Your World First

Client Briefing Financial Services

January 2015

Amendment Act financial markets 2015 and other developments

In 2008 the Dutch Ministry of Finance introduced an annual amendment cycle of the main bodies of law for the financial sector, primarily directed to amendments of the Act on Financial Supervision "**AFS**" (Wet op het financieel toezicht). This annual amendment cycle aims at clustering in a one off amendment act all the changes to AFS (and ancillary formal laws regulating certain specific aspects of the financial sector) that are intended to enter into force on the 1st January of the year for which the amendments are introduced. For 2015 the Amendment Act Financial Markets 2015 ("**Amendment Act**") brings amendments to some 15 topics. In this client briefing we will comment on most of the amendments and also discuss a number of other topics concerning changes in the Dutch laws for the financial markets that will be effective from 1 January 2015. We will also provide a brief outlook of changes that will be introduced in 2016.

The amendment cylcle introduced in 2008 brings many changes to Dutch financial markets laws each year.

In this client briefing we discuss:

- Expanding the scope of applicability trustworthiness and suitability vetting
- Collection and use of micro prudential data by the Dutch Central Bank
- Group Financing Company Regime
- Modernisation of premium collection by insurance intermediaries
- Covered bond laws
- Mandatory disclosure deposit guarantee scheme
- Codes of conduct, bankers oath and disciplinary rules
- Prohibition to promote systemic relevant status
- Transfer of security interest in clearing and settlement
- Retail passport AIFM
- Payment services controlled business operations
- Mitigated regime for managers of investment funds
- Authority to dissolve investment funds by the Authority Financial Markets
- Concentration banking and securities laws
- Acceleration of Publication of offences („naming and shaming")
- Amendments money laundering laws
- Further developments
    - Amendment Decree Financial Markets 2015
    - Omnibus II-Implementation Act
    - Amendment Act Financial Markets 2016

In this issue the following acronyms and expressions have the meaning set forth below:

AIF:	Alternative Investment Fund
AIFM:	Alternative Investment Fund Manager
AIFMD:	Alternative Investment Fund Manager Directive (Directive 2011/61/EU)
AFM:	Authority Financial Markets
AFS:	Act on Financial Supervision (Wet op het financieel toezicht)
Amendment Act:	Amendment Act Financial Markets 2015
DCB:	Dutch Central Bank
DCC:	Dutch Civil Code (Burgerlijk Wetboek)
DPR:	Decree Prudential Rules Act on Financial Supervision
DMR:	Decree Market Conduct Rules Act on Financial Supervision
EBA:	European Banking Authority
EEA:	European Economic Area
EIOPA:	European Insurance and Occupational Pensions Authority
ESMA:	European Securities and Markets Authority
ESRB:	European Systemic Risk Board

Expanding the scope of applicability trustworthiness and suitability vetting

Enhancing stability in the financial sector is considered a responsibility of the authorities. Especially for banks but also for insurance companies, high risk activities can endanger the financial stability and cause a spill over effect to the real economy. For this reason it is considered important that individuals who are involved in decision-making with banks and other financial undertakings are trustworthy, have a proper understanding of possible risks of the firm they are managing and will prevent the firm they manage taking risks that would directly or indirectly harm the stability of the financial sector.

Requirements for trustworthiness and suitability already apply to day-to-day policymakers (i.e. management board members) and internal supervisors (supervisory board members) of financial undertakings. Also a policy rule of DCB and AFM concerning the assessment of suitability of (co-)policymakers as referred to in the AFS is in place ("Beleidsregel geschiktheid 2012"). The Dutch regulator has found that for banks and insurance companies, also managerial/executive staff, in functions right below the level of the management board, have responsibilities that may influence the risk profile of firms. As part of the changes to the supervisory framework of the Dutch financial sector, the requirements for trustworthiness (article 3:9 AFS) and suitability (article 3:8 AFS) have therefore now been extended to managerial staff of banks and insurance companies established in the Netherlands, in functions right below the level of the management boards of such firms, who are also responsible for employees (including temporary staff and seconded employees) that can influence the risk profile of the financial undertaking. The financial undertaking should determine functions that are to be considered within the scope of this extension of the wider scope of application of the rules.

Banks or insurance companies have the responsibility to observe that individuals appointed in the relevant functions meet the requirements of trustworthiness and suitability. Firms should ensure that they have the necessary internal policy, procedures and processes in place. The criteria for trustworthiness for this extended group will be the same as currently applicable to members of the management board and supervisory board of banks and insurance companies. With respect to suitability however, the undertaking should determine the criteria itself, as these should be based on the specific functions. DCB and AFM can provide further guidance in policy rules with respect to general criteria of suitability applicable to such functions. The suitability vetting by the financial undertaking should result in individual substantiated opinions.

DCB will test the trustworthiness of this extended group directly, whereas for suitability DCB will supervise the compliance of the internal processes of the undertaking with the new requirements. DCB will however perform a suitability vetting itself in the event of concrete indications, that an individual in a relevant function may not be suitable. In general DCB will perform risk based supervision.

The current amendment of the AFS brings no changes to the applicable requirements for members of the management board and the supervisory board. However, in the consultation document Amendment Act Financial Markets 2016, it is proposed that if the regulatory authorities doubt whether a management board member or a supervisory board member fulfills the suitability criteria, the authorities can issue an instruction and a course of action towards the financial undertaking, resulting ultimately in suspension of the relevant board member by the financial undertaking, until a final decision has been taken with respect to the suitability.

Collection and use of micro prudential data by the Dutch Central Bank

In 2011 the European authorities have introduced the European System of Financial Supervision, in which a particular emphasis has been placed on the introduction of a strong oversight regime for the supervision of macro-prudential risks. The ESRB has been established and being provided with a broad mandate to supervise the building up of systemic risks within Europe and to provide (binding) advice to the national competent authorities, the European Supervisory Authorities (EBA, ESMA and EIOPA), the European Central Bank and the European Commission.

ESRB has developed as a strong but most of the times rather 'introvert' authority. Little is known about the exact processes applied by this authority in fulfilling its tasks and responsibilities. However, one of the trends has been that ESRB has built up significant databases with

Some Amendments introduce stricter regimes for existing stuctures, such as Group Financing Companies.

information on national and regional economies (often macro prudential data), and information about individual institutions (micro prudential information). As regards the information sharing between national competent authorities and the ESRB, doubts could arise as to whether or not national supervisory authorities were mandated (in view of their own obligations to treat information on individual institutions confidential) to share the information with ESRB.

With a proposed amendment of the Banking Act 1998, a clear and broad mandate is given to the DCB to provide information that is gathered from various sources to ESRB.

Group Financing Company Regime

For decades the Netherlands is a preferred jurisdiction for the establishment of (group) finance companies that operate as "internal banks" for the larger group of companies to which the finance company belongs. Typically, such finance companies are financed through issuing instruments on the debt capital markets ("**DCM**") and using the proceeds of these issues for onwards lending to group companies. Debt capital market issues by such companies may also be made in programmes where the ultimate investors in the bonds are part of the "public". Since the introduction of the definitions of "credit institution" in European law pursuant to the various banking directives (now the Capital Requirements Regulation), there was a need to address the question whether or not such finance companies may qualify as credit institution and therefore being subject to banking supervision. Through a number of legislative instruments enacted since 1990, the Dutch legislator has reduced the scope of application of banking laws. Finance companies were either exempt from application of banking laws, or they could obtain a dispensation or they had been generally excluded from the scope of applicability of the relevant banking supervision laws. The latter legislative technique had been introduced with the regime for exclusion of applicability of most of the prudential supervision provisions of the Act on Financial Supervision for so-called group finance companies ("GFCs"), which regime became applicable from 1 January 2007. The exclusion regime for **GFCs** changes as result of amendments to the AFS that come into effect on 1 January 2015. The most significant changes are as follows:

— Stronger language is introduced as regards the guarantee or keep well statements that the (ultimate) parent company of the finance company must provide to the benefit of external investors (in the DCM instruments), suggesting that the parent company must at all times ensure that the finance company will be able to meet its obligations;
— urther requirements are imposed on the finance company, where that finance company must ensure the observance by its parent of the obligations pursuant to the exception regulations (i.e. the issue of a guarantee or keep well statement and the safeguard that the finance company may meet its own obligations);
— Finance companies positioned in a group that makes its business of raising funding and credit granting, will be subject to a requirement to hold a license as a bank, unless the group company providing the credit facilities or loans to third parties, or the (ultimate) parent company is subject to banking supervision by authorities in the Netherlands, in the EEA or in a third country nominated by the Dutch Ministry of Finance;
— Finance companies that consider that the requirements of the exception regulation can no longer be met, have a reporting duty to the Dutch Central Bank.

Modernisation of premium collection by insurance intermediaries

The intended purpose of the commission ban for complex products sold in the financial sector (such as payment protectors and occupational accident insurance) which entered into force on January 2013 is to obtain a culture change from a sales-focused to a customer-focused approach. The commission ban restricts the offerors of financial products to direct customers in buying products because of their own interests rather than their customers interests.

The AFS states that an intermediary has a right to collect premium for the insurer. The set-off of the collected premium takes place through receivables from the intermediary on a current account. This results into a financial relationship between the intermediary and the insurer. Because of this financial relationship, the undesirable situation of directing the customer to buy products for the incorrect reasons (i.e. the offerors interests rather than the customers interests) could develop.

Covered bond laws are replaced with legal certainty as important objective.

Therefore from the entry into force of the amendments to the AFS effective 1 January 2015, intermediaries are no longer permitted to collect premium relating to complex products. However, after the amendments to the AFS will enter into force it will still be possible for the intermediary to conclude an agreement with the insurer in order to collect premium for complex products. Therefore it is to be questioned whether the amendment of the AFS will have the desired effect.

Covered bond laws

A bank that is under adequate supervision can issue covered bonds that will be registered with DCB if certain requirements are met that intend to protect bondholders. The Amendment Act provides for a legal framework for covered bonds At the level of the AFS, rather than the lower level implementation regulations. Currently supervision on covered bonds is arranged for in delegated regulations, which restricts the possibilities for DCB to impose obligations on the issuing banks.

The amended rules aim to enhance supervision on covered bonds and make these products more attractive for investors. The amended rules procure that the holder of a registered covered bond receives his investment back, even in the event that the issuing bank is no longer able to make the payments. This will be effected by safeguarding assets that provide a double recourse in the event that the bank is in default of payment. The AFS provides the basis for further rules that will be laid down in the BPR regarding asset eligibility, overcollateralization, transparency, liquidity and internal organization. The issuing bank does not only need to comply with the requirements at registration but on a continuous basis, which will enhance the supervision on the issuing banks.

Mandatory disclosure deposit guarantee scheme

The final report of the Committee of Parliamentary Inquiry into the Financial System (Verloren krediet II- de balans opgemaakt), chaired by a member of Dutch Parliament De Wit (“**the Committee**”) was presented to Dutch Parliament on 11 April 2012.

One of the topics of the inquiry of the Committee concerned the decision of the Minister of Finance to increase the coverage of the deposit guarantee scheme in the Netherlands up to a coverage amount of EUR 100,000 in 2008 and the effects of this decision. In its report, the Committee signals that the communication towards the market related to this decision was insufficient. Saving accountholders were confused whether or not this increase covered deposits held at all Dutch banks or also at foreign banks and whether it included smaller banks or was only related to systematically important banks. Research of the Committee also showed that consumers assumed that it would take longer to receive payment in the event of a call under the Dutch deposit guarantee scheme, than the timelines in the regulations suggested. Consumers assumed that depositors are likely to receive full compensation (with no ceiling amount of EUR 100,000 being applicable) in case the deposit was held with banks that are Too-Big-To-Fail, as generally those banks would be subject to state rescue operations and would not become insolvent. This confusion has led to consumers transferring savings to other banks at that time, indicating an increased mobility of savings in the Netherlands. Such developments would potentially threaten financial stability, according to the Committee. As a result, one of the recommendations of the Committee was to improve communication and information regarding the deposit guarantee scheme in order to increase transparency for consumers.

Following this recommendation and given the importance of the deposit guarantee scheme for the stability of the financial system, an active obligation to provide information with respect to the deposit guarantee scheme has been proposed in the Amendment Act Financial Markets 2015, which will also apply to Dutch branches of banks established outside the EEA. The same obligation is also proposed for financial undertakings who participate in the investor compensation scheme. The statutory obligation for an active information obligation is also in line with Directive 2014/49/EU of the European Parliament and of the Council on deposit guarantee schemes of 16 April 2014, which needs to be implemented in local law ultimately on 1 July 2015. This Directive elaborates the information obligation and provides a depositor information template in Annex I, which can be used for the purpose of providing basic information about the protection of deposits. One of the stipulations of the Directive is that the account statements of deposit holders should contain a confirmation in case the specific deposit is covered under the deposit guarantee scheme. The details of the Directive provisions will be implemented in the DPR.

Codes of conduct, bankers oath and disciplinary rules

On 1 January 2010 the Dutch banking sector introduced a code, with the aim of restoring trust in the financial sector. This Banking Code included a moral and ethical conduct declaration, to be signed by each individual member of the management board and the supervisory board, declaring that he or she shall perform his or her tasks in a meticulous, expert and fair manner, taking into account the applicable laws, codes of conduct and regulations (the so called "bankers' oath"). In 2011 the insurance sector adopted Insurer Governance Principles identical to the banking code. By Royal Decree in 2010 and 2011 both codes have been designated a code of conduct within the meaning of Book 2, Section 391, paragraph 5 of the Dutch Civil Code with retroactive effect from 1 January 2011. With effect from 1 January 2013 the AFS required the board members of banks and insurers and the policy makers of Dutch financial undertakings to swear or to promise a bankers' oath.

As from 1 January 2015, the requirement to take an oath will be expanded to all employees that influence the risk profile of the financial undertaking or are directly involved in the provision of financial services to clients.
As a consequence, all employees and persons that perform duties that are part of the banking service or core supporting business processes are required to deliver the oath.

In October 2014 the Dutch Bankers' Association ("**NVB**") adopted a Social Charter, an updated Banking Code, and introduced a bankers' oath with corresponding rules of conduct and disciplinary system for all bank employees and persons that perform duties as part of the banking service or supporting the banking service or are part of a core supporting business process. The NVB's rules are based on self regulation. The bankers' oath contained in the NVB's regulations is confirmed, as discussed here above, by a mandatory law provision in the Amendment Act.

The Social Charter and the Banking Code apply to all banks established in the Netherlands that are licensed by the Dutch Central Bank pursuant to article 2:11 of the AFS (in relation to all activities performed in, or directed towards, the Netherlands). The introduction of disciplinary rules for bank employees is supported by the government and is given a legal basis by including the obligation for banks to implement a disciplinary framework in the amendments to the AFS for 2015. As the obligation is part of the AFS, the AFM and the DCB are authorised to supervise and monitor the correct application of the disciplinary rules by the banks.

The regime of professional disciplinary sanctions is mandatory for all bank employees and individuals performing work for a Dutch bank where their work is directly related to banking activities in the Netherlands.

The binding behavioral standards of integrity and duty of care are a translation of the text of the oath. The bank employees will be subject to the disciplinary rules on the basis of private law; the disciplinary framework is developed and controlled by the banks and not by a professional association as it is for example the case for physicians or attorneys.

The disciplinary rules will provide adequate safeguards for due process and be applied and implemented by an independent and external disciplinary board. The Dutch Securities Institute will fulfill the role of the required independent disciplinary committee.
The new Banking Code comes into effect on 1 January 2015 (and applies to all banks established in the Netherlands). For employees with an existing employment agreement, the rules will apply from the moment they have delivered the new oath which has to take place before 31 December 2015.

Prohibition to promote systemic relevant status

The concept of "systemic relevance" was introduced in the AFS through the Amendment Act Financial Markets 2014. The policy with respect to systemically relevant institutions is aimed at, amongst others, preventing the need for future state aid operations and the risks of spill over effects of a crisis in the financial sector to the real economy. The prevention of systemic risk developing is to be achieved by requiring additional capital buffers and anticipating on an orderly winding up of systemically important institutions by imposing the requirement to establish recovery plans. Resolution plans and introduction of instruments to safeguard the continuity of systemically important institutions are also measures introduced for managing the impact of failing systemically important financial sector firms.

It is considered undesirable that a systemically important institution refers to its status in its marketing communication, with the purpose to capitalize on its status towards external investors or the financial markets. For this reason, in the Amendment Act Financial Markets 2015, a prohibition has been proposed for systemically important undertakings to use information with respect to their status as regulated systemically important institution for marketing purposes.

The prohibition is applicable for banks as well as other financial undertakings established in the Netherlands being qualified as systemically important as well as Dutch branches of foreign banks and financial undertakings established outside the Netherlands and for those undertakings who perform cross border services to the Netherlands, if such firms are qualifying as systemically important by the competent authorities concerned.

The supervision is kept with DCB and a statutory prohibition provides DCB the tools to act in case of non compliance.

Transfer of security interest in clearing and settlement

By virtue of the Intervention Act that was introduced in 2012, DCB is entitled to prepare a plan for a forced transfer of a problem institution's assets and liabilities to a private party. This plan for transfer is subject to approval of the Dutch court. After such approval, the deed of transfer of the assets and liabilities will be creating effects of the transfer for all assets and liabities by operation of law (i.e. without the consent being required from all creditors and debtors whose rights and obligations are transferred). Within the financial sector concerns are raised regarding:

- the possibility of netting/settlement under a netting clause in agreements with regard to financial instruments between the problem institution and a counterparty with whom the problem institution has transacted, and
- the transfer and execution of security interests and/or privilege and ancillary rights.

Netting/Settlement
Concerns are raised that it could not be ruled out that under current law there is a possibility of "cherry picking", as a result of which the entitlement of netting/settlement by the counterparty can be affected. Positions "in the money" for the problem institution would then be subject to the forced transfer, positions "out of the money" for the problem institution would be kept with the problem institution.

The term "cherry-picking" in this context means: i) only the claims of the problem institution under the agreement between the problem institution and the counterparty are transferred and not the claims of the counterparty ("cutting up of agreements") and ii) in the event of multiple transactions under a framework agreement for derivatives, only the transactions with a positive value for the problem institution are transferred and not the transactions with a negative value for the problem institution ("splitting up of transactions").

It should be noted that it is already set out in the AFS that the court approves a plan for transfer unless the creditors who have a claim on the problem institution would be disadvantaged. In addition to this the protection clauses of the Financial Collateral Directive would apply to this transfer. However, in the Amendment Act, besides a clause describing the definition of "plan for transfer", a more specific clause is added to the AFS determining that the effects of a netting clause will not be affected as a consequence of an approval of a plan for transfer. Pre-transfer, netting of the positions of the problem institution and its counterparty at application of a close out mechanism would be permissible. The same applies to the plan for transfer in the context of a bankruptcy or a partial expropriation.

Transfer and execution of security interests and/or privilege and ancillary rights
As set out above, there are also concerns regarding the transfer and execution of security interests and/or priority and ancillary rights in the event of execution of a plan for transfer. Therefore, pursuant to the Amendment Act a clause is added to the AFS providing that ancillary rights, security interests in assets of the problem institution or a third party, other security interests and priority rights will not be affected as a consequence of an approval of a plan for transfer. It should be mentioned that this provision also applies to security interests and rights under foreign law.

It is questionable whether this amendment is necessary for collateral security rights, in view of the current provisions in

the Dutch Civil Code (“**DCC”**) concerning transfer under universal title and assignment. The amendment is indeed necessary for “other security interests”, for example a personal security as a suretyship. According to the DCC, in the event of a transfer of debts, the rights under the suretyship will be nullified, unless the surety agreed with enforcement of the suretyship in advance. At this point the amendment therefore includes a derogation from the concerning provision in the DCC.

Retail passport AIFM

AIFM’s that are licensed in their EEA home state 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 AIFM’s 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 its 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 hereof. If an EEA AIFM offers units in an AIF to non-professional investors, the Dutch ‘top-up’ rules will apply, which 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.

Payment services controlled business operations

The position of payments in social and economic life, the ambitions at European level to increase electronic (cross border) payments and the fast development of new payment methods, impose an increased responsibility to financial undertakings that form part of the payments schemes, such as banks, payment institutions or clearing and settlement institutions, in fulfilling their roles to maintain a stable and reliable payments scheme and operation. These undertakings already need to comply with certain qualitative criteria that are established by DCB that also reference to international standards such as the Bank of International Settlements “Principles for Financial Markets Infrastructures” and the ECB “Oversight Framework for direct debit schemes and for credit transfer schemes”. For product developers that are not supervised by DCB, voluntary agreements are in place between DCB and these parties to comply with certain international standards.

To provide more substance to the qualitative requirements and standards when necessary and to safeguard that undertakings active in the payments industry operate at an adequate level at all times, the legislator has expanded the list of requirements for a sound and ethical operational management for these undertakings, by adding the subject “payments services controlled business operations” (article 3:17 subsection 2 AFS).

Consequently, the legislator is now able to create a legal framework in DPR regarding the safeguarding of payment services business operation and implementation of the international standards by DCB. As a result DCB will be able to monitor whether these undertakings have structured their business operations in such a way that a stable and reliable payment infrastructure is safeguarded. The draft Amendment Decree Financial Markets 2015 already foresees in this in article 26 sub b DPR.

Mitigated regime for managers of investment funds

The Amendment Act provides for inclusion in the public register of the AFM of Dutch AIFM’s 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 AIFM’s that directly or indirectly manage portfolio’s of Alternative Investment Funds (AIFs) whose assets under management do not exceed, in total, a threshold of (i) EUR 100 million or (ii) EUR 500 million, if the AIFM only manages 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 less than 150 investors or with a value of more than EUR 100,000 per

investor. If a Dutch AIFM uses lighter regime it needs to notify the AFM thereof. The AFM already has a register on its website that includes AIFM's that uses of the lighter regime but inclusion currently is on a voluntary basis. As of 1 January 2015 all AIFM's that uses of the lighter regime must be included in this register.

Authority to dissolve investment funds by the Authority Financial Markets

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 only applies 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 (i) the license of the AIFM has been revoked, (ii) the AIF or its AIFM has ceased its activities for a period of more than six months, (iii) the AIF or its AIFM does not comply with the FSA or, (iv) the AIF or its AIFM has not sufficiently given effect to an instruction (aanwijzing) of the AFM.

Concentration banking and securities laws

The court of Amsterdam will have exclusive jurisdiction regarding civil cases concerning certain subareas of banking and securities law, based on the proposed new article 1:23a AFS. This amendment is motivated by the need of specific expertise in some of the subareas of banking and securities law, more specifically it concerns cases regarding the provision of investment services, the performance of investment activities and the issuing of securities to the public. Article 1:23a AFS does not affect the general regulations concerning jurisdiction as set out in the Code of Civil Procedure (e.g. article 107 and 110 Code of Civil Procedure). Because the exact scope of application of article 1:23a AFS is unclear, the date of entry into force of this article is postponed to an unknown later date.

Acceleration of Publication of offences („naming and shaming")

The AFS states that an offence will be made public five working days after the decision of the imposed penalty has been announced. Until now aforementioned publication only regarded certain financial service providers (such as UCITS, custodians of UCITS, investment firms, and pension custodians) which were fined due to lack of adequate policy safeguarding the general accepted principles of integrity.

Decisions of imposed penalties to other financial service providers could only be made public after irreversible judgement. Now the AFS is amended in order to enable the dispatch of "name and shame" publications for all financial service providers which were fined due to lack of adequate compliance, within five working days after the penalty has been announced.

Amendments to money laundering laws

The amendments to the Dutch Prevention of Money Laundering and the Financing of Terrorism Act ("**Wwft**") for 2015 relate to changes necessary to close gaps in the law.

Traders in objects of great value
Traders in objects of great value (€ 15.000 and more), such as cars, ships, antiques, art, jewellery and precious metals, qualify as institution pursuant to the Wwft and have to comply with the Wwft when selling assets. For dealers who acted as intermediary, the Wwft was previously not applicable and customer due diligence and reporting of unusual transactions was not required for such intermediaries. To prevent traders to shift from a direct selling to an intermediary role, intermediaries will now also qualify as an institution under the Wwft.

Pawnshops
It has been established that pawnshop transactions can be relevant for money laundering or financing terrorism. In anticipation of the new rules for pawnshop loans to be implemented in Book 7 DCC, it is proposed that the Wwft will be amended in order qualify pawnshops also as institutions within the meaning of the Wwft and to comply therewith.

In the draft Amendment act financials markets 2016 a new chapter to the Wwft is proposed. This chapter will enable the supervisory authorities (which will most probably be the Dutch Central Bank) to effectively act in case of cross border transport of cash and valuable goods (precious metals and jewels) in case of a possible connection with

It is doubtfull whether The Netherlands will meet the Ombinbus II implementation deadline.

money laundering or financing of terrorism.

Further developments

Amendment Decree Financial Markets 2015
Together with the annual amendment acts to amend certain provisions of the AFS and ancillary formal acts of parliament, the annual amendment cycle for the financial markets is supplemented with a comparable routine to adopt amendments to the lower laws and regulations established by Royal Decree. Often the amendment proposed to the lower laws and regulations serve to implement at that level certain changes adopted at the highest level of the formal acts of parliament. For the year 2015, the Amendment Decree Financial Markets 2015 covers one topic that is highly relevant for the financial markets. This concerns the amendments to the reporting framework for insurance companies. With the envisaged amendments, the Ministry of Finance intends to make final arrangements and to introduce the final regulatory framework for the Netherlands for the reporting obligations of insurers subject to Solvency II.

It is noteworthy that DCB has proposed, and the Ministry of Finance follows this proposal, to have the Solvency II compliant supervisory reporting being prepared for the first time over de annual financial figures for the year 2014, requiring insurance companies to report in the course of Q1/Q2-2015 for the annual report 2014 established in accordance with Solvency II and a first quarterly report for 2015 established in accordance with Solvency II criteria commencing for Q1-2015 and to be submitted to DCB in April 2015. The changes as proposed in the Amendment Decree Financial Markets 2015 will enter into force from 1 January 2015 as has been announced in a letter of the Ministry of Finance to Dutch Parliament on 25 November 2014.

Derivatives offerings to (quasi-) professional investors
A very significant number of cases have been litigated before the Dutch civil law courts by claimants that requested damages as a compensation for losses made in derivatives transactions. These derivatives particularly related to interest rate hedging offered by Dutch banks to (semi-)professional parties (medium sized and small businesses) in connection with financing provided. Most of the cases resulted into the claims being honoured and the banks concerned being condemned to pay out significant damages. The particular reason for this claims settlement trend in favour of bankers' customers is being based on the overall judgment that derivatives products may not be considered suitable for non-professional parties and that banks failed to provide sufficient warnings on the risks customers would incur when entering into the derivatives transactions.

Omnibus II-Implementation Act
In the spring of 2014 the Ministry of Finance published the Consultation Document Implementation Act Omnibus II ("**Omnibus II Law**") in order to transpose the Omnibus II-Directive (Directive 2014/51/EU) to Dutch law.

After the publication of the consultation version of the Omnibus II Law, no further follow up has been given by the Ministry to contribute this legislative proposal to the reading in Dutch Parliament. The Omnibus II Directive is required to be implemented in the national laws of the EU member states by 31 March 2015. Therefore it may be expected that the legislative process with respect to the Omnibus II Law will commence shortly in the autumn of 2014. In view of the fact that legislative processes in the Netherlands take approximately 1 year from the commencement until publication of the adopted laws, it is doubtful whether the Netherlands will meet the deadline of Omnibus II.

Based on the reading of the consultation version of the Omnibus II Law, it may be concluded that this act will introduce rather significant changes to Dutch law regulating the insurance sector. Therefore an in-depth discussion of its impact is justified. We will focus hereinafter on two topics introduced by the Omnibus II Law.

Omnibus II permits the Member States to exercise four (additional) options in respect of (i) volatility adjustment to the relevant risk-free interest rate term structure, (ii) alternative calculation equity risk, (iii) solvency I capital requirements pension insurance and (iv) approval partial application of internal model by ultimate parent insurance or reinsurance undertaking.
The Netherlands will not exercise options (i) up to and including (iii) but will introduce the option of (iv) regarding *partially deviating application of internal models* of the (ultimate) parent and insurance company deviating from models in other parts of the group to which the parent company and insurance company belongs.

Based on the consultation document published in 2014, the Amendment Act 2016 will bring important changes again.

In 2014 the provision of article 3:97 AFS changed to introduce a scheme related to redemption of capital or distribution of reserves being made subject to a declaration of no-objection to be granted by DCB if an insurance company forecasts that it will not be able to meet the minimum solvency margin requirements (Solvency I levels) in the forthcoming 12 months. The language of that provision is revised to reflect the requirement to obtain a declaration of no objection for redemption of capital, distribution of reserves or *distribution of dividend* (emphasis on new language, CMS) in the event the insurance company forecasts that it will not be able to meet the Solvency Capital Requirements under Solvency II.

Amendment Act Financial Markets 2016
Anticipating on the annual cycle of amendments to the AFS and other financial markets laws as explained in more detail here above, we list the main topics that are comprised in the consultation document where the Ministry proposes to make the following amendments to the laws:

- Possibility to suspend members of the board of directors of financial undertakings by the supervisory authorities, in case there is doubt as to whether or not the individual concern meets the criteria of suitability;
- Introduction of a comprehensive regime for the protection of counterparties to derivatives in case of the insolvency or bankruptcy of the other counterparty. This proposed amendment concerns a drastic overhaul of the regime for so-called "giro-settled" securities where similar protection exists, which regime is expanded to non-securities financial products (particular derivatives);
- Corrections to the Intervention Act for banks and insurers where there are reasons to doubt that the undertakings may maintain adequate levels of solvency (or liquidity in cases of banks). Corrections proposed suggest improvement of the legislative provisions based on the experience in practice with the nationalisation of SNS Reaal.

Please contact us should you wish to further discuss the topics of this client briefing:

Equity Capital Markets Investment Funds

Reinout Slot
T +31 20 3016 319
M +31 6 46 224 224
E reinout.slot@cms-dsb.com

Clair Wermers
T +31 20 3016 423
M +31 6 47 146 908
E clair.wermers@cms-dsb.com

Market Conduct Supervision, Regulatory Governance and Banking

Ben Baldwin
T +31 20 3016 344
M +31 6 52 609 690
E ben.baldwin@cms-dsb.com

Mehtap Urfan
T +31 20 3016 318
M +31 6 55 104 071
E mehtap.urfan@cms-dsb.com

Insurance Industry

Leonard Böhmer
T +31 30 2121 710
M +31 6 50 213 184
E leonard.bohmer@cms-dsb.com

Annemarie de Best
T +31 30 2121 240
M +31 6 55 740 383
E annemarie.debest@cms-dsb.com

Payment Services

Mehtap Urfan
T +31 20 3016 318
M +31 6 55 104 071
E mehtap.urfan@cms-dsb.com

Sanne Machiels
T +31 30 2121 537
M +31 6 50 213 185
E sanne.machiels@cms-dsb.com

Tessa Penninks
T +31 30 2121 797
M +31 6 46 405 531
E tessa.penninks@cms-dsb.com

Consumer Credit

Tessa Penninks
T +31 30 2121 797
M +31 6 46 405 531
E tessa.penninks@cms-dsb.com

Sanne Machiels
T +31 30 2121 537
M +31 6 50 213 185
E sanne.machiels@cms-dsb.com

Prudential Supervision & Trust Offices

Bart Joosen
T +31 20 3016 356
M +31 6 46 224 860
E bart.joosen@cms-dsb.com

Tessa Penninks
T +31 30 2121 797
M +31 6 46 405 531
E tessa.penninks@cms-dsb.com

CMS Offices


Aberdeen
Glasgow
Edinburgh
Moscow
Amsterdam
Hamburg
Berlin
London
Utrecht
Bristol
Antwerp
Duesseldorf
Leipzig
Warsaw
Cologne
Brussels
Frankfurt
Prague
Kyiv
Luxembourg
Vienna
Paris
Stuttgart
Strasbourg
Munich
Bratislava
Zurich
Budapest
Geneva
Ljubljana
Zagreb
Lyon
Milan
Belgrade
Bucharest
Sarajevo
Sofia
Podgorica
Barcelona
Rome
Tirana
Istanbul
Madrid
Lisbon
Seville
Algiers
Casablanca
Dubai
Muscat
Mexico City
Beijing
Rio de Janeiro
Shanghai

> 800 partners

> 3,000 lawyers

33 countries

53 cities

59 offices

> 5,500 staff

EUR 842m turnover 2013

Amsterdam
Mondriaantoren
Amstelplein 8-A
1096 BC Amsterdam
Postbus 94700
1090 GS Amsterdam
T +31 20 3016 301
F +31 20 3016 333
E amsterdam@cms-dsb.com

Brussel
Avenue des Nerviers 85
B-1040 Brussel
T +32 2 650 04 50
F +32 2 650 04 59
E brussel@cms-dsb.com

Utrecht
Newtonlaan 203
3584 BH Utrecht
Postbus 85250
3508 AG Utrecht
T +31 30 2121 111
F +31 30 2121 333
E utrecht@cms-dsb.com