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### **Decree of 12 October 2006, containing provisions regarding a number of definitions from Section 1:1 of the Act on Financial Supervision (Decree on Definitions 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 26 June 2006, no. FM 2006-01571 M;

Taking account of Article 1 of Council Directive No. 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJEC L 42), Article 2 of Directive No. 2003/71/EC of the European Parliament and of the Council of the European Union of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJEC L 345) and Section 1:1 of the Dutch Act on Financial Supervision;

Having consulted the Council of State (opinion of 20 July 2006, no. W06.06.0267/IV);

Having seen the more detailed report of Our Minister of Finance of 9 October 2006, no. FM 2006-01837 U;

Have approved and decreed the following:

#### **Section 1**

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

- a. the Act: the Act on Financial Supervision (*Wet op het financieel toezicht*);
- b. derivative instruments for the transfer of credit risk:

financial instruments as referred to in Annex I, Section C(8) of Directive No. 2004/39/EC of the European Parliament and of the Council of the European Union of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJEC L 145).

#### **Section 2**

The following shall be designated as an investment object within the meaning of Subsection (b) of the definition of an investment object in Section 1:1 of the Act: a participating interest in a partnership through which investments are made in a film, not being a financial product as referred to in Subsections (b) up to and including (h) of the definition of a financial product in Section 1:1 of the Act,

upon acquisition of which the holder of the participating interest is promised a monetary yield or a part of the revenue from the firm, and whereby the partnership is managed principally by a party other than the holder of the participating interest.

### Section 3

The following shall be designated as a professional market party within the meaning of Subsection (c) of the definition of a professional market party in Section 1:1 of the Act:

a. legal persons or companies whose balance sheet total before the redeemable funds are made available amounts to € 500,000,000 or more;

b. persons or companies whose net assets or net equity before the redeemable funds are made available amounts to € 10,000,000 or more and which, during a minimum period of two consecutive years before the redeemable funds are made available, have been active in the financial markets on two occasions a month on average;

c. legal persons or companies which have been rated by a credit rating agency that the Dutch Central Bank (*De Nederlandsche Bank*, DNB) considers to be an expert, or which issue securities or attract redeemable funds on the basis of loan agreements that have been rated by a credit rating agency considered to be an expert by the Dutch Central Bank;

d. legal persons or companies that were set up especially:

1°. to conduct transactions to obtain claims that will serve as collateral for securities that have been offered or are to be offered;

2°. to conduct transactions involving investments in sub-participating interests or derivative instruments for transferring credit risks, which transactions may be settled by transferring the claims to the aforementioned legal persons or companies, whereby the rights accruing to them from the sub-participating interests or from the derivative instruments will serve as collateral for securities offered or to be offered; or

3°. to extend credit grants for the exclusive benefit of one or more professional market parties as referred to in Section 1:1(a) or (b) of the Act.

### Section 4

1. The following shall be designated as a small enterprise within the meaning of Subsection (d) of the definition of a qualified investor in Section 1:1 of the Act: legal persons or companies which, according to the most recent annual accounts or consolidated accounts, fulfil at least two of the following three criteria:

a. the average number of employees during the financial year is less than 250;

b. the balance sheet total is no more than € 43,000,000;

c. the annual net turnover is no more than € 50,000,000.

2. Natural persons within the meaning of Subsection (f) of the definition of a qualified investor in Section 1:1 of the Act shall be natural persons who fulfil at least two of the following three criteria:

a. the natural person has carried out at least 10 transactions of a significant size on the securities markets, per quarter, over the previous four quarters;

b. the size of the natural person's securities portfolio exceeds € 500,000;

c. the natural person works or has worked for at least one year in the financial sector in a professional position which requires knowledge of securities investment.

#### **Section 5**

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 6**

This Decree shall be cited as: Decree on Definitions pursuant to the Act on Financial Supervision (*Besluit definitiebepalingen Wft*).

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 has been made available for public inspection at the offices of the Ministry of Finance. In addition, the opinion and the documents made available for inspection shall be published in the Annex to the Government Gazette of 14 November 2006, no. 222.

## EXPLANATORY MEMORANDUM

### General notes

This Decree works out a number of definitions from Section 1:1 of the Act in more detail. The terms in question are 'investment object', 'professional market party' and 'qualified investor'.

### Administrative burden

Since this Decree involves a continuation of rules which previously applied under the Act on the Supervision of the Securities Trade 1995 (*Wet toezicht effectenverkeer 1995*), the Financial Services Decree (*Besluit financiële dienstverlening*), the Exemption Regulations pursuant to the Act on the Supervision of the Credit System 1992 (*Vrijstellingsregeling Wtk 1992*)<sup>1</sup> and the Exemption Regulations pursuant to the Act on the Supervision of the Securities Trade 1995 (*Vrijstellingsregeling Wet toezicht effectenverkeer 1995*), it does not entail any additional administrative burden.

A draft version of this Decree ("draft Decree") was submitted to the Advisory Board on Administrative Burden (*adviescollege toetsing administratieve lasten*, Actal).

### Advice received

The draft Decree was submitted to representatives of market parties for formal consultation. Responses were received from the Dutch Central Bank (*De Nederlandsche Bank*, DNB), the Netherlands Authority for the Financial Markets (*Autoriteit Financiële Markten*, AFM), the Netherlands Bankers' Association (*Nederlandse Vereniging van Banken*, NVB), the Association of Insurers (*Verbond van Verzekeraars*, which endorsed the NVB's response), Euronext Amsterdam N.V. and the Securities Industry Council (*Raad van de Effectenbranche*, REB) (Euronext/REB, joint response), the Dutch Association for Lending to Private Individuals (*Nederlandse Vereniging van Volkskrediet*, NVVK) and the legal profession.

The greater part of the responses concerned Sections 4 to 6 of the draft Decree, which were the sections relating to the designation of professional market parties and to the supervisory authority keeping a list of the said professional market parties. As the draft Decree did not yet include Section 2 (designation of an investment object within the meaning of Subsection (b) of the definition of an investment object in Section 1:1 of the Act), this section did not elicit any responses. None of the responses concerned Section 3 (definition of "service in the context of commodities credit"), which was moved to the Act. Accordingly, only the responses relating to Sections 4 to 6 of the draft Decree will be addressed below.

The responses to Sections 4 to 6 (the designated professional market parties) resulted in particular from the fact that the draft Decree included a definition of professional market parties that was to apply to the part on Prudential Supervision of Financial Enterprises, the part on Supervision of the Conduct of Financial Enterprises and the part on Supervision of Financial Markets.<sup>2</sup> Based on the responses, it was decided to split up the term 'professional market party' as originally proposed into the term 'professional market party' and the term 'qualified investor'. This change was implemented in the sixth memorandum of amendment. Therefore Section 1:1 of the Act contains definitions of both 'qualified investor' and 'professional market party'. Because of the split, the definition of a professional market party can be aligned more closely with the definition of a professional market party in Section 1(e) of the Exemption Regulations pursuant to the Act on the Supervision of the Credit System 1992 (*Vrijstellingsregeling Wtk 1992*), and the definition of a qualified investor can be aligned more closely with the definition of a qualified investor in Article 2(1)(e) of the Prospectus Directive<sup>3</sup>. Splitting up the definition has removed a large part of the criticism.

<sup>1</sup> Exemption Regulations pursuant to the Act on the Supervision of the Credit System 1992 (Government Gazette, 2005, 247, p. 21).

<sup>2</sup> Parliamentary Documents II 2004/05, 29,708, no. 10, Section .. (1)(bbbb).

<sup>3</sup> Directive No. 2003/71/EC of the European Parliament and of the Council of the European Union of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJEC L 345).



The attempt to establish one definition for the part on Prudential Supervision of Financial Enterprises as well as for the parts on Supervision of the Conduct of Financial Enterprises and Supervision of the Markets had the effect that certain categories of professional market parties defined in the Exemption Regulations pursuant to the Act on the Supervision of the Credit System 1992 (*Vrijstellingsregeling Wtk 1992*) could not be retained or required amendment. Both supervisory authorities and market parties take the view that this restriction is undesirable in relation to present practice. Now that the definition has been split, the following categories listed in the Exemption Regulations pursuant to the Act on the Supervision of the Credit System 1992 fall under the definition of a professional market party once again:

- a subsidiary of a professional party that is involved in the supervision of the professional party on a consolidated basis (Subsection (b) of the definition of a professional market party in Section 1:1 of the Act);
- enterprises with a balance sheet total of € 500,000,000 or more before redeemable funds are made available (Section 3(1)(a) of this Decree);
- natural persons and enterprises with assets or equity amounting to € 10,000,000 or more, who have been active in the financial markets before the redeemable funds are made available (Section 3(1)(b) of this Decree);
- enterprises that have been rated by a credit rating agency that is considered to be an expert by the Dutch Central Bank (*de Nederlandsche Bank*, DNB), or which offer securities that have been rated by a credit rating agency considered to be an expert by the Dutch Central Bank (Section 3(1)(c) of this Decree). This section has been extended to include loan agreements, because they may have been rated as well.

In addition, it should be pointed out that the scope of the definition of a professional market party in Section 1:1 of the Act in conjunction with Section 3 of this Decree is not more limited than in the Exemption Regulations pursuant to the Act on the Supervision of the Credit System 1992. As in those Exemption Regulations, the definition of a professional market party in Section 1:1 of the Act in conjunction with Section 3 of this Decree also allows for certain parties not based in the EU to be classified as professional market parties. For example, Subsections (a), (b) and (c) of the definition of a qualified investor in Section 1:1 of the Act are not restricted to parties based in the EU. The scope of these subsections of the definition of a qualified investor also applies to Subsection (a) of the definition of a professional market party in Section 1:1 of the Act.

Furthermore, the other categories in the definition of a professional market party in Section 1:1(b) and (c) of the Act and the categories in Section 3 of this Decree are not limited to parties based in the EU.

#### *Alignment with the Prospectus Directive*

Several respondents commented that, in attempting to establish one definition, the legislator had strayed too far from the definition of qualified investors in Article 2(1)(e) of the Prospectus Directive. One of the reasons for splitting up the definition, therefore, was to achieve a close alignment between the definition of a qualified investor in Section 1:1 of the Act in conjunction with Section 4 of this Decree, on the one hand, and the definition in the Prospectus Directive, on the other hand.

DNB pointed out that the criteria in Section 5 of the draft Decree, under which enterprises and natural persons could be classified as professional parties at their own request, differed from the Prospectus Directive (Article 2(1)(e)(iv) and (v) of the Prospectus Directive).

The draft Decree has been amended accordingly. The criteria in Section 4 of this Decree under which enterprises and natural persons are classified as qualified investors at their own request have been taken over from the Prospectus Directive.

Furthermore, DNB stated that it would prefer a situation in which only the AFM could classify enterprises and natural persons as qualified investors if they so requested, rather than a situation in which the AFM is authorised to do so in some cases and DNB in others, as provided for in Section 5 of the draft Decree. Now that this point has been aligned with the Prospectus Directive, only the AFM can classify the said enterprises and natural persons as qualified investors if they so request. The AFM also keeps the register in which the said enterprises and natural persons are listed.

The AFM stated in this context that the Bill and the draft Decree speak of the designation of a professional market party, which suggests that a designation by the AFM is a constitutive requirement, whereas in its view such a designation may not be a condition under the Prospective Directive. Euronext/REB also observed that a party that fulfils the criteria for classification as a qualified investor should be classified on request as a qualified investor without further conditions applying, and should be registered as such by the AFM. In the Act, the definition of a qualified investor is now worded in such a way that if the enterprises or natural persons fulfil the conditions referred to in Section 4 of this Decree, they will be classified and registered as qualified investors upon request, without any further conditions applying. This is in line with the provisions of the Prospectus Directive. Consequently, designation by the AFM is not required.

The AFM pointed out that the Prospectus Directive includes the proviso that there must be mutual recognition for the enterprises and natural persons that are classified as qualified investors at their own request. According to the AFM, an explanation should be given as to why this proviso has not been included in Section 5 of the draft Decree. Only small enterprises *with their registered office in the Netherlands* can be registered by the AFM upon request. Among other things, the principle of mutual recognition is intended to ensure that small enterprises with their registered office in another Member State, which are classified as qualified investors by the supervisory authority of that Member State, are automatically classified as qualified investors in the Netherlands. There should be no need for these enterprises to make a request to this effect to the AFM. In order to guarantee this mutual recognition, Subsection (g) has been included in the definition of a qualified investor in Section 1:1 of the Act, which provides that the said optional natural persons and enterprises from another Member State are classified as qualified investors in the Netherlands.

However, mutual recognition also means that the said natural persons and enterprises from another Member State will only be classified as qualified investors in the Netherlands if, likewise, a Dutch qualified investor is also classified as such in that other Member State. In order to retain a favourable business climate in the Netherlands, the definition of a qualified investor in Section 1:1 of the Act does not provide that the said enterprises and natural persons from other Member States are classified as qualified investors in the Netherlands only if similar Dutch qualified investors would also be qualified as such in those other Member States.

With regard to the natural persons who may be classified as qualified investors at their own request, the NVB asked what was meant by “10 transactions of a significant size on the securities markets”. Euronext/REB wondered whether this covered both foreign and domestic securities markets, and whether these markets could be either regulated or unregulated.

A transaction is deemed to be of a significant size if it is substantially larger than the average transaction by a private investor. Transactions conducted on a foreign securities market are counted as well. The same applies to transactions conducted on unregulated securities markets, because Section 4(2)(1°) does not stipulate that the transactions must be conducted on a regulated market. However, the person concerned does have to live in the Netherlands (see Subsection (f) of the definition of a qualified investor in Section 1:1 of the Act).

The NVB pointed out that bringing together all credit products and investment products under optional professional market parties, as stipulated in Section 5 of the draft Decree, did not have a basis in the Prospectus Directive. As stated earlier, following the split in the definition of a professional market party in the Act, the rules in respect of optional qualified investors are now in agreement with the Prospectus Directive. As a result, there is no longer any question of bringing together credit products and investment products.

The NVB and Euronext/REB also – rightly – observed that, for the purposes of a uniform application of Section 4(2)(2°) of this Decree, the notes should specify how the size of the securities portfolio is determined. A securities portfolio is deemed to include the securities deposited with a bank and securities-denominated claims. Cash in hand or deposits are not part of this portfolio. The notes have been supplemented on this point.

Euronext/REB stated that the process of registration and requesting an extract from the register should have a low threshold. The section on registration is no longer part of this Decree – it has been moved to the General Provisions of the Act. Registration may take place via the Internet, which means that the threshold will be low. The threshold for requesting an extract will also be low. Enterprises as referred to in Section 1:109(2) will be sent an extract upon request on payment of a fee not exceeding the cost price. Although the costs of registration and providing an extract have not yet been determined, they will not be high (probably between € 40 and € 200).

#### *Other comments*

DNB and Euronext/REB observed that entities or natural persons from other Member States, which qualify as professional market parties in their country of establishment or residence under their own national legislation, should also qualify as such in relation to the Dutch market. This is indeed the case, as Subsections (a) to (d) of the definition of a qualified investor in Section 1:1 of the Act and Subsections (a) to (c) of the definition of a professional market party in Section 1:1 of the Act in conjunction with Section 3 of this Decree are not restricted to persons and companies with their place of residence or registered office in the Netherlands.

The only persons and companies that must have their place of residence or registered office in the Netherlands are those persons and companies that may be classified as qualified investors upon request. Subsection (g) has been included in the definition of a qualified investor in Section 1:1 of the Act in order to guarantee that the said persons and companies from other Member States are classified as qualified investors as well.

DNB also considered it important that all enterprises and natural persons regarded as qualified investors should also be considered professional market parties. The Act provides for their classification as professional market parties by stipulating that a qualified investor is a professional market party. This means that all qualified investors are by definition professional market parties, which therefore includes the enterprises and natural persons that are classified as qualified investors at their own request.

Responses from the legal profession and the response from Euronext/REB referred to enterprises that do not possess a licence and are not regulated in any other way, but should still be classified as qualified investors. In general, the object of such enterprises is described in broad terms and is more comprehensive than exclusively investing in securities. In the view of these respondents, it cannot be the intention for this to exclude these enterprises from being classified as qualified investors. On the other hand, they argued, it cannot be the intention that – for example – pension companies whose only shareholder is a private individual, and whose corporate purpose is solely to invest in securities, are classified as qualified investors. Under the Prospectus Directive, however, non-regulated entities whose *sole* corporate purpose is to invest in securities should be classified as qualified investors.

The legal profession and DNB made several comments about the description of *securitisation SPVs*. Following close consultation with the legal profession and DNB, an entirely new description of the said SPVs has now been included in Section 3(d) of this Decree. All the parties involved fully agreed to this description.

The AFM pointed out that it was essential for the definition of qualified investors in the Prospectus Directive to be taken over properly. According to the AFM, this meant that securitisation SPVs should not be classified as qualified investors, as had been done in the draft Decree. This objection was removed by splitting up the definition of a professional market party, because the said SPVs are now only classified as professional market parties and no longer as qualified investors.

The NVB observed that no account had been taken of the term “professional client” from Article 4(1)(11) in conjunction with Annex II of the MiFID Directive<sup>1</sup>. It is indeed the case that this term has not yet been taken into account, but it will be taken into account when the MiFID Directive is implemented.

The NVVK wanted a separate subsection for municipal credit banks, which would stipulate that they qualified as professional market parties in the context of financial services. It was explained to the NVVK that the inclusion of a separate subsection dealing with municipal credit banks was not necessary.

<sup>1</sup>Directive 2004/39/EC of the European Parliament and of the Council of the European Union of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJEC L 145).

## Notes on individual sections

### Section 2

Section 2 designates investment objects within the meaning of the Act. The basis for this designation can be found in Subsection (b) of the definition of an investment object in Section 1:1 of the Act. An explanation of the term 'investment object' can be found in the notes on Subsection (a) of the definition of an investment object in Section 1:1 of the Act.

Section 2 extends the definition of an investment object to include investment products such as intellectual property rights in respect of films (copyrights). A film partnership gives investors the opportunity to take part in a limited partnership with the aim of participating in one or more film productions. The investor will not obtain the revenue from or return on an item of property, as is the case, for example, with limited partnerships in the shipping industry. Therefore these rights cannot be classified as an *item of property* or as a *right to an item of property* (see Subsection (a) of the definition of investment objects), nor as another financial product as referred to in Section 1:1 of the Act. As film partnerships often entail the same risks as investment objects, it was considered desirable to place this type of investment product under the investment object definition insofar as these partnerships do not qualify as another financial product within the meaning of the Act. Other proprietary rights relating to intellectual property rights are not known to entail the same risks as investment objects or to be offered to investors on a large scale. Therefore it is not necessary for the time being to extend the term 'investment object'. However, it remains possible that items of property, rights to items of property, intellectual property rights or other proprietary rights will be designated as investment objects in the future. Nevertheless, that will only happen where necessary, and where the designation is effective and proportional. The basis for this designation can be found in Subsection (b) of the definition of an investment object in Section 1:1 of the Act.

### Section 3

Section 3 designates market parties as professional market parties within the meaning of the Act. The basis for this designation can be found in Subsection (c) of the definition of a professional market party in Section 1:1 of the Act.

The Act uses three terms to indicate the "professionalism" of a market party: 'professional market party', 'qualified investor' and 'professional investor'. The term 'professional market party' is used in the part on Prudential Supervision of Financial Enterprises, and the term 'qualified investor' in the parts on Supervision of the Conduct of Financial Enterprises and Supervision of Financial Markets. Because the content of the terms 'professional market party' and 'qualified investor' is unsuitable – on account of European regulations – for use in the regulations on financial services provided by investment firms, Section 1:1 also introduces the term 'professional investor'. A detailed explanation can be found in the notes to the definitions of a professional market party, a qualified investor and a professional investor in Section 1:1 of the Act.

The persons and companies referred to in Subsections (a) and (b) are classified as professional market parties because their size is such that they do not require additional protection. Until recently, these categories were also included in the previously applicable Exemption Regulations pursuant to the Act on the Supervision of the Credit System 1992 (*Vrijstellingsregeling Wtk 1992*). Now that the definition of a professional market party has been split up into a definition of a professional market party and a definition of a qualified investor, there is again a need to classify these categories as professional market parties. Although there is some overlap between these subsections and Subsection (d) of the definition of a qualified investor, this overlap cannot lead to misunderstandings because of the different contexts in which the terms are used. The inclusion of Subsections (a) and (b) was necessary in order to continue the existing policy.

The indication “legal person or company” in this section refers to any legal entity that is customary either in the Netherlands or abroad. The term “person” means “a natural person or a legal person” (see the definition of a person in Section 1:1 of the Act).

Subsection (c) was taken over from Section 1(e)(5°) of the Exemption Regulations pursuant to the Act on the Supervision of the Credit System 1992 (*Vrijstellingsregeling Wtk 1992*). Legal persons and companies which have been rated by a credit rating agency that DNB considers to be an expert, or which issue securities or attract redeemable funds on the basis of loan agreements that have been rated by a credit rating agency that DNB considers to be an expert, will be deemed to be sufficiently able to assess the financial soundness of the person or company to whom they make their funds available. The enterprises concerned will be classified as professional market parties during the term of the rating of the enterprise as a whole, or during the term of the securities or the loans with a rating.

Under Subsection (d), certain enterprises known as special purpose vehicles (SPVs) are classified as professional market parties. The reason for this classification is that these SPVs are not always rated by a credit rating agency that DNB considers to be an expert, or do not always have a rating from an expert credit rating agency for the securities that they offer or monies that they attract on the basis of loan agreements. As a result, they do not qualify as professional market parties under Subsection (c). It was therefore decided to create a separate subsection for SPVs. Under Subsection (d), an SPV is only classified as a professional market party if it conducts transactions whereby the legal or economic interest in claims passes to the SPV and securities are issued (so-called securitisation transactions).

Subsection (d)(1°) to (3°) further specifies which special purpose vehicles are classified as professional market parties. 1° describes securitisation transactions whereby – for example – the following securities are offered (these are the names by which they are known and identified on the market): asset backed securities, residential mortgage backed securities, credit linked notes, commercial mortgage backed securities, collateralised debt obligations and covered bonds. From the provisions under 2°, it follows that SPVs that invest in credit derivatives (such as credit default swaps or total return swaps) – whether or not in addition to offering the aforementioned securities – are classified as professional market parties. The credit derivatives in question may be settled by the counterparties of these SPVs via a transfer of claims in respect of redeemable funds.

The collateral provided for the securities offered or to be offered may consist of the revenue accruing to the SPV from such credit derivatives. The same situation can occur when sub-participating interests (economic interests in loans) are used.

Based on the provisions of Subsection (d)(3°), legal persons and companies extending credit grants exclusively for the benefit of one or more professional market parties as referred to in Section 1:1(a) or (b) of the Act are classified as professional market parties. The term "credit grant" means the same as the term "credit grants" in the definition of a bank in Section 1:1 of the Act (see the notes to the definition of a bank, *Parliamentary Documents II 2004/05, 29 708, no. 10, p. 169*). The phrase "for the benefit of" means that the SPV was set up to extend credit grants (lend money) exclusively for the account of professional market parties as referred to in Section 1:1(a) or (b) of the Act.

The phrase "were set up especially" in the opening words of Subsection (d) is meant to prevent this subsection from being invoked in respect of "regular" legal persons or companies. The legal persons or companies must have been set up especially to make it possible to perform the securitisation transactions described in this subsection and referred to above. The phrase "to obtain claims" in Subsection (d)(1°) refers to obtaining a claim via a transfer as well as obtaining a claim by lending money independently. The claims obtained always relate to redeemable funds.

The words "or to be offered" in Subsection (d)(1°) and (2°) make it clear that, under this subsection, an SPV is also classified as a professional market party during the period preceding the intended securitisation transactions. This is necessary in situations where the claims are already bought during this so-called "warehousing period" with money borrowed from professional market parties (e.g. from banks) and the offering of securities whereby the funds are obtained to repay these loans does not take place until after this period.

#### *Section 4*

The definition of a qualified investor in Section 1:1 of the Act, Subsection (d) contains a basis for classifying legal persons and companies as small enterprises under rules to be laid down by order in council. The AFM registers these legal persons and companies as qualified investors at their own request. Pursuant to Section 1:1(f), the AFM may also register natural persons as qualified investors at their own request under rules to be laid down by order in council.

The criteria applicable in respect of small legal persons and companies have been taken over from Article 2(1)(e)(v) of the Prospectus Directive. If a legal person or company does not fulfill at least two of the three criteria set out in Subsection (1), it constitutes a large legal person or company as referred to in Subsection (e) of the definition of a qualified investor in Section 1:1 of the Act. The phrase "legal person or company" in this section refers to any legal entity that is customary either in the Netherlands or in another Member State. The term "small enterprise" has the same meaning as the term "small or medium-sized enterprise" in the Prospectus Directive. Since the regime laid down in the Directive only envisages a dichotomy (between large and non-large enterprises), the addition of "or medium-sized" is superfluous and a distinction between large and small enterprises is sufficient.

Subsection (2) contains criteria under which natural persons are classified as qualified investors. These criteria have been taken over from Article 2(1)(e)(iv) and Article 2(2) of the Prospectus Directive regarding natural persons who are deemed to have such knowledge of the financial markets that they do not require protection. The request will be granted if a natural person fulfils at least two of the three criteria listed in this subsection. The first criterion concerns the requirement that the natural person must have carried out at least 10 transactions of a significant size on the securities markets, per quarter, over the four quarters preceding the request. A transaction is deemed to be of a significant size if it is substantially larger than the average transaction by a private investor. Transactions conducted on a foreign securities market are counted as well. The same applies to transactions of a significant size conducted on unregulated securities markets, because Section 4(2)(a) does not stipulate that the transactions must have been conducted on the regulated Dutch securities markets. However, the person concerned does have to live in the Netherlands (see Subsection (f) of the definition of a qualified investor in Section 1:1 of the Act).

A securities portfolio as referred to in Subsection (2)(b) is deemed to include the securities deposited with a bank and securities-denominated claims. Cash in hand or deposits are not part of this portfolio.

The Minister of Finance,  
G. Zalm

**Annexes**

**A. Table of concordance for the Exemption Regulations pursuant to the Act on the Supervision of the Credit System 1992 and the Exemption Regulations pursuant to the Act on the Supervision of the Securities Trade 1995 / Decree on Definitions pursuant to the Act on Financial Supervision**

Exemption Regulations pursuant to the Act on the Supervision of the Credit System 1992	Exemption Regulations pursuant to the Act on the Supervision of the Securities Trade 1995	Decree on Definitions pursuant to the Act on Financial Supervision
		2
1(e)(2°)		3(1)(a)
1(e)(3°)		3(1)(b)
1(e)(5°)		3(1)(c)
		3(1)(d) in conjunction with 3(2)
	1f(1)(a)	4(1)
	1f(1)(b)	4(2)

**B. Table of concordance for the Prospectus Directive and the Act on Financial Supervision / Decree on Definitions pursuant to the Act on Financial Supervision**

Directive No. 2003/71/EC of the European Parliament and of the Council of the European Union of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJEC L 345).

Prospectus Directive articles	Sections in the Act on Financial Supervision	Sections in the Decree on Definitions pursuant to the Act on Financial Supervision
2(1)(e)(i)	Subsections (a) and (b) of the definition of a qualified investor in Section 1:1	
2(1)(e)(ii)	Subsection (c) of the definition of a qualified investor in Section 1:1	
2(1)(e)(iii)	Subsection (e) of the definition of a qualified investor in Section 1:1	
2(1)(e)(iv) and 2(2)	Subsection (f) of the definition of a qualified investor in Section 1:1	4(2)
2(1)(e)(v) and 2(1)(f)	Subsection (d) of the definition of a qualified investor in Section 1:1	4(1)
2(3)	1:94a	