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VOLUME 20, NUMBER 12 >>> DECEMBER 2014

NETHERLANDS

New Alternative Investment Funds Rules Included in Recent Amendments

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The First Chamber of the Dutch Parliament November 18, 2014, adopted the Amendment Act Financial Markets 2015 (Wijzigingswet financiële markten 2015, the "Amendment Act").

The Amendment Act contains substantive and technical amendments to the Financial Supervision Act (Wet op het financieel toezicht, the "FSA"). The Amendment Act will enter into force on January 1, 2015.

In respect of investment funds, the Amendment Act introduces a public register for alternative investment fund managers ("AIFMs") that are subject to the lighter regime, provides for a retail passport for European Economic Area ("EEA") AIFMs, and reintroduces the authority of the Authority for Financial Markets ("AFM") to request the court to dissolve an investment fund.

Public Register

The Amendment Act provides for inclusion in the AFM's public register of Dutch AIFMs that make use of the lighter regime.

Under the lighter regime, a manager is exempted from the license requirement, but it does need to comply with certain (ongoing) information requirements. The lighter regime is available to Dutch AIFMs that directly or indirectly manage portfolios of alternative investment funds ("AIFs") whose assets under management

do not exceed, in total, a threshold of 1) 100 million euros (U.S.\$124.4 million) or 2) 500 million euros (U.S.\$622 million), if the AIFM manages only unleveraged AIFs without redemption rights during a period of five years. If a Dutch AIFM also offers units in an AIF to non-professional investors (retail funds), the offer must, in addition to the aforementioned conditions, be made to fewer than 150 investors or with a value of more than 100,000 euros (U.S.\$124,400) per investor.

If a Dutch AIFM makes use of the lighter regime, it needs to notify the AFM of that fact. The AFM already has a register on its website that includes AIFMs that make use of the lighter regime, but inclusion currently is on a voluntary basis. As of January 1, 2015, all AIFMs that make use of the lighter regime must be included in this register.

Retail Passport

AIFMs that are licensed in their EEA home states may exercise passport rights for management and marketing of AIFs to professional investors in the Netherlands on a services and/or branch basis. Following the Amendment Act, it will also be possible for EEA AIFMs to manage a Dutch AIF that offers units to non-professional investors in the Netherlands and/or to offer units in an EEA AIF to non-professional investors in the Netherlands by means of their passport.

To obtain a passport, the EEA AIFM must notify its home state competent authority, which will send the passport notification to the AFM. Once the EEA AIFM has received the notification from its home state competent authority that it has sent the passport notification to the AFM, the EEA AIFM can manage a Dutch AIF and/or offer units in an EEA AIF that it manages

in the Netherlands to both professional and non-professional investors.

In the event that an AIFM intends to offer units to non-professional investors in the Netherlands, the AIFM needs to notify the AFM of that fact. If an EEA AIFM offers units in an AIF to non-professional investors, the Dutch “top-up” rules will apply. These are rules concerning the business operations, the information to investors and supervisory authorities, the powers of supervisory authorities, the depository and the proper treatment of investors.

Authority to Dissolve an Investment Fund

The Amendment Act re-introduces the authority of the AFM to request the court to dissolve an investment fund or to liquidate the assets of an investment fund in certain circumstances. This authority is granted for the purpose of consumer protection, and applies only to investment funds of which units have been offered to non-professional investors.

The investment fund may be dissolved by the court or the assets of the investment fund may be liquidated by one or more liquidators appointed by the court at the request of the AFM, *inter alia*, in the event that:

- the license of the AIFM has been revoked;
- the AIF or its AIFM has ceased its activities for a period of more than six months;
- the AIF or its AIFM does not comply with the FSA; or
- the AIF or its AIFM has not sufficiently given effect to an instruction (aanwijzing) of the AFM.

The text of the Amendment Act Financial Markets 2015, in Dutch, is available at <https://zoek.officielebekendmakingen.nl/kst-33918-A.html?zoekcriteria=%3fzkt%3dUitgebreid%26pst%3dParlementaireDocumenten%26dpr%3dAlle%26spd%3d20141126%26epd%3d20141126%26dosnr%3d33918%26kmr%3dEersteKamerderStatenGeneraal%257cTweedeKamerderStatenGeneraal%257cVerenigdeVergaderingderStatenGeneraal%26sdt%3dKenmerkendeDatum%26par%3dKamerstuk%26dst%3dOnopgemaakt%257cOpgemaakt%257cOpgemaakt%2bna%2bonopgemaakt%26isp%3dtrue%26pnr%3d1%26rpp%3d10&resultIndex=3&sorttype=1&sortorder=4>

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