

AFM, DNB

Covenant between Stichting Autoriteit Financiële Markten and De Nederlandsche Bank N.V.

Covenant between *Stichting Autoriteit Financiële Markten* or *AFM* [the Netherlands Authority for the Financial Markets] and *De Nederlandsche Bank N.V.* or *DNB* as regards co-operation and co-ordination in matters concerning supervision, regulation and policy, domestic and international consultations and other duties embodying a common interest in the execution of the *Wta*, *Wft*, *Pw* en *Wvb*

Having regard to the entry into operation of the *Wet toezicht accountantsorganisaties* or *Wta* [Audit Organisations Supervision Act] on 1 October 2006, the *Wet op het financieel toezicht* or *Wft* [Act on Financial Supervision], the *Pensioenwet* or *Pw* [Pension Act] and the amended *Wet verplichte beroepspensioenregeling* or *Wvb* [Mandatory Occupational Pension Scheme Act] on 1 January 2007, the Stichting Autoriteit Financiële Markten (hereafter: AFM) and De Nederlandsche Bank N.V. (hereafter: DNB), jointly to be referred to as the supervisors, have made agreements about cooperation in the implementation of these Acts.

Pursuant to the *Wft*, *Pw* and *Wvb*, AFM and DNB have been entrusted with, respectively, market conduct supervision, and prudential and material (pension providers) supervision of financial institutions and pension providers. At the same time, pursuant to the *Wta*, AFM supervises audit organisations. AFM and DNB each implement these Acts according to their own responsibilities and authorities.

Where the supervision entrusted to them interface, AFM and DNB work together to prevent overlap and promote efficiency and effectiveness of the implementation of the supervision entrusted to them. The supervisors, insofar as possible and meaningful, use the information and expertise available to each of them and the infrastructure at their disposal for collecting data from supervised financial institutions, pension funds and audit organisations. For this purpose, AFM and DNB lay down several agreements in this covenant. AFM and DNB further agree that they will align their policies and regulatory practices.

Chapter I Agreements on the implementation of the *Wta*, *Wft*, *Pw* and *Wvb*

1.1 Information exchange

General

1.1.1 With due observance of the applicable statutory secrecy provisions, the supervisors will exchange data and intelligence and inform each other on developments at the supervised institutions that are relevant to the other supervisor.

1.1.2 The supervisors will facilitate each other's contacts with foreign supervisors in the context of information exchange.

Wft*, *Pw* and *Wvb

1.1.3 Data and intelligence that a financial institution, including an insurer that is also a pension provider within the meaning of the *Pw* and *Wvb*, a pension fund or a natural person, is obliged to provide to the supervisor, which obligation ensues directly from legislation and regulations, will be provided by one supervisor to the other without notification of the one who provided the data or intelligence. The financial institution, pension fund or natural person involved will be notified of the exchange of all other data and information that is supplied to the other supervisor, unless either supervisor deems this undesirable in the interest of an ongoing examination or other special circumstances.

1.1.4 Pursuant to the relevant provisions of the *Wft*, *Pw* and *Wvb*, the supervisors, before requesting data from a financial institution or a pension fund about the control of operational processes and risks and about integrity, will first ask the other supervisor whether it possesses and can supply these data. If the latter supervisor has the requested data, it will supply them as soon as possible to the requesting supervisor.

*1.2 Request for advice on market access pursuant to the *Wft**

1.2.1 Pursuant to Section 1:48, *Wft*, the supervisor deciding on an application for authorisation or dispensation with respect to market access for which the applicant also has to meet legal requirements falling under the competence of the other supervisor, will request advice from the other supervisor on whether or not those legal requirements have been met.

1.3 Enforcement measures pursuant to the Wft, Pw and Wvb

1.3.1 If either supervisor intends to take enforcement measures, as referred to in Section 1:47 of the Wft, it will enquire after the views of the other supervisor. In addition, the supervisors will attune other enforcement measures pursuant to the *Wft*, insofar as these relate to financial institutions that are subject to both prudential and conduct supervision, as well as enforcement measures pursuant to the *Pw* and the *Wvb*, unless this is evidently unnecessary.

1.4 Examinations pursuant to the Wft, Pw and Wvb

1.4.1 The supervisors will exchange their examination schedules in advance of each quarter. Any requests from the other supervisor will be incorporated in the supervisory efforts, unless compelling grounds dictate otherwise.

1.4.2 Prior notice will be given to the other supervisor of unscheduled examinations.

1.4.3 Without prejudice to the stipulations of 1.1 the supervisors will exchange examination reports insofar these are relevant to the other supervisor.

1.5 Following each other's opinion within the framework of the Pw and the Wvb

1.5.1 For the implementation of the *Pw* and the *Wvb*, the supervisor, in principle, directly adopts the other supervisor's opinion regarding the supervision data and intelligence on which the other supervisor is primarily authorised to give an opinion, so that no differences of interpretation may arise.

1.5.2 In the event that the supervisor has to give an opinion about data and intelligence for which the other supervisor is primarily authorised to give an opinion, the supervisor will withhold its opinion until the other supervisor has given its opinion. The other supervisor will reach this opinion as soon as possible.

1.6 Securities-specific conduct supervision pursuant to the Wft

1.6.1 Each year, at the request of AFM, DNB asks the supervised financial institutions and pension funds to report data, enabling the AFM to determine whether or not a financial institution or pension fund is exempted from the provisions of Section 5.4.3, *Wft*.

1.7 Illegal financial institutions and pension funds pursuant to the Wft, Pw and Wvb

1.7.1 The agreements in this Chapter also apply to the actions of a supervisor against a financial institution that unlawfully operates without authorisation or dispensation or to a pension fund operating without a registration, where the existence of an overlap with the competence of the other supervisor cannot be ruled out in advance.

1.8 Alignment of generally binding stipulations and policy rules pursuant to the Wft, Pw and Wvb

1.8.1 The supervisors align as much as possible the determination of the generally binding stipulations and policy rules in implementation of the *Wft*, the *Pw* and the *Wvb* that relate to the supervisory domain.

1.9 Dealing with questions and complaints relating to the Wft, Pw and Wvb

1.9.1 Where necessary and meaningful, the supervisors co-operate in dealing with questions and complaints about the implementation, policies and regulations relating to the implementation of the *Wft*, the *Pw* and the *Wvb*.

1.10 Funding of supervision pursuant to the Wft, Pw and Wvb

1.10.1 The supervisors make netting agreements on the coverage of costs incurred in the context of activities which they perform (in part) on each other's behalf in the context of supervision and the levying of charges pursuant to the *Wft*, *Pw* and *Wvb*.

1.10.2 The supervisors will share all required data for determining the duty to pay charges and the fees and rates charged.

Chapter II Co-ordination and board-level consultations

2.1 Co-ordination

2.1.1 The supervisors will promote compliance with the agreements in this Covenant through mutual co-ordination.

2.2 Board-level co-ordination

2.2.1 The supervisors will hold at least four board-level consultations a year on the co-operation specified in this Covenant on subjects including supervision, legislation, policies, domestic and international consultations and other topics of common interest.

Chapter III Final provisions

3.1. Evaluation

3.1.1 The supervisors will discuss annually whether the agreements laid down in this Covenant have been adhered to.

3.1.2 If either supervisor perceives the need to amend this Covenant, the supervisors will enter into consultations on its amendment.

3.2. Entry into operation

3.2.1 This Covenant will enter into operation on 2 July 2007.

3.2.2 This Covenant replaces the Covenant between the *Stichting Autoriteit Financiële Markten* and *De Nederlandsche Bank N.V.* as regards co-operation and co-ordination in matters concerning supervision, regulation and policy, domestic and international consultations and other duties embodying a common interest, dated 15 November 2004, Staatscourant [Bulletin of Acts, Orders and Decrees] 224, as lastly amended on 9 March 2006.

Thus agreed and signed in duplicate in Amsterdam on 2 July 2007.

Stichting Autoriteit Financiële Markten,

A.W.H. Docters van Leeuwen.

A.W. Kist.

De Nederlandsche Bank N.V.

A.H.E.M. Wellink.