a security meant under 2^o. A definition of option as meant in the first sentence may be given by order in council;
- c. subsidiary: a subsidiary as meant in Section 24a of Book 2 of the Dutch Civil Code or a legal person or company in which the rights and powers as meant in Section 24a of Book 2 of the Dutch Civil Code may be exercised by a natural person;
- d. person subject to the notification obligation: a person subject to the notification obligation under this chapter;
- e. voting rights: voting rights which may be exercised in respect of shares, including rights under a contract to acquire voting rights;
- f. share capital: the issued share capital of an issuer;
- g. substantial unit: at least five per cent of the share capital or the right to exercise at least five per cent of the voting rights;
- h. threshold value: a percentage of the share capital or the voting rights which, when a person holding or acquiring shares or who may exercise or acquire voting rights attains, exceeds or falls below it, may lead to a notification under this chapter.

2. In this chapter and the ensuing provisions an issuer shall not be taken to mean an investment company whose units shall, directly or indirectly, be repurchased or repaid on request of the unit-holders and at the expense of the assets of this investment company.

Part 5.3.2 Notifications by issuers with regard to the share capital and the voting rights

Section 5:34

1. An issuer shall, without delay, inform the Netherlands Authority for the Financial Markets of the total of the changes in its share capital as a result of which that share capital has changed by one per cent or more since the previous notification under this section. The issuer may also inform the Netherlands Authority for the Financial Markets of the other changes in its share capital at a time preceding the time of the periodic notification meant in the second subsection.

2. The issuer shall periodically inform the Netherlands Authority for the Financial Markets of the total of the changes in its share capital which the issuer is not obliged to notify under the first subsection, first sentence, in so far as it has not yet notified such changes in accordance with the first subsection, second sentence. The period to which the notification refers and the term within which the notification must be made shall be determined by order in council.

Section 5:35

1. An issuer shall, without delay, inform the Netherlands Authority for the Financial Markets of any change in its voting rights not ensuing from a change as meant in Section 5:34 (2). Where a change in the voting rights ensues from a change as meant in Section 5:34 (1) second sentence, the issuer may simultaneously notify that change to the Netherlands Authority for the Financial Markets.

2. The issuer shall periodically inform the Netherlands Authority for the Financial Markets of the changes in the voting rights which the issuer is not obliged to notify without delay under the first subsection, first sentence, in so far as it has not already notified those changes in accordance with the first subsection, first sentence. The period to which the notification refers and the term within which the notification must be filed shall be determined by order in council.

3. The issuer shall, without delay, inform the Netherlands of any issuance or withdrawal with its concurrence of shares as meant in Section 5:33 (1) (b) (2^o), in so far as it concerns one per cent or more of its share capital. The issuer may also periodically inform the Netherlands Authority for the Financial Markets at any time before the time of the periodic notification meant in the fourth subsection of any other issuance or withdrawal of shares as meant in Section 5:33 (1) (b) (2^o).

4. An issuer shall periodically inform the Netherlands Authority for the Financial Markets of the total of shares issued or withdrawn with its concurrence as meant in Section 5:33 (1) (b) (2^o) which the issuer is not obliged to notify without delay under the third subsection, first sentence, in so far as it has not yet notified that under the third subsection, second sentence.

The period to which the notification refers and the term within which the notification must be filed shall be determined by order in council.

Section 5:36

A public limited company incorporated under Dutch law or a legal person incorporated under the law of a non-Member State and which becomes an issuer shall, without delay, inform the Netherlands Authority for the Financial Markets of its share capital and its voting rights, as well as the shares issued with its cooperation as meant in Section 5:33 (1) (b) (2^o).

Section 5:37

Rules shall be laid down by order in council with regard to the data which must be supplied in a notification as meant in this part and the means of notification.

Part 5.3.3 Notifications by shareholders and other parties with voting rights with regard to changes in control and share capital interest

Section 5:38

1. Any person acquiring or losing the disposal of shares as a result of which, as this person knows or should know, the percentage of share capital at its disposal reaches, exceeds or falls below a threshold value shall, without delay, notify the Netherlands Authority for the Financial Markets.
2. Any person acquiring or losing the disposal of voting rights as a result of which, as this person knows or should know, the percentage of voting rights at its disposal reaches, exceeds or falls below a threshold value shall, without delay, notify the Netherlands Authority for the Financial Markets.
3. The threshold values meant in the first and second subsection are: five per cent, ten per cent, fifteen per cent, twenty per cent, 25 per cent, thirty per cent, 40 per cent, 50 per cent, 60 per cent, 75 per cent and 95 per cent.
4. It may be determined by order in council in which cases a person subject to the notification obligation should know that it reaches, exceeds or falls below a threshold value.

Section 5:39

1. Any person whose percentage of the share capital or of the voting rights at its disposal, as that person knows or should know, reaches, exceeds or falls below a threshold value as a result of a change processed after a notification meant in Section 5:34 or 5:35 by the Netherlands Authority for the Financial Markets in the register meant in Section 1:107 shall notify the Netherlands Authority for the Financial Markets. The notification shall be made not later than on the fourth trading day following the processing in the register meant in the preceding sentence. Trading day may be defined by order in council.
2. The threshold values meant in the first subsection, first sentence are: five per cent, ten per cent, fifteen per cent, twenty per cent, 25 per cent, thirty per cent, 40 per cent, 50 per cent, 60 per cent, 75 per cent and 95 per cent.
3. It may be determined by order in council in which cases a person subject to the notification obligation should know that it reaches, exceeds or falls below a threshold value.

Section 5:40

Any person acquiring or losing the disposal of one or more shares with a special right under the articles of association regarding control in an issuer shall, without delay, inform the Netherlands Authority for the Financial Markets.

Section 5:41

1. Any person whose substantial unit at 31 December at 12 midnight differs from a previous notification as a result of an exchange of shares as meant in Section 5:33 (1) (b) (3^o or 4^o), in shares as meant in Section 5:33 (1) (b) (1^o or 2^o) or vice versa, or as a result of an exchange of shares as meant in Section 5:33 (1) (b) (1^o), in shares as meant in Section 5:33 (1) (b) (2^o), or vice versa, shall notify the Netherlands Authority for the Financial Markets within four weeks. A director or supervisory director fulfils this obligation where the same fact has been notified under Section 5:48 (6 or 7).
2. Any person whose substantial unit at 31 December at 12 midnight differs from the previous notification as a result of exercising rights under a contract to acquire voting rights or vice versa, shall notify the Netherlands Authority for the Financial Markets within four weeks. A director or supervisory director fulfils this obligation where the same fact has been notified under Section 5:48 (7).

Section 5:42

Any person that ceases to be a subsidiary and that has a substantial unit or one or more shares with a special right under the articles of association concerning the control in an issuer at its disposal shall, without delay, inform the Netherlands Authority for the Financial Markets.

Section 5:43

1. Any person that at the time at which a public limited company incorporated under Dutch law becomes an issuer, as that person knows or should know, has a substantial unit or one or more shares with a special right under the articles of association concerning the control in that issuer at its disposal shall, without delay, notify the Netherlands Authority for the Financial Markets.
2. An person that at the time at which a legal person incorporated under the law of a non-Member State becomes an issuer, as that person knows or should know, has a substantial unit or one or more shares with a special right under the articles of association concerning the control in that issuer at its disposal shall, without delay, notify the Netherlands Authority for the Financial Markets.
3. It may be determined by order in council in which cases a person subject to the notification obligation should know that it has a substantial unit in an issuer at its disposal.

Section 5:44

Rules shall be laid down by order in council with regard to the data which must be supplied in a notification as meant in this part and the means of notification.

Part 5.3.4 Special provisions and exceptions to the obligation to notify with regard to changes in control and share capital interest

Section 5:45

1. A person has the disposal of the shares it holds as well as of the voting rights it may exercise as holder of shares.
2. A person has the disposal of the voting rights it may exercise as a usufructuary or lien holder where Section 88 (3) or 89 (3) of Book 2 of the Dutch Civil Code is applied.
3. A person is deemed to have the disposal of the shares its subsidiary holds as well as the voting rights which the subsidiary may exercise. A subsidiary is deemed to have no disposal of shares or voting rights.
4. A person is deemed to have the disposal of the shares held by a third party for its account as well as the voting rights which that third party may exercise.
5. A person is deemed to have the disposal of the votes of which a third party has the disposal if it has concluded a contract with that third party which provides in a long-term common policy on the exercise of voting rights.
6. A person is deemed to have the disposal of voting rights of which a third party has the disposal if it has concluded a contract with that third party providing for a temporary and paid transfer of those voting rights.
7. The management company of a common fund is deemed to have the disposal of the shares which the depositary holds and the related voting rights. The depositary of a common fund is deemed to have no shares or voting rights at its disposal.
8. Shares and voting rights which form part of a community shall be allocated to the participants in that community in proportion to their entitlement to those shares and voting rights. Notwithstanding the preceding sentence the voting rights forming part of a statutory community of property as meant in Section 93 of Book 1 of the Dutch Civil Code shall be allocated to the spouse on whose side the voting rights accrued to the community as meant in Section 97 of Book 1 of the Dutch Civil Code.
9. A person is deemed to have the disposal of the voting rights which it may exercise at its own discretion as an authorized agent.
10. The third subsection shall, according to rules to be laid down by order in council, not concern a person whose subsidiary:
 - a. is a management company which may exercise, at its own discretion, the voting rights attached to the shares held by the collective investment scheme which it manages or the voting rights of which it is deemed to have the disposal under the seventh subsection, first sentence; or
 - b. is a portfolio manager which may exercise, at its own discretion, the voting rights attached to the shares which it manages.

Section 5:46

1. The obligations meant in part 5.3.3 are, in so far as the shares and the related voting rights in the regular operations of their business are held for a short period of time, shall not concern:
 - a. clearing institutions in so far as they do not also carry on the business of a bank or electronic money institution;
 - b. settlement bodies as meant in Section 212a (d) of the Bankruptcy Act; and
 - c. national central banks forming part of the European System of Central Banks meant in Article 8 of the Treaty establishing the European Community, in so far as the voting rights are not exercised.

2. The obligations meant in part 5.3.3, in so far as the shares and the related voting rights are held in the regular operations of their business, shall not concern:

- a. depositaries of shares, in so far as they may not exercise, at their own discretion, the voting rights attached to those shares; and
- b. persons that perform activities as meant under c and f of the definition of providing an investment service in Section 1:1, that acquire or lose the disposal of shares and related voting rights as a result of which, as they know or should know, the percentage of the share capital or the voting rights at their disposal reaches, exceeds or falls below the threshold value of five per cent, in so far as they exercise no influence in the management of the issuer concerned and are authorized to carry on their business in their home Member State.

3. To determine whether the threshold values meant in Sections 5:38, third subsection, or 5:39, second subsection, have been reached or exceeded, shares and the related voting rights belonging to the trading portfolio of one of the financial undertakings to be named hereinbelow shall not be taken into account in so far as these shares or voting rights do not exceed five per cent of the capital or the votes of an issuer and if the voting rights are not exercised or otherwise used to exercise influence in the management of the issuer concerned:

- a. financial undertakings authorized by the Netherlands Central Bank under Part 1a, Market access of financial undertakings to carry on the business of a bank;
- b. financial undertakings which have a certificate of supervised status for the pursuit of the business of a financial institution issued by the Netherlands Central Bank under Part 2, Prudential supervision of financial undertakings;
- c. financial undertakings authorized by the Netherlands Authority for the Financial Markets under Part 1a, Market access of financial undertakings to provide investment services;
- d. investment firms established in a Member State other than of the Supervisory Authority of that other Member State authorized in the sense of Article 5 (1) first sentence of Directive 2004/39/EEC of the European Parliament and of the Council of 21 April 2004 on markets for 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 (OJ L 145);
- e. credit institutions established in another Member State authorized by the Supervisory Authority of that other Member State as meant in Article 4 (2) of the Recast Banking Directive; and
- f. financial institutions established in another Member State which have a certificate of supervised status to carry on their business issued by the Supervisory Authority of that Member State equivalent to the certificate meant in Section 3:110.

4. Rules may be laid down by order in council with regard to the first, second or third subsection.

5. Where an undertaking or institution meant in the first, second or third subsection at the time at which the first, second or third subsection no longer applies still holds the shares or may exercise the voting rights, it is deemed at that time to have acquired the disposal of those shares and voting rights.

Section 5:47

As regards the 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 in the Netherlands and for which legal person the Netherlands is a host Member State as meant in Article 2 (1) (n) of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonization 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 (OJ L 390):

- a. Sections 5:40, 5:41 and 4:42 shall not apply;
- b. notwithstanding Section 5:38 (3) the obligations meant in Section 5:38 (1 and 2) to notify the threshold values of five and ten per cent shall not apply where the person subject to the notification obligation is an issuer obliged to notify as a result of acquiring or losing the disposal of its own shares; and
- c. notwithstanding Sections 5:38 (3) and 5:39 (2), the obligations meant in Sections 5:38 (1 and 2) and 5:39 (1) to notify the threshold values shall apply for 5 per cent, 10 per cent, 15 per cent, 20 per cent, 25 per cent, 30 per cent, 50 per cent and 75 per cent.

Part 5.3.5 Notifications by directors and supervisory directors regarding control and share capital interest

Section 5:48

1. In this section and the ensuing provisions, an issuer shall be taken to mean, notwithstanding Section 5:33 (1) (a): a public limited company incorporated under Dutch law whose shares as meant in Section 5:33 (1) (b) (1^o or 2^o) are admitted to trading on a regulated market.
2. In this section and the ensuing provisions an affiliated issuer shall be taken to mean: any other issuer:
 - 1^o. with which the issuer is affiliated within a group or in which the issuer has a unit and whose most recently established turnover amounts to at least ten per cent of the consolidated turnover of the issuer;
 - 2^o. which, directly or indirectly, provides more than 25 per cent of the share capital of the issuer.
3. A director or supervisory director of an issuer shall inform the Netherlands Authority for the Financial Markets of the shares and voting rights in the issuer and the affiliated issuers at its disposal. These notifications shall be submitted within two weeks of the designation or appointment as a director or supervisory director.
4. A director or supervisory director of a public limited company which becomes an issuer in the sense of the first subsection shall, without delay, inform the Netherlands Authority for the Financial Markets of the shares and voting rights in the issuer and the affiliated issuers which it has at its disposal. The obligation under the preceding sentence is fulfilled if a notification regarding the same fact is submitted under Section 5:43 (1).
5. A director or supervisory director of an issuer of which another public limited company becomes an affiliated issuer in the sense of the second subsection shall, without delay, inform the Netherlands Authority for the Financial Markets of the shares and voting rights in the affiliated issuer which it has at its disposal. The obligation under the preceding sentence is fulfilled if a notification regarding the same fact is submitted under Section 5:43.

6. A director or supervisory director of an issuer shall, without delay, inform the Netherlands Authority for the Financial Markets of any change in the shares in the issuer and the affiliated issuers which it has at its disposal. The obligation under the preceding sentence is fulfilled if a notification regarding the same fact is made under Section 5:38 (1) or 5:40, first sentence.
7. A director or supervisory director of an issuer shall, without delay, inform the Netherlands Authority for the Financial Markets of any change in the voting rights in the issuer and the affiliated issuers which it has at its disposal. The obligation under the preceding sentence is fulfilled if a notification regarding the same fact is made under Section 5:38 (2).
8. An issuer shall, without delay, notify the Netherlands Authority for the Financial Markets of the fact that a director or supervisory director is no longer in office.
9. Where a director of an issuer is a legal person, the third through the eighth subsections shall apply mutatis mutandis to the natural persons who determine the day-to-day policies of that legal person, and to the natural persons who supervise the management's policies and the general course of events in this legal person.
10. Rules shall be laid down by order in council with regard to the data which must be supplied in a notification meant in this section and the means of notification.

Part 5.3.6 Registration of notifications

Section 5:49

1. Without prejudice to the provisions in the third subsection, the Netherlands Authority for the Financial Markets, after receiving the notification, shall, without delay, inform the issuer concerned and the person subject to the notification obligation of the notification. The notification meant in the first subsection shall serve as proof for the person subject to the notification obligation that it has fulfilled that obligation.
2. The Netherlands Authority for the Financial Markets shall, without delay, following the processing in the register meant in Section 1:107 (3) (c) (1^o) of the inform the issuer concerned of the substance of the notification.
3. Where the Netherlands Authority for the Financial Markets has suspended the processing of a notification in the register meant in Section 1:107 based on Section 5:51 (2), it shall process the data meant in the second subsection, in derogation from Section 1:107 (3) (c) (1^o), in any event in that register within one working day following the working day on which the requested information was obtained or, where the requested information was not obtained, as soon as it deems processing in that registration possible. The notification meant in the second subsection shall serve as proof for the person subject to the notification obligation that it has fulfilled that obligation.

Part 5.3.7 Other rules

Section 5:50

Where an issuer, based on a notification as meant in Section 5:49 (2 or 3) second sentence, suspects that an incorrect notification has been made, it shall, without delay, inform the Netherlands Authority for the Financial Markets.

Section 5:51

1. The Netherlands Authority for the Financial Markets may, by giving an instruction, oblige a person that has submitted an incorrect notification or has wrongly failed to make a notification to make a correct notification within a reasonable term fixed by the former.
2. The Netherlands Authority for the Financial Markets may suspend the processing of a notification in the register meant in Section 1:107 for the duration of requesting information as meant in Section 1:74. It shall inform the issuer concerned and the person obliged to notify of the suspension.
3. Where a notification is incorrect and it is not rectified or has wrongly not been submitted and the correct notification is not made, the Netherlands Authority for the Financial Market may enter the data it regards as correct in the register meant in Section 1:107 after informing the issuer and the person subject to the notification obligation.

Section 5:52

1. Where a notification obligatory under this chapter has not been made according to this chapter, the district court within whose jurisdiction the issuer concerned is established may, on application of the person authorized to do so under the second subsection, take the measures mentioned in the fourth subsection. Where a notification concerns an issuer established outside the Netherlands, the district court of The Hague shall be competent to take measures.
2. The following persons may file an application:
 - a. holders of shares which alone or jointly have the disposal of a substantial unit;
 - b. holders of one or more shares with a special right under the articles of association with regard to the control in the issuer; and
 - c. the issuer concerned.
3. The power to file an application shall lapse after three months from the day on which the person authorized to file an application has taken or has been able to take note of the violation.
4. The measures meant in the first subsection are:
 - a. to order the person subject to the notification obligation to make a notification according to this chapter;
 - b. to suspend the right to exercise voting rights in the issuer concerned which the person subject to the notification obligation has at its disposal during a period to be determined by the district court of not more than three years;
 - c. to suspend a resolution of the general shareholders' meeting of the issuer concerned until a decision regarding a measure as meant under d has become final and conclusive;
 - d. to annul a resolution of the general shareholders' meeting of the issuer concerned where it is plausible that such a resolution would not have been adopted if the voting rights at the disposal of the person subject to the notification obligation had not been exercised; or
 - e. to order the person subject to the notification obligation to refrain from obtaining the disposal of shares or voting rights of the issuer concerned during a period to be determined by the district court of not more than five years.

5. A measure as meant in the fourth subsection (b or e) shall not concern shares which are held by way of management by a person other than the person subject to the notification obligation, unless the latter may acquire the disposal of those shares or determine how the voting rights attached to those shares must be exercised.
6. The district court shall, where necessary, provide for the effects of the measures it has taken.
7. The district court may, on application of the person that filed the initial application or of the person to which the measure is addressed, reduce the period meant in the fourth subsection under b or e.
8. A measure as meant in the fourth subsection under d shall not be declared immediately enforceable.
9. Where the application meant in the first subsection concerns shares which are not held by the person subject to the notification obligation or voting rights which it may not exercise as the shareholder, lien holder or usufructuary, the claimant shall summon the holder, lien holder 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 district court which is competent under the first subsection. The application may only refer to measures meant in the fourth subsection under a, b, c and e. The fifth and ninth subsections shall apply mutatis mutandis.

CHAPTER 5.4 RULES ON PREVENTING MARKET ABUSE AND ON OPERATING ON MARKETS IN FINANCIAL INSTRUMENTS

Part 5.4.1 Introductory provision

Section 5:53

1. In this chapter and the ensuing provisions inside information shall be taken to mean: knowledge of information of a precise nature relating directly or indirectly to an issuer of financial instruments as meant in the fourth subsection under a, or to trading in those financial instruments, which information has not been made public and which, if it were made public, would be likely to have a significant effect on the prices of the financial instruments or on the prices of related derivative financial instruments. Where it concerns derivatives on commodities, inside information in the provisions in this chapter and ensuing provisions shall, in derogation from the preceding sentence, be taken to mean: knowledge of information of a precise nature which has not been made public and which directly or indirectly relates to one or more derivatives on commodities, which investors in those derivatives on commodities may expect to be made public in accordance with accepted market practices on the regulated market or the market in financial instruments, not being a regulated market, the holder of which has been recognized as meant in Section 5:26, first subsection, on which those derivatives on commodities are traded.
2. Market practices as meant in the first subsection, second sentence, may be designated under or pursuant to order in council.
3. In this chapter and in the ensuing provisions, a financial instrument shall, in derogation from Section 1:1, also be taken to mean: any other instrument admitted to trading on a regulated market or a market in financial instruments,

not being a regulated market, the holder of which has been recognized as meant in Section 5:26, subsection one, or for which admission to trading on a regulated market or a market in financial instruments, not being a regulated market, the holder of which has been recognized as meant in Section 5:26, subsection one, has been requested.

4. In this chapter and in the ensuing provisions an issuer shall, in derogation from Section 1:1, be taken to mean:

a. a legal person, company or institution that has issued financial instruments as meant in Section 5:56 (1) under a or b, or a party at whose proposal a purchase contract in respect of a financial instrument other than a security has been concluded; or

b. a legal person, company or institution that intends to issue financial instruments as meant in Section 5:56 (1) under a or b, or a party that proposes a purchase contract in respect of a financial instrument other than a security.

5. In this chapter and the ensuing provisions an investment recommendation shall be taken to mean: information meant for the public and drawn up or issued by:

a. the persons meant in Section 5:64 (2) (a) in which, explicitly or implicitly, an investment strategy is recommended or proposed with regard to:

1^o. financial instruments admitted to trading on a regulated market, or a market in financial instruments, not being a regulated market, the holder of which has been recognized as meant in Section 5:26, subsection one, in the Netherlands or for which admission to such trading has been requested;

2^o. financial instruments admitted to trading on a regulated market in another Member State; or

3^o. an issuer having issued financial instruments as meant under 1^o or 2^o;

b. the persons meant in Section 5:64 (2) (b) in which an investment decision is explicitly recommended with regard to:

1^o. financial instruments admitted to trading on a regulated market, or a market in financial instruments, not being a regulated market, the holder of which has been recognized as meant in Section 5:26, subsection one, in the Netherlands or for which admission to such trading has been requested; or

2^o. financial instruments admitted to trading on a regulated market in another Member State.

6. In this chapter and the ensuing provisions the person making an investment recommendation shall be taken to mean: a person that makes an investment recommendation in the course of its profession or its business.

Part 5.4.2 Rules on preventing market abuse

Section 5:54

Any violation of Section 5:56 (1, 3 or 7), 5:57 (1 or 2), or 5:58 (1) is a serious offence.

Section 5:55

As regards offences as meant in Section 5:56 (1, 3 and 7), 5:57 (1 and 2), 5:58 (1), 5:59 (1 and 5) and 5:62 (1), the district court of Amsterdam shall have exclusive jurisdiction in the first instance.

§ 5.4.2.1 Prohibitions

Section 5:56

1. No-one belonging to the category of persons listed in the second subsection may use inside information by performing 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, or a market in financial instruments, not being a regulated market, the holder of which has been recognized as meant in Section 5:26, subsection one, in the Netherlands or for which 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 market in financial instruments established and permitted by the authorities in a non-Member State, or in financial instruments for which admission to such trading has been requested; or
 - c. in or from the Netherlands or a non-Member State in financial instruments, not being financial instruments as meant under a or b, of which the value is also determined by the financial instruments meant under a or b;
 - d. in or from another Member State in financial instruments admitted to trading on a market in financial instruments, not being a regulated market, the holder of which has been recognized as meant in Section 5:26, first subsection.
2. The categories meant in the first subsection are:
 - a. persons having inside information at their disposal due to the fact that they (co-)determine the day-to-day policies or supervise the policies and the general course of events of the issuer meant in Section 5:53 (4) under a to which the inside information relates;
 - b. persons having inside information at their disposal due to the fact they have at their disposal a qualifying holding in the issuer as meant in Section 5:53 (4) under a, or that has issued financial instruments as meant in the first subsection under c, to which the inside information relates;
 - c. persons with access to information as meant in Section 5:53 (1) in the normal course of the exercise of their work, profession or duties; and
 - d. persons having inside information at their disposal due to involvement in offences.
3. Any person not belonging to the category mentioned in the second subsection and who is aware or should reasonably suspect that it has inside information at its disposal is prohibited from using such inside information by:
 - a. performing or effecting a transaction in financial instruments in or from the Netherlands as meant in the first subsection under a;
 - b. performing or effecting a transaction in financial instruments in or from the Netherlands as meant in the first subsection under b;
 - c. performing or effecting a transaction in financial instruments in or from the Netherlands or a non-Member State as meant in the first subsection under c;
 - d. performing or effecting a transaction in financial instruments as meant in the first subsection under d in or from another Member State.
4. Information which investors may expect to be made public as meant in Section 5:53 (1) second sentence shall concern information which is of such a nature that it:
 - a. is routinely made available to the investors in those financial instruments; or

b. is required to be disclosed in accordance with legal provisions applicable to the market meant in that subsection or according to the market rules, contracts or customs on the relevant regulated market.

5. The first and third subsections shall not apply to performing or effecting transactions in financial instruments;

a. to perform a demandable obligation which already existed when the person performing or effecting the transaction received knowledge as meant in Section 5:53 (1) first sentence with regard to the issuer as meant in Section 5:53 (4) under a to which those financial instruments relate;

b. in the context of the monetary policy, the exchange-rate policy or the public debt-management policy;

c. in the context of a buy-back programme as described in Chapter II of Regulation 2273/2003 of the Commission of the European Communities 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 stabilization of financial instruments (OJ L 336); and

d. in the context of stabilization as described in Chapter III of Regulation 2273/2003 of the Commission of the European Communities 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 stabilization of financial instruments (OJ L 336).

6. Categories of transactions may be designated by order in council to which the prohibitions meant in the first and the third subsections shall not apply. In a category to be designated a distinction may also be made between persons by which and the circumstances under which the transactions are performed or effected.

7. No-one may use inside information by seeking to perform or to effect a transaction as meant in the first subsection.

Section 5:57

1. A person belonging to a category meant in Section 5:56 (2) (a, b or d) as well as a person having at his/her disposal inside information and belonging to the category meant in Section 5:56 (2) (c) is not permitted in or from a State meant in Section 5:56 (1) (a, b, c or d), in so far as it concerns financial instruments as meant in the relevant part:

a. to disclose the information to which the inside information relates to a third party, other than in the course of the exercise of their work, profession or duties; or

b. to recommend or induce another person to perform or to effect transactions in those financial instruments.

2. The first subsection shall apply mutatis mutandis to any other person who knows or should reasonably suspect that such person has inside information at its disposal.

3. Rules may be laid down by order in council with regard to the cases in which and the circumstances under which a disclosure shall be regarded as the disclosure in the normal course of the exercise of his/her employment, profession or duties as meant in the first subsection under a.

Section 5:58

1. No-one is permitted, in or from a State meant in Section 5:56 (1) a, b or d), where it concerns financial instruments as meant in the relevant part:

- a. to perform or effect a transaction or order to trade in financial instruments which gives, or is likely to give, false or misleading signals as to the offer, demand or price of those financial instruments, unless the party which performed or effected the transaction or order to trade shows proof that its motive for performing or effecting the transaction or order to trade is justified and that the transaction or order to trade is in conformity with usual market practice on the regulated market concerned or the market concerned, not being a regulated market, the holder of which has been recognized as meant in Section 5:26 (1);
 - b. to perform or effect a transaction or order to trade in financial instruments in order to secure the price of those financial instruments at an artificial level, unless the party which performed or effected the transaction or order to trade shows proof that its motive for performing or effecting the transaction or order to trade is justified and that the transaction or order to trade is in conformity with usual market practice on the regulated market concerned or the market concerned, not being a regulated market, the holder of which has been recognized as meant in Section 5:26 (1);
 - c. to perform or effect a transaction or order to trade in financial instruments employing deception or contrivance;
 - d. to disseminate information which gives, or is likely to give, false or misleading signals as to the offer, demand or price of financial instruments, while the disseminator of such information knows or should reasonably suspect that such information is false or misleading.
2. The first subsection shall not apply to performing or effecting transactions or orders to trade in financial instruments or disseminating information in the course of:
- a. the monetary policy, the exchange-rate policy or the public debt-management policy;
 - b. a buy-back programme as described in Chapter II of Regulation 2273/2003 of the Commission of the European Communities 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 stabilization of financial instruments (OJ L 336); and
 - c. stabilization as described in Chapter III of Regulation 2273/2003 of the Commission of the European Communities 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 stabilization of financial instruments (OJ L 336).
3. Categories of transactions or orders to trade may be designated under or pursuant to order in council to which the prohibitions meant in the first subsection, opening words and under a and b shall not apply, and rules may be laid down with regard to the way in which they are designated.
4. The first subsection, opening words and under d shall not apply in so far as it concerns the dissemination of information by journalists when they act in their usual professional capacity, taking into account the rules governing their profession, unless they derive an advantage or profits from the dissemination of the information.

§ 5.4.2.2. *Disclosure and notification obligations*

Section 5:59

1. An issuer as meant in Section 5:53 (4) under a which has issued financial instruments as meant in Section 5:56 (1) under a or b which were admitted to trading on a regulated market, or a market in financial instruments, not being a regulated market, the holder of which has been recognized as meant in Section 5:26, subsection one, in the Netherlands with its consent or for which admission to trading was requested on a regulated market, or a market in financial instruments, not being a regulated market, the holder of which has been recognized as meant in Section 5:26, subsection one, in the Netherlands with its consent shall, without delay, disclose information meant in Section 5:53 (1) which directly relates to itself. Such information shall be disclosed by a press release issued simultaneously in the Netherlands and in any other Member State in which the financial instruments issued by the issuer were with its consent admitted to trading on a regulated market or a market in financial instruments, not being a regulated market, the holder of which has been recognized as meant in Section 5:26, subsection one, or where the issuer has requested or consented to their admission to trading on such a market. The issuer shall simultaneously inform the Netherlands Authority for the Financial Markets of that information.
2. The issuer shall have a website and shall, without delay, post the information on that website. If the issuer is a collective investment scheme, the information may also be posted without delay on the website of the management company of the collective investment scheme. The issuer or the management company shall have the information available on the website for at least one year.
3. Notwithstanding the first and second subsection, the issuer may delay the disclosure of the information if:
 - a. the delay serves the legitimate interests of the issuer;
 - b. the delay is unlikely to mislead the public; and
 - c. the issuer is able to ensure the confidentiality of the information.
4. Rules shall be laid down by order in council with regard to the third subsection. It shall thereby be determined what the legitimate interests of the issuer can be taken to mean and which requirements the issuer must satisfy to ensure the confidentiality of the information.
5. Where the issuer or a person representing the issuer deliberately discloses information as meant in Section 5:53 (1) in the normal course of the exercise of its employment, profession or duties to a third party, the issuer shall simultaneously disclose that information. Where the information is not deliberately disclosed to a third party, the issuer shall then promptly disclose the information. The first subsection shall apply mutatis mutandis.
6. The fifth subsection shall not apply if the person receiving the information owes a duty of confidentiality in respect of that information.
7. An issuer established in the Netherlands which has issued financial instruments as meant in Section 5:56 (1) (a or b) that were admitted to trading on a regulated market or a market in financial instruments, not being a regulated market, the holder of which has been recognized as meant in Section 5:26, subsection one, with its consent, or for which admission to trading on such a market was requested with its consent, an issuer established in another Member State which has issued financial instruments as meant in Section 5:56, first subsection, under d, that with its consent were admitted to trading on a market in financial instruments meant there, an issuer established in a non-Member State which has issued financial instruments as

meant in Section 5:56, first subsection, under d, that with its consent were admitted to trading on the market in financial instruments meant there, which has issued or intends to issue financial instruments, as meant in Section 5:56 (1) (a) that will be admitted to trading on a regulated market or a market in financial instruments, not being a regulated market, the holder of which has been recognized as meant in Section 5:26, subsection one, as meant there with its consent or for which admission to trading on such a market was requested with its consent, as well as any person that acts on behalf of or for the account of the said issuer, shall keep a list of the persons working for itself or for the issuer who, either regularly or occasionally, may have access to the information meant in Section 5:53 (1) and it shall inform those persons of the prohibitions laid down in this part and of the sanctions imposed upon violation of those provisions.

8. Rules shall be laid down under or pursuant to order in council with regard to the way in which the disclosure meant in the first, second and fifth subsections must take place, and with regard to the content, the updating and keeping of the list meant in the seventh subsection.

Section 5:60

1. Any person that:

a. determines or co-determines the day-to-day policies of an issuer established in the Netherlands or an issuer established in a non-Member State or an issuer established in another Member State which has issued or intends to issue financial instruments as meant in Section 5:56 (1) (a), or an issuer established in another Member State which has issued financial instruments as meant in Section 5:56, first subsection, under d, or any person at whose proposal a purchase contract was concluded with regard to a financial instrument as meant in that part, other than a security, or that proposes a purchase contract with regard to a financial instrument as meant in that part, other than a security;

b. supervises the management's policies and the general course of events in an issuer as meant under a and the related undertaking;

c. has managerial responsibilities and on that basis may take decisions affecting the future developments and business prospects of an issuer as meant under a and that may have regular access to information as meant in Section 5:53 (1); or

d. belongs to a category of persons closely affiliated with a person as meant under a, b or c to be designated by order in council,

shall not later than on the fifth working day after the transaction data report the transactions performed or effected for its own account in shares relating to the issuer meant under a, b or c, or in financial instruments whose value is also based on the value of those shares. The notification shall, where it concerns an issuer established in the Netherlands or established in another Member State, be made to the Netherlands Authority for the Financial Markets or, where it concerns an issuer not established in a Member State, be made to the supervisor of the Member State in which the issuer is obliged to issue the annual information relating to the shares in accordance with Article 10 of the Prospectus Directive.

2. The notification meant in the first subsection may be delayed by the persons meant in the first subsection under a, b or c until the time at which the transactions performed by them for their own account, added to the

transactions for their own account performed by persons affiliated with them as meant in the first subsection under d, amount to a sum of at least € 5,000 in the calendar year concerned. The notification may be delayed by the persons as meant in the first subsection under d until the time at which the transactions performed by them for their own account, added to the transactions for their own account performed by the persons as meant in the first subsection under a, b or c with which they are affiliated, 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 under or pursuant to order in council.

4. The notification may be made through a person to be appointed by the issuer to which the financial instruments relate.

5. As regards the notification, it may be determined by order in council that where certain data has already been provided to the Netherlands Authority for the Financial Markets on the basis of other statutory provisions to be thereby designated, the notification obligation under the first subsection is fulfilled.

6. This section shall not concern transactions performed or effected in the context of the monetary policy, the exchange-rate policy or the public debt-management policy. Other categories of transactions may be designated by order in council to which this section shall not apply.

Section 5:61

1. The Netherlands Authority for the Financial Markets may, by giving an instruction, order a person that has made an incorrect notification or has wrongly failed to make a notification to make a correct notification within a reasonable term fixed by the former.

2. Where a notification is incorrect and it is not rectified or has wrongly not been made and the correct notification is not made, the Netherlands Authority for the Financial Market may enter the data it regards as correct in the register after informing the issuer and the person subject to the notification obligation.

3. The Netherlands Authority for the Financial Markets may, with a view to an investigation of the correct nature of the notification, suspend the registration of the notification in the register for the duration of the investigation. It shall inform the person having 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 violate Section 5:56 (1 or 3), or 5:58 (1) shall, without delay, inform the Netherlands Authority for the Financial Markets of this suspicion.

2. The Netherlands Authority for the Financial Markets shall, without delay, communicate the suspicion reported in accordance with the first subsection to any government body or body designated by the authorities to supervise a regulated market where those financial instruments have been admitted to trading or where application for their admission to trading has been applied for.

3. It may be determined under or pursuant to order in council when a reasonable suspicion as meant in the first subsection occurs and rules may be laid down which the notification must comply with and how the notification must be made.

Section 5:63

1. An investment firm having made a notification in good faith based on Section 5:62 (1) shall not be liable for any loss or damage sustained by a third party as a result.
2. Data or information provided based on Section 5:62 (1) may not serve as a basis for an investigation or prosecution on suspicion of or as proof of charges on account of violation of Section 5:56 or 5:58 in respect of an investment firm which has provided data or information based on Section 5:62 (1).
3. An investment firm which has made a notification based on Section 5:62 (1) shall owe a duty of confidentiality in respect of that information.

Section 5:64

1. Any person who makes an investment recommendation in or from the Netherlands, another Member State or a non-Member State shall observe the rules to be laid down by order in council with regard to:
 - a. the identity of the person having made the investment recommendation or disclosing such recommendation;
 - b. ensuring that the investment recommendation fairly presents the facts; and
 - c. disclosing information which may reasonably be expected to affect the objectivity of the investment recommendation.
2. The first subsection shall apply to:
 - a. independent analysts, investment firms, other persons whose main activity it is to make recommendations or natural persons working for them according to an employment contract or otherwise, that:
 - 1^o. in or from the Netherlands or a non-Member State make investment recommendations recommending or proposing, explicitly or implicitly, an investment strategy with regard to financial instruments admitted to trading on a regulated market, or a market in financial instruments, not being a regulated market, the holder of which has been recognized as meant in Section 5:26, subsection one, in the Netherlands or for which admission to such trading is requested or in or from another Member State make investment recommendations recommending or proposing, explicitly or implicitly, an investment strategy with regard to financial instruments admitted to trading on a market in financial instruments, not being a regulated market, the holder of which has been recognized as meant in Section 5:26, first subsection; or
 - 2^o. in or from the Netherlands make investment recommendations recommending or proposing, explicitly or implicitly, an investment strategy with regard to financial instruments admitted to trading on a regulated market in another Member State or regarding an issuer;
 - b. persons other than meant under a that:
 - 1^o. in or from the Netherlands or a non-Member State make investment recommendations in which an investment decision is explicitly recommended with regard to financial instruments admitted to trading on a regulated market, or a market in financial instruments, not being a regulated market, the holder of which has been recognized as meant in Section 5:26, subsection one, in the Netherlands or for which admission to such trading is requested or in or from another Member State make investment recommendations in which an investment strategy is explicitly recommended or proposed with regard to financial instruments admitted to trading on a market in financial instruments, not being a regulated market, the holder of which has been recognized as meant in Section 5:26, first subsection; or

2°. in or from the Netherlands make investment recommendations 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 its profession or business:

1°. in or from the Netherlands or a non-Member State makes investment recommendations in which an investment decision is explicitly recommended with regard to financial instruments admitted to trading on a regulated market, or a market in financial instruments, not being a regulated market, the holder of which has been recognized as meant in Section 5:26, subsection one, in the Netherlands or for which admission to such trading is requested or in or from another Member States make investment recommendations in which an investment decision is explicitly recommended with regard to financial instruments admitted to trading on a market in financial instruments, not being a regulated market, the holder of which has been recognized as meant in Section 5:26, first subsection; or

2°. in or from the Netherlands makes investment recommendation 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 meant in the second subsection under a shall mention in the investment recommendation that the Netherlands Authority for the Financial Markets is the competent supervisor. Any person that is not an investment firm and to which norms or rules of conduct under self-regulation apply with regard to the matters meant in the first subsection shall mention those in the investment recommendation.

4. An investment firm as meant in the second subsection under a shall disclose in general wordings the organizational and administrative measures it has taken to prevent a conflict of interests with regard to recommendations.

5. A person making an investment recommendation that disseminates an investment recommendation made by a third party under its own responsibility shall state clearly any changes it has made to the investment recommendation or shall state that the recommendation is unchanged and complies with the rules to be laid down by order in council under the first subsection. The third subsection, first sentence, shall apply *mutatis mutandis*.

6. A person making an investment recommendation that disseminates a summary of an investment recommendation made by a third party in or from the Netherlands shall ensure that the summary is clear, not misleading and directly and easily accessible. It shall also state the location where the information represented in the summary is accessible if such information is public.

7. Different rules may be laid down by order in council as meant in the first subsection with regard to the disclosure of investment recommendation by journalists or other professionals.

Section 5:65

An issuer established in the Netherlands which has issued or intends to issue financial instruments as meant in Section 5:56 (1) (a or b) or an issuer established in a state which has issued or intends to issue financial instruments as meant in Section 5:56, first subsection, under d, or at whose proposal a purchase contract was concluded with regard to a financial

instrument as meant in those parts, other than a security, or who proposes such a contract, except for financial instruments issued or to be issued in the context of the monetary policy, the exchange-rate policy or the public debt-management policy, as well as an issuer established in a non-Member State which has issued or intends to issue financial instruments as meant in Section 5:56 (1) (a) or at whose proposal a purchase contract was concluded with regard to a financial instrument as meant in that part, other than a security, or who proposes such a contract, except for financial instruments issued in the context of the monetary policy, the exchange-rate policy or the public debt-management policy, shall lay down rules with provisions in respect of the possession of and transactions by its employees and by the persons meant in Section 5:60 (1) (a and b) in shares relating to the said issuer or in financial instruments relating to it, the value of which is determined in part by the value of these shares. The rules shall comply with rules to be laid down under order in council.

§ 5.4.2.3. Additional supervisory powers

Section 5:66

The Netherlands Authority for the Financial Markets may give an instruction to a holder of a regulated market, or a market in financial instruments, not being a regulated market, the holder of which has been recognized as meant in Section 5:26, subsection one, in the Netherlands to suspend, interrupt or cancel trading in certain financial instruments where an issuer as meant in Section 5:59 (1) does not comply with the provisions under Section 5:59 (1 or 5).

Section 5:67

1. Where the Netherlands Authority for the Financial Markets is convinced that acts have been or are performed in another Member State in violation of 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 similar to the notification meant in the first subsection to the Netherlands Authority for the Financial Markets, the latter shall take the required measures and inform the notifying Supervisory Authority of the results, and, in so far as possible, of any important interim developments.
3. The Netherlands Authority for the Financial Markets shall consult the Supervisory Authorities of the other Member States on the intended measures.

Part 5.4.3 Operating on markets in financial instruments

Section 5:68

1. A place of business in the Netherlands of a bank, management company, collective investment scheme, investment firm, clearing institution, financial institution with a certificate of supervised status as meant in Section 3:110 (1), company savings fund, pension fund or insurer shall observe the rules to be laid down under or pursuant to order in council with regard to fair business operations in respect of operating on markets in financial instruments. Those

rules shall in any event seek to realize that the undertaking meant in the preceding sentence:

- a. adopts internal regulations with regard to dealing with inside information or private transactions in financial instruments by directors and staff;
- b. manages a conflict of interest relating to transactions in financial instruments; and
- c. has adequate control mechanisms for observing the rules meant in the opening words.

2. An exemption of the first subsection may be provided by ministerial regulation.

3. The Netherlands Authority for the Financial Markets may, on application, grant a waiver, fully or in part, whether or not for a fixed term, of the provisions under the first subsection, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objectives which this section seeks to attain shall also be sufficiently attained otherwise.

Section 5:69

Section 1:75 (1) shall apply mutatis mutandis to company savings funds and pension funds in respect of the compliance with the provisions under this part.

CHAPTER 5.5 RULES ON PUBLIC OFFERS IN RESPECT OF SECURITIES OR UNITS IN A COLLECTIVE INVESTMENT SCHEME

Section 5:70

For the purposes of this chapter and the ensuing provisions the following shall be taken to mean:

- a. public offer: an offer made by a public communication as meant in Section 217 (1) of Book 6 of the Dutch Civil Code, in respect of securities or units in a collective investment scheme admitted to trading on a regulated market or an invitation to make an offer in respect of such securities or units in a collective investment scheme whereby the party making an offer intends to acquire those securities or units;
- b. party making an offer: a person or company or any similar body under foreign law or joint venture by which or on behalf of which, whether or not in combination with one or more other persons or companies or similar bodies or joint ventures, a public offer is prepared or made or has been made.

Section 5:71

1. This Act prohibits making a public offer in respect of securities or units in a collective investment scheme admitted to trading on a regulated market in the Netherlands.

2. The first subsection shall not apply if an offer document is available in relation to the public offer which complies with rules to be laid down by order in council, if the party making an offer refers to the offer document in any disclosure of the public offer by or on behalf of that party.

3. The party making an offer, the institution at whose expense the securities and units meant in the first subsection are issued, as well as the directors, supervisory directors and other officers as meant in Section 1 (b) of the Corporations Conflict of Laws Act of that party making an offer and that institution shall observe the rules to be laid down by order in council with regard to preparing, making and declaring a public offer unconditional.

4. An order in council laid down under the second or third subsection shall be presented to both Houses of Parliament. It shall enter into force on a date adopted by Royal Decree after four weeks following the presentation have expired, unless within that term the wish is expressed by or on behalf of one of the Houses or at least one-fifth of the constitutional number of members of one of the Houses that the entry into force of the order in council shall be regulated by law. In such a case a legislative proposal to that effect shall be filed as soon as possible. Where the legislative proposal is repealed or where one of both Houses of Parliament dismisses the proposal, the order in council shall be repealed.

5. An exemption of the first and third subsection and of Section 5:72 may be provided by ministerial regulation.

6. The Netherlands Authority for the Financial Markets may, on application, whether or not for a fixed term, grant a waiver of the first subsection, if the applicant shows proof that the interests which this chapter seeks to protect are sufficiently protected otherwise.

7. The Netherlands Authority for the Financial Markets may, on application, fully or in part, whether or not for a fixed term, grant an exemption to the party making an offer, the institution at whose expense the securities and units are issued or the directors, supervisory directors or other officers as meant in Section 1 (b) of the Corporations Conflict of Laws Act of the said party making an offer or the said institution, of the provisions under the second or third subsection or of Section 5:72, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objectives which these sections seek to attain shall be attained otherwise.

8. Rules may be laid down under or pursuant to order in council for investment firms which are allowed under Chapter 2.2 to provide investment services with regard to performing activities in respect of a public offer as an intermediary.

Section 5:72

Where the party making an offer has declared the offer unconditional, it may not, neither directly nor indirectly, during a period of three years after the offer document is made available, acquire securities or units of the type to which the offer related against conditions that are more favourable to the right holder than the conditions of the public offer.

CHAPTER 5.6 RULES ON THE APPLICATION OF A CODE OF CONDUCT BY INSTITUTIONAL INVESTORS

Section 5:86

1. An institutional investor established in the Netherlands and an invested capital which includes shares or depository receipts for shares admitted to trading on a market in financial instruments shall report its compliance with the principles and best practice provisions addressed to the institutional investor in the code of conduct designated pursuant to Article 391, fifth subsection, of Book 2 of the Dutch Civil Code. If the institutional investor has not complied with those principles or best practice provisions in full or in part in the most recently concluded 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 reasons.

2. The institutional investor shall make the report and the statement meant in the first subsection at least once in the course of each financial year:
 - a. in its annual report;
 - b. on its website; or
 - c. addressed to each participant or client that has given its prior explicit consent to be so approached.
3. Participant as meant in the previous subsection shall also be deemed to refer to a participant as meant in Article 1, first subsection, under g, of the Pension and Savings Funds Act.
4. Section 1:25 shall not apply to the foregoing subsections.

Section 5:87

An exemption of the Section 5:86 may be provided by ministerial regulation.

PART 6 - INFRASTRUCTURE OF FINANCIAL MARKETS

PART 7 - FINAL PROVISIONS

Section 7:1

Our Minister shall adopt the numbering of the sections, paragraphs, parts and chapters of this Act before publication of this Act in the Bulletin of Acts and Decrees and shall adjust the references to the sections, paragraphs, 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 under or pursuant to the law.

Section 7:3

This Act shall be cited as: Financial Supervision Act.

We order and command that this Act shall be published in the Bulletin of Acts and Decrees, and that all ministries, authorities, bodies and officials whom it may concern shall diligently implement it

Given at the Hague, 28th September 2006

Beatrix

The Minister of Finance,
G. Zalm

Issued on 31st October, 2006
The Minister of Justice,
E.M.H. Hirsch Ballin

Unofficial draft translation of Financial Supervision Act of 28th September 2006
*Alleen de officiële Nederlandse tekst, zoals in het Staatsblad gepubliceerd, is geldig.
Aan deze vertaling kunnen geen rechten worden ontleend.*