



Year of publication 2006

509

Decree of 12 October 2006, containing rules implementing Chapter 5.3 of the Act on Financial Supervision governing disclosure of voting rights, capital, major holdings and capital interests in issuing institutions (Decree on the Disclosure of Major Holdings and Capital Interests in Issuing institutions)

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 20 April 2006, no. FM 2006-00968M;

Taking account of Articles 9 to 15 of Directive No. 2004/109/EC of the European Parliament and of the Council of the European Union of 15 December 2004 on the transparency requirements in relation to information about issuing institutions whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJEC L 390/38), and Sections 5:34(2), second sentence, 5:35(2), second sentence and (4), second sentence, 5:37, 5:44, 5:45(10), 5:48(10) and 1:107 of the Act on Financial Supervision;

Having consulted the Council of State (opinion of 19 May 2006, no. W06.06.0134/IV);

Having seen the more detailed report of Our Minister of Finance of 9 October 2006, no. FM 2006-1299U;

Have approved and decreed the following:

CHAPTER 1. DEFINITION

Section 1

In this Decree, 'the Act' shall mean: the Act on Financial Supervision (*Wet op het financieel toezicht*, Wft).

CHAPTER 2. PERIODS AND TERMS

Provision implementing Sections 5:34(2) and 5:35(2) and (4) of the Act

Section 2

A disclosure as referred to in Section 5:34(2) or Section 5:35(2) or (4) of the Act shall relate to a calendar quarter and shall be made within eight days of the end of the calendar quarter concerned.

CHAPTER 3. DATA TO BE PROVIDED WHEN A DISCLOSURE IS MADE

3.1. Disclosure of share capital and voting rights by an issuer

Provisions implementing Section 5:37 of the Act

Section 3

1. When making a disclosure as referred to in Sections 5:34 or 5:35 of the Act, the person subject to the notification obligation shall provide the following data:
 - a. the name of the issuer;
 - b. where applicable: the number under which the issuer is listed in the Trade Register, as referred to in Section 2 of the Commercial Registers Act 1996 (*Handelsregisterwet 1996*); and
 - c. the date on which the notification obligation arose.
2. When making a disclosure as referred to in Section 5:34 of the Act, the person subject to the notification obligation shall also provide the following data:
 - a. the size of the share capital at the moment when the notification obligation arose; and
 - b. the number and type of shares, as referred to in Section 5:33(1)(b)(1°) of the Act, into which the share capital was divided at the moment when the notification obligation arose.
3. When making a disclosure as referred to in Section 5:34(2), first sentence of the Act of changes that occurred during a calendar month that was not the final month of the calendar quarter concerned, the person subject to the notification obligation shall also provide the following data: the size of the share capital and the number and type of shares, as referred to in Subsection (2)(b), at the end of that calendar month.
4. When making a disclosure as referred to in Section 5:35(1), first sentence, or (2), first sentence of the Act, the person subject to the notification obligation shall also provide the following data: the number and type of voting rights at the moment when the notification obligation arose.
5. When making a disclosure as referred to in Section 5:35(2), first sentence of the Act, the person subject to the notification obligation shall also provide the following data:
 - a. the number and type of voting rights at the moment when the notification obligation arose; and
 - b. if the changes occurred during a calendar month that was not the final month of the calendar quarter concerned: the number and type of voting rights at the end of that calendar month.
6. When making a disclosure as referred to in Section 5:35(3) of the Act, the person subject to the notification obligation shall also provide the following data: the number and type of shares, as referred to in Section 5:33(1)(b)(2°) of the Act, at the moment when the notification obligation arose.
7. When making a disclosure as referred to in Section 5:35(4), first sentence of the Act, the person subject to the notification obligation shall also provide the following data:

- a. the number and type of shares, as referred to in Section 5:33(1)(b)(2°) of the Act, at the moment when the notification obligation arose; and
- b. if the changes occurred during a calendar month that was not the final month of the calendar quarter concerned: the number and type of shares, as referred to in Section 5:33(1)(b)(2°) of the Act, at the end of that calendar month.

Section 4

When making a disclosure as referred to in Section 5:36 of the Act, the person subject to the notification obligation shall provide the following data:

- a. the name of the issuer;
- b. where applicable: the number under which the issuer is listed in the Trade Register, as referred to in Section 2 of the Commercial Registers Act 1996 (*Handelsregisterwet 1996*);
- c. the date on which the notification obligation arose;
- d. the size of the share capital at the moment when the notification obligation arose;
- e. the number and type of shares, as referred to in Section 5:33(1)(b)(1°) of the Act, into which the share capital was divided at the moment when the notification obligation arose;
- f. the number and type of voting rights at the moment when the notification obligation arose; and
- g. where applicable: the number and type of shares, as referred to in Section 5:33(1)(b)(2°) of the Act, at the moment when the notification obligation arose.

3.2. Disclosure of shares and voting rights by a holder of a substantial unit or one or more shares with a special controlling right under the articles of association, or by a director or supervisory board member of an issuer

Provisions implementing Sections 5:44 and 5:48(10) of the Act

Section 5

1. When making a disclosure as referred to in Section 5:38(1) or (2), or 5:39(1) of the Act, the person subject to the notification obligation shall provide the following data:

- a. the name of the person subject to the notification obligation;
- b. the address and place of residence/establishment of the person subject to the notification obligation;
- c. the name of the shareholder concerned, if this shareholder does not have a notification obligation;
- d. the date on which the notification obligation arose;
- e. the name of the issuer;
- f. the number and type of shares and voting rights in the issuer at this party's disposal at the moment when the notification obligation arose; and
- g. insofar as Section 5:45(3), first sentence of the Act applies: the name of the subsidiary concerned.

If the shares and the voting rights attached to them are held via a chain of one or more subsidiaries of the subsidiary concerned, the person subject to the notification obligation shall also give the name of this subsidiary or these subsidiaries.

2. When making a disclosure as referred to in Section 5:38(1) of the Act, the person subject to the notification obligation shall also provide the following information if the disclosure is also made to comply with Section 5:40, first sentence of the Act: the nature of the special right.

3. When making a disclosure as referred to in Section 5:38(1) of the Act, the person subject to the notification obligation shall also provide the following data if the disclosure relates to shares in an issuer and is also made to comply with Section 5:48(6), first sentence of the Act:

- a. the number and type of shares to which the change referred to in Section 5:48(6), first sentence of the Act related;
- b. the value at which this party acquired or lost the disposal of the shares concerned; and
- c. where applicable: the fact that the change results from a transaction conducted by an authorised agent to whom this party transferred the discretionary management of its financial instruments portfolio by means of a written mandate.

4. When making a disclosure as referred to in Section 5:38(1) of the Act, the person subject to the notification obligation shall provide the following data if the disclosure relates to shares in an affiliated issuer and is also made to comply with Section 5:48(6), first sentence of the Act:

- a. the data referred to in Subsection 1(a) to (e);
- b. the number and type of shares in the affiliated issuer that were at this party's disposal at the moment when the notification obligation arose;
- c. the number and type of shares to which the change referred to in Section 5:48(6), first sentence of the Act related;
- d. the value at which this party acquired or lost the disposal of the shares concerned;
- e. where applicable: the fact that the change results from a transaction conducted by an authorised agent to whom this party transferred the discretionary management of its financial instruments portfolio by means of a written mandate;
- f. the name of the affiliated issuer; and
- g. insofar as Section 5:45(3), first sentence of the Act applies: the name of the subsidiary concerned.

5. When making a disclosure as referred to in Section 5:38(2) of the Act, the person subject to the notification obligation shall also provide the following data if the disclosure relates to voting rights in an issuer and is also made to comply with Section 5:48(7), first sentence of the Act:

- a. the number and type of voting rights to which the change referred to in Section 5:48(7) of the Act related;
- b. the value at which this party acquired or lost the disposal of the voting rights concerned; and
- c. where applicable: the fact that the change results from a transaction conducted by an authorised agent to whom this party transferred the discretionary management of its financial instruments portfolio by means of a written mandate.

6. When making a disclosure as referred to in Section 5:38(2) of the Act, the person subject to the notification obligation shall provide the following data if the disclosure relates to voting rights in an affiliated issuer and is also made to comply with Section 5:48(7), first sentence of the Act:

- a. the data referred to in Subsection 1(a) to (e);
- b. the number and type of voting rights in the affiliated issuer at this party's disposal at the moment when the notification obligation arose;
- c. the number and type of voting rights to which the change referred to in Section 5:48(7) of the Act related;
- d. the value at which this party acquired or lost the disposal of the voting rights concerned;

- e. where applicable: the fact that the change results from a transaction conducted by an authorised agent to whom this party transferred the discretionary management of its financial instruments portfolio by means of a written mandate;
- f. the name of the affiliated issuer; and
- g. insofar as Section 5:45(3), first sentence of the Act applies: the name of the subsidiary concerned.

Section 6

1. When making a disclosure as referred to in Section 5:40, first sentence of the Act, the person subject to the notification obligation shall provide the following data:

- a. the name of the person subject to the notification obligation;
- b. the address and place of residence/establishment of the person subject to the notification obligation;
- c. the name of the shareholder concerned, if this shareholder does not have a notification obligation;
- d. the date on which the notification obligation arose;
- e. the name of the issuer; and
- f. the number and type of shares with a special controlling right in the issuer under the articles of association that were at this party's disposal at the moment when the notification obligation arose, as well as the nature of the special controlling right;

2. When making a disclosure as referred to in Section 5:40, first sentence of the Act, the person subject to the notification obligation shall also provide the following information if the disclosure is also made to comply with Section 5:45(3), first sentence of the Act: the name of the subsidiary concerned;

3. When making a disclosure as referred to in Section 5:40, first sentence of the Act, the person subject to the notification obligation shall also provide the following data if the disclosure relates to shares in an issuer and is also made to comply with Section 5:48(6), first sentence of the Act:

- a. the number and type of shares to which the change referred to in Section 5:48(6), first sentence of the Act related;
- b. the value at which this party acquired or lost the disposal of the shares concerned; and
- c. where applicable: the fact that the change results from a transaction conducted by an authorised agent to whom this party transferred the discretionary management of its financial instruments portfolio by means of a written mandate.

4. When making a disclosure as referred to in Section 5:40, first sentence of the Act, the person subject to the notification obligation shall provide the following data if the disclosure relates to shares in an affiliated issuer and is also made to comply with Section 5:48(6), first sentence of the Act:

- a. the data referred to in Subsection 1(a) to (e);
- b. the number and type of shares with a special controlling right in the affiliated issuer under the articles of association of which this party had the disposal at the moment when the notification obligation arose, as well as the nature of this special right;
- c. the number and type of shares to which the change referred to in Section 5:48(6), first sentence of the Act related;
- d. the value at which this party acquired or lost the disposal of the shares concerned;
- e. where applicable: the fact that the change results from a transaction conducted by an authorised agent to whom this party transferred the discretionary management of its financial instruments portfolio by means of a written mandate;
- f. the name of the affiliated issuer; and

g. insofar as Section 5:45(3), first sentence of the Act applies: the name of the subsidiary concerned. If the shares and the voting rights attached to them are held via a chain of one or more subsidiaries of the subsidiary concerned, the person subject to the notification obligation shall also give the name of this subsidiary or these subsidiaries.

Section 7

When making a disclosure as referred to in Sections 5:41 or 5:42 of the Act, the person subject to the notification obligation shall provide the following data:

- a. the name of the person subject to the notification obligation;
- b. the address and place of residence/establishment of the person subject to the notification obligation;
- c. the name of the shareholder concerned, if this shareholder does not have a notification obligation;
- d. the date on which the notification obligation arose;
- e. the name of the issuer;
- f. the number and type of shares and voting rights in the issuer at this party's disposal at the moment when the notification obligation arose;
- g. if this party had the disposal of one or more shares with a special controlling right under the articles of association at the moment when the notification obligation arose: the number and type of shares, as well as the nature of the special right; and

h. insofar as Section 5:45(3), first sentence of the Act applies: the name of the subsidiary concerned. If the shares and the voting rights attached to them are held via a chain of one or more subsidiaries of the subsidiary concerned, the person subject to the notification obligation shall also give the name of this subsidiary or these subsidiaries.

Section 8

1. When making a disclosure as referred to in Section 5:43 of the Act, the person subject to the notification obligation shall provide the following data:

- a. the name of the person subject to the notification obligation;
- b. the address and place of residence/establishment of the person subject to the notification obligation;
- c. the name of the shareholder concerned, even if this shareholder does not have a notification obligation;
- d. the date on which the notification obligation arose;
- e. the name of the issuer;
- f. the number and type of shares and voting rights in the issuer at this party's disposal at the moment when the notification obligation arose;
- g. if this party had the disposal of one or more shares with a special controlling right in the issuer under the articles of association at the moment when the notification obligation arose, and insofar as Section 5:43(1) of the Act applies: the number and type of shares, as well as the nature of the special right;
- h. insofar as Section 5:45(3), first sentence of the Act applies: the name of the subsidiary concerned. If the shares and the voting rights attached to them are held via a chain of one or more subsidiaries, the person subject to the notification obligation shall also give the name of this subsidiary or these subsidiaries;
- i. if the disclosure is also made to comply with Section 5:48(4), first sentence of the Act:

- 1°. the names of the affiliated issuers;

2°. the number and type of shares and voting rights in the affiliated issuers at this party's disposal at the moment when the notification obligation arose.

Section 9

1. When making a disclosure as referred to in Section 5:48 of the Act, the person subject to the notification obligation shall provide the following data, without prejudice to Sections 5 to 8:

- a. the name of the person subject to the notification obligation;
- b. the address and place of residence/establishment of the person subject to the notification obligation;
- c. the date on which the notification obligation arose; and
- d. the name of the issuer and, where applicable, of the affiliated issuers.

2. When making a disclosure as referred to in Section 5:48(3), first sentence, (4), first sentence, or (5), first sentence of the Act, the person subject to the notification obligation shall also provide the following data: the number and type of shares and voting rights in the issuer or in the affiliated issuers at this party's disposal at the moment when the notification obligation arose.

3. When making a disclosure as referred to in Section 5:48(6), first sentence of the Act, the person subject to the notification obligation shall also provide the following data:

- a. the number and type of shares in the issuer or the affiliated issuer to which the change related;
- b. the value at which this party acquired or lost the disposal of these shares;
- c. where applicable: the fact that the change results from a transaction conducted by an authorised agent to whom this party transferred the discretionary management of its financial instruments portfolio by means of a written mandate; and
- d. the number and type of shares in the issuer or the affiliated issuer at this party's disposal after the change.

4. When making a disclosure as referred to in Section 5:48(7), first sentence of the Act, the person subject to the notification obligation shall also provide the following data:

- a. the number and type of voting rights in the issuer or the affiliated issuer to which the change related;
- b. the value at which this party acquired or lost the disposal of these voting rights;
- c. where applicable: the fact that the change results from a transaction conducted by an authorised agent to whom this party transferred the discretionary management of its financial instruments portfolio by means of a written mandate; and
- d. the number and type of voting rights in the issuer or the affiliated issuer at this party's disposal after the change.

CHAPTER 4. RULES ON VOTES THAT MAY BE CAST BY A SUBSIDIARY THAT IS A PORTFOLIO MANAGER

Provision implementing Section 5:45(10) of the Act

Section 10

Section 5:45(3), first sentence of the Act shall not apply to the party whose subsidiary is a portfolio manager that provides its services in relation to the management of individual share capital independently of other services that it provides.

CHAPTER 5. MANNER OF DISCLOSURE

Provision implementing Sections 5:37, 5:44 and 5:48(10) of the Act

Section 11

The data to be provided under this Decree in a disclosure as referred to in Sections 5:34, 5:35, 5:36, 5:38 to 5:43, or 5:48 of the Act shall be provided using the disclosure forms to be specified by the Netherlands Authority for the Financial Markets.

CHAPTER 6. THE REGISTER

Provision implementing Section 1:107 of the Act

Section 12

If the person subject to the notification obligation is a natural person, his/her address and place of residence shall not be included in the register referred to in Section 1:107 of the Act.

CHAPTER 7. FINAL PROVISIONS

Section 13

This Decree shall enter into force at the time when the Act enters into force.

Section 14

This Decree shall be cited as: Decree on the Disclosure of Major Holdings and Capital Interests in Issuing institutions (*Besluit melding zeggenschap en kapitaalbelang in uitgevende instellingen*).

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

Introduction

This Decree implements Sections 5:34(2), second sentence, 5:35(2), second sentence and (4), second sentence, 5:37, 5:44, 5:45(10) (partly), and 5:48(10) of Chapter 5.3 (Rules governing disclosure of voting rights, capital, major holdings and capital interests in issuing institutions) of the Act on Financial Supervision (*Wet op het financieel toezicht*) (hereinafter: the Act), as well as Section 1:107 of the Act.

Sections 5:38(4), 5:39(3), 5:43(3), 5:45(10) (partly) and 5:46(4) of the Act have not yet been worked out in detail. [Deze zin is niet nauwkeurig genoeg vertaald.] The European Commission, pursuant to Article 12(8)(d) of the Transparency Directive, may decide to take account of technical developments on financial markets and ensure uniform application by adopting implementing measures in order to clarify the circumstances under which the person subject to the notification obligation should have learned of an acquisition or transfer causing this party to reach or exceed a threshold value. [Deze zin is niet nauwkeurig vertaald.] Sections 5:38(4), 5:39(3) and 5:43(3) of the Act provide for the possibility to lay down these implementing measures in an order in council in due course.

Pursuant to Article 12(8)(e) of the Transparency Directive, the European Commission may also issue implementing measures under which parent companies of management companies and/or portfolio managers may obtain certain exemptions from duties to disclose. Section 5:45(10), opening words and under (b) of the Act provides for the possibility to lay down these implementing measures in an order in council in due course.

Finally, the Commission, pursuant to Article 9(7), first paragraph of the Transparency Directive, may issue implementing measures under which certain categories of financial institutions may be exempt under certain circumstances from the duties to disclose their interests that are laid down in the Act. Section 5:46(4) of the Act provides for the possibility to lay down these implementing measures in an order in council in due course.

Administrative burden

This Decree may be regarded as the conversion to the Wft framework of the Decree on the Disclosure of Major Holdings and Capital Interests in Securities-Issuing Institutions (*Besluit melding zeggenschap en kapitaalbelang in effecten-uitgevende instellingen*), which entered into force on 1 October 2006, at the same time as the Act on the Disclosure of Major Holdings and Capital Interests in Securities-Issuing Institutions (*Wet melding zeggenschap en kapitaalbelangen in effectenuitgevende instellingen*, Wmz 2006).

As this Decree has the same structure as the Decree on the Disclosure of Major Holdings and Capital Interests in Securities-Issuing Institutions, it was decided not to include a table of concordance between the two decrees. The other decree contained rules implementing Wmz 2006. A draft version of that decree, as well as of the Bill it implemented, was submitted at the time to the Advisory Board on Administrative Burden (*Adviescollege toetsing administratieve lasten*, ACTAL). In its subsequent advice, ACTAL stated that it was pleased to learn that the application of ICT tools would reduce the administrative burden for the business sector in comparison with the previous statutory regime, even though the total extent of this reduction (in absolute terms) would be limited in its view. ACTAL also applauded the fact that the Bill streamlined a number of disclosures.

Finally, ACTAL indicated that, given its selection criteria, it would not select the Bill for an assessment of the resulting administrative burden for the business sector.

The present Decree implements sections in Chapter 5.3 of the Act relating to the duties to disclose and the manner in which these disclosures are processed in the register referred to in Section 1:107 of the Act. In particular, this Decree regulates:

1. the applicable periods and terms in relation to a disclosure;
2. the data to be provided in a disclosure;
3. the manner in which a disclosure must be made;
4. the possible concurrence of several duties to disclose that are regulated in Chapter 5.3, which means that in a number of cases a person subject to the notification obligation only has to make a single disclosure.

This is important with a view to restricting the administrative burden.

Another important point is that this Decree does not prescribe any further duties to disclose or administrative obligations other than those already laid down in Chapter 5.3 of the Act.

In short, the present Decree, being purely a technical and policy-neutral conversion of the Decree on the Disclosure of Major Holdings and Capital Interests in Securities-Issuing Institutions, does not entail any changes in respect of the administrative burden for the business sector. I address this issue in my letter of 17 May 2006 to the President of the Lower House of the States General regarding the administrative burden under the Wft (Parliamentary Documents, TK 2006/06, 29 708, no. 42). This letter pointed out that the present Decree would not result in any change in the administrative burden compared to the Wmz Bill under discussion at the time (the Wmz Bill, i.e. the Act on the Disclosure of Major Holdings and Capital Interests in Securities-Issuing Institutions, was enacted on 1 October 2006).

Responses to consultation

Advice received

This draft Decree was submitted for formal consultation to the two supervisory authorities and to the representative (organisations of) market parties. Responses were received from the Netherlands Authority for the Financial Markets (*Autoriteit Financiële Markten*, AFM), the Dutch Central Bank (*De Nederlandsche Bank*, DNB), the Netherlands Bankers' Association (*Nederlandse Vereniging van Banken*, NVB), the Association of Insurers (*Verbond van Verzekeraars*), the Netherlands Association of Authorised Agents (*Nederlandse Vereniging voor Gevolmachtigde Agenten*, NVGA), the Securities Industry Council (*Raad voor de Effectenbranche*, REB) and Euronext Amsterdam N.V. (REB and Euronext gave a joint response). These responses have been published on the website of the Ministry of Finance (www.minfin.nl/Wft). The main points of the responses received are discussed below.

Responses

A number of the organisations consulted indicated that they did not have any comments and/or agreed to the draft Decree as it had been submitted to them for formal consultation. The organisations concerned were as follows: DNB, the Association of Insurers, the NVGA and the REB/Euronext Amsterdam N.V. (joint response).

The AFM also agreed to the draft Decree and had only a few editorial comments, which have since been incorporated in the Decree.

The NVB, on the other hand, made a number of comments and asked questions. These comments and questions and any consequences for the draft Decree are addressed below.

First of all, the NVB observed that the fourth memorandum of amendment to the then Wmz Bill had not yet been incorporated in the text of the Wft Bill as it had been submitted to the Lower House in November 2005. This observation was correct at the time. The fact that the said memorandum of amendment had not yet been incorporated in the Wft Bill was due to this memorandum having been submitted to the Lower House after the submission to the Lower House of the Wft Bill. It is also the case, as stated earlier, that Wmz 2006 entered into force on 1 October 2006, and was converted into the Wft in a policy-neutral manner.

The NVB then noted that the administrative burden for parties with a notification obligation had increased as a result of the threshold values of 40, 60 and 95 percent proposed in the fourth memorandum of amendment to the Wmz Bill, and the NVB asked which provisions would be deleted to compensate for this increase in the administrative burden. Despite these new threshold values, no provisions were deleted at the time. There was no need to do so, partly because it was expected that the additional burden resulting from the new threshold values would be relatively limited, as had been explained in the notes to the said memorandum of amendment. It is also the case that the Wmz Bill as a whole results in a material reduction in the administrative burden.

Furthermore, the NVB stated that neither the draft Decree nor the explanatory notes indicated that a separate Trade Register disclosure (with regard to, for instance, a change in the issued capital of an issuer) would be superfluous if a Wmz disclosure were made as well. A provision to this effect in the Decree is not necessary, however, because, as proposed in Section 49 of the Wmz Bill, this concurrence of the Wmz disclosure and the Trade Register disclosure is regulated in Section 9 of the Commercial Registers Act 1996. It is therefore not necessary to include a provision to this effect in the Decree. As observed earlier (and also noted by the NVB), the AFM will indeed pass on to the Trade Register any Wmz disclosures that it receives in connection with capital changes. Moreover, the AFM has already been doing so since 1 October 2006, based on the Wmz 2006 which entered into force on that date.

The NVB also pointed out that CESR was still in the process of developing a standard EU disclosure form (with which, in its opinion, the present Decree would be incompatible) and the NVB therefore argued that the implementation of this Decree should be postponed until CESR had concluded its consultation process and the implementing rules had been adopted by the European Commission. In my opinion, there is no need for such a postponement, because the said implementing rules do not affect the essence of the Bill and the present Decree, which is based on that Bill. Due care will also be taken to ensure a proper alignment of the standard form to be developed at EU level and the AFM's disclosure form, in order to prevent the administrative burden feared by the NVB.

In addition, the NVB drew attention to the passive disclosure requirement under Sections 5:38 and 5:39 (presumably this should be Section 5:39 only), which provides for a notification obligation in cases where the percentage of share capital or voting rights held exceeds or falls below a threshold value and the party involved knows or should know that this has occurred. As an example of the applicability of this provision, the NVB mentioned the situation in which an investor may pass a threshold value in the event of dilution through a share issue by an issuer. The NVB pointed out that, although this situation was excluded from the notification obligation under the old system, it was not clear whether this was also the case under the new system.

In this connection it should be noted that, in the situation referred to by the NVB, the investor concerned will have a notification obligation under the new system (pursuant to Section 5:39, which serves to implement Article 9(2) of the Transparency Directive). This therefore constitutes a difference compared to the situation under the old system, because the Wmz 1996 did not provide for a passive notification obligation.

Notes on individual sections

Section 2

This section is based on Sections 5:34(2) and 5:35(2) and (4) of the Act. Pursuant to Sections 5:34(2), second sentence and 5:35(2), second sentence and (4), second sentence of the Act, an order in council determines the period to which a disclosure (by an issuer with regard to its outstanding capital and voting rights) relates and the term within which a disclosure must have been made. The present section sets the period at a calendar quarter and the term at eight days after the end of the calendar quarter concerned.

The decision in favour of disclosure per calendar quarter is in line with the agreements about the disclosure of capital changes that were made in the context of the Listing and Issuing Rules (*Fondsenreglement*) between, on the one hand, a large number of issuers that are listed on the securities exchange held by Euronext Amsterdam and, on the other hand, the holder of that securities exchange.

An issuer, for which Chapter 5.3 of the Act includes a specific definition in Section 5:33(1)(a), will have to disclose – among other things – the types of its outstanding shares, such as ordinary, preference or priority shares. It will also have to disclose the nature of the voting rights, for instance whether they are special controlling rights in an issuer under the articles of association and, if so, the content of these rights.

In addition, an issuer will have to disclose, where applicable, the number under which it is listed in the Trade Register. Dutch issuers (must) possess such a number. Foreign legal persons whose shares are traded on a regulated market in the Netherlands, and which therefore fall within the scope of Chapter 5.3 of the Act, must possess such a number if they conduct a business in the Netherlands.

Subsections (3), (5) and (7) of Section 3 provide that, if an issuer makes a periodic (quarterly) disclosure pursuant to Section 5:34(2), first sentence, Section 5:35(2), first sentence and Section 5:35(4), first sentence of the Act respectively, this issuer must disclose the total changes as at the end of the month with regard to the month or months in which the changes to be periodically disclosed occurred. These provisions implement Article 15 of Directive No. 2004/109/EC of the European Parliament and of the Council of the European Union of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJEC L 390/38; hereinafter: the Transparency Directive). Accordingly, there is no obligation to disclose at the end of each calendar month.

For example, if an issuer has made changes to its denominator (i.e. its outstanding capital, the shares into which this capital is divided and the voting rights attached to those shares) in the first and third months of a calendar quarter, it only has to make a periodic disclosure within eight days of the end of that calendar quarter. In this disclosure, it will have to disclose not only the denominator information at the end of that calendar quarter, but also the denominator information as at the end of the first month of that calendar quarter (changes also took place in the first month).

Sections 3 and 4

These sections are based on Section 5:37 of the Act. These sections specify the data which an issuer must provide to the AFM when making a disclosure in respect of its outstanding capital, shares, voting rights and depositary receipts for shares. Section 3 relates to (Dutch) companies or (foreign) legal persons that already qualify as an issuer as defined in Section 5:33(1)(a). Section 4 relates to companies or legal persons that do not yet qualify as such an issuer but will be qualified as such, for example because shares they have issued will be initially admitted to trading on a regulated market (initial listing).

In addition to name and address details and the like, the data to be disclosed by the issuers concerned will consist of data regarding the outstanding capital of these issuers, the voting rights attached to the shares into which that capital is divided, and – if depositary receipts for shares are involved that were issued with the cooperation of the issuer – data regarding these depositary receipts. This data will be entered in the register referred to in Section 1:107 of the Act, and will enable an owner of a substantial unit and/or one or more shares with special controlling rights in those issuers under the articles of association to calculate its interest in those issuers correctly and therefore to fulfil its duties to disclose such interests in a correct manner.

Sections 5 to 9

These sections are based on Sections 5:44 and 5:48(10) of the Act. They specify the data to be provided by (i) a holder of a substantial unit (as defined in Section 5:33(1)(g) of the Act) or one or more shares with special controlling rights under the articles of the association, and (ii) a director or supervisory board member of an issuer, when making a disclosure pursuant to the Act. These sections take account of the concurrence of duties to disclose regulated in different sections of the Act (Sections 5:40, 5:41 and 5:48). This means that if a particular disclosure (under Section 5:38(1), for example) includes not only the obligatory data but also the data that has to be disclosed pursuant to a different provision (for example, Section 5:40), the person subject to the notification obligation may comply with both sections by making only the former disclosure (i.e. there is no double notification obligation in respect of the same transaction).

Section (5)(1)(c) – among other provisions – stipulates that the data disclosed must include the name of the shareholder concerned, if this shareholder does not have a notification obligation.

This may be the case in situations regulated by Section 5:45 of the Act. Section 5(1)(c) – among other provisions – implements Article 12(1)(d) of the Transparency Directive. Under this provision, a disclosure of a major holding or capital interest in an issuer must include the identity of the shareholder, even if this shareholder is not entitled to exercise the voting rights attached to his shares because a situation as referred to in Section 5:45 applies.

Section 5(1)(f) – among other provisions – stipulates that such a person subject to the notification obligation must determine the type of shares in an issuer at its disposal. Based on this provision, this party must not only distinguish between – for example – ordinary, preference and priority shares at its disposal, but also indicate whether the shares are as referred to in Section 5:33(1)(b) under 1° (shares), 2° (depository receipts for shares), 3° (for instance, convertible bonds) or 4° (for instance, call options) of the Act.

Section 5(1)(g), first sentence – among other provisions – stipulates that, if a group relationship exists and a parent company (pursuant to Section 13(3), first sentence of the Act) is therefore deemed to have the disposal of the shares and the voting rights attached to them that are at the disposal of its subsidiary, this parent company must also disclose the name of the subsidiary concerned. This provision ensues from Article 12(1)(b) of the Transparency Directive.

The second sentence of Section 5(1)(g) provides that, if the shares and the voting rights attached to them allocated to the parent company pursuant to Section 5:45(3), first sentence of the Act are held via a chain of subsidiaries, the parent company must also disclose the names of the subsidiaries concerned. This situation may also occur, for example, if these shares and voting rights are held by one or more (sub-)subsidiaries of this subsidiary. This second sentence also implements Article 12(1)(b) of the Transparency Directive.

Section 10

This section implements Section 5:45(10) and opening words of the Act, which provides that if certain conditions (to be specified by order in council) are fulfilled, a party whose subsidiary is a portfolio manager with a licence is not required to fulfil the allocation duty laid down in Section 5:45(3), first sentence in respect of the shares and the voting rights attached to them that are managed by the subsidiary concerned.

Section 5:45(10) of the Act imposes the condition that the portfolio manager must be able to exercise the voting rights attached to the shares concerned at its own discretion. This provision implements Article 12(5) of the Transparency Directive with regard to (i) the first paragraph, third dash, which provides that the portfolio manager must be able to exercise these voting rights independently of its parent company, and (ii) the second paragraph, which provides that in certain cases the parent company must allocate to itself the shares and the voting rights attached to them that are managed by its subsidiary/portfolio manager if this subsidiary may only exercise the voting rights under instructions from the parent company or another subsidiary.

Article 12(5) of the Transparency Directive also imposes the condition (in the first paragraph, second dash) that the portfolio manager may only exercise the voting rights attached to the shares it manages after having received written instructions to this effect, or must ensure, by putting in place appropriate mechanisms, that its individual portfolio management services are conducted independently of its other services under conditions provided for by Council Directive 85/611/EEC 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). This condition is implemented by Section 5:45(10), opening words of the Act (which provides that the aforementioned allocation duty will not apply if rules to be laid down by order in council are complied with) in conjunction with Section 10 of the present Decree (which stipulates that the allocation duty will not apply if the subsidiary/portfolio manager ensures that its services in respect of the individual management of financial instruments portfolios are performed independently of its other services).

Finally, it should be noted that the European Commission, pursuant to Article 12(8)(e) of the Transparency Directive, may adopt implementing measures in connection with Article 12(5) (among other provisions) of this Directive. In doing so, it may impose conditions in particular with regard to the independence that must be achieved between a portfolio manager and its parent company, in order to exempt the parent company from the aforementioned allocation duty. These conditions, once they have been specified, will be laid down in (an amendment to) this Decree pursuant to Section 5:45(10), opening words of the Act.

Section 11

This section is based on Sections 5:37, 5:44 and 5:48(10) of the Act and stipulates that the disclosures to be made pursuant to Chapter 5.3 of the Act must be made in writing (Subsection (1)). Under the Act on Online Administrative Business (*Wet elektronisch bestuurlijk verkeer*), “in writing” includes “online” in this context. Furthermore, a disclosure must be made by means of disclosure forms to be specified by the AFM.

Section 12

This section is based on Section 1:107 of the Act, which stipulates the data disclosed to the supervisory authorities under this Act that must be included in the register set up pursuant to this Act. In order to protect the personal privacy of private individuals with a notification obligation, the name and address details of natural persons are not included in the register. For further details regarding this exception, please refer to the parliamentary debate on the Act of 18 April 2002 amending the Dutch Civil Code (*Burgerlijk Wetboek*), and to a number of other Acts relating to the publication of the remuneration and shareholdings of directors and supervisory board members (Bulletin of Acts, Orders and Decrees 2002, 225), which involved a similar consideration of, on the one hand, the interest of protecting the personal privacy of private individuals with a notification obligation and, on the other hand, the possible interest in publishing the name and address details of private individuals to ensure the transparency of the capital markets (see also Parliamentary Documents II, 2000/01, 27 900, no. 5, p. 14).

The Minister of Finance,
G. Zalm

Table of concordance

Directive 2004/109/EC of the European Parliament and of the Council of the European Union of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJEC L 390/38)

Article of the Directive	Section of the Act	Section of the Decree
1(2) (in conjunction with Article 2(1) (g) and (h))	5:33(2)	
2(1)(a)	5:33(1)(b)(1°), (2°) and (3°)	
2(1)(c)	1:1	
2(1)(d)	5:33(1)(a)	
2(1)(e)	5:33(1)(d) in conjunction with 5:45(1)	
2(1)(f)	5:33(1)(c)	
2(1)(g)	5:33(2)	
2(1)(h)	5:33(2)	
2(1)(m)	1:1	
2(1)(n)	1:1	
9(1)	5:38, 5:44	5, 11
9(2)	5:39, 5:44	5, 11
9(4)	5:46(1), opening words and under (a) and (b), and 5:46(2), opening words and under (a)	
9(5)	5:46(2), opening words and under (b)	
9(6)	5:46(3)	
10(a)	5:45(5)	
10(b)	5:45(6)	
10(c)	5:45(2)	
10(d)	5:45(2)	
10(e)	5:45(3), first sentence	
10(f)	5:45(1)	
10(g)	5:45(4)	
10(h)	5:45(9)	
11	5:46(1), opening words and under (c)	
12(1)	5:44	5, 11
12(2)	5:38 and 5:39	5
12(3)	5:45(3), second sentence	
12(4), first paragraph	5:45(10)(a)	
12(4), second paragraph	5:45(3)	
12(5), first paragraph, first and third dashes	5:45(10)(b)	10
12(5), first paragraph, second dash	5:45(10)(b)	10
12(5), second paragraph	5:45(3)	
12(6)	1:107	12
12(7)	1:107	
13	5:33(1)(b)(4°) and 5:44	
14(1)	5:38(1) and 5:47, opening words and under (b)	5
15	5:34, 5:35 and 5:37	2, 3 and 4
19(3) and (4)	5:38, 5:39 and 5:44	5