

The Minister of Finance,

Having regard to Article 124b(1) of the Decree on Prudential Rules for Financial Undertakings (*Besluit prudentiële regels Wft*),

hereby decides:

Section I

The Regulation Implementing the Financial Supervision Act (*Uitvoeringsregeling Wft*) shall be amended as follows:

A

The following definitions shall be added in alphabetical order to Article 1:

offering programme: publicly announced intention to issue covered bonds of a specific category in a continuous or repeated manner;

application: request for registration as referred to in Article 124b(1) of the Decree on Prudential Rules for Financial Undertakings (*Besluit prudentiële regels Wft*);

covered bonds: covered bonds as referred to in Article 1 of the Decree on Prudential Rules for Financial Undertakings (*Besluit prudentiële regels Wft*);

legal adviser: a legal expert who is independent of the issuing bank.

B

A new Chapter shall be inserted after Chapter 9, and shall read as follows:

Chapter 9a. Covered bonds.

Provisions for the implementation of Article 124b(1) of the Decree on Prudential Rules for Financial Undertakings (*Besluit prudentiële regels Wft*)

Article 20a

1. A bank submitting an application shall demonstrate to De Nederlandsche Bank N.V. (hereafter: 'DNB') that the bonds to be issued are to be designated as covered bonds, by presenting the following:

(a) a legal opinion of a legal adviser from which DNB can conclude that, with respect to the bonds, subparagraphs (b) and (c) of the definition of covered bonds in the Decree on Prudential Rules for Financial Undertakings (*Besluit prudentiële regels Wft*) are complied with;

- (b) written documents regarding the issue of the bonds on which the legal opinion as referred to in subparagraph (a) above is based;
- (c) other relevant documents regarding the issue; and
- (d) a written statement by the natural persons that define the bank's policies, setting out that the bonds comply with the definition of covered bonds in Article 1 of the Decree on Prudential Rules for Financial Undertakings (*Besluit prudentiële regels Wft*) and that the issuing bank complies with the provisions of Article 124c of the Decree on Prudential Rules for Financial Undertakings (*Besluit prudentiële regels Wft*).

2. The data and the documents referred to in paragraph 1 above shall demonstrate the following:

- (a) that, at the time of application, the bonds shall have a credit rating from a recognised credit rating agency as referred to in Article 88 of the Decree on Prudential Rules for Financial Undertakings (*Besluit prudentiële regels Wft*), which credit rating shall be associated with credit quality step 1 in the credit quality assessment scale as set out in paragraph 6.4 of Annex VI to the recast Banking Directive, such within the scope of the provisions of Part 3, paragraph 2, points 8 and 9 of the said Annex, and that the credit rating and the conditions attached by the credit rating agency to the credit rating with respect to the assets and the issuing bank shall, in DNB's opinion, be adequate;
- (b) that there shall be a healthy ratio between the total nominal value of the covered bonds issued or to be issued and the assets qualifying as cover for these bonds. After consultation with the issuing bank, DNB shall determine whether the total nominal value of these bonds as a percentage of the consolidated balance sheet total of the issuing bank may be considered a healthy ratio;
- (c) that the issuing bank shall have in place solid, effective strategies and procedures through which, during the life of the bonds, it shall continuously check and ensure that sufficient assets have been transferred to the legal entity as referred to in subparagraph (c) under (i) of the definition of covered bonds in Article 1 of the Decree on Prudential Rules for Financial Undertakings (*Besluit prudentiële regels Wft*), thereby taking account of the nature and composition of the assets, the surplus values, the risks to be taken into account and stress tests.

Article 20b

1. An issuing bank shall only proceed to repeated issues under an offering programme of covered bonds registered in accordance with the provisions of Article 124b of the Decree on Prudential Rules for Financial Undertakings (*Besluit prudentiële regels Wft*) if it has found that the rules for registration are complied with.
2. If the ratio as referred to in Article 20a(2) under (b) between the total nominal value of the covered bonds and the consolidated balance sheet total of the issuing bank increases, the issuing bank shall demonstrate to DNB that this ratio continues to be healthy as referred to in that subparagraph.

Article 20c

1. A bank having issued covered bonds that have been registered in accordance with the provisions of Article 124b(1) of the Decree on Prudential Rules for Financial Undertakings (*Besluit prudentiële regels Wft*):

(a) shall demonstrate at least once every quarter to DNB that the covered bonds comply with the conditions governing registration, by submitting reports regarding the assets and providing further information on same to DNB, and

(b) shall demonstrate at least annually to DNB that the bank complies with the provisions of Article 20a(2) under (c).

2. Within six months of the close of the financial year, the issuing bank shall submit to DNB the annual financial statements and the annual report of the legal entity to which the assets have been transferred in accordance with the Decree on Prudential Rules for Financial Undertakings (*Besluit prudentiële regels Wft*). These documents have been drawn up in accordance with the provisions set out in Title 2, Book 9 of the Dutch Civil Code, in accordance with international financial reporting standards, or in accordance with the laws of the state in which the legal entity has its registered office. If the legal entity has its registered office in the Netherlands, it shall report whether or not the annual financial statements have been adopted and approved in accordance with its Articles of Association or Deed of Incorporation.

3) The issuing bank shall forthwith notify DNB if, during the life of the covered bonds:

(a) changes occur relative to the data and documents on which the legal opinion as referred to in Article 20a(1) was based or relative to the written documents as referred to in Article 20a(1), as a result of which the outstanding covered bonds are or will no longer be complying with the rules for registration, or

(b) significant changes are made in an offering programme or in the conditions governing the covered bonds.

Section II

This Regulation shall enter into force with effect from 1 July 2008.

This Regulation and the accompanying Explanatory Memorandum shall be published in the Government Gazette (*Staatscourant*).

The Minister of Finance,

Wouter Bos

Explanatory Memorandum

1. General

Pursuant to Article 124b(1) of the Decree on Prudential Rules for Financial Undertakings (*Besluit prudentiële regels Wft*) (hereafter: 'the Decree'), rules are laid down by Ministerial Regulation regarding the manner in which a bank can demonstrate to De Nederlandsche Bank N.V. (hereafter: 'DNB') that the bonds issued by the said bank qualify as covered bonds within the meaning of the Decree. This Regulation serves to implement such rules. Rules are laid down with respect to the manner in which the issuing bank demonstrates to DNB that covered bonds are concerned, so that DNB may proceed to the registration of these bonds in the appropriate register. Rules are also laid down with respect to the manner in which the issuing bank, after registration, demonstrates to DNB its continuing compliance with the requirements for covered bonds and the registration of these bonds. The issuing bank demonstrates such compliance to DNB by submitting to DNB written documents such as prospectuses, transaction documents and accounting documents, as well as a legal opinion and the documents underlying such opinion, which show that the relevant requirements are being met. Furthermore, throughout the life of the covered bonds registered by DNB, the issuing bank submits, among other things, periodic reports with respect to the covered bonds and the assets that serve or may serve as cover for the issuing bank's obligations under the covered bonds, and the annual accounts of the legal entity to which the assets have been transferred under universal or singular title. The issuing bank keeps DNB well informed, also after registration, of the registered covered bonds and the relevant assets.

2. Structure of the supervision of registered covered bonds

The basic principle of the rules contained in the Decree and in this Regulation is that the holders of registered covered bonds are being offered a high degree of security that the obligations under the bonds can, at all times, be fulfilled, because the assets that serve as security for the bonds provide sufficient cover for these obligations during the life of the bonds. It has been decided not to lay down detailed rules for the nature and composition of the assets; neither do such rules follow from provisions of European law. Such requirements do, however, apply if the issuing bank wants the registered covered bonds to qualify, for instance, for a lower risk weighting in the context of the solvency requirements for credit risk (reference is made to the Explanatory Memorandum to the Decree as well as to DNB's Regulation on Solvency Requirements for Credit Risk (*Regeling solvabiliteitseisen voor het kredietrisico*)). However, given the high degree of security and the adequate cover required, it has been decided to look to an integral assessment of the covered bonds in the market by taking, among other things, the credit rating from credit rating agencies into account in supervisory practice (see the notes to Article 20a(2) under (a) in the Explanatory Notes to the Individual Articles).

If the issuing bank issues the bonds to be registered in the context of an offering programme, and a situation has arisen where the conditions attached to the credit rating, or the provisions of the Decree, are not or no longer fulfilled, the issuing bank no longer complies with the rules for registration and must, therefore, refrain from new issues under the offering programme, until such time that the situation, in DNB's opinion, has sufficiently recovered. As has been clarified in the Explanatory Memorandum to the Decree, DNB takes the interests of the issuing bank and the bondholders into account in situations as referred to above. Both the issuing bank and the bondholders have an interest in maintaining the registration and thereby also in maintaining the supervision on Dutch Covered Bonds exercised by DNB pursuant to the Decree. It therefore seems reasonable that, only in the exceptional case where DNB's supervision of the relevant bonds no longer has any protective effect on bondholders, and the issuing bank no longer has any interest therein either, DNB will proceed to remove the registration of still outstanding registered covered bonds.

3. Impact on the sector

As stated in the Explanatory Memorandum thereto, the Decree on Dutch Covered Bonds will have consequences, if only limited, for the sector. Its provisions are consistent with current practice in Dutch covered bonds. These are optional provisions, serving to enable the issuing bank to derive financial benefits. As shown in the Explanatory Memorandum to the Decree on Dutch Covered Bonds, the total costs of demonstrating to DNB that the provisions of this Decree are complied with, are limited, amounting to EUR 86,400. In addition, Article 20c(1) of this Regulation contains further provisions as to how reports are to be submitted to DNB. Although this Article is consistent with current practice, and reports and records are also available for structured bonds that are not issued under the framework of the Decree on Dutch Covered Bonds, it is conceivable, for instance, that as a result of the provision to DNB of further details or of relevant documents, the estimate of EUR 86,400 will be exceeded. It is clear, however, that such will not be by any significant amount.

Explanatory Notes to the Individual Articles

Section I

A

A legal adviser is understood to be a legally trained expert who is independent of the issuing bank and who, in line with his/her statutory or professional duties, can issue a legal opinion, based on which DNB can conclude that the bonds comply with subparagraphs (b) and (c) of the definition of covered bonds. See the notes to Article 20a(1) in these Explanatory Notes. The independent judgment of the legal adviser must be beyond doubt. This implies that the adviser does not work for, or is otherwise associated with, the issuing bank, which does not rule out, however, that the adviser can be involved in structuring the issue, or otherwise advising the issuing bank, whether or not with some regularity. Attorneys-at-law, corporate lawyers, notaries public or similar professionals may, for instance, be regarded as experts.

B

Article 20a

Article 20a(1)

DNB will only proceed to registration as referred to in Article 124b(1) of the Decree on Prudential Rules for Financial Undertakings (*Besluit prudentiële regels Wft*) (hereafter: 'the Decree') if it has received from the issuing bank a legal opinion of a legal expert, based on which DNB can conclude that subparagraphs (b) and (c) of the definition of covered bonds in the Decree are complied with. In other words, the opinion must confirm that it has been duly laid down in the relevant documents underlying the opinion that the assets will be used on a priority basis for the reimbursement of principal and the payment of accrued interest, as well as that the assets have been safeguarded by transferring them, and pledging them, to the relevant legal entities. Of course, the opinion need only refer to facts that can be legally established. Also, DNB must receive the written documents regarding the issue, on which the legal opinion is based, and other relevant documents regarding the issue. These may include transaction documents such as the deeds of pledge, the agreements on the transfer of the assets and the agreements establishing that the assets serve as security for the issuing bank's obligations under the relevant bonds. These documents may also include ratings assigned to the bonds by credit rating agencies and the legal merits of the issue, as well as administrative documents regarding the assets.

The documents must show that the requirements of the covered bonds definition in Article 1 of the Decree are fulfilled. One of these requirements is the legally valid transfer of sufficient assets to a legal entity, so that these assets may, at all times, be used for the repayment of the issuing bank's obligations under the bonds.

Paragraph 1 under (d) of this Article refers to a statement issued by policy-makers, setting out that the issuing bank complies with all rules for registration that have been laid down in the Decree and in Article 20a of this Regulation.

Article 20a(2) under (a)

As stated earlier, the basic principle of the rules contained in the Decree and in this Regulation is that the holders of registered covered bonds are being offered a high degree of security that the issuing bank can, all times, fulfil its obligations under these bonds, because the assets that serve as security for these bonds provide sufficient cover for these obligations throughout the life of the bonds (see, in particular, subparagraphs (b) to (e) of the definition in Article 1 of the Decree). As no detailed rules have been laid down with respect to the nature and composition of the assets, it has been decided, given the high level of security required to ensure that sufficient cover is available for the reimbursement of principal and the payment of accrued interest on the bonds as well as for payments in respect of the management and administration of the assets, that supervisory practice includes an integral assessment of the covered bonds in the market by taking the credit rating from credit rating agencies into account. After all, the assessment as to whether adequate cover has been provided

depends on a (subjective) perception of risks, market developments, stress tests that have been used, et cetera.

It is required that the bonds in question are assigned an external credit rating by one or several recognised credit rating agencies. Pursuant to Article 88 of the Decree, DNB may recognise credit rating agencies. These agencies are registered in the public register as referred to Section 1:107(1) of the Financial Supervision Act. It must concern a credit rating from the relevant credit rating agency which is associated with credit quality step 1 in the credit quality assessment scale as set out in paragraph 6.4 of Annex VI to the recast Banking Directive, such within the scope of the provisions of Part 3, paragraph 2, points 8 and 9 of the said Annex.

In that context, it seems reasonable that DNB does not rely solely on the judgment of the credit rating agencies, but can form its own judgment on the credit rating and the conditions which a credit rating agency attaches in a specific case to a credit rating for a covered bond, whereby DNB may take into account the rules that usually prevail in this respect in the European market. In assessing the credit rating and the conditions attached by the credit rating agency to the credit rating, DNB may take into account, among other things, the nature and composition of the assets, their proper valuation, the surplus values, the risks to be taken into account and stress tests. DNB's findings may therefore deviate from the credit rating. DNB has stated that it will, in its supervisory practice, make a cursory check of these credit ratings and the conditions attached to them.

It seems equally reasonable that DNB assesses, in its supervisory practice, whether the issuing bank complies with the conditions attached by a credit rating agency to the credit rating. If this is not the case, DNB may (independently of possible measures taken by the credit rating agency) enter into consultation with the issuing bank, to determine how and when the situation that prevailed at the time of registration of the bonds can be restored.

DNB will, of course, also enter into consultation with the issuing bank if the requirements of the Decree are no longer complied with (see below).

Article 20a(2) under (b)

In assessing the application and in its supervisory practice pursuant to Article 124c of the Decree, DNB will take into account the issuing bank's consolidated balance sheet total and free assets, such with a view to the requirement in subparagraph (d) of the covered bonds definition that sufficient assets must be available as cover for the reimbursement of principal and the payment of accrued interest as well as for payments in respect of the management and administration of the assets.

After consultation with the issuing bank, DNB determines whether the ratio between the total nominal value of these bonds and the issuing bank's consolidated balance sheet total is to be regarded as a healthy ratio. In assessing whether there continues to be a healthy ratio, DNB weighs the total nominal value of the covered bonds that are issued against the nature and composition of the assets and the amount of free (i.e. available as cover for the bonds) assets (such as assets commonly used as cover for covered bonds, liquid funds or other assets that may be used as substitution for the aforementioned assets or liquid funds). If, in DNB's opinion, there is no healthy ratio, DNB will not register a new category or categories of covered bonds.

In its assessment, DNB takes account of all relevant aspects such as the issuing bank's financial position, its risk profile, the risks associated with the assets, as well as the position of other creditors, not being the holders of the covered bonds.

Neighbouring countries have different regulations with respect to the requirement that the nominal value of the bonds issued or to be issued should be in a healthy proportion to the assets qualifying as cover for these bonds. It is only in the United Kingdom that an indicative limit of 20% of the issuing bank's balance sheet total is used by the Financial Services Authority.

Article 20a(2) under (c)

The issuing bank must, as an integral part of its risk management, have in place adequate strategies and procedures to be able to make its own assessment as to whether, throughout the life of the covered bonds, they are backed by sufficient collateral. The risks in question comprise in particular, but not exclusively, credit risks associated with the assets, market risks including counterparty risks, as well as concentration risks and foreign exchange risks.

Article 20b

Article 20 b(1)

If a category of covered bonds included in the register as referred to in Article 124b of the Decree is issued in the context of an offering programme, under which registered covered bonds are issued in a continuous or repeated manner in several successive tranches, these successive tranches need not be subjected to a separate assessment as referred to in Article 124b(1) of the Decree, because the relevant category of bonds (including the offering programme) and the issuing bank have already been registered. The issuing bank must, however, make sure at all times that, if it issues new bonds under an offering programme, the rules for registration as laid down in the Decree and in Article 20a of this Regulation are complied with.

Article 20b(2)

It is possible that, as a result of a new issue under a programme, the ratio between the total nominal

value of the covered bonds and the consolidated balance sheet total of the issuing bank will increase. In that case, the ratio may deviate from the ratio which DNB, pursuant to Article 20a(2) under (b), had defined as healthy. The issuing bank must then demonstrate to DNB that a change in the ratio does not mean that there is no longer a healthy ratio between the total nominal value of the covered bonds issued or to be issued and the assets qualifying as cover for these bonds. In its consultation with the issuing bank, DNB takes into account all aspects it also takes into account in applying Article 20a(2) under (b). If, in DNB's opinion, there is no longer a healthy ratio, the issuing bank will, of course, not be able to carry out this new issue of covered bonds without it having adverse effects on the registration.

Article 20c

This Article specifies in which manner the issuing bank must continue to demonstrate that the registration requirement as referred to in Article 124b(1) of the Decree, is complied with. Under Article 20c(1) of this Regulation and in accordance with Article 124c of the Decree, the issuing bank must thereto submit reports regarding the assets and provide further information on same to DNB at least once every quarter. This is especially important with a view to the cover to be provided by the assets for the reimbursement of principal and the payment of accrued interest on the bonds, as well as for payments in respect of the management and administration of the assets.

The requirement to demonstrate such compliance at least quarterly is in line with what currently is usual procedure in the market for covered bonds, with banks reporting regularly, sometimes even monthly, on the cover percentage, for instance, to internal management or to credit rating agencies.

With a view to the requirements for registration and maintaining such registration, DNB must have insight into the amount of outstanding covered bonds, and the cover percentage required by the Decree. Under this present Article, the issuing bank keeps DNB posted thereof.

Also, with a view to the asset cover for the bonds, the bank must demonstrate at least once every year that it has and continues to have in place solid, effective strategies and procedures through which, during the life of the bonds, it will continuously check and ensure that sufficient assets have been transferred, thereby taking account of the nature and composition of the assets, the surplus values, the risks to be taken into account and stress tests. See also Article 20a(2) under (c).

Notwithstanding these periodic reports and annual checks, DNB may also require the issuing bank to demonstrate in the interim that it continues to fulfil requirements. Thus, in times of unfavourable market developments, it may be necessary to make additional checks as to whether sufficient cover is still available.

Article 20c(2)

The issuing bank submits to DNB the annual financial statements and the annual report of the legal entity to which the assets have been transferred.

Article 20c(3)

To keep DNB informed at all times of the current situation, all relevant changes as a result of which the outstanding covered bonds are or will no longer be complying with the definition of covered bonds, will be reported immediately to DNB.

Article 20a(2) under (a) and (b) requires, in short, that the bonds have, in DNB's opinion, an adequate credit rating and that the issue continues to result in a healthy ratio vis-à-vis the other free assets. When receiving a request for registration pursuant to Article 124b(1) of the Decree, DNB shall assess whether there is a healthy ratio. If the ratio changes as a result of the issue of new bonds under an offering programme, the issuing bank must demonstrate that the ratio continues to be healthy. Pursuant to Article 20c(3) under (a), any change or expected change in the credit rating for registered covered bonds must also be reported immediately to DNB. This applies equally to all other relevant changes with respect to the rules for registration as laid down in the Decree and in Article 20a of this Regulation.

Article 20c(3) under (b) specifies that significant changes in the offering programme or in the conditions governing registered covered bonds must also be reported.

In the event of an actual or imminent downgrading of the credit rating for outstanding registered covered bonds, the issuing bank must enter into consultation with DNB. If, as a result of such downgrading, the credit rating for outstanding registered covered bonds declines to below the levels as specified in Article 20a(2) under (a), the issuing bank must refrain from further issues.

The Minister of Finance,

Wouter Bos