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### **Decree of 12 October 2006, containing rules relating to various special prudential measures, the investor-compensation and the deposit-guarantee scheme pursuant to the Act on Financial Supervision (Decree on Special Prudential Measures, Investor Compensation and Deposit Guarantees pursuant to the Act on Financial Supervision)**

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

On the recommendation of Our Minister of Finance of 27 June 2006, no. FM 2006-01568;

Having regard to Directive No. 94/19/EC of the European Parliament and of the Council of the European Union of 30 May 1994 on deposit-guarantee schemes (OJEC L 135), Directive No. 97/9/EC of the European Parliament and of the Council of the European Union of 3 March 1997 on investor-compensation schemes (OJEC L 84) and Sections 3:116, 3:132(2), 3:136(3), 3:156(10), 3:259(3) and (4), and 3:266(5) of the Act on Financial Supervision;

Having consulted the Council of State (opinion of 17 August 2006, no. W06.06.0258/IV);

Having seen the more detailed report of Our Minister of Finance of 9 October 2006, no. FM 2006-01983;

Have approved and decreed the following:

#### **CHAPTER 1. DEFINITIONS**

##### **Section 1**

In this Decree, the following terms shall have the following meaning:

- a. group of banks or group of financial undertakings: two or more banks or financial undertakings that are connected to each other in a formal or actual control structure;
- b. Act: the Act on Financial Supervision (*Wet op het financieel toezicht*, Wft).

## **CHAPTER 2. PORTFOLIO TRANSFER, MERGERS AND DIVISIONS**

### **Provision implementing Section 3:116 of the Act**

#### **Section 2**

A request for approval of a transfer as referred to in Section 3:112(1), 3:113(1), 3:114(1), or 3:115(1) of the Act shall be accompanied, without prejudice to Section 4:2(2) of the General Administrative Law Act [*Algemene wet bestuursrecht*], by the submission of a draft agreement together with the following explanatory documents:

- a. a description of the rights and obligations referred to in Section 3:112(1), 3:113(1), 3:114(1) or 3:115(1) of the Act that are to be transferred by the insurer;
- b. draft texts of the notifications that the transferring insurer shall submit under Section 3:119(1) of the Act;
- c. a statement, by the acquiring insurer, of the acquisition price of the rights and obligations referred to under (a);
- d. a statement of the changes in the available solvency margin as a consequence of the transfer;
- e. a statement of the extent of the technical provisions to be maintained in connection with the rights and obligations as referred to under (a);
- f. a statement of the nature and extent of the investments to be transferred to cover the technical facilities; and
- g. in the event of profit sharing, a description of the profit definition.

## **CHAPTER 3. RESTORATION PLAN**

### **Provision implementing Section 3:132(2) of the Act**

#### **Section 3**

1. A restoration plan as referred to in Section 3:132 of the Act shall state how and by what deadline an end will be brought to the circumstances that caused the demand for the restoration plan.

2. The restoration plan shall contain at least the following details for the next three financial years:

- a. an estimate of the management costs, particularly of the general current costs and the commission fees;
- b. a detailed forecast of the probable income and expenditure from direct Insurance, the accepted reinsurance and transfers by virtue of reinsurance;
- c. the expected balance;
- d. an estimate of the funding to cover the obligations and of the required solvency margin; and
- e. the general reinsurance policy.

3. The Dutch Central Bank [*De Nederlandsche Bank*] may demand additional details, if such is necessary for a proper assessment of the restoration plan.

## **SECTION 4. RECOVERY PLAN AND FINANCE SCHEME**

### **Provision implementing Section 3:136(3) of the Act**

#### **Section 4**

1. A recovery plan as referred to in Section 3:136(1) of the Act shall state how and by what deadline the solvency margin is to be restored to the required level. If, pursuant to Section 3:132(1) of the Act, a restoration plan has been drawn up for which approval has been given, the recovery plan shall also state how the restoration plan is to be included therein.

2. A finance scheme as referred to in Section 3:136(2) of the Act shall state how and by what deadline the solvency margin is to be restored to the required level. If, pursuant to Section 3:136(1) of the Act, a recovery plan has been drawn up for which approval has been given, the finance scheme shall also state how the recovery plan is to be included therein.

## **SECTION 5. SUPPORT INSTRUMENT FOR LIFE INSURANCE COMPANIES**

### **Provisions implementing Section 3:156(10) of the Act**

#### **Section 5**

1. If, in accordance with Section 3.5.4.1 of the Act, a portfolio has been transferred to a support institution, the support institution shall give immediate notice to this effect in the Government Gazette [*Staatscourant*]. The Dutch Central Bank (DNB) may decide that the support institution must also give notice of the portfolio transfer in another manner to be determined by DNB. The content of these notifications shall require the prior approval of DNB.

2. The portfolio transfer shall take effect, as regards all interested parties other than the life insurance companies involved, as of the second day after the date of the Government Gazette in which notice of the transfer is given.

3. DNB shall give notice of the portfolio transfer:

a. if the transfer involves a life insurance company that is domiciled in the Netherlands: to the supervisory authorities in the other Member States in which the life insurance company has a branch or to which it provides services from its branches in a Member State;

b. if the transfer concerns a life insurance company that is domiciled in a state that is not a Member State: to the supervisory authorities of the other Member States to which it provides services from a branch located in the Netherlands.

4. Before the portfolio transfer takes place and after the relevant authorisation has been acquired as referred to in Section 3:154 of the Act, DNB shall inform the supervisory authorities, as referred to in Section 5(3) above, of the intended portfolio transfer, unless such jeopardises the goal to be achieved by the support.

#### **Section 6**

1. A life insurance company on whom an assessment is imposed, pursuant to Section 3:156(6) of the Act, shall pay the amount of the assessment to the support institution within a period of time to be determined by DNB.

2. DNB may decide that a life insurance company shall pay the amount of the assessment in whole or in part to another party to enable the said other party to transfer its shares in the support institution to the insurance company.

## **Section 7**

1. Having consulted the confidential advisory committee, DNB shall draw up a remuneration plan for the support.

2. Without prejudice to the powers assigned in Book 2 of the Dutch Civil Code to the bodies of the support institution, the compensation of dividend and the refund of capital to the shareholders of the support institution, as well as the interest compensation for, and the recompensation of, the subordinated loan issued to the support institution shall take place in accordance with the remuneration plan.

3. Having first consulted the confidential advisory committee, DNB may amend the remuneration plan, if urgent circumstances so demand.

## **CHAPTER 6. INVESTOR-COMPENSATION AND DEPOSIT-GUARANTEE SCHEMES**

### **Provisions implementing Section 3:259(3) and (4) and 3:266 (5) of the Act**

#### *§ 6.1. Investor-compensation scheme*

## **Section 8**

1. The investor compensation scheme shall apply to:

a. financial undertakings that have a licence as referred to in Section 2:11 of the Act for conducting the business of a bank and that are allowed to provide investment services under Section 2:97(1)(c) of the Act;

b. financial undertakings that have a licence as referred to in Sections 2:96 or 2:65(1), opening words and (a) of the Act;

a. financial undertakings that have a supervised status certificate as referred to in Section 3:110 of the Act and that are allowed to provide investment services under Section 2:97(1)(b) of the Act;

d. financial undertakings as referred to in Section 3:266(1)(a) and (c) of the Act, in so far as concerns their business conducted from a branch located in the Netherlands; and

e. financial undertakings with regard to which a decision has been taken as referred to in Section 3:267(1) of the Act, in so far as concerns their business conducted from a branch located in the Netherlands.

2. The investor-compensation scheme shall not apply to financial undertakings that exclusively provide investment services as referred to in (c), (f) and (g) of the definition of the provision of investment services in Section 1:1 of the Act.

## **Section 9**

If DNB decides, under Section 3:260(1) of the Act, to apply the investor-compensation scheme, claims from the categories of persons referred to below shall be eligible for compensation in accordance with this chapter, in so far as these persons do not belong to one of the categories referred to in Annex A to this Decree:

- a. persons who, in connection with investment services, have entrusted money or financial instruments, in their own name and on their own account, to a financial undertaking that is unable to pay;
- b. persons who, together with a person as referred to in (a) and in connection with investment services, have entrusted money or financial instruments, in their own name and whether or not on their own account, to a financial undertaking that is unable to pay; and
- c. third parties on behalf of whom a person as referred to in (a) or (b), not being a collective investment scheme, has entrusted money or financial instruments, pursuant to an agreement or the law, in their own name and in connection with investment services, to a financial undertaking that is unable to pay.

#### **Section 10**

1. Claims that are eligible for compensation in accordance with the investor-compensation scheme shall be claims that result from the inability of the insolvent financial undertaking to comply with statutory and contractual conditions by:

- a. repaying money that it owes to persons as referred to in Section 9 or that it holds on their behalf in connection with the provision of investment services; or
- b. returning financial instruments that it holds, administers or manages for persons as referred to in Section 9 in connection with the provision of investment services.

2. Claims from third parties as referred to in Section 9(c) shall only be eligible for compensation if the identity of the third party has been, or can be, determined before DNB has established that the financial undertaking as referred to in Section 8(1) is unable to pay as referred to in Section 3:260(2) of the Act.

#### **Section 11**

1. The banks, as referred to in Section 8(1)(a), shall reimburse the amount paid pursuant to the investor-compensation scheme, as a result of a bank's inability to pay, to DNB in accordance with the apportionment percentage to be determined by DNB under Section 12.

2. The obligation to contribute, as referred to in Subsection (1), shall arise at the point in time when DNB establishes a bank's inability to pay as referred to in Section 3:260(2) of the Act. Banks that no longer fulfil the criteria referred to in Section 8(1)(a), after that point in time, shall continue to owe the contribution.

3. DNB may determine, at the request of a group of banks and after consultation with official representatives, that a bank belonging to this group, which bank shall be designated in the request, shall pay in full all the contributions owed by the banks belonging to this group. In each case, DNB shall comply with the request if the banks belonging to the group have been consolidated in the balance sheet of the designated bank.

4. The contribution of banks that are affiliated to a central credit institution shall be paid as one amount by the central credit institution.

5. The contribution payable by each individual bank shall be determined by multiplying the apportionment percentage for that bank by the total amount that is paid out pursuant to the investor-compensation scheme.

6. DNB may charge the banks the contributions payable by the banks, on a monthly basis, with regard to the remuneration paid at that moment pursuant to Section 27(2).

7. DNB may decide that contributions below an amount to be determined by DNB, after consultation with official representatives, do not need to be paid. The total amount of these contributions shall be apportioned amongst the banks that are not below this limit, in accordance with the apportionment percentage, as referred to in Section 12.

## **Section 12**

1. In its own official capacity or at the request of official representatives and after consultations with these representatives, DNB shall determine the apportionment percentage applicable to each bank on the basis of the consolidated balance sheet submitted by the bank concerned to DNB prior to the point in time when DNB established inability to pay as referred to in Section 2:295(2) of the Act. After consulting official representatives, DNB shall determine, in detail, which prudential balance sheets are to be used and which items from these balance sheets are eligible for this calculation. In this calculation the total amount of these items for each bank shall be divided by the total amount of these items for all the banks together and the resulting figure shall be multiplied by 100 percent. The items of the bank that is unable to pay shall be excluded from the calculation.

2. DNB may specify a provisional contribution. Seventy percent thereof shall be paid to DNB in the form of an advance. Advances paid shall be set off against the definitive contributions. Section 3:262, second sentence of the Act shall apply *mutatis mutandis*.

## **Section 13**

1. The amount that is paid out pursuant to the investor-compensation scheme as a consequence of the inability to pay of a financial undertaking that is not a bank shall be reimbursed to DNB as follows:

- a. as an amount charged to the compensation fund, as referred to in Section 16(1), up to an amount equal to the resources present in the fund;
- b. by the financial undertakings referred to in Section 8 that are not a bank: the outstanding amount, with due observance of Section 14, up to a maximum of € 11.3 million.

2. With due observance of Section 15, any remaining amount, after application of Subsection (1)(a) and (b), shall be reimbursed by the financial undertakings referred to in Section 8(1).

3. The obligations to contribute, as referred to in Subsection (1)(b) and (c), shall arise at the point in time when DNB establishes the inability to pay of a financial undertaking as referred to in Section 3:260(2) of the Act. Financial undertakings that no longer fulfil the criteria referred to in Section 8, after that point in time, shall continue to owe the contribution.

4. At the request of a group of financial undertakings that are not a bank and after consultation with official representatives, DNB may determine that a financial undertaking belonging to this group, which enterprise shall be designated in the request, shall pay in full all the amounts owed by the financial undertakings belonging to this group. In each case, DNB shall comply with the request if the financial undertakings belonging to the group have been consolidated in the balance sheet of the designated financial undertaking.

5. The contribution of banks that are affiliated to a central credit institution shall be paid as one amount by the central credit institution.

6. DNB may charge the amounts payable, on a monthly basis, with regard to the remuneration paid at that moment pursuant to Section 27(2).

7. DNB may decide that contributions below an amount to be determined by DNB, in consultation with official representatives, do not need to be paid. The total amount of these contributions shall be apportioned amongst the financial undertakings that are not a bank, in accordance with the apportionment percentages referred to in Sections 14 and 15.

#### **Section 14**

1. In its own official capacity or at the request of official representatives and after consultations with these representatives, DNB shall determine the amount of the contribution of each financial undertaking as referred to in Section 13(1)(b). That amount shall be equal to the sum of:

- a. a fixed amount that is the same for all financial undertakings; and
- b. a variable amount that is determined by multiplying the apportionment percentage referred to in Subsection (2) by the amount referred to in Section 13(1)(b), minus the sum of the fixed amounts referred to under (a).

2. In its own official capacity or at the request of official representatives and after consultations with these representatives, DNB shall determine an apportionment percentage for the calculation of the amount referred to Subsection (1) on the basis of the data submitted by the financial undertakings referred to in that Subsection to DNB with regard to a period to be determined by DNB in relation to the number of persons whose claims are eligible for compensation pursuant to Section 9. In this calculation, the number of these persons per financial undertaking shall be divided by the total number of these persons at all financial undertakings jointly, as referred to in Subsection 1, and the resulting number shall then be multiplied by 100 percent. The data for the financial undertaking that is unable to pay shall be excluded from the calculation.

3. DNB may specify a provisional contribution. Financial undertakings as referred to in Subsection (1) shall pay 70 percent of the provisional contribution to DNB in the form of an advance. Advances paid shall be set off against the definitive contributions. Financial undertakings as referred to in Subsection (1) shall pay the advances within a period of time determined by DNB.

#### **Section 15**

1. In its own official capacity or at the request of official representatives and after consultations with these representatives, DNB shall determine the amount of the contribution of each financial undertaking referred to in Section 13(1)(c). That amount shall be established by multiplying the apportionment percentage, as referred to in Subsection (2), by the amount referred to in Section 13(1)(c).

2. In its own official capacity or at the request of official representatives and after consultations with these representatives, DNB shall determine the apportionment percentage applicable to each financial undertaking, as referred to in Section 8(1), on the basis of the consolidated balance sheet submitted by the financial undertaking concerned to DNB prior to the point in time when DNB established inability to pay as referred to in Section 3:260 (2) of the Act.

After consulting official representatives, DNB shall determine, in detail, which prudential balance sheets are to be used and which items from these balance sheets are eligible for this calculation. In this calculation the total amount of these items for each financial institution shall be divided by the total amount of these items for all the financial institutions together, and the resulting figure shall be multiplied by 100 percent. The data for the financial undertaking that is unable to pay, as referred to in Section 3:260(2) of the Act, shall be excluded.

3. DNB may specify a provisional contribution. Financial undertakings as referred to in Subsection (1) shall pay 70 percent of the provisional contribution to DNB in the form of an advance. Advances paid shall be set off against the definitive contributions. Financial undertakings as referred to in Subsection (1) shall pay the advances within a period of time determined by DNB.

## Section 16

1. The Investor-Compensation Fund Foundation [*Stichting Beleggers Compensatiefonds*] shall be responsible for the management and maintenance of a compensation fund that is intended for the reimbursement of amounts to DNB that DNB has paid out pursuant to the investor-compensation scheme.

2. DNB shall be authorised, following consultation with official representatives, to amend the articles of the Investor-Compensation Fund Foundation.

3. Amendments to the articles shall require the approval by Our Minister. Our Minister may refuse to grant approval in the interests of a proper implementation of the investor-compensation scheme or because the amended articles are incompatible with the Act or this Decree.

4. The compensation fund shall comprise contributions by the financial undertakings as referred to in Section 8(1) that are not a bank and shall have a target equity of € 11.3 million.

5. DNB shall periodically determine the size of the total contribution to the compensation fund that is considered necessary, after consultation with official representatives. If the target equity of the compensation fund has not been achieved, the size of the total annual contribution to the compensation fund shall be at least € 750,000. If DNB, after consultation with official representatives, decides to increase the contribution, this increase shall be imposed immediately or spread over a period to be determined by DNB. The total contribution determined by DNB shall be apportioned to the financial undertakings referred to in Subsection (4).

6. Without prejudice to the above, a levy shall be determined, when deciding the size of the total contribution, which levy shall be the same for all the financial undertakings referred to in Subsection (4) and which shall be multiplied by a variable amount that is calculated for the individual financial undertakings in proportion to the number of persons whose claims are eligible for compensation per financial undertaking pursuant to Section 9. Section 14(2) shall apply *mutatis mutandis*.

7. DNB may decide that an institution that becomes a financial undertaking, as referred to in Section 8, after this Decree comes into effect, shall make a contribution, the size of which shall be determined by DNB, for a period and with a frequency to be determined at the time.

8. If the equity in the compensation fund exceeds the target equity, DNB, after consulting with official representatives, may have the excess paid out to the financial undertakings as referred to in Subsection (4), in accordance with an allocation formula to be specified by DNB.

### **Section 17**

1. The amount payable by a bank in any calendar year pursuant to Section 11(1) and 13(1) (c), multiplied by the amount to be paid under Section 6.2, shall not exceed five percent of its net worth. DNB shall advance any surplus on an interest-free basis.

2. The amount payable by a financial undertaking that is not a bank, in any calendar year, pursuant to Section 13(1) and Section 16(5) shall not be more than three percent of its net worth. DNB shall advance any surplus on an interest-free basis.

3. If the solvency or liquidity position of a bank, or the solvency position of an investment firm gives cause to do so, DNB may set a lower percentage for the bank or investment firm in question.

### *§ 6.2. Deposit-guarantee scheme*

### **Section 18**

The deposit-guarantee scheme shall apply to:

- a. banks that have a licence as referred to in Section 2:11 of the Act;
- b. banks as referred to in Section 3:266(1)(b) of the Act, in so far as concerns their business conducted from a branch located in the Netherlands; and
- c. banks as referred to in Section 3:267(2) of the Act, in so far as concerns their business conducted from a branch located in the Netherlands.

### **Section 19**

If DNB decides, under Section 3:260(1) of the Act, to apply the deposit-guarantee scheme, claims from the categories of persons referred to below shall be eligible for compensation in accordance with this section:

- a. persons who maintain deposits in their own name and on their own account with the bank that is unable to pay;
- b. persons who, together with a person as referred to in (a), maintain deposits in their own name, whether on their own account or otherwise, with the bank that is unable to pay;
- c. third parties on whose behalf a person as referred to in (a) or (b) maintains deposits in their own name, pursuant to an agreement or the law, with the bank that is unable to pay.

### **Section 20**

1. Claims from deposits shall be eligible for compensation under the deposit-guarantee scheme, with the exception of claims from deposits as referred to in Annex B, which the bank that is unable to pay owes to the persons referred to in Section 19 or which belong to them and which the bank that is unable to pay is keeping on their behalf in accordance with the statutory and contractual conditions.

2. Claims from a third party as referred to in Section 19(c) shall only be eligible for compensation if the identity of the third party has been, or can be, determined before DNB establishes that the bank is unable to pay as referred to in Section 3:260(2) of the Act.

## **Section 21**

1. The banks, as referred to in Section 18, shall reimburse the amount, paid out under the deposit-guarantee scheme, to DNB in accordance with the apportionment percentage to be determined by DNB under Section 22.

2. The obligation referred to in Subsection (1) shall arise at the point in time when DNB establishes a bank's inability to pay as referred to in Section 3:260(2) of the Act. Banks that no longer fulfil the criteria referred to in Section 18, after that point in time, shall continue to owe the contribution.

3. At the request of a group of banks and after consultation with official representatives, DNB may determine that a bank belonging to this group, which bank shall be designated in the request, shall pay in full all the contributions owed by the banks belonging to this group. In each case, DNB shall comply with the request if the banks belonging to that group have been consolidated in the balance sheet of the designated bank.

4. The contribution of banks that are affiliated to a central credit institution shall be paid as one amount by the central credit institution.

5. The contribution payable by each individual bank shall be determined by multiplying the apportionment percentage for that bank by the total amount that is paid out pursuant to the deposit-guarantee scheme.

6. DNB may charge the banks the contributions payable by the banks, on a monthly basis, with regard to the remuneration paid at that moment pursuant to Section 27(2).

7. DNB may decide that contributions below an amount to be determined by DNB, after consultation with official representatives, do not need to be paid. The total amount of these contributions shall be apportioned amongst the banks that are not below this limit, in accordance with the apportionment percentage, as referred to in Section 22.

## **Section 22**

1. In its own official capacity or at the request of official representatives and after consultations with these representatives, DNB shall determine the apportionment percentage applicable to each bank on the basis of the consolidated prudential balance sheet submitted by the bank concerned to DNB prior to the point in time when DNB established inability to pay as referred to in Section 3:260(2) of the Act. After consulting official representatives, DNB shall determine, in detail, which prudential balance sheets are to be used and which items from these balance sheets are eligible for this calculation. In this calculation the total amount of these items for each bank shall be divided by the total amount of these items for all the banks together and the resulting figure shall be multiplied by 100 percent. The data for the bank that is unable to pay shall be excluded from the calculation.

2. DNB may specify a provisional contribution. Seventy percent thereof shall be paid to DNB in the form of an advance. Advances paid shall be set off against the definitive contributions.

Section 3:262, second sentence of the Act shall apply mutatis mutandis.

### **Section 23**

1. The amount to be paid by a bank in any calendar year pursuant to Section 21, plus the amounts to be paid by this bank by virtue of section 6.1, shall not be more than five percent of its net worth. DNB shall advance any surplus on an interest-free basis.

2. If the solvency or liquidity position of a bank gives cause to do so, DNB may set a lower percentage for the bank concerned.

§ 6.3. *Payout procedure:*

### **Section 24**

1. DNB shall place a notice in the Government Gazette [*Staatscourant*], as referred to in Section 3:260(3) of the Act, as soon as possible after the decision has been taken as referred to in Subsection (1) of said Section relating to the application of a guarantee scheme. As soon as possible after it has established inability to pay, DNB shall also give notice, by means of advertisements in national newspapers to be selected by DNB, that:

a. it has applied the investor-compensation scheme as referred to in Section 3:259(1) of the Act or the deposit-guarantee scheme as referred to in Section 3:259(2) of the Act; and

b. the persons referred to in Section 9 and Section 19, respectively, may submit an application to DNB for reimbursement of the claims referred to in Section 10 or Section 20, respectively, using a form to be established for that purpose by DNB, within five months after the date of the notification in the Government Gazette.

2. DNB shall ask the administrators or receivers of the financial undertaking that is unable to pay to refer, in their correspondence with the persons referred to in Subsection (1), to the application of the investor-compensation scheme and to the deadline for submitting an application as referred to in Subsection (1)(b).

3. DNB shall not process applications submitted after the expiry of the deadline referred to in Subsection (1)(b) unless the applicant cannot reasonably be judged to be in default.

### **Section 25**

1. DNB shall determine the existence and the value of the claims submitted using the statutory provisions and contractual conditions applicable to the claims, the accounts of the financial undertaking that is unable to pay and any other relevant documents.

2. DNB shall base its valuation of foreign currency claims on the reference rates of exchange of the European Central Bank as applicable on the day on which DNB established the inability to pay.

## **Section 26**

1. Claims as referred to in Section 10(1), opening words and (a), or Section 20(1) that have been established by DNB shall be paid in the form of recompensation up to the maximum referred to in Subsection (4).

2. Claims as referred to in Section 10(1)(b) that have been established by DNB shall be paid, to the extent possible, by returning the financial instruments referred to in Section 10(1)(b). If this is impossible, the claim shall be paid in cash up to the maximum referred to in Subsection (4). In the latter case, the value of the claim shall be set, unless provided otherwise by law or by contract, at the market value of the financial instruments at the moment in time when DNB established the financial undertaking's inability to pay.

3. When determining the value of the established claims, DNB shall set the claims off against the possible claims of the financial undertaking that is unable to pay vis-à-vis the applicant.

4. Claims up to a maximum of € 20,000 per person as referred to in Section 9 per financial undertaking that is unable to pay and claims up to a maximum of € 40,000 per person as referred to in Section 19 per financial undertaking that is unable to pay shall be eligible for compensation, on the understanding that 90 percent shall be paid of the part of the claims above € 20,000 that are submitted by persons as referred to in Section 19.

5. Unless contractually specified that the persons referred to in Section 9(b) or Section 19(b) are entitled to the claims on the basis of a different proportion, each of these persons shall receive a compensation equal to a proportional part of the total of the established claims with due regard for the provisions of Subsection (2).

6. If there is more than one third party as referred to in Section 9(c) or Section 19(c), each of their shares and the compensation as referred to in Subsection (2) to each of them shall be calculated on the basis of Subsection (5) of this Section.

7. Our Minister may decide that, contrary to Subsection (4), other maximums shall apply to the claims that are eligible for compensation. Our Minister shall give notice of the decision to that effect in the Government Gazette.

## **Section 27**

1. DNB shall pay the applicant the amount determined on the basis of Section 25 as soon as possible, but in any event within three months after the point in time when the applicant submitted the application.

2. The compensation shall be made into an account indicated by the applicant at a bank domiciled in a Member State or at a branch located in a Member State of a bank domiciled in a state that is not a Member State.

3. The compensation shall only take place if:

a. the applicant has declared that it has taken note of the subrogation pursuant to Section 150(d) of Book 6 of the Dutch Civil Code;

b. the applicant assigns its to DNB unconditionally and irrevocably, up to the amount paid out, vis-à-vis the financial undertaking concerned that is unable to pay; and

c. the applicant also transfers any rights to DNB to the return or recompensation of financial instruments, vis-à-vis third parties, up to the amount paid out.

## **Section 28**

If an applicant is prosecuted in connection with a crime that is the result of, or is linked to, money laundering, DNB may suspend the deadlines referred to in Subsection (1) and in Section 27(2). This suspension shall end as soon as the prosecution has ended or the decision of the competent court is irrevocable.

## **Section 29**

1. DNB shall recover from the financial undertaking that is unable to pay, to the extent possible, all claims or rights transferred to it pursuant to Section 27(4)(b) to which it is subrogated in accordance with Section 150, opening words and (d) of Book 6 of the Dutch Civil Code.

2. The revenue received by DNB pursuant to the recovery referred to in Subsection (1) shall be paid out by DNB to the financial undertakings that have contributed under Sections 11, 13 or 21. The payout shall be based on the set apportionment percentage.

## **CHAPTER 7. FINAL STIPULATIONS**

### **Section 30**

1. Without prejudice to Section 16, DNB shall provide an interest-free advance on compensations to be charged to the compensation fund under Section 13(1)(a) until the target equity of the compensation fund has been achieved, or up to and including 31 December 2008, whichever is earlier.

2. The advance referred to in subsection (1) shall be an amount set by DNB that shall not exceed € 1 million. This advance shall be made available, prior to an apportionment as referred to in Section 13(1)(b), if the compensation fund is exhausted due to a compensation within the meaning of Section 13(1)(a).

3. A paid-out interest-free advance as referred to in Subsection (1) shall be repaid to DNB by the financial undertakings referred to in Section 16(4) after 1 January 2009. DNB shall set the modalities regarding the recompensation of this interest-free advance after consultation with official representatives and shall ensure that the maximum contribution per calendar year referred to in Section 17 for a financial undertaking as referred to in Section 8 is not exceeded.

### **Section 31**

DNB shall inform the supervisory authorities in other Member States that are charged with tasks relating to an investor-compensation scheme of any change in the investor-compensation scheme.

### **Section 32**

The Royal Decree of 17 December 1998 implementing Section 9(c) of the Bank Act 1998 (Bulletin of Acts, Orders and Decrees 719) shall be repealed.

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and Decrees 2006

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### Section 33

The sections of this Decree shall enter into force at a time to be determined by Royal Decree. Different times may be set for different sections or parts thereof.

### Section 34

This Decree shall be cited as: Decree on Special Prudential Measures, Investor Compensation and Deposit Guarantees pursuant to the Act on Financial Supervision.

We hereby order and command that this Decree and the accompanying Explanatory Memorandum be published in the Bulletin of Acts, Orders and Decrees (*Staatsblad*).

The Hague, 12 October 2006

Beatrix

The Minister of Finance,  
G. Zalm

Published on the *thirty-first* of October 2006

The Minister of Justice,  
E.M.H. Hirsch Ballin

The opinion of the Council of State shall not be published pursuant to Section 25a(5) and (4)(b) of the Council of State Act (*Wet op de Raad van State*), because its comments are exclusively of an editorial nature.

## ANNEX A to Section 9

### *Categories of persons whose claims do not fall under the scope of this Decree*

1. Persons whose claims result from transactions in connection with which a criminal conviction has been pronounced for money laundering.
2. Professional investors and professional market parties.
3. Persons who:
  - a. are also a director, administrator, or jointly and severally liable partner of the financial undertaking that is unable to pay;
  - b. hold at least a five percent share in the capital of the financial undertaking that is unable to pay; or
  - c. have control comparable with (b) in other enterprises in the same group as the financial undertaking that is unable to pay.
4. Close relatives of the persons referred to under (3) and third parties that act for the account of these persons. In this context, close relatives shall be taken to mean family members once removed, as well as any spouses and partners of these persons. Notarial documents shall be produced to show that these partners are the partners of the persons referred to under (4), unless they are registered partners.
5. Legal persons that are part of the same group as referred to in Section 24a of Book 2 of the Civil Code as the financial undertaking that is unable to pay.
6. Persons that in part caused, or that have benefited from, the financial undertaking's inability to pay.
7. Legal persons that are a financial undertaking of such magnitude that they may not draw up an abridged balance sheet in accordance with Article 11 of Fourth Council Directive 78/660/EEC of the Council of the European Communities of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies (OJEC L 222);

## **ANNEX B to Section 20(1)**

*Deposits as referred to in Section 20(1), of which the resulting claims are not covered by this Decree*

1. Financial instruments that are covered by the definition of own funds as referred to in Article 2 of Directive 89/299/EEC of the Council of the European Communities of 17 April 1989 on the own funds of credit institutions (OJEC L 124), as amended by Directive 92/16/EEC (OJEC L 75) of 21 March 1992.

2. Deposits by virtue of transactions in connection with which a criminal sentence has been pronounced for money laundering.

3. Deposits of professional investors and professional market parties

4. Deposits of:

a. directors, administrators, or jointly and severally liable partners of the bank that is unable to pay;

b. persons that hold at least a five percent share in the capital of the bank that is unable to pay;

c. persons that have control comparable with (b) in other enterprises in the same group as the bank that is unable to pay.

5. Deposits of close relatives of the persons referred to under (4) and deposits of third parties that act for the account of these persons. Close relatives shall be taken to mean family members once removed, as well as any husbands or wives and registered partners of these persons. Notarial documents shall be produced to show that these partners are the partners of the persons referred to under (4), unless they are registered partners.

6. Deposits of legal persons that are part of the same group as referred to in Section 24a of Book 2 of the Civil Code as the bank that is unable to pay.

7. Deposits that are not registered.

8. Deposits for which the creditor of the bank that is unable to pay has acquired such interest rates and financial benefits that they have contributed to the bank's inability to pay.

9. Debts that result from acceptances or promissory notes from the bank that is unable to pay.

10. Deposits of legal entities that are of such magnitude that they may not draw up an abridged balance sheet in accordance with Article 11 of the Fourth Council Directive 78/660/EEC of the Council of the European Communities of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies (OJEC L 222);

11. Bonds that comply with the conditions of Article 22(4) of Directive no. 85/611/EEC of the Council of the European Communities of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJEC L 375).

## EXPLANATORY

### MEMORANDUM

#### General

##### *Introduction*

This Decree lays down a number of special rules and measures relating to the financial undertakings that operate on the financial markets under Chapter 3.5 of the Act of Financial Supervision [*Wet op het financieel toezicht*] (the Act). This concerns the portfolio transfer, the restoration plan, the recovery plan, and the financing scheme of insurers, the support instrument for life insurance companies and the investor-compensation and deposit-guarantee scheme. The Decree lays down the details of the measures whose main features are laid down in the Act. With the exception of the investor-compensation and deposit-guarantee scheme, these measures have been adopted from the Act on the Supervision of the Insurance Industry 1993 [*Wet toezicht verzekeringsbedrijf 1993*] (Wtv 1993) and the Act on the Supervision of the Funeral Provisions Insurance Industry [*Wet toezicht natura-uitvaartverzekeringsbedrijf*] (Wtn). In view of the detailed level of the regulations involved, it was decided within the framework of the Act that these provisions would no longer be set out at the level of the Act, but in the form of an order in council. Any differences between the provisions and the sections of the Wtv 1993 and the Wtn are indicated explicitly in the explanatory notes to each Section.

Chapter 6 contains provisions relating to the guarantee schemes provided for in Part 3.5.6 of the Act: the investor-compensation scheme and the deposit-guarantee scheme. The basis for these provisions is given in Sections 3:259(3) and (4) and 3:266(5) of the Act. The investor-compensation scheme and the deposit-guarantee scheme are the main focus of the Decree.

##### *Investor-compensation and deposit-guarantee schemes (chapter 6)*

The investor-compensation scheme and the deposit-guarantee scheme used to be laid down in two agreements between official representatives of banks and investment firms and the supervisory authorities, namely the Dutch Central Bank [*De Nederlandsche Bank*] (DNB) and the Netherlands Authority for the Financial Markets [*Autoriteit Financiële Markten*] (AFM; originally with its predecessor, the Securities Board of the Netherlands [*Stichting Toezicht Effectenverkeer*]). These agreements – the Collective Guarantee Scheme (*Collectieve Garantieregeling*, CGR; Bulletin of Acts, Orders and Decrees 1998, 577) and the Investor-Compensation Scheme (*Beleggerscompensatieregeling*, BCR; Bulletin of Acts, Orders and Decrees 1998, 556) – implemented Directive no. 94/19/EC (OJEC L135) of the European Parliament and of the Council of the European Union of 30 May 1994 on deposit-guarantee schemes (hereinafter referred to as: the Directive on Deposit-Guarantee Schemes) and Directive no. 97/9/EC (OJEC L84) of the European Parliament and of the Council of the European Union of 3 March 1997 on investor-compensation schemes (hereinafter referred to as: the Directive on Investor-Compensation Schemes). The Minister of Finance declared these agreements universally binding under Section 84(2) of the Act on the Supervision of the Credit System 1992 [*Wet toezicht kredietwezen 1992*] (Wtk) and Section 28a(2) of the Act on the Supervision of the Securities Trade 1995 [*Wet toezicht effectenverkeer 1995*] (Wte 1995). While the Securities Board of the Netherlands, which later became the AFM, was originally charged with the implementation of the investor-compensation scheme, DNB is now charged with the implementation of both guarantee schemes. The Act now regulates both agreements in public law in the form of the current Decree and lays down DNB's statutory powers. The Act and the Decree have replaced the two agreements. The declaration that the agreements were universally binding also no longer applies as a consequence of the lapsing of their legal basis.



The fact that there were still private agreements for investor-compensation schemes (BCR) and collective guarantee schemes (CGR) is due to the historic development of the supervision of banks. Before 1952, the supervision of banks was based entirely on a private-law agreement between DNB and the banks. No deposit-guarantee scheme yet existed when the first Act on the Supervision of the Credit System [*Wet toezicht kredietwezen*] was introduced. However, up until the 1970s, an agreement did exist between DNB and the banks that, in the event of the liquidation of a bank, the other banks would adopt the most subordinate position as creditors. When a guarantee scheme was introduced in the Netherlands, it was also on the basis of an agreement. This situation was continued when the Directive on Deposit-Guarantee Schemes was implemented. With the approval of DNB and the banks, the Act on Financial Supervision was used as an opportunity to regulate the guarantee schemes properly in law so that all prudential supervisory rules that result from European Directives are included in the Act.

The investor-compensation scheme and the deposit-guarantee scheme were converted into this Decree in a largely policy-neutral manner. However, the regulations have been adapted to the system used in the Act and technical changes and editorial improvements were made. One fundamental change in the deposit-guarantee scheme is the increase in the maximum balance over which compensation is guaranteed and the introduction of an own risk. This is clarified in the section on “developments after consultation”.

The main rules are included in Part 3.5.6 of the Act. Part 3.5.6 of the Act applies to both the investor-compensation scheme and the deposit-guarantee scheme. However, in this Decree, the decision was taken to regulate the investor-compensation scheme and the deposit-guarantee scheme in separate Parts. Only the Part that addresses the procedural aspects and the transitional law applies to both schemes. The reason why the schemes are otherwise regulated separately is that a separate funding and compensation regime applies to each scheme and the Decree contains much more detailed regulations than the Act. The schemes relate to different claims from different persons in relation to different categories of financial undertakings.

As mentioned above, the current Decree replaces the BCR and the CGR. With a view to the optimum readability of this Decree as a standalone document, the explanatory notes to the old regulations have been used and adapted where necessary. Changes compared to the BCR and the CGR are clarified in each case.

#### *Goal and scope*

The investor-compensation scheme and the deposit-guarantee scheme offer a minimum level of protection to a large number of persons that have entrusted cash or securities to a financial undertaking should the financial undertaking fail. The guarantee schemes offer the guarantee that these persons' claims vis-à-vis the financial undertaking that is unable to pay will be paid out up to a certain amount within a short period of time, irrespective of the extent of the assets of the enterprise and the possibility of compensating the persons concerned by selling off the assets. After all, the licensing and supervision system laid down in the Act cannot prevent all situations from arising in which financial undertakings fail, despite the preventive measures they take and the demands made by the market and the supervisory authorities as regards expertise, solvency, liquidity and administrative organisation. This does not detract from the fact that the licensing and supervision system laid down in the Act is intended to avoid, wherever possible, a situation of continued default within the meaning described above.



An important distinction between the investor-compensation scheme and the deposit-guarantee scheme is that the investor-compensation scheme is not so much intended to allocate compensation to investors in the event of the insolvency of an investment firm, but to compensate them (partially) in the event of fraud or administrative mismanagement by an investment firm. After all, investment firms do not, in principle, manage any cash from investors because the assets under management have to be separate.

In the case of the guarantee schemes, the point of departure is that professional investors and deposit holders, in contrast to non-professional ones, can themselves assess the risks of investment and placement of deposits. The guarantee schemes therefore relate only to compensation of non-collectible claims of non-professional investors and creditors. Financial undertakings are obliged to contribute to the scheme. The situation is only different in the case of branches in the Netherlands of financial undertakings that are domiciled in other Member States or in states that are not Member States, as clarified in more detail below.

The compensation of claims by investors vis-à-vis banks that also provide investment services used to be provided for in the CGR. The CGR applied to banks in connection with both deposits and investment activities. Within that framework, it was decided to regulate the regime of the banks separately from the other investment firms, including to the extent that the banks provided investment services. The current Decree no longer makes this distinction. Section 6.1 addresses the investor-compensation scheme irrespective of whether it concerns investment services provided by banks, financial institutions or investment firms. However, the distinction that used to be made between banks and investment firms does feature in the financing of the investor-compensation scheme. The investor-compensation scheme for investment firms is financed in part on an ex ante basis and in part on an ex post basis. The scheme for banks and investment firms is financed on a completely ex post basis, as is the case with the deposit-guarantee scheme.

The main features of the way in which the guarantee schemes have to be applied in practice have not been changed. After DNB has determined that a financial undertaking cannot fulfil its obligations, deposit holders and investors can submit their claims to DNB. DNB determines, on the basis of the accounts of the financial undertaking that is in difficulty, whether each deposit holder or investor is eligible and if so, for what amount. The compensations are subject to maximums. The payout must then take place quickly to prevent deposit holders and investors from encountering liquidity problems. The payout will only take place if the claim by the deposit holder or investor, vis-à-vis the bank or investment firm that is unable to pay, has been transferred to DNB for the amount of the payout. For the rest, account holders and investors can recover their claim from the assets of the bankrupt financial undertaking.

DNB divides the amount of the payouts among the other financial undertakings, in proportion to the number of customers they have or their size. DNB then tries to recoup its claims from the assets of the financial undertaking that is unable to pay. In doing so it has the same standing as the deposit holder or investor had, from which it has taken over the claim.

Any resulting revenue is then distributed across the financial undertakings that, by virtue of the apportionment, should have contributed to the payouts made.

#### *Home state control*

The way in which and the degree to which minimal protection has to be offered to investors and deposit holders has been harmonised for the Member States of the European Union in two Directives: the Directive on Deposit-Guarantee Schemes and the Directive on Investor-Compensation Schemes. Both Directives are based on the principle of home state control: the Member State in which the financial undertaking is domiciled office is required to ensure that a system is introduced that offers cover to the deposit holders of, or investors at, all branches of said financial undertakings within the European Union and the European Economic Area. Branches of financial undertakings that are domiciled in other Member States are therefore covered by the guarantee scheme of their home state. In this context, however, the Directives include the possibility of supplementary cover.

If the host state system offers broader cover than the home state system of a financial undertaking, the branch of said financial undertaking must be allowed to participate in the guarantee scheme of the host state in order to supplement the cover. The related costs are borne by the guarantee system of the host state. This is referred to as “topping up”. The Act allows for topping up in Section 3:266(1) and (2). This decision consequently applies *mutatis mutandis* to the branches that have opted for supplementary participation in the investor-compensation scheme or the deposit-guarantee scheme. Section 3:267(1) and (2) of the Act creates the same possibility for branches of financial undertakings that are domiciled in a state that is not a Member State. Upon request or otherwise (i.e. including in its official capacity), DNB may decide to apply the guarantee schemes to such a branch of a financial undertaking belonging to this latter group.

As already mentioned, the BCR and CGR did not extend the cover prescribed as a minimum by the Directives, and the supplementary cover described above applied in practice only to branches of financial undertakings domiciled in the Netherlands that participated in a scheme in another Member State that offered broader cover. Because of the increase in the compensation under the deposit-guarantee scheme, it is possible that branches of banks that are domiciled in a Member State that has more limited cover than the Netherlands will choose to opt for the broader cover now offered by the Dutch scheme.

#### *Administrative costs (Actal)*

This decree does not create any new or supplementary obligations for financial undertakings that could lead to an increase in the administrative costs compared to the situation before this Decree came into effect. A draft version of this Decree was submitted to the Advisory Board on Administrative Burden (*Adviescollege toetsing administratieve lasten*, Actal).

As stated already, the current Decree is composed of existing regulations that have been taken over in a largely policy-neutral manner. Chapters 2 to 5 indicate which specific details have to be submitted within the framework of the portfolio transfer, the restoration plan, the recovery plan and the support instrument for life insurance companies. This Decree does not require any details that did not also have to be submitted under the Act on the Supervision of the Insurance Industry 1993 [*Wet toezicht verzekeringbedrijf 1993*] and the Act on the Supervision of the Funeral Provisions Insurance Industry [*Wet toezicht natura- en uitvaartverzekeringbedrijf*].



The administrative costs of the investor-compensation scheme and the deposit-guarantee scheme are limited and unchanged compared to the former situation. The deposit-guarantee scheme is financed on an ex-post basis. Banks do not, therefore, have any administrative costs in this respect. The investor-compensation scheme is financed partially on an ex-ante basis in the form of the investor-compensation fund. This fund is administered by the Investor-Compensation Fund Foundation [*Stichting Beleggers Compensatiefonds*], which is administratively part of the DNB structure. The costs of this fund are not only minimal but are also unchanged compared to the fund under the BCR.

The draft Decree was also submitted for advice to the Advisory Board on Administrative Burden (*Adviescollege toetsing administratieve lasten*, Actal). Actal did not see any reason to issue advice.

#### *Advice received*

The draft Decree was submitted to a large number of official representatives of market parties for formal consultation. Responses were received from the Netherlands Bankers' Association [*Nederlandse Vereniging van Banken*] (NVB), the Dutch Fund and Asset Association (Dufas), the Securities Industry Council [*Raad voor de effectenbranche*] (REB), Euronext Amsterdam N.V. (Euronext), the Association of Insurers [*Verbond van Verzekeraars*] and the Netherlands Institute of Registered Accountants [*Nederlands instituut voor registeraccountants*] (Nivra). The draft Decree was also submitted to the two supervisory authorities. The main points of the responses received are discussed below.

Various responses referred to the fact that the working title the draft Decree – 'Decree on Investor Compensation and Deposit Guarantees' [*Besluit beleggerscompensatie en depositogarantie*] – did not cover the full content of the Decree because the Decree also regulates other issues of a prudential nature, such as the portfolio transfer, the restoration plan and the support instrument for life insurance companies. The title by which the Decree is to be known was therefore adapted accordingly.

In addition, various market parties pointed out that it was unfortunate that the draft Decree used a different definition of 'deposit' to that used in the Act. The definition of 'deposit' in Section 1:1 of the bill has now been replaced under the fifth memorandum of amendment by the definition of 'deposit' from the Directive on Deposit-Guarantee Schemes. Now that the Act uses this definition, the separate definition of 'deposit' has been omitted from this Decree.

DNB raised the question as to whether the legal form of the Investor-Compensation Fund Foundation [*Stichting Beleggers Compensatiefonds*] has to be maintained. DNB wanted to consider, together with the Ministry, how the organisation can be improved for managing and implementing the investor-compensation scheme. DNB also wanted to consult with the Ministry regarding whether and, if so, how the implementation of the deposit-guarantee scheme had to be adapted, partly as a result of the liquidation of Van der Hoop Bankiers. In close consultation with DNB as the party implementing the scheme, the Ministry is considering the extent to which the experiences in the case of Van der Hoop mean that the guarantee scheme has to be adapted, for example as regards the convergence of the guarantee schemes with the Bankruptcy Act [*Faillissementswet*]. If the outcome gives cause to do so, this Decree will be amended. In connection with the small amount of time before the Act comes into effect on 1 January 2007, these amendments will be included in a separate amending order.

The section below entitled “Developments after consultation” examines the amendments already implemented in the scheme, partly as a result of the experiences gained in connection with Van der Hoop.

DNB also drew attention to the categories of persons excluded from the investor-compensation scheme. In DNB's opinion, such exclusions were too wide-ranging in some respects, for example as regards family members twice removed. Nivra also pointed out that excluding family members once and twice removed is unworkable in practice. In addition, Nivra wondered why persons that are charged with the statutory audit of the annual accounts of a financial undertaking that is unable to pay (accountants) were excluded from the cover provided by the investor-compensation scheme and the deposit-guarantee scheme. Following the comments made by DNB and Nivra, the exclusion of family members twice removed was deleted, as was the exclusion of the accountants. As far as the accountants are concerned, the existence of a guarantee scheme does not detract from the accountant's task of auditing the annual accounts in an independent fashion and in accordance with objective criteria.

The AFM pointed out that the scope of the investor-compensation scheme in Section 8 (Section 9 of the draft Decree) was too limited. Apart from investment firms that have a licence as referred to in Section 2:96 of the Act, management companies of undertakings for collective investment in transferable securities (UCITS) that have a licence as referred to in Section 2:65(1), opening words and (a) of the Act should also be covered by the scheme, in so far as the management of individual capital is concerned. Since the Act on the Supervision of Collective Investment Schemes [*Wet toezicht beleggingsinstellingen*] (Wtb) as amended on 15 September 2005 and as a result of the Collective Investment Schemes Directive as amended in 2001, a management company of UCITS (European passport holder) has been permitted to manage not only collective investment schemes, but also individual capital (see also Section 4:59(2) of the Act). A separate licence is not required under the Wte 1995 for the management of individual capital, whereas the material requirements of the Wte 1995 for individual capital management are applicable to these services. The Act continues a number of items and the exception to the obligation for management companies to possess a licence is included in Section 2:97(3), in conjunction with Section 2:65 of the Act. This amendment has not been implemented in the BCR and will be incorporated into this Decree. Management companies of UCITS are still accommodated under the investor-compensation scheme, but only in so far as they manage individual capital.

The NVB and Dufas wondered why professional investors were excluded from the investor-compensation scheme while professional market parties were not, despite it being a safety net for non-professional parties. The NVB also wondered why these parties were not also excluded from the deposit-guarantee scheme. In most cases, the terms ‘professional investor’ and ‘professional market party’ will overlap. This is not always the case, however. Dufas rightly points out that small pension funds and insurers are not professional investors in the system used in the Act, although they are professional market parties. In the draft Decree, small pension funds that have an invested capital of less than €25 million were able to submit a claim against the investor-compensation scheme because the exception for “pension funds” in the BCR had been replaced with “professional investor”. Including professional market parties in Annex A in addition to professional investors brings the regulations into line with the cover as applies under the BCR. In addition, the exception in the draft Decree for the State of the Netherlands, provincial authorities, municipal authorities, other decentralised legal persons under public law and foreign states can be scrapped

because these bodies are covered by the definition of 'professional market party'. Annex B contains a comparable list of exceptions to the deposit-guarantee scheme. In the draft Decree, banks, collective investment schemes, pension funds, insurance companies and government bodies are referred to individually. These terms are going to be replaced by the umbrella terms of "professional investors" and "professional market parties" in accordance with the point of departure that only non-professional parties need protection and to bring the regulations in this Decree more into line with the system used in the Act.

The NVB was of the opinion that an assessment needed to be made regarding the extent to which the use of the terms from the Act leads to an increase or decrease in the number of persons eligible for compensation and what the potential financial consequences are for financial undertakings' obligation to contribute. Within the framework of this Decree, no cause has been found for a fundamental review of the cover provided by the guarantee schemes. However, this does not detract from the fact that, as a consequence of the amendment of the guarantee schemes in accordance with the Act, and in particular the definitions, certain features of the cover may have been changed. This applies to a very limited extent to persons that have been excluded from protection under the guarantee schemes. In Annexes A and B, insurers, pension funds and public bodies, for example, are referred to separately under the BCR and CGR. These bodies are now covered by the definitions of 'professional investor' or 'professional market parties'. The scope of the terms 'professional investor' and 'professional market party' is broader than the sum of the separate parts that they replace. For example, an order in council can designate certain persons as a professional market party and therefore exclude them from the cover. However, this restriction is limited and is in line with the aim of the guarantee scheme, namely to offer protection to non-professional parties. For the rest, the amendment of the BCR and the CGR in accordance with the definitions of the Act has no consequences. The definition of 'deposit' remains unchanged and the definition of 'investment firm' replaces the definition of 'securities institution' on a one-to-one basis. The definition of 'financial instrument' in the Act is largely in line with the definition of 'security' in the Wte 1995.

The NVB had its doubts as to whether the term 'group' in Section 11(3), Section 13(4) and Section 21(3) (12(3), 14(3) and 23(3) of the draft Decree) was the same as the definition of 'group' in the Dutch Civil Code. This was indeed not the case. The term 'group' as used in this Decree is broader than the definition in the Dutch Civil Code. A definition of 'group' was included in the Decree by way of clarification. The definition in the Decree is in line with the description of the term 'group' in Sections 3:16 and 3:88 of the Act. Details can be found under the explanatory notes to these sections. However, in the annexes under A5 and B6 references are made to the definition of the term 'group' as referred to in Section 24a of Book 2 of the Dutch Civil Code.

The NVB and Dufas pointed out that Section 1:28 of the Act refers to "official representatives" whilst the Decree refers to "representative organisations designated by ministerial regulation". They wondered whether the difference was intentional. This was not the case. The text in the Decree is in line with the Act. Moreover, it is not necessary to designate official representatives by ministerial regulation. The official representatives will generally be the representatives of the financial undertakings covered by the investor-compensation scheme or the deposit-guarantee scheme. These are sufficiently well known.

According to the NVB, the maximum contribution of five percent of own funds, as referred to in Section 17(2), (18(2) in the draft Decree) is too high and a maximum of one percent would be sufficient. The NVB pointed out that the scope of the investor-compensation fund will be sufficient to compensate the majority of the victims. Although this is indeed the expectation, there must always be a guarantee that, even in exceptional cases, investors can still be compensated if the costs of the scheme exceed the capacity of the fund. Taking everything into consideration, I have decided to lower the maximum contribution for investment firms that are not banks to three percent of their own funds. The maximum contribution under Section 17(1), (18(1) in the draft Decree) (investor-compensation scheme for banks-investment firms) and Section 23(1), (25(1) in the draft Decree) (deposit-guarantee scheme) remains five percent because no claim is possible on the investor-compensation fund for the first payout as regards the financing of compensation payouts under the investor-compensation scheme for banks and the deposit-guarantee scheme.

As regards Section 17(3), (18(3) in the draft Decree), the NVB asked on what grounds DNB can determine a lower percentage for the contribution by a financial undertaking to the investor-compensation scheme and in the case of what solvency and liquidity position this possibility applies. A maximum contribution must prevent the obligation to contribute to the guarantee schemes from causing difficulties for other financial undertakings. It may be the case, however, that even the maximum contribution is too heavy a burden on a financial undertaking. In that case, DNB has the option of lowering the contribution for the financial undertaking concerned. DNB will be able to do so, in the first instance, if the financial undertaking is in danger of running into liquidity problems. The requirements imposed under Section 3:63 of the Act vis-à-vis the minimum extent and the composition of the liquidity position can be used as a basis for a decision in such cases. In addition, DNB will be able to lower the contribution if the solvency of the financial undertaking approaches the statutory minimum under Section 3:57 of the Act. The above also applies to Section 23(2), (25(2) in the draft Decree), which regulates the maximum contribution within the framework of the deposit-guarantee scheme and is identical to Section 17(3) (18(3) in the draft Decree).

The NVB and Dufas asked how the applicant must prove the correctness of the details that the applicant provides. In line with the system used in the Act, for example in the case of the licence application, the applicant is required to demonstrate that it has a claim that is eligible for compensation. It is also up to the applicant to demonstrate that the details that it submits in that context are correct. Depending on the financial undertaking, there may be many thousands of victims that claim against the guarantee scheme.

The NVB and Dufas asked what the criteria are for determining whether persons in part cause, or have benefited from, the financial undertaking's inability to pay. The Decree does not apply any independent criteria in this respect. The description of 'partial causer' may apply, for example, if the director is liable within the meaning of the Dutch Civil Code. As regards determining whether persons have benefited from the financial undertakings' inability to pay, the *actio pauliana* may provide a number of starting points.

Dufas wondered how decisions are taken after consultation with official representatives. The REB and Euronext would like to have seen “after consultation” changed to “in consultation”. DNB consults banks and investment firms about various issues relating to the investor-compensation and deposit-guarantee schemes. Under the Directives, DNB must, in principle, be able to proceed with payouts within three months of it being established that a financial undertaking is unable to pay. The schemes demand decisive action in this regard on the part of DNB as the implementing party. At the same time, there must still be a guarantee that the sector remains closely involved in the application of the schemes. It was in this light that the decision was taken to retain the words “after consultation”. These words express the fact that DNB has to consult the sector, but that DNB still has the final word. It is desirable for a single body to be able to take a decision in any impasse. This avoids delays when implementing the schemes.

A joint response by the REB and Euronext reflected their pleasure at the promised investigation into the criteria for determining the target equity of the investor-compensation fund. In said response they refer to a number of factors that, in their opinion, need to be taken into account when determining the target equity. These factors will be included in the investigation wherever possible.

Various comments by the REB and Euronext related to the way in which the investor-compensation scheme is financed.

In the first instance, they pointed out the fact that it is not in accordance with the objective of the Act, namely cross-sectoral harmonisation, to use different financing methods for the investor-compensation scheme and the deposit-guarantee scheme. They advocated the introduction of ex-post financing for the investor-compensation scheme. When the BCR was set up, the decision was taken to create a fund because of the smaller investment firms that operate on the market. A fund ensures that DNB can reimburse investors in the short term.

The REB and Euronext were also of the opinion that the minimum annual contribution to the fund of €750,000 was too high. The minimum amount that has to be contributed to the fund each year is linked to the fund's target equity and the aim to fill the fund within the foreseeable future. If a decision is taken to adapt the target equity, an assessment will also be made as to the extent to which the annual contribution has to be adjusted.

The REB and Euronext also argued that investment firms that only provide services to professional parties should be excluded from participation in the investor-compensation scheme. This too ought to affect the level of the fund's target equity. The contribution to the fund consists of a fixed amount that is the same for all investment firms and a variable amount that depends on the number of clients of an investment firm who are protected by the scheme. Investment firms that only have professional clients are only required to pay the fixed contribution. The points referred to above regarding the financing of the investor-compensation scheme will be included wherever possible in the investigation into the criteria for determining the target equity.

The REB and Euronext also wondered whether the Decree deliberately did not distinguish between investment firms and collective investment schemes. Investment firms are defined in the Act as parties that provide an investment service.

The investor-compensation scheme applies to investment firms that have a licence under Section 2:96 of the Act, banks with a licence under Section 2:11 and financial institutions with a declaration as referred to in Section 3:110 of the Act to whom investment services may be provided, as well as management companies of UCITS under Section 2:65 of the Act in so far as the management of individual capital is concerned. Only financial undertakings with one of the licences referred to above are allowed to provide investment services. Investment funds do not provide investment services as defined in the Act and are therefore not investment firms within the meaning of the Act.

The REB and Euronext commented with regard to Section 15(2) (16(2) in the draft Decree) that an advance of 90 percent is too high in the event that DNB and official representatives do not reach agreement regarding the apportionment. A more acceptable percentage would be 50 percent. I share the opinion of the REB and Euronext that an advance of 90 percent is high. I have reduced it to 70 percent. This guarantees that DNB can compensate the majority of claims in a timely fashion without the financial undertakings being disproportionately affected. This Section has been edited accordingly. The draft Decree referred to the setting of an advance as long as DNB and the official representatives were unable to reach an agreement. However, the point of departure of this Decree is that DNB takes decisions after consultation with the representative organisations. Although the aim should be to reach agreement, this is not essential. The Decree now states that DNB can set a provisional advance if DNB has not yet engaged in any consultation in this regard with the official representatives. This change also applies to Sections 12(2), 14(3) and 22(2) (13(3), 15(3) and 22(2) in the draft Decree), which contain an identical provision.

The REB and Euronext were also of the opinion that DNB may only increase the total annual contribution in consultation with the official representatives. Following the comment by the REB and Euronext, the Decree was amended as regards this point. As far as the debate about "in consultation" and "after consultation" is concerned, please refer to the comments already made on this question.

As regards Section 17 (18 in the draft Decree), the REB and Euronext asked why a lower contribution could be set for banks, if the solvency or liquidity positions give cause to do so, but not for investment firms. This omission has been rectified. DNB can set a lower contribution for investment firms as well, if the solvency position gives cause to do so. Lowering the contribution on the basis of the liquidity position is not an issue in the case of investment firms because there is no supervision thereof.

The Association of Insurers highlighted the details that must be submitted in the case of a portfolio transfer under Section 2 of the draft Decree. In the Association's opinion, the provisions of Section 2 of the draft Decree deviated from the situation in practice. In consultation with the Association and DNB, Section 2 of the Decree has been amended. The point of departure was that the Decree does not require more details to be submitted than is currently the case in practice.

Besides the comments discussed, various organisations also provided editorial feedback. This feedback resulted in amendments and clarifications in the Decree and the explanatory memorandum.

#### *Developments after consultation*

During the General Consultation with the Standing Committee on Financial Affairs of the Lower House regarding the liquidation of Van der Hoop Bankiers (Parliamentary Papers II 2005/06, 30 300 IXB, no. 29), the question was asked as to whether the compensation that account holders receive based on the deposit-guarantee scheme should be increased, partly in the light of higher compensation compensations in a number of other Member States of the European Union. In the fifth detailed report on the bill, the question was asked as to whether, given the increase in savings deposits, the government is prepared to increase this amount to, for example, €40,000 (Parliamentary Papers II 2005/06, 29 708, no. 28).

In a letter dated 21 March 2006 (Parliamentary Papers II, 2005/06, 30 300 IXB, no. 30) I informed the Lower House that the maximum compensation under the deposit-guarantee scheme would be increased from €20,000 to €40,000 and that this increase would be combined with the introduction of an own risk to increase the risk awareness of deposit holders and banks. An own risk is intended to limit, as much as possible, undesirable and erratic high-risk behaviour prompted by the existence of a guarantee scheme, which is known as the "moral hazard". The Directive on Deposit-Guarantee Schemes allows Member States to introduce a maximum own risk of ten percent on €22,222. A higher percentage may be applied above that amount.

The NVB is divided regarding how an own risk should be structured and has submitted two options to me. The first option is to deduct a fixed own risk of ten percent from the gross maximum guarantee amount of €40,000. The medium-sized and large banks are particular supporters of this option. The major argument in favour of this option is that it restricts the undesirable high-risk behaviour of all savers, including the small ones. The second option involves including a multi-stage own risk with a risk-free threshold up to €20,000 and an own risk of, for example, 20 percent over the amount from €20,000 to €40,000. The small banks prefer this option. They believe that a situation has to be avoided that is worse for small savers than the situation under the CGR. Given the point of departure with regard to limiting undesirable high-risk behaviour, the draft Decree did not include a risk-free threshold. In a motion put forward by Heemskerk et al (Lower House, session 2005/06, 29 708, no. 59) the Lower House also asked for the own risk within the deposit-guarantee scheme to be cancelled as regards the first €20,000. Therefore, claims under the deposit-guarantee scheme up to €20,000 will be paid in full, and 90 percent of the rest of the claims will be paid from €20,000 to €40,000. As a result, the guarantee for small savers continues to be 100 percent, and nothing changes as far as they are concerned compared to the situation under the CGR. Nevertheless, retaining an own risk of ten percent in the draft decree for amounts between €20,000 and €40,000 introduces an incentive for larger savers by which high-risk behaviour is discouraged as much as possible.

For the record, I wish to point out that the own risk relates exclusively to the deposit-guarantee scheme and not to any compensation from the assets. Account holders may submit their entire claim, minus the payout from the guarantee scheme, to the receiver. Therefore, the amount that is deducted from the payout as own risk may be recovered from the assets.

This can be clarified by an example. An account holder with a deposit of € 10,000 (which falls entirely in the risk-free part) receives € 10,000 compensation from the guarantee scheme. Then the account holder no longer has a claim on the assets. An account holder with a balance of € 100,000 receives € 20,000 (risk-free) plus € 18,000 (€ 20,000 minus own risk of ten percent of € 2,000) from the guarantee scheme: which is a total of € 38,000. The account holder then still has a claim on the assets of € 62,000 (the account holder's claim of € 100,000 minus the € 38,000 received from the guarantee scheme).

## **Notes on individual sections**

### *Section 1*

The Decree was drawn up using the definitions in the Act with as few new definitions as possible. Please refer to the Act for definitions of terms such as "deposit", "the provision of investment services", "investment firm" and "professional investor". Explanations of terms from the Dutch Civil Code, such as "annual accounts", can be found in the Dutch Civil Code and the Explanatory Memorandum to this document. The definition of a group of banks or financial undertakings is new compared to the draft Decree. The term "group", as used in this Decree, is broader than the definition in the Dutch Civil Code. This is in line with the description of the term "group" in Sections 3:16 and 3:88 of the Act. Please refer to the notes to these sections for further details. However, in the annexes under A5 and B6 references are made to the definition of the term "group" as referred to in Section 24a of Book 2 of the Dutch Civil Code.

### *Section 2*

This provision implements Section 3:116 of the Act and has been taken over from Sections 122(1) and 130(1) of the Wtv 1993 and Section 53(1) of the Wtn. In the case of the Wtv 1993 and the Wtn there was an openly formulated requirement for the submission of documents together with the application for permission: "all clarifying documents". In practice this meant that the details now stated under (a) to (g) already had to be submitted for the assessment of an application for permission to transfer a portfolio. Based on the reference in the Act (Section 3:115(1) of the Act), this provision applies *mutatis mutandis* to transfers as part of mergers and divisions. Under Section 4:2 of the General Administrative Law Act [*Algemene wet bestuursrecht*] DNB can demand additional details, if such is required for a proper assessment of the transfer.

### *Section 3*

This provision implements Section 3:132(2) of the Act and has been taken over from Section 137a(3) and (4) of the Wtv 1993. The Section indicates the details that the restoration plan must contain. It must be clear how and by what deadline the insurer believes it is going to end the circumstances that were the reason for requesting a restoration plan. A new feature compared to the Wtv is that DNB may demand additional details, if such is necessary for a proper assessment of the restoration plan.

#### *Section 4*

This provision implements Section 3:136(3) of the Act and has been taken over from Section 138 of the Wtv 1993 and Section 57 of the Wtn. The Section requires that the recovery plan and the financing scheme state how and by what deadline the solvency margin will be brought back to the required level. These details are needed in order to be able to determine whether the recovery plan and the financing scheme can actually achieve this aim.

#### *Sections 5–7*

These sections implement Section 3:156(10) of the Act and have been taken over from Sections 147j and 147k of the Wtv 1993. Section 5(1) requires that the support institution publish a notification announcing the obligatory portfolio transfer. These publications require the approval of DNB. Besides the prescribed publication in the Government Gazette, a further notification is also required for the policyholders. Subsection (1) provides in this regard that DNB must indicate how the further notification must be given. One way would be an announcement in three national daily newspapers.

The term “insurance companies concerned” in Subsection (2) should be understood to mean the insurance company that is in difficulties and the support institution (because the latter actually performs the insurance tasks).

Pursuant to Subsection (3), DNB informs supervisory authorities regarding the realisation of the portfolio transfer.

Section 6(1) states that insurance companies pay the assessment amount imposed by DNB to the support institution. Subsection (2) provides the possibility to pay the assessment amount (in part) to another party.

Pursuant to Sections 3:149(1) and 3:159 of the Act, the support instrument applies to life insurance companies that are domiciled in the Netherlands and those that are domiciled in a state that is not a Member State. However, an exception applies to life insurance companies that are domiciled in a state that is not a Member State and to which a dispensation has been granted as referred to in Section 3:60 of the Act. The dispensation means that the solvency margin of that insurance company is no longer supervised by DNB.

The support instrument applies exclusively to life insurance companies for which DNB is authorised to audit the solvency position and is therefore able to take action before things go wrong. DNB is not authorised to act in this way in the case of life insurance companies that are domiciled in a different Member State, which means that the support instrument does not apply to these life insurance companies.

#### *Section 8*

This Section has been taken over from Section 1(5) of the BCR and Section 1(7) of the CGR and indicates which financial undertakings are covered by the investor-compensation scheme.

Under the BCR, the investor-compensation scheme was regulated in an agreement between the supervisory authorities and official representatives from market parties, which agreement was declared universally binding. The Minister of Finance was able to designate financial undertakings to take part in the investor-compensation scheme. The enterprises were then obliged to do so. The non-fulfilment of the obligations on account of the BCR or the CGR could be a reason for withdrawing a licence to provide investment services. Under the new statutory framework, the Minister of Finance no longer has to designate financial undertakings.



If they belong to one of the categories referred to in Section 8, they are automatically obliged to take part in the investor-compensation scheme. What has remained unchanged is that if they do not fulfil their obligations, for example their obligation to contribute, DNB can take enforcement measures under the General part of the Act. See Sections 1:79 and 1:80 of the Act and the related Annexes, for example.

The investor-compensation scheme applies to all financial undertakings that have been allowed to provide investment services. In the first instance, these are the investment firms that have a licence as referred to in Section 2:96 of the Act. In this context it should be noted that investment firms are defined substantively in Section 1:1 of the Act based on the services that they offer. If a financial undertaking offers one of the investment services referred to in the definition of an investment firm, it is then automatically an investment firm. The definition of "investment firm" is not related to the kind of licence granted. Including the licence under Section 2:96 of the Act as a condition for the applicability of the investor-compensation scheme prevents investment firms without a licence from falling under the investor-compensation scheme. In addition, the investor-compensation scheme applies to management companies of undertakings for collective investment in transferable securities (UCITS), in so far as this concerns the management of individual capital under Section 2:65(1), opening words and (a) of the Act. The investor-compensation scheme also applies to banks that are allowed to provide investment services. These are the banks that have a licence as referred to in Section 2:11 of the Act. Due to the fact that the term "investment firm" is substantively defined, these banks also fall, strictly speaking, under the definition of an investment firm. The licensing condition prevents banks that are not allowed to provide investment services from also falling under the investor-compensation scheme. Lastly, the investor-compensation scheme applies to the financial institutions that have a declaration of supervised status as referred to in Section 3:110 of the Act and that are allowed to provide investment services. The same comments apply to these financial institutions as were made in relation to the banks.

Therefore the investor-compensation scheme now covers banks as well. As stated in the general part of the Explanatory Memorandum, banks did not previously fall under the BCR, but instead under the CGR. However, they are subject to a different financing regime as regards the contribution that they make to this scheme, as explained in more detail below. For the sake of clarity, it should be noted that the term "banks" also covers central credit institutions and the banks affiliated to them. In practice, this currently covers only the Rabobank.

Branches of the investment firms in a different Member State are also covered by the Decree. Because these offices are not independent legal entities and are part of the financial undertakings referred to in Subsection (1), it is not necessary to include them separately.

Subsection (1)(d) and (e) refers to the financial undertakings in so far as they are branches of financial undertakings that are domiciled in a different Member State or are domiciled in a state that is not a Member State as referred to in Sections 3:266 or 3:267 of the Act. These financial undertakings also fall under the investor-compensation scheme in so far as they have chosen supplementary cover.

For the sake of clarity it should be noted here that the only claims that can be paid out are those that have their basis in a legal relationship that is regarded as being an aspect of the business – conducted in or from the Netherlands – of the branch in question that is unable to pay. This is expressed by the addition of “in so far as concerns the business that they conduct from the Netherlands”. Otherwise, this could lead to confusion about the scope of the cover, given that, from a legal point of view, a branch and the headquarters (and any other branches) are all part of a single legal entity. Irrespective of whether the branch has opted for supplementary cover, the Decree does not cover claims vis-à-vis the head office. Those claims have to be dealt with on the basis of the investor-compensation scheme of the state in which the head office is registered. The 3:267 regime does not apply to financial institutions as referred to in Section 3:110 of the Act. The rationale behind the existence of financial institutions is laid down in the Banking Directive. No financial institutions exist outside the European Union within the meaning of the Directive. Neither are there any financial institutions in the Netherlands at the moment.

Subsection (2) excludes enterprises that provide investment services purely for their own account, by virtue of which they are not involved in transactions for third parties. The Directive on the investor-compensation scheme does not make it obligatory for an investor-compensation scheme to apply to this group of financial undertakings. The amendment of the BCR in 2003 as a result of the judgement of the Trade and Industry Appeals Tribunal [*College van Beroep voor het bedrijfsleven*] of 31 June 2001 (LJN: AB3178) also excluded this group under the BCR.

#### *Section 9*

This Section is in line with Section 3:260(2) of the Act, which determines when a financial undertaking has to be designated as unable to pay. The scheme's safety net will apply as soon as DNB announces the decision to designate a financial undertaking as unable to pay. This Section also determines which claims from which persons are eligible for compensation. For the record it should be noted that, in the Act, a person is taken to mean both a natural person and a legal person.

Annex A to the Decree contains a list of categories of persons whose claims are not eligible for compensation under the guarantee scheme. These persons are primarily “insiders”, professional investors and professional market parties and larger enterprises. The contents of the list are quite closely in line with the permitted or obligatory exceptions referred to in the Directives and the related Annexes. Section 10(c) states that claims from collective investment schemes are not covered by the guarantee scheme either.

#### *Section 10*

This Section has been taken over from Section 4 of the BCR and Section 5(1) of the CGR. It specifies which claims are eligible for compensation. The key is that the claims have to be linked to the provision of investment services. Claims related to services other than investment services are not eligible for compensation. See, for example, the judgement of the Trade and Industry Appeals Tribunal [*College van Beroep voor het bedrijfsleven*] dated 19 April 2005 (LJN number: AT6460). The Tribunal considered that, when the inability to pay arose, cash was no longer being held for investors in connection with investment activities, and that only a claim for compensation due to investment losses could be upheld.

Such a claim is not paid under the investor-compensation scheme.

#### *Sections 11-12*

Provided measures have been taken to ensure that the investor-compensation scheme can make compensations on time, the Directive does not impose any obligations on the scheme as regards the financing method. The Dutch investor-compensation scheme has two funding regimes: one for the banks that provide investment services and one for the other investment firms and financial institutions that provide investment services. The scheme for banks that provide investment services was previously regulated in the CGR, while the scheme for the investment firms was regulated in the BCR.

Sections 11 and 12 specify the financing of the investor-compensation scheme for banks. The costs of compensating victims in the event that a bank-investment firm is unable to pay are borne by the other bank-investment firms. The other investment firms do not play a role in this process. In the event of a claim being made against the scheme for bank-investment firms, DNB pays out the compensation, after which DNB apportions the total amount of compensation amongst the other bank-investment firms. From the moment at which DNB establishes inability to pay, the banks have an obligation to contribute to DNB.

Because the scheme is intended to allow DNB to make rapid compensation compensations, Section 11(6) states that DNB can charge the compensation amounts to the bank-investment firms on a monthly basis. The level of the compensation obligation is set on the basis of an apportionment percentage. This apportionment percentage is determined pursuant to Section 12 on the basis of the consolidated prudential balance sheets of the banks, in the version applicable prior to the moment when DNB establishes inability to pay. Consultations may be held with official representatives when determining this apportionment percentage.

Section 11(4) makes it possible for a central credit institution to pay a single contribution for all the credit institutions affiliated to it. In practice, this applies primarily to Rabobank Nederland and the affiliated Rabobank offices and subsidiaries. They are all considered one single financial undertaking as far as the apportionment system of the deposit-guarantee scheme is concerned. Under the CGR, a special regime referred to as the "Rabobank regime" applied to central credit institutions, as regards both the deposit-guarantee scheme and the investor-compensation scheme. This regime has not been changed and amounts to the following. Each affiliated Rabobank needs a separate (banking) licence. The investor-compensation scheme or the deposit-guarantee scheme must then provide cover for each Rabobank. This follows from the Directives. Under the CGR scheme, Rabobank Nederland, the affiliated Rabobanks and the subsidiaries of Rabobank Nederland were regarded as a single institution for the financing of the investor-compensation scheme or the deposit-guarantee scheme. Given that each affiliated Rabobank has a separate banking licence and provides investment services, the scheme has to provide cover for the clients of each Rabobank. Similarly, the Directives on deposit-guarantee schemes and investor-compensation schemes do not provide for the possibility of declaring in advance that the individual Rabobanks will be able to fulfil their obligations as long as the group is able to do so.

The simple fact that the cross-guarantee scheme applies between the central credit institution and the affiliated institutions, as was required under Section 12 of the Wtk 1992, is namely insufficient to be able to determine that the affiliated institutions cannot get into difficulties. That requires that the group also actually fulfils its obligations in this matter and provides the affiliated credit institution that has run into difficulties with sufficient liquidity. As long as the mutual contractual obligations that were referred to are indeed fulfilled, it goes without saying that an affiliated Rabobank will not end up in a situation in which the guarantee schemes have to be applied. Given that the Directives do not prescribe anything for the financing of the guarantee schemes, the Rabobank exception can be upheld without prejudicing the other banks. This means that the central credit institution pays a single contribution for all individual Rabobanks.

#### *Sections 13-15*

These Sections specify the financing of the compensation scheme for investment firms that are not also banks. As when the BCR was drawn up, the adopted point of departure here is that claims from investors up to an amount of € 22.6 million are borne by these investment firms. The financing of this amount is spread over two tranches. The first tranche consists of a fund to which investment firms that are domiciled in the Netherlands contribute, as do the branches of investment firms that are domiciled elsewhere that have opted for supplementary cover in the Netherlands. Such a fund is regarded as important with a view to the smaller financial capacity of some investment firms that participate in the scheme. This smaller capacity restricts the space for complete apportionment financing as in the compensation scheme for banks.

When the fund is depleted, an amount of up to € 11.3 million is apportioned to the investment firms that are not also banks. An apportionment percentage in proportion to the number of clients is applied for this amount, as referred to in Section 12(1)(b).

If this additional apportionment is insufficient to finance the compensation of the victims, the rest is apportioned to the entire branch of industry, that is, to all investment firms, including the bank-investment firms. This amount, as referred to in Section 12 (1)(c) is the third tranche in the financing of the compensation scheme.

On the one hand, this system of three tranches guarantees that, under normal circumstances, the investment firms themselves take on responsibility for financing the scheme and, on the other hand, that the banks also contribute to the compensation scheme for investment firms in exceptional circumstances, namely in the event that the costs resulting from the scheme exceed all the money brought together in the fund and the supplementary surcharge of € 11.3 million. This system is considered to be sufficient, leaving aside extreme circumstances, to fulfil the obligations resulting from the scheme.

The same points of departure are applied as regards determining the contributions to the third tranche as those that are used in the compensation scheme for the bank-investment firms: an apportionment percentage proportional to the consolidated prudential balance sheets. Contrary to what applies under the BCR, the apportionment percentage for the third tranche is not calculated per category of financial undertaking but per financial undertaking, whereby they contribute in proportion to their size.

In this process, financial undertakings that are independent subsidiaries and that are also included in the consolidated balance sheet of the parent company must not be counted twice, if they are also financial undertakings covered by the investor-compensation scheme. DNB determines the apportionment percentages after consultation with official representatives, if the said representatives require such consultation.

Given that it is responsible for further processing of the claims of the investors in question, DNB will try to ensure that the claims are paid during the liquidation proceedings. Any profit is distributed among the investment firms that have funded the payouts.

#### *Section 16*

Section 16, which has been taken over from Section 16 of the BCR, provides the legal basis for a fund in the compensation scheme for investment firms that are not banks. The fund is managed by a foundation established especially for that purpose, which is known as the Investor-Compensation Fund Foundation [*Stichting Beleggers Compensatiefonds*]. This foundation was established on 18 August 1999. Its operating procedure and the management of the fund are regulated in the foundation's articles. In order to ensure that the articles are in accordance with the Act and this Decree, Subsection (4) states that the articles may only be amended with the approval of the Minister of Finance.

The compensation fund has target equity of € 11.3 million. This target equity is the result of the negotiations that resulted in the BCR, which was originally an agreement between the branch of industry and the supervisory authorities, and it was not affected by the last amendment of the BCR in 2003. The amount of € 11.3 million is to continue to apply for the time being. The request by the REB and Euronext for clear criteria by which to set the target equity was the reason for having an investigation carried out into the possibility of establishing a criterion by which to determine the target equity. The size of the target equity, and possibly also the financing of the compensation scheme, will be assessed on the basis of the results of this investigation.

DNB determines the size of the allocation to the compensation fund. Official representatives will be consulted as part of that process. An important point of departure for DNB is to give the investment firms and financial institutions as much certainty as possible regarding the size of the regular levy. DNB will therefore notify the investment firms and financial institutions regarding which financing method it intends to use for the compensation fund. In addition, the investment firms and financial institutions will be informed in good time regarding the size of the allocation to the fund and the individual levy. This will allow them to make any necessary reservations.

It is against this background that no accumulation deadline has been included. Indeed, in the event of claims against the compensation fund, a fixed accumulation deadline can lead to an erratic and unpredictable pattern as regards the allocation and the individual levies. In view of the fact that it is desirable to make the accumulation of the compensation fund subject to certain limiting conditions, the Decree includes a statement to the effect that, as long as the target equity of the compensation fund has not been reached, the size of the annual allocation will, in any event, be € 750,000.

If this amount can only be realised by a dramatic increase in the contribution per institution, which increase was entirely unforeseen when determining the financing method, for example because a large number of financial undertakings, for whatever reason, no longer fall under the investor-compensation scheme, this may constitute a reason for DNB to reopen discussion of the financing of the compensation fund with the official representatives.

Subsection (8) states that, as regards an institution that joins the compensation scheme for investment firms that are not banks, DNB can determine, at a point in time after this Decree takes effect, that the financial undertaking concerned will contribute to the fund for a specific period and at a specific frequency to be determined at that time, whereby DNB will lay down the size of said contribution. The reason for this provision is that, otherwise, any financial undertaking that joins later would benefit from the accumulated fund without having contributed to it.

#### *Section 17*

The European Directives impose the requirement that the financial scheme must not be jeopardised due to the financing obligations relating to the compensations to be made. Section 17 implements this requirement in the Netherlands for investor-compensation schemes. Recovery within one calendar year of more money than the percentages indicated may be seriously detrimental to the financial scheme. The maximum recovery amount sets an annual ceiling for each individual financial undertaking and for the financial undertakings jointly. In so far as the contributions exceed the ceiling, DNB will advance the surplus free of charge. This postpones the obligation to contribute to the following year and possibly the year after that.

The annual ceiling as referred to in Subsection (1) concerns the combination of recovery by virtue of the investor-compensation scheme and by virtue of the deposit-guarantee scheme for the banks-investment firms. In the worst case scenario, if, in a single year, a bank goes into liquidation that provides investment services as an investment firm, there is a risk that the bank-investment firms will have to contribute three times: under the deposit-guarantee scheme, under the investor-compensation scheme in so far as the bank also provided investment services, and under the investor-compensation scheme for an investment firm under Section 13(1)(c).

As regards the maximum compensation, a distinction is made between the investor-compensation scheme for investment firms that are not banks on the one hand, and, on the other, the investor-compensation scheme for banks and the deposit-guarantee scheme. As regards the investor compensation scheme for investment firms that are not banks, the maximum is limited to three percent of the own funds of each investment firm and has therefore been reduced compared to the maximum that applied under the BCR. As far as the banks are concerned, the old maximum of five percent still applies for both the investor-compensation scheme as well as the deposit-guarantee scheme.

The maximum amount under the BCR and the CGR consisted of a double maximum. As well as the contribution of each individual financial undertaking being linked to a maximum, the contribution by the financial undertakings together was also restricted. This double maximum has been scrapped. The restriction on the maximum amounts for all financial undertakings together has been scrapped because it was superfluous.

As long as the individual investment firms and banks do not have to contribute more than three or five percent, respectively, of their own funds, the joint contribution per group will not exceed three or five percent, respectively, of their joint own funds.

Moreover, under the BCR, the maximum amount did not include the contribution by the investment firms to the compensation fund. In order to avoid a situation in which the contribution to the compensation scheme ends up being too high due to some other reason, it was decided to lower the contribution to the compensation fund to below the maximum amount.

#### *Section 18*

In the first instance, the deposit guarantee scheme covers banks that are domiciled in the Netherlands. In addition, as in the case of the investor-compensation scheme, the branches of banks that are domiciled in a Member State or banks that are domiciled in a state that is not a Member State can opt for (additional) participation in the deposit-guarantee scheme (which is referred to as “topping up”). DNB can even make this obligatory in the case of banks that are domiciled in a state that is not a Member State, under Section 3:267 of the Act, if the cover of the deposit-guarantee scheme applicable to them is not equal to the cover of the Dutch deposit-guarantee scheme.

#### *Section 19*

The structure of this Section is largely in line with Section 9. This Section regulates when and how the deposit-guarantee scheme comes into effect and which people can submit a request for compensation.

#### *Section 20*

The term “deposit” is defined in Section 1:1 of the Act. Claims relating to registered debt securities issued by banks are also covered. This includes registered bonds and medium-term notes. In view of Section 9, these bonds and medium-term notes might be covered twice by the scheme, if the issuing institution is also the financial undertaking that provides investment services for the client with regard to said securities. This has a favourable consequence for the client when the maximum compensation is determined. It goes without saying that only one compensation can be made for each (part of a) security, because there is no longer any damage by virtue of investments if the securities are paid out, and there is no damage by virtue of deposits if the securities are taken over when reimbursing the (partial) damage.

It is important that various categories of deposits have been excluded from the coverage. The excluded deposits, which are stated in Annex B, are primarily deposits of insiders, professional market parties and larger enterprises. The contents of the list are quite closely in line with the permitted or obligatory exceptions referred to in the Directive on deposit-guarantee schemes and in the related Annex. Only the permitted exceptions for claims by virtue of debt securities issued by the bank and claims by virtue of deposits in other currencies than those of the Member States or in euros have not been taken over. For the sake of clarity, it should be noted that deposits in foreign currency also fall under the term “deposit”. The Directive does not allow subordinated claims to be excluded from cover.

In so far as subordinated loans have been issued in a form that is not excluded on the grounds set out in the Annex, they are covered, providing they fall under the definition of “deposit”.

Finally, it should be pointed out that custodian companies do not fall under the deposit-guarantee scheme. If issued by a financial undertaking, guarantees pertaining to the obligations of custodian companies are not covered by the deposit-guarantee scheme in the event of non-performance on the part of the custodian company. A claim against a guarantee (after the date on which the scheme is declared applicable) is not regarded as a credit balance resulting from normal bank transactions. Moreover, a separate custodian company is also established for the clients to safeguard the securities held by the custodian company in the event of a group company going into liquidation. This is why a custodian company will usually not have any other obligations.

#### *Sections 21-22*

The way in which the contribution by the banks is determined within the framework of the deposit-guarantee scheme is identical to the funding method used within the framework of the investor-compensation scheme for bank-investment firms. For the sake of brevity here, please refer to the explanatory notes to Sections 11 and 12.

#### *Section 23*

See Section 17.

#### *Section 24*

This Section determines how DNB publicises the fact that it is applying the investor-compensation scheme or the deposit-guarantee scheme and the deadline by which requests for compensation can be made. Under Section 3:260(3) of the Act, DNB must announce this information in the Government Gazette. Doing so brings the Decree into effect. In addition in this regard, the Decree states that an announcement also has to be made in the form of advertisements in national newspapers.

The Directives indicate that a deadline may be imposed for the submission of the claims of deposit holders and investors. In accordance with the minimum deadline referred to in Article 9(1) of the Directive on investor-compensation schemes, this deadline has been set at five months after the official announcement of the guarantee scheme: the publication of the Government Gazette in which the advertisement is included. Most requests for compensation will presumably be received quite quickly thereafter. The provision that relates to the excusable reason for exceeding the deadline (Subsection (3)) is derived from a comparable regulation on notices of objection in Section 6:11 of the General Administrative Law Act [*Algemene wet bestuursrecht*]. Everyone who registers will, in practice, receive an application form that details, step-by-step, the formal aspects (assignment, acceptance of the subrogation) and the material aspects (which claim, on what basis). If these details and declarations are not issued on time, DNB will not be able to make a compensation.

#### *Section 25*

Section 25 regulates how, and based on which documents, DNB assesses the existence and the value of a claim submitted. This assessment is not made exclusively on the basis of the applicable statutory and contractual conditions and the accounts, but also using any other relevant documents.

In practice there proved to be a need for this provision because sometimes “other documents” exist that substantiate the claim, but these documents are not, strictly speaking, among the documents referred to, which means that they should not be taken into account according to the letter of the law.

#### Section 26

The point of departure as regards the compensation of the claim is that a claim in the form of financial instruments (within the framework of the investor-compensation scheme) is paid, if possible, by refunding the relevant kind of instruments. The (market) value of the financial instruments at the moment of notification of inability to pay will only be paid if a refund is not possible.

In the case of claims from investors, it will often be the case that the financial instruments that are not refunded are not held by the financial undertaking for administration or management purposes, but by a third party or in a separate securities deposit. This is the situation in which the institution has registered the financial instruments in the investor's name in a collective deposit as referred to in the Securities Giro Transactions Act [*Wet giraal effectenverkeer*] or has placed the financial instruments in the custody of a separate custodian company. In principle, the securities will then be returned to the investor, either because they are not part of the institution's assets (because they have been kept separate) or because they have been deposited with a different institution (custodian company). The receiver or third party will, in principle, return the securities to the investor, which means that the investor will then have no claim vis-à-vis the financial undertaking. However, there can be problems or delays. If there are, the investor might have a covered claim vis-à-vis the investor-compensation scheme in addition to any payable claim vis-à-vis a possible third party. The investor must then also cede this claim in the amount of the compensation, so that he cannot receive both the compensation and, ultimately, the securities.

The compensation from the investor-compensation scheme is subject to a ceiling of € 20,000 per financial undertaking that is unable to pay, per investor, irrespective of the number of claims as referred to in Section 10 and of the office of the financial undertaking that is unable to pay as referred to in Section 8(1), in the Netherlands or in another Member State, where the claims arose. The maximum compensation from the deposit-guarantee scheme is € 40,000, with an own risk of ten percent over the second € 20,000 (i.e. over the amount from € 20,000 to € 40,000), per financial undertaking that is unable to pay, per depositor, irrespective of the number of claims as referred to in Section 20 and of the office of the financial undertaking that is unable to pay as referred to in Section 18, in the Netherlands or in another Member State, where the claims arose. An explanation of the level of the compensation under the deposit-guarantee scheme and the own risk can be found in the comments made in this regard in the general part of this Explanatory Memorandum in the section entitled “Developments after consultation”. In both cases, there is only a difference if it has been contractually agreed that the persons are entitled to the claim on a different basis in relation to each other, for example if they have jointly instructed that certain investment activities must be carried out. For the sake of clarity, it should be noted that, for example in the case of an inability to pay on the part of a bank that provides investment services in addition to its banking services, a client of this bank will receive a maximum compensation of € 38,000 of his/her deposit and a maximum of € 20,000 in securities, giving a maximum total of € 58,000.

The Directive on deposit-guarantee schemes refers to an obligation on the part of the European Commission to assess the compensation amount at least every five years against the economic developments within the EU. This assessment obligation has not been included in the Directive on investor-compensation schemes. The European Commission is carrying out an evaluation and a review of the deposit-guarantee scheme. If the European Commission wanted to amend the minimum payout, it would have to follow the normal procedure for amending a Directive and submit a proposal to the Council of the European Union and the European Parliament.

Under Subsection (7), the Minister of Finance can amend the maximum amount. Under the BCR and the CGR, this power was assigned to DNB in view of the fact that these regulations were agreements between the supervisory authority and the official representatives of the investment firms and banks. Now that these regulations have been converted into this Decree, it is no longer DNB but the Minister of Finance who is able to amend the amounts stated in Subsection (4).

#### *Section 27*

According to the Directives, it must be possible to pay properly assessed claims from the investor-compensation scheme and the deposit-guarantee scheme no later than three months after DNB has established that a financial undertaking is unable to pay and has initiated a guarantee scheme. This has been taken over from Section 3:261(2) of the Act. When a compensation is actually made will depend on when the claim is submitted. If it is established that the claim is not valid or that incorrect details have been provided, no compensation will have to be made.

Deposit holders and investors must transfer their claims vis-à-vis the financial undertaking that is unable to pay to DNB as referred to in Section 150(d) of Book 6 of the Dutch Civil Code. This is required in order to ensure that DNB, with a view to protecting the interests of the investor-compensation scheme and the deposit-guarantee scheme, acquires the rights of the applicant in so far as the applicant is reimbursed under one of the schemes. The scheme resulting from the Directives only means that applicants are entitled to (partial) compensation of their claim. It does not entail any additional benefit (for example double compensation).

#### *Section 28*

No compensation needs to be made if the applicant is the subject of criminal proceedings in relation to a crime that results from, or relates to, money laundering. Under the provisions laid down in the annexes, these persons can be excluded from the scheme (A1 and B2). This possibility has been taken over from the Directive on deposit-guarantee schemes and the Directive on investor-compensation schemes. The suspension is terminated as soon as the criminal proceedings have ended or the decision of the competent court is irrevocable.

For the record, it should be pointed out that if it is established, after the claim has been paid, that the claim is not covered or is fraudulent, the amount will be reclaimed from the recipient on account of undue compensation under the Dutch Civil Code.

This claim is subject to the normal limitation periods as stated in the Dutch Civil Code.

#### *Section 29*

This provision has been taken over from Section 15 of both the BCR and the CGR. Wherever possible, DNB will try to recoup the claims ceded to it from the assets of the financial undertaking that is unable to pay. In doing so it has the same standing as the deposit holder or investor had, from which it has taken over the claim. Any resulting revenue is then distributed amongst the financial undertakings that, under Sections 11, 13 or 21, should have contributed to the compensations made. The same apportionment percentage will be applied in this distribution as was previously used to determine the contribution for each financial undertaking.

#### *Section 30*

Among other things, the amendment of the BCR in 2003 limited the scope of the scheme, partly as a consequence of the judgement of the Trade and Industry Appeals Tribunal [*College van Beroep voor het bedrijfsleven*] of **31 June 2001** (LJN: AB3178). As a result, a number of parties, referred to as 'market makers', were no longer covered by the investor compensation scheme and the same applied to their contribution to the compensation fund. The AFM had promised these institutions that they would be refunded the contribution already paid. DNB took over responsibility for this promise. These various developments led not only to a reduction in the number of parties shouldering the financial burdens, but also to a fall in the equity of the compensation fund. In order to limit the detrimental effects of this amendment for the apportionment amongst all financial undertakings involved in the BCR, DNB made an interest-free advance available for compensations from the compensation fund. This facility applies until 31 December 2008. If the compensation fund is exhausted at any time before 31 December 2008, a claim can be made first on the interest-free advance before the apportionment in accordance with Section 14(1) (b) and (c) is implemented. The interest-free advance corresponds to the sum of the amounts that are repaid to the parties that no longer participate in the scheme, on the understanding that this advance amounts in total to no more than € 1 million. A claim can be made against this facility until the interest-free advance has been used up. Recompensation of an amount advanced in this way starts at the end of the period in which the interest-free advance can be used (i.e. after 31 December 2008). In order to avoid a situation in which a recompensation would have a serious detrimental effect on the financial system, the recompensation must be structured in line with the guarantee given in Section 18.

#### *Section 31*

The content of Section 31, which used to be included in Section 13(6) of the Wte 1995, implements Sections 17(7) of Directive no. 93/22/EEC of the Council of the European Communities of 10 May 1993 on investment services in the securities field (OJEC L 141) and 6bis (7) of Directive no. 85/611/EEC of the European Parliament and the Council of the European Communities of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJEC L 375), in so far as concerns individual portfolio management by management companies of undertakings for collective investment in transferable securities. Under the Wte 1995, the Minister informed the other Member States about amendments to the investor-compensation scheme.

However, the Minister had delegated this task to the AFM, which was originally charged with the implementation of the investor-compensation scheme. Under this Decree, DNB is the implementing body of both the deposit-guarantee scheme and the investor-compensation scheme. It is therefore logical that it should be DNB that informs other Member States about amendments to the investor-compensation scheme.

#### *Section 32*

Under the BCR and the CGR, the Minister of Finance had designated DNB as the implementing body of the investor-compensation scheme and the deposit-guarantee scheme. That decision lapsed when the Act and this Decree came into effect. This Decree forms the basis for the implementation of the schemes by DNB.

#### *Section 33*

With a view to the complexity of the Act and the regulations based thereupon, it was decided, as in the case of other Decrees based on the Act, to have this Decree take effect in a differentiated manner. Given that this Decree is part of a complex system of regulations, it may well be necessary to have certain Sections take effect at different times.

#### *Annexes A and B*

Annex A, which has been taken over from the BCR, contains a list of the categories of investors that are excluded partly under the Directive on investor-compensation schemes. The CGR contained an identical annex, which excluded certain persons from submitting a request for compensation within the framework of the investor-compensation scheme. Because the section in the Decree relating to the investor-compensation scheme applies both to investment firms and banks that provide investment services, a single annex that excludes certain groups of investors from submitting a request for compensation is sufficient.

Annex B contains a list of the claims from certain deposit holders and the claims relating to certain deposits that are excluded from the scheme partly under the Directive on deposit-guarantee schemes.

A number of items in the annexes are explained in more detail below.

A2: Professional investors and professional market parties are excluded. This is in line with the definition of professional investors and professional market parties in the Act. Certain persons may be excluded under the European Directives. The BCR and the CGR referred to professional and institutional investors and named various institutions. These are now all covered by the definitions of professional investors and professional market parties.

B1: The reference to Directive no. 89/299/EC of the Council of the European Communities of 17 April 1989 comes from the Directive on deposit-guarantee schemes. However, Directive 89/299/EC has been withdrawn and replaced by the Banking Directive. This means that the definition of "own funds" in Section 2 of Directive 89/299/EEC has not been taken over.

With a view to retaining nevertheless the material definition of own funds from Directive 89/299/EEC, the reference to the – now withdrawn – Directive 89/299/EEC remains. For the definition of “own funds” as referred to under B2, the text of the withdrawn Directive is therefore decisive, in the version that applied at the time of amendment by Directive no. 92/16/EEC of the Council of the European Communities of 21 March 1992 on the credit institution’s own funds.

A3 and B4: These sections should exclude (any appearance of) undue preference and/or conflict of interests. As pointed out above in the discussion of the recommendations received, the accountant is no longer excluded from the guarantee schemes.

A4 and B5: Family members twice removed used to be excluded from cover under the guarantee schemes. On the basis of the recommendations received, it was decided to limit the exclusion to family members once removed.

A5 and B6: Although the Directive does not prescribe it, Section 24b of Book 2 of the Dutch Civil Code is used as a basis for defining the term “group”.

B9: This means bills of exchange and order notes, for example.

A7 and B10: This item refers to the deposits of medium/large enterprises. In contrast, claims relating to deposits of (small) enterprises that are allowed to submit an abridged balance sheet do fall under the cover. An enterprise may submit an abridged balance sheet if it fulfils two of the following three criteria: a balance sheet total of €2.5 million or less, a net turnover of €5 million or less, an average number of employees of 50 or fewer during the financial year.

The Minister of Finance,  
G. Zalm

**A. Table of concordance  
Order in Council 6 – BCR, CGR, Wtv 1993 and Wtn**

AMvB 6	BCR	CGR	Wtv 1993	Wtn
1		1, under 1		
2(1)			122(1) and 130(1)	53(1)
2(2)				
3(1)			137(a)(3) and (4)	
3(2)				
3(3)				
4(1)			138(1)	57
4(2)			138(3)	
5(1)			147(i)(1)	
5(2)			147(i)(2)	
5(3)			147(i)(4)	
5(4)			147(i)(5)	
6(1) and (2)			147(k)(7)	
7(1)			147(l)(1)	
7(2)			147(l)(2)	
7(3)			147(l)(3)	
8(1)	1(5)			
9	1(7) and 6(2)	1(10) and 5(1)		
10(1)(a)	4(1)(a)	5(1)(a)		
10(1)(b)	4(1)(b)	5(1)(b)		
10(2)	6(2)	7(3)		
11		11		
12		12		
13(1)	10(1)(a) and (b)			
13(2)	10(1)(c)			
13(3)	2(4)			
13(4)	10(2)			
13(5)	10(3)			
13(6)	10(4)			
14	11			
15	12			
16	16			
17	14			
18		1(7)		
19		4(1)		
20(1)		4(1)		
20(2)		7(3)		
21		11		
22		12		
23		14		
24(1)	3(4)	3(4)		
24(2)	3(4)	3(4)		
24(3)	3(5)	3(5)		
25(1)	4(1) and 8(1)	4(1) and 9(1)		
25(2)	8(2)	9(2)		
26(1)	4(1)(a)	5(1)(a)		
26(2)	4(1)(b)	5(1)(b)		
26(3)	8(1)	9(1)		
26(4)	7(1)	8(1)		
26(5)	6(1)	7(2)		
26(6)	6(2)	7(2)		
26(7)	7(2)	8(2)		
27(1)	9(1)	10(1)		
27(2)	8(2) and (3)	9(2) and (3)		
27(3)	9(1)	10(1)		
28	9(5)	10(5)		
29	15	15		
30				
31				
32				
33				
34				
Annex I	Annex	Annex B		
Annex II		Annex A		

**B. Table of concordance**  
**Directive on deposit-guarantee schemes – Wft/Decree sections**

*Directive No. 94/19/EC of the European Parliament and of the Council of the European Union of 30 May 1994 on deposit-guarantee schemes (OJEC L 135)*

Directive sections	Sections in the Act on Financial Supervision	Decree sections
1(1)	3:259(2)	
1(2)		19(b)
1(3)	3:260(2)	
1(4)	1:1	
1(5)	1:1	
2		20(1) and Annex B
3(1)	3:258–3:260	18
3(2)	1:79; 1:80	
3(3-5)	Does not need to be implemented	
4(1-3)	3:258; 3:266	18(b) and (c)
4(4)	1:79; 1:80	
4(5)	Does not need to be implemented	
5	3:258(2)	
6(1)	3:267(2)	
6(2) and (3)	3:267(3) and (4)	
7(1)		26(1-4)
7(2) and (3)	Does not need to be implemented	
7(4)		26(4)
7(5)	Does not need to be implemented	
7(6)		19, 20, 24 and 26(1)
8(1)		26(4)
8(2)		26(5)
8(3)		20(2) and 26(6)
9	3:263; 3:264	
10(1-4)	3:261(2)	

10(5) Does not need to be implemented

11 3:261(3)

12–16 Do not need to be implemented

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### C. Table of concordance

#### Directive on investor-compensation schemes – Wft/Decree sections

*Directive No. 97/9/EC of the European Parliament and of the Council of the European Union of 3 March 1997 on investor-compensation schemes (OJEC L84)*

Directive sections	Sections in the Act on Financial Supervision	Sections in Decree
1(1-5)	1:1	
1(6)		9(1)(b)
1(7)	Does not need to be implemented	
2	3:258–260	
3	Does not need to be implemented	
4(1)		26(1-4)
4(2)		9
5(1)	1:79; 1:80	
5(2-4)	Does not need to be implemented	
6	3:258(2)	
7(1)	3:258; 3:266	8(b) and (c)
7(2) first paragraph	1:79; 1:80	
7(2) second paragraph	Does not need to be implemented	
8(1)		26(4)
8(2)		26(5)
8(3)		10(2)
9(1) and (2)	3:261	24(1)
9(3)		28
10	3:263; 3:264	
11(1)	3:267(1)	
11(2) and (3)	3:267(3) and (4)	
12	3:261(3)	
13		9, 24 and 26(1)

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