

Unofficial translation of *Besluit Gedragstoezicht financiële ondernemingen Wft* dated 12 October 2006.

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(Text applicable as at 3 January 2008)

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## **Decree of 12 October 2006, containing rules relating to the supervision of the conduct of financial enterprises (Decree on the Supervision of the Conduct of Financial Enterprises pursuant to the Act on Financial Supervision)**

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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 12 July 2006, no. FM 2006-01681 M;  
Having regard to 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), Council Directive 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 1987 L 42), Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (OJEC L 228), Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (OJEC L 141), Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (OJEC L 271), Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance (OJEC L 345) and Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (OJEC L 9), as well as Sections 4:3(4), 4:5(3), 4:9(3), 4:10(3), 4:11(3) and (4), 4:14(2), 4:15(2), opening words and (a) and (b)(2°), 4:16(2) and (3), 4:17(3), 4:20(1), (2), (3), opening words and (b), (4) and (5), 4:22(1), 4:25(1), 4:26(3), 4:27(4), 4:30a(3), 4:32(2), 4:33(3) and (4), 4:34(3), 4:43(2), 4:48(2), 4:49(2), opening words and (e), 4:51(4), 4:52(3), 4:56(1), 4:61, 4:71(4), 4:72(3), opening words and (a), 4:73(3), opening words and (a) and (c), 4:74(2), 4:75(2), 4:76(2), 4:78(1), 4:85(3), 4:86, 4:87(3), 4:88(3) and 4:89(2) of the Act on Financial Supervision;

Having consulted the Council of State (opinion of 20 September 2006, no. W06.06.0334/IV);

Having seen the more detailed report of Our Minister of Finance of 9 October 2006 (no. FM 2006-02268 M);

Have approved and decreed the following:

### **Chapter 1. Introductory provisions**

#### **§ 1.1. Definitions**

##### **Section 1**

For the purpose of this Decree and the provisions based upon it, the following terms shall have the following meaning:

- a. *initial commission*:
  - 1°. remuneration or fee, in any form whatsoever, which a broker who is in direct contact with a consumer receives on the occasion of the establishment of an agreement regarding a complex product between a provider and that consumer, from the provider of the complex product, either directly or indirectly; or
  - 2°. remuneration or fee, in any form whatsoever, which a broker who is in direct contact with a consumer and who compiles a complex product as referred to in Subsection (d)(4°) or makes that product generally available on the market, receives on the occasion of the establishment of an agreement between a provider and that consumer regarding a financial product which is part of that complex product, from the provider of that financial product, either directly or indirectly;
- b. *director*: in the case of a management company, investment company or custodian, anyone who is authorised by law to represent a management company, investment company or custodian, or to determine the policy of a management company, investment company or custodian;

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- c. *payment term*: period between:
  - 1°. the moment when a provider, pursuant to a credit agreement, makes a sum of money available or starts providing the enjoyment of a movable property, financial instrument or investment object or performing a service, and the moment when the consumer must have made the first payment in this respect; or
  - 2°. two successive moments when a consumer must have made a payment pursuant to a credit agreement;
- d. *complex product*:
  - 1°. combination of two or more financial products that contains at least one financial product whose value depends on developments in the financial markets or other markets;
  - 2°. unit in a collective investment scheme, other than a security; and
  - 3°. life insurance, other than funeral provisions insurance or other insurance which serves exclusively for paying monetary benefits providing for the funeral of a natural person, or insurance whereby the insurer's obligation to make a payment or a series of payments only arises if the death of the person to whose life the insurance relates occurs before the date specified in the policy;
  - 4°. combination of a mortgage loan with life insurance as referred to under (3°), or with a savings account;
  - 5°. investment object;
  - 6°. other financial product that may be designated by ministerial regulation if this is desirable for the purpose of the comparability of the complex products referred to under (2°) to (5°) with this financial product with a view to the interests which the part of the Act that relates to the Supervision of the Conduct of Financial Enterprises intends to protect; or
  - 7°. combination of one or more of the complex products referred to under (2°) to (6°) with one or more financial products;
- e. *consumer credit*: credit other than a mortgage loan;
- f. *deposit*: credit balance with a bank that can be withdrawn immediately and for which the interest period does not exceed 12 months;
- g. *ongoing commission*:
  - 1°. remuneration or fee, in any form whatsoever, other than initial commission, which a broker who is in direct contact with a consumer receives after the establishment of an agreement regarding a complex product between a provider and that consumer, from the provider of the complex product, either directly or indirectly; or
  - 2°. remuneration or fee, in any form whatsoever, other than initial commission, which a broker who is in direct contact with a consumer and who compiles a complex product as referred to in Subsection (d)(4°) or makes that product generally available on the market, receives after the establishment of an agreement between a provider and that consumer regarding a financial product which is part of that complex product, from the provider of that financial product, either directly or indirectly;
- h. *revolving credit*: agreement concerning:
  - 1°. monetary credit enabling the consumer to draw sums of money at various times, insofar as the outstanding balance does not exceed the credit limit; or
  - 2°. commodities credit whereby the provider or a third party is obliged to provide a consumer at various times with the enjoyment of a movable property, financial instrument or investment object or to perform a service, insofar as the outstanding balance does not exceed the credit limit;
- i. *exit qualifications*: standards of professional competence for the provision of a particular financial service in respect of a particular financial product;
- i.1. *financial analyst*: a relevant person who carries out tangible investment research;
- j. *financial derivative*: financial instrument as referred to in Section 4:60(1)(d), (e), (f) or (g) of the Act;
- k. *Financial Information Leaflet*: document presenting information on the subjects referred to in Section 66(1) or (2) with regard to a complex product in the manner prescribed pursuant to that section;
- l. *money market instrument*: financial instrument as referred to in Subsection (c) of the definition of a financial instrument in Section 1:1 of the Act;
- m. *affiliated party*:
  - 1°. person that is connected with a management company, investment company or custodian, or with a director of a management company, investment company or custodian, in a formal or actual control structure;
  - 2°. person that can exercise a voting right, either directly or indirectly, or exercise certain rights in

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- other ways, in such a way as to exert material influence on the commercial or financial policy of a management company, investment company or custodian;
- 3°. natural person who has a family relationship with a director of a management company, investment company or custodian, or with a natural person as referred to under (1°) or (2°);
  - 4°. natural person who has a personal relationship with a director of a management company, investment company or custodian, or with a natural person as referred to under (1°) or (2°), pursuant to which relationship he can influence the actions of that director or natural person in respect of the management company, investment company or custodian;
  - 5°. legal person in which a director of a management company, investment company or custodian, or a natural person as referred to under (3°) or (4°), can exercise voting rights, either directly or indirectly, or exercise certain rights in other ways, in such a way as to exert material influence on the commercial or financial policy of that legal person; or
  - 6°. natural person who belongs to a body responsible for supervising the policy and the general affairs of a management company, investment company or custodian;
- m.1. *associated financial instrument*: a financial instrument whose price greatly depends on price fluctuations of another financial instrument that is the subject of investment research, or of a financial instrument derived from that other financial instrument;
- n. *mortgage loan*: credit agreement with a consumer that involves the establishment of a mortgage right that gives priority to the recovery of the claim in settlement of the payment owed by the consumer, or in respect of which such a right has already been established and whereby the credit is granted at an effective lending rate customary for mortgage financing by the provider;
- o. *incident*: action or event that poses a serious threat to the honest and ethical conduct of the business of a financial enterprise;
- p. *sensitive post*:
- 1°. management position directly under the persons determining or co-determining the policy of the financial enterprise; or
  - 2°. position involving a power that entails a material risk to the honest and ethical conduct of the business of a financial enterprise;
- q. *integrity risk*: risk of damage to the reputation or an existing or future threat to the capital or results of a financial enterprise caused by inadequate compliance with the provisions laid down in or pursuant to any statutory regulation;
- r. *international accounting standards*: international accounting standards approved by the Commission of the European Communities in accordance with Article 3 of Regulation (EC) No. 1606/2002/EC of the European Parliament and of the Council of 19 July 2002 (OJEC L 243);
- s. *costs*: amounts charged by a financial enterprise to a client, consumer or unit holder;
- t. *credit limit*:
- 1°. maximum amount of the sums of money to be drawn by a consumer from the credit provider pursuant to a revolving monetary credit agreement; or
  - 2°. maximum value of the enjoyment of a property, financial instrument or investment object or the service to be provided by a credit provider to the consumer pursuant to a revolving commodities credit agreement;
- u. *credit sum*:
- 1°. sum of money made available to the consumer under a monetary credit agreement, on the understanding that where revolving credit is concerned, the credit limit is regarded as that sum of money; or
  - 2°. difference between the total present value of the movable properties, financial instruments, investment objects or services of which the consumer is given the enjoyment or which are provided to the consumer under a commodities credit agreement, and the cash payments made by the consumer in that context, on the understanding that where revolving credit is concerned, the credit limit is regarded as that difference;
- v. *lending fee*: costs relating to a credit agreement;
- w. *monthly payment*: amount owed by a consumer in payments relating to credit, calculated for one calendar month, including in any case interest and redemption payments in respect of the credit;
- w.1. *close ties*: situation in which two or more natural or legal persons are connected by:
- 1°. a participating interest, i.e. ownership of at least 20% of the voting rights or the capital of a legal person, either directly or through a control relationship;
  - 2°. a control relationship, i.e. the relationship that exists between a parent company and a subsidiary, in all cases as referred to in Article 1(1) and (2) of the Consolidated Accounts Directive, or a relationship of the same nature between a natural or legal person and another legal person; a subsidiary of a subsidiary is also regarded as a subsidiary of the parent company heading these enterprises;

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- w.2. *investment research*: research or other information intended for the general public in which an investment strategy is recommended or proposed, either explicitly or implicitly, in respect of one or more financial instruments or issuers of financial instruments, including recommendations concerning the current or future value or price of such instruments, which research:
  - a. is presented as investment research or is referred to in any other way as an objective or independent explanation of the matters discussed in the recommendation; and
  - b. if it is addressed to a client, does not constitute advice;
- x. *surcharges and discounts*: amounts by which the price or repayment paid or received by the unit holders for units in a collective investment scheme is increased and reduced respectively in relation to the net asset value of the units;
- x.1. *personal transaction*: a transaction in a financial instrument conducted by or on behalf of a relevant person, whereby:
  - 1°. the relevant person concerned acts otherwise than in the course of his profession or business;
  - 2°. the transaction is conducted at the relevant person's expense;
  - 3°. the transaction is conducted at the expense of a person with whom the relevant person has a family relationship or close ties; or
  - 4°. the transaction is conducted at the expense of a person whose relationship with the relevant person is such, that the relevant person has a material interest, either directly or indirectly, in the result of the transaction other than the commission he receives for carrying out the transaction;
- y. *relevant person*:
  - 1°. a person who determines the day-to-day policy or is a tied agent of an investment firm;
  - 2°. anyone who determines the day-to-day policy of a tied agent of an investment firm;
  - 3°. an employee of the investment firm or of a tied agent of the investment firm, or another natural person whose services are available to and controlled by an investment firm and the tied agent respectively and who is involved in the performance of investment activities or the provision of investment services by the investment firm; or
  - 4°. a natural person who, pursuant to an outsourcing agreement with a view to the provision or performance of investment services or investment activities by the investment firm, is directly engaged in performing services on behalf of the investment firm or its tied agent;
- z. *return commission*: part of a fee payable or paid by or at the expense of a collective investment scheme for a third-party service that is repaid or passed on by the recipient, either directly or indirectly;
- aa. *risk indicator*: representation of the risk level of a complex product;
- bb. *series of investment objects*: collection of investment objects for which the same investment object prospectus as referred to in Section 4:30a of the Act is drawn up;
- cc. *instalment amount*: amount of the payment that a consumer must have made by the end of a payment term;
- dd. *theoretical term*: duration of the period during which a consumer is obliged to make payments in respect of a revolving credit, calculated in the manner set out in Annex A to this Decree;
- ee. *assessment terms*: criteria against which a person's professional competence is assessed in order to determine whether this person has the required exit qualifications;
- ff. *total price of the credit*: sum of the monthly payments payable by a consumer during the term of a credit agreement or, where revolving credit is concerned, during the theoretical term of a credit agreement;
- gg. *outstanding balance*:
  - 1°. where monetary credit is concerned: total amount at any moment of the sums of money drawn by the consumer up to and including that moment, increased by the lending fee charged to the consumer up to and including that moment and reduced by the payments made by the consumer up to and including that moment;
  - 2°. where commodities credit is concerned: total present value at any moment of the movable properties, financial instruments, investment objects or services of which the consumer was given the enjoyment up to and including that moment, or which were provided to the consumer up to and including that moment, increased by the total amount of the lending fee charged to the consumer up to and including that moment and reduced by the payments made by the consumer up to and including that moment;
- hh. *Act*: the Act on Financial Supervision (*Wet op het financieel toezicht*, Wft).

## **§ 1.2. Special provisions**

### **Provisions implementing Sections 4:3(4) and 4:5(3) of the Act**

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## **Section 2**

1. The policy of the holder of a dispensation as referred to in Section 4:3(4) of the Act shall be determined or co-determined by persons whose properness is beyond doubt. If a body within the dispensation holder is responsible for supervising the policy and the general affairs of the dispensation holder, the properness of the persons exercising this supervision shall be beyond doubt.
2. The applicant for a dispensation as referred to in Section 4:3(4) of the Act shall demonstrate that Subsection (1) will be complied with, and shall submit the following details with regard to the persons concerned:
  - a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position;
  - b. a copy of a valid identity document;
  - c. details with regard to the antecedents referred to in Section 13; and
  - d. a list of referees.
3. The properness of a person as referred to in Subsection (1) shall be beyond doubt once this has been established for the purpose of the Act by a supervisory authority, as long as a change in the relevant facts or circumstances has not given reasonable cause for a reassessment.
4. Sections 12 to 16 shall apply accordingly to the establishment of the properness of the persons referred to in Subsection (1).

## **Section 3**

1. The holder of a dispensation as referred to in Section 4:3(4) of the Act:
  - a. before entering into an agreement as regards performing activities as an intermediary with a view to attracting or obtaining funds outside a private circle from others than professional market parties, shall inform the other party clearly and completely about the latter's rights and obligations under the agreement;
  - b. shall inform the Netherlands Authority for the Financial Markets (*Autoriteit Financiële Markten*) of any change in the details which this holder or a financial enterprise provided earlier to a supervisory authority for the purpose of the assessment of the requirements made pursuant to the Act as regards the properness of the persons referred to in Section 2(1). The holder shall report the change in writing and immediately after it has taken note of this in the normal course of its business; and
  - c. shall notify the Netherlands Authority for the Financial Markets in writing of the intention to change the persons referred to in Section 2(1).
2. The holder of a dispensation shall not carry out the intention referred to in Subsection (1)(c) before the Netherlands Authority for the Financial Markets has established that the properness of the person concerned is beyond doubt. The Netherlands Authority for the Financial Markets shall decide on the properness:
  - a. within six weeks of having received the notification; or
  - b. If the Netherlands Authority for the Financial Markets requested further details within two weeks of having received the notification, within four weeks of having received those details, but in any event within 13 weeks of having received the notification.
3. If the Netherlands Authority for the Financial Markets requests a third party to provide further details as referred to in Subsection (2)(b), it shall inform the holder accordingly.
4. Together with the notification referred to in Subsection (1)(c), the holder shall submit the following details with regard to the person concerned:
  - a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position;
  - b. a copy of a valid identity document;
  - c. details with regard to the antecedents referred to in Section 13; and

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d. a list of referees.

5. Subsections (2) and (4)(b),(c) and (d) shall not apply if the change concerns a person whose properness for the purpose of the Act has already been established by a supervisory authority.

## **Section 4**

The legal person referred to in Section 4:5(2) of the Act, when making the notification referred to in that subsection to the Netherlands Authority for the Financial Markets, shall submit the following details about the enterprise concerned:

- a. a statement of the name and address;
- b. a statement of the legal form;
- c. if the enterprise is a legal person: a statement of the registered office, the name given in the articles of association and the trade name or trade names; and
- d. if the enterprise is registered in the Trade Register: a statement of the registration number.

## **Chapter 2. Professional competence of employees**

### **§ 2.1. Exit qualifications for professional competence Provisions implementing Section 4:9(3) of the Act**

## **Section 5**

1. The persons referred to in Section 4:9(2) of the Act shall be professionally competent if they have the exit qualifications listed in section 1 of Annex B and, insofar as they are directly engaged in performing financial services in respect of the subjects specified under (a) to (d) below, the exit qualifications listed in the corresponding section of Annex B:
  - a. mortgage loan, whether or not in combination with buildings insurance, home contents insurance, occupational disability insurance, capital sum insurance or life insurance, whereby the provider's obligation to make a payment or a series of payments only arises if the death of the person to whose life the insurance relates occurs before the date specified in the policy: section 2 of Annex B;
  - b. consumer credit, whether or not in combination with occupational disability insurance: section 3 of Annex B;
  - c. non-life insurance: section 4 of Annex B; or
  - d. life insurance, whether or not in combination with occupational disability insurance: section 5 of Annex B.
2. If the financial services provider referred to in Section 4:9(2) of the Act acts as an authorised agent or an authorised sub-agent, the persons referred to in that subsection shall be professionally competent if they have the exit qualifications listed in section 6 of Annex B, and in the sections of that annex referred to in Subsection (1), in respect of the financial products in which they are directly engaged.
3. Subsection (1) shall not apply to the provision of financial services in respect of occupational disability insurance as referred to in Subsection (1)(a), (b) or (d), or buildings insurance, home contents insurance or life insurance as referred to in Subsection (1)(a) that is combined with the subject referred to in the section concerned.

### **§ 2.2. Proof of professional competence Provisions implementing Section 4:9(3) of the Act**

## **Section 6**

1. A financial services provider shall comply with Section 4:9(2), first sentence of the Act if:
  - a. its employees and other persons directly engaged in performing financial services under its responsibility, with the exception of de facto managers, all hold a valid diploma for the exit qualifications relevant in their situation, as referred to in Section 5, issued by an examination institute recognised by Our Minister as referred to in Section 9(1), or a valid recognition of

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- vocational qualifications as referred to in Section 5 of the General Act on the Recognition of EC Vocational Qualifications (*Algemene wet erkenning EG-beroepskwalificaties*); or
- b. its operations are organised in such a way as to sufficiently guarantee the competent provision of financial services to consumers or, in the case of insurance, clients.
2. A financial services provider shall comply with Section 4:9(2), second sentence of the Act if:
    - a. the de facto managers referred to in that sentence hold a valid diploma for the exit qualifications relevant in their situation, as referred to in Section 5, issued by an examination institute recognised by Our Minister, or a valid recognition of vocational qualifications as referred to in Section 5 of the General Act on the Recognition of EC Vocational Qualifications; or
    - b. it is a financial services provider with an average workforce of more than 50 fulltime employees on an annual basis and its operations are organised in such a way as to sufficiently guarantee the competent provision of financial services to consumers or, in the case of insurance, clients.
  3. [Cancelled.]
  4. Without prejudice to Subsections (1) and (2), a broker as referred to in Section 2:81(2) of the Act shall comply with the provisions of Section 4:9(2) of the Act if its operations under the responsibility of the provider for whom it acts as a broker are organised in such a way as to sufficiently guarantee the competent provision of financial services to consumers or, in the case of insurance, clients.
  5. Without prejudice to Subsections (1) and (2), an affiliated enterprise as referred to in Section 2:105(1) of the Act shall comply with the provisions of Section 4:9(2) of the Act if its operations under the responsibility of the legal person with whom it is affiliated are organised in such a way as to sufficiently guarantee the competent provision of financial services to consumers or, in the case of insurance, clients.

## **Section 7**

1. A diploma or a recognition of vocational qualifications shall be valid as long as its holder:
  - a. within 18 months following the publication referred to in Section 8(3), complies with the relevant assessment terms for permanent education referred to in Section 8(2) in the manner specified by Our Minister; or
  - b. within 18 months following the publication of assessment terms for permanent education referred to in Section 8(3), has passed an examination conducted by an examination institute recognised by Our Minister that complies with the relevant assessment terms published simultaneously with the aforementioned assessment terms for permanent education.
2. If a holder of a diploma or a recognition of vocational qualifications fails to comply with the relevant assessment terms for permanent education within the period referred to in Subsection (1), the diploma or the recognition of vocational qualifications shall be invalid from the end of that period until he does comply with these terms.

### **§ 2.3. Determination of assessment terms Provisions implementing Section 4:9(3) of the Act**

## **Section 8**

1. Assessment terms shall be laid down by ministerial regulation for the examinations that lead to the issue of a diploma as referred to in Section 10(1).
2. If developments on the financial markets or relevant statutory regulations necessitate this, assessment terms shall be laid down by ministerial regulation with regard to permanent education, as well as the manner in which these assessment terms can be complied with.
3. Our Minister shall ensure that the assessment terms for examinations and the corresponding assessment terms for permanent education are published simultaneously.

### **§ 2.4. Examination institutes**

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### **Provisions implementing Section 4:9(3) of the Act**

#### **Section 9**

1. Our Minister shall recognise an examination institute on application, if the applicant has demonstrated that it meets the requirements of Section 10(2), (3), (5), (6) and (7), insofar as the provisions of those subsections apply to the applicant.
2. Our Minister shall decide on an application for recognition within four months after the application was submitted. The decision period may be extended no more than twice, each time by two months.
3. Our Minister may attach conditions to a recognition.
4. Our Minister may withdraw a recognition:
  - a. at the request of the recognised examination institute;
  - b. if, following the recognition, the information and documents that were submitted in order to obtain the recognition prove to be incorrect or incomplete to such an extent that the recognition would have been refused, or would not have been granted without conditions, if the correct information had been fully known when the application was considered; or
  - c. if the examination institute no longer complies with Section 10 or 11 or with a condition attached to the recognition.
5. Our Minister shall publish a decision to recognise an examination institute or to withdraw the recognition of an examination institute in the Government Gazette (*Staatscourant*).

#### **Section 10**

1. A recognised examination institute shall issue a diploma to a candidate who has passed an examination conducted by the recognised examination institute.
2. A recognised examination institute that also offers training courses shall make such a distinction in its operations between developing and providing training courses and conducting examinations as to avoid a conflict of interest between these activities. To this end, a recognised examination institute shall in any case take adequate measures aimed at:
  - a. keeping separate accounts for developing and providing training courses and for conducting examinations; and
  - b. preventing examination material from being accessed by employees who are involved in any way in developing or providing a training course directed at the examination concerned.
3. A recognised examination institute shall make the examinations that it offers available to anyone.
4. An examination to be conducted by a recognised examination institute shall comply with the assessment terms laid down by Our Minister as referred to in Section 8(1) within six months following their publication.
5. Where the method of examination is concerned, a recognised examination institute shall take the measures that are necessary within reason to ensure that examinations are taken in a correct and fair manner.
6. A recognised examination institute shall ensure that the examinations conducted are assessed in a professionally correct and objective manner.
7. A recognised examination institute shall possess and act in accordance with examination regulations that adequately regulate at least the following subjects:
  - a. the manner of registering candidates;
  - b. the number of times per year that the various examinations can be taken;
  - c. the manner of announcing the venue, date and start time of the examinations;

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- d. the manner of establishing the candidates' identity;
  - e. the duration and the manner of examination;
  - f. the measures in the event that irregularities are noted;
  - g. the designation of the examiners for the oral examinations;
  - h. the assessment of the examinations;
  - i. the period within which the examination results are announced, and the period within which the diplomas are awarded;
  - j. the designation of the person or persons who determine the results of the written examination;
  - k. the manner of determining the assessment criteria and the pass and fail criteria;
  - l. the manner of making the guideline answers available after an examination;
  - m. the inspection of the examinations taken;
  - n. the retention periods for the examinations taken; and
  - o. the internal complaints procedure.
8. Before 1 July of every year, a recognised examination institute shall provide Our Minister with a summary of the number of examinations conducted and assessed during the previous calendar year, as well as an analysis of the results of these examinations, the complaints made about the examination procedure and the results, and the examination institution's decisions on these complaints.
9. Subsections (2) and (3) shall not apply to government-funded training courses offered by higher education institutions as referred to in Section 1.8(1) of the Higher Education and Research Act (*Wet op het hoger onderwijs en wetenschappelijk onderzoek*).

## **Section 11**

1. A recognised examination institute shall provide Our Minister upon request with the information that Our Minister needs in order to perform his duties as described in this chapter.
2. The supervision of compliance with Sections 9 and 10 shall be assigned to the persons designated by the decision of Our Minister.
3. A notification of the decision as meant in Subsection (2) shall be published in the Government Gazette.

## **Chapter 3. Properness Provisions implementing Section 4:10(3) of the Act**

### **Section 12**

The Netherlands Authority for the Financial Markets shall establish whether the properness of a person as referred to in Section 4:10(1) of the Act is beyond doubt on the basis of this person's intentions, acts and antecedents.

### **Section 13**

In establishing a person's properness as referred to in Section 12, the Netherlands Authority for the Financial Markets shall in any event consider the following antecedents:

- a. the criminal antecedents referred to in sections 1 and 2 of Annex C;
- b. the financial antecedents referred to in section 3 of Annex C;
- c. the supervision antecedents referred to in section 4 of Annex C;
- d. the fiscal antecedents under administrative law referred to in section 5 of Annex C; and
- e. the other antecedents referred to in section 6 of Annex C.

### **Section 14**

1. The Netherlands Authority for the Financial Markets shall obtain insight into the intentions, acts and antecedents referred to in Section 12 on the basis of:
  - a. details and information provided by the person concerned;

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- b. details from the police files obtained from the National Public Prosecutor;
  - c. details from the registration referred to in Section 1(b) of the Act on Companies (Documentation) (*Wet documentatie vennootschappen*);
  - d. details and information obtained from the Dutch Tax and Customs Administration (*Belastingdienst*);
  - e. details and information obtained from Dutch or foreign government bodies or from Dutch or foreign government-appointed bodies that are charged with the supervision of financial markets, or of persons operating in those markets;
  - f. official reports from the Public Prosecution Service;
  - g. information obtained from referees specified by the persons concerned;
  - h. details from public sources;
  - i. information obtained from receivers or administrators with regard to liquidations, moratoriums, debt restructuring, the imposition of administration or emergency regulations in which the persons referred to in Section 12 were involved;
  - j. information obtained from organisations of current or former professional colleagues of the person concerned; or
  - k. details and information obtained from other sources to be designated by ministerial regulation.
2. If the details and information obtained in accordance with Subsection (1) cause the Netherlands Authority for the Financial Markets to carry out a further investigation, the Netherlands Authority for the Financial Markets may also gather information and request details from persons or bodies other than those referred to in that subsection. In that event, the Netherlands Authority for the Financial Markets shall first inform the person concerned in writing of:
- a. the reason for the further investigation;
  - b. the persons or bodies from whom further details or information will be requested; and
  - c. the nature of the further details or information.

## **Section 15**

The properness of a person as referred to in Section 12 shall not be beyond doubt if this person has been convicted of a crime as referred to in section 1 of annex C, unless eight or more years have elapsed since the judgment became final.

## **Section 16**

In establishing a person's properness as referred to in Section 12, the Netherlands Authority for the Financial Markets shall consider:

- a. the interrelationship between the action or actions underlying an antecedent and the other circumstances of the case;
- b. the interests which the Act intends to protect; and
- c. the other interests of the management company, investment company, investment firm, custodian or financial services provider and the person concerned.

## **Chapter 4. Honest and ethical conduct of the business**

### **§ 4.1. Management companies, collective investment schemes and custodians Provisions implementing Sections 4:11(3) and (4) and 4:14(2), opening words and (b) of the Act**

## **Section 17**

1. A management company, collective investment scheme or custodian as referred to in Section 4:11(1) of the Act shall see to a systematic analysis of integrity risks.
2. The management company, collective investment scheme or custodian shall ensure that the policy referred to in Section 4:11(1) of the Act is reflected in procedures and measures.
3. The management company, collective investment scheme or custodian shall inform all the relevant business units of the policy and the procedures and measures.

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4. The management company, collective investment scheme or custodian shall see to the implementation and the systematic assessment of the policy and the procedures and measures.
5. The management company, collective investment scheme or custodian shall see to independent supervision of the implementation of the policy and the procedures and measures.
6. The management company, collective investment scheme or custodian shall have procedures in place which ensure that any shortcomings or faults identified with regard to the honest and ethical conduct of the business result in an appropriate adjustment.

### **Section 18**

A management company, collective investment scheme or custodian as referred to in Section 4:14(1) of the Act shall have procedures and measures in place aimed at preventing conflicts between the private interests of persons determining the policy of the financial enterprise, persons belonging to a body responsible for supervising the policy and the general affairs of the financial enterprise, other employees, or other persons regularly carrying out activities for the enterprise concerned on the latter's instructions, and the interests of that enterprise or those of its unit holders.

### **Section 19**

1. A management company, collective investment scheme or custodian as referred to in Section 4:14(1) of the Act shall have procedures and measures in place as regards the handling and documentation of incidents.
2. Following an incident, the management company, collective investment scheme or custodian shall take measures aimed at controlling the risks that have arisen and preventing a repetition.
3. The management company, collective investment scheme or custodian shall immediately notify the Netherlands Authority for the Financial Markets of any incidents occurring.

### **Section 20**

1. A management company, collective investment scheme or custodian as referred to in Section 4:14(1) of the Act shall make a reasoned assessment of the properness of persons whom it wants to appoint to a sensitive post.
2. The management company, collective investment scheme or custodian shall see to the assessment of the properness of those who carry out activities in a sensitive post otherwise than under a contract of employment.

### **Section 21**

1. A collective investment scheme as referred to in Section 4:14(1) of the Act shall have procedures and measures in place regarding the acceptance of unit holders in order to protect the integrity of the business.
2. Without prejudice to the provisions pursuant to the Identification (Provision of Services) Act (*Wet identificatie bij dienstverlening*), the collective investment scheme shall have procedures and measures in place regarding the identification of unit holders and the verification of their identity. The collective investment scheme shall not accept a unit holder if it has not established the latter's identity in accordance with the policy drawn up for that purpose.
3. In order to protect the integrity of the business, the collective investment scheme shall have organisational and administrative procedures and measures in place concerning risk classifications in respect of clients, products or services.
4. The collective investment scheme shall have procedures and measures in place regarding the analysis of unit holders' details, partly in relation to the products purchased by the unit holder, and the detection of deviating transaction patterns. Based on these procedures and measures, the collective

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investment scheme shall also determine the risk posed by particular clients, products and services to the honest and ethical conduct of its business.

5. The collective investment scheme shall see to the documentation and recording of the acceptance and risk classification of clients, the identification and verification of clients' details and the monitoring of client transactions. Such data shall be retained for a period of five years following the provision of the service or the termination of the relationship.
6. Subsections (1) to (5) shall not apply insofar as the collective investment scheme takes no decision as to whether it will accept unit holders prior to the admission or withdrawal of unit holders in the collective investment scheme.

## **Section 22**

1. A collective investment scheme as referred to in Section 4:14(1) of the Act shall investigate, at the request of the Netherlands Authority for the Financial Markets, whether particular persons or institutions appear on its records who or which – in the opinion of Our Minister – might harm the integrity of the financial sector because of suspected terrorist activities or related activities.
2. The collective investment scheme shall provide the Netherlands Authority for the Financial Markets with the results of the investigation referred to in Subsection (1) within a period to be specified by the Netherlands Authority for the Financial Markets.

### **§ 4.2. Investment firms**

#### **Provisions implementing Sections 4:11(3) and (4) and 4:14(2), opening words and (b) of the Act**

## **Section 23**

1. An investment firm shall ensure, with a view to the honest and ethical conduct of its business, that the policy referred to in Section 4:11(1) of the Act is reflected in procedures and measures.
2. The investment firm shall see to independent supervision of the implementation of the policy and the procedures and measures referred to in Subsection (1), and shall have procedures in place which ensure that any shortcomings or faults identified are reported to the persons responsible for the task referred to in Section 31c.
3. The investment firm shall have procedures in place which ensure that any shortcomings or faults identified with regard to the honest and ethical conduct of the business supervised by the persons responsible for the task referred to in Section 31c result in an appropriate adjustment.

## **Section 24**

1. An investment firm as referred to in Section 4:14(1) of the Act shall have procedures and measures in place as regards the handling and documentation of incidents.
2. Following an incident, the investment firm shall take measures aimed at controlling the risks that have arisen and preventing a repetition.
3. The investment firm shall immediately notify the Netherlands Authority for the Financial Markets of any incidents occurring.

## **Section 25**

1. An investment firm as referred to in Section 4:14(1) of the Act shall make a reasoned assessment of the properness of a staff member whom it wants to appoint to a sensitive post.
2. The investment firm shall see to the assessment of the properness of those who carry out activities in a sensitive post otherwise than under a contract of employment.

## **Section 26**

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1. An investment firm as referred to in Section 4:14(1) of the Act shall have procedures and measures in place as regards the acceptance of clients. These procedures and measures shall concern risk classifications in respect of clients, products or services.
2. Without prejudice to the provisions pursuant to the Identification (Provision of Services) Act, the investment company shall have procedures and measures in place regarding the identification of clients and the verification of their identity. The investment firm shall not accept a client if it has not established the latter's identity in accordance with the policy drawn up for that purpose.
3. The investment firm shall have procedures and measures in place regarding the analysis of clients' details, partly in relation to the products purchased by the client, and the detection of deviating transaction patterns. Based on these procedures and measures, the investment firm shall also determine the risks in respect of particular clients or products.
4. The investment firm shall see to the documentation and recording of the acceptance and risk classification of clients and the monitoring of client transactions. Such data shall be retained for a period of five years following the provision of the service or the termination of the relationship.

## **Section 27**

1. An investment firm as referred to in Section 4:14(1) of the Act shall investigate, at the request of the Netherlands Authority for the Financial Markets, whether particular persons or institutions appear on its records who or which – in the opinion of Our Minister – might harm the integrity of the financial sector because of suspected terrorist activities or related activities.
2. The investment firm shall provide the Netherlands Authority for the Financial Markets with the results of the investigation referred to in Subsection (1) within a period to be specified by the latter.

### **§ 4.3. Financial services providers**

**Provisions implementing Sections 4:11(3) and (4) and 4:15(2), opening words and (a) of the Act**

## **Section 28**

1. A financial services provider as referred to in Section 4:11(2) of the Act shall ensure that the properness of its employees and of other natural persons directly engaged in performing financial services under its responsibility is beyond doubt.
2. A person as referred to in Subsection (1) shall be considered proper if he can submit a certificate of good behaviour as referred to in the Judicial Data and Criminal Records Act (*Wet justitiële en strafvorderlijke gegevens*) and has not been declared bankrupt, unless a discharge took place as referred to in Section 212 of the Bankruptcy Act (*Faillissementswet*).

## **Section 29**

1. A financial services provider as referred to in Section 4:15(1) of the Act shall have procedures and measures in place as regards the handling and documentation of incidents.
2. Following an incident, the financial services provider shall take appropriate measures, aimed at controlling the risks that have arisen and preventing a repetition.
3. The financial services provider shall immediately notify the Netherlands Authority for the Financial Markets of any incidents occurring.

## **Chapter 5. Controlled conduct of the business**

### **§ 5.1. General aspects of the operations**

**Provisions implementing Section 4:14(2), opening words and (a) of the Act**

## **Section 30**

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1. The operations of a management company, collective investment scheme or custodian as referred to in Section 4:14(1) of the Act shall at least comprise procedures and measures which ensure that:
  - a. the decision-making process and the arrangements made are clearly shown within the operations of the management company, collective investment scheme and custodian;
  - b. the directors are informed regularly, as well as in the interim if special circumstances occur, about the operations;
  - c. the integrity, constant availability and security of the automated data are guaranteed; and
  - d. a system is in place which monitors to what extent the operating procedures described are complied with, notes deviations from these procedures and the extent of these deviations, and whether the actual conduct is capable of adjustment.
2. A management company shall set up separate operations as referred to in Subsection (1) for every collective investment scheme under its management.
3. The management company, collective investment scheme or custodian shall record its operations in a clear manner.

### **Section 31**

1. The operations of an investment firm as referred to in Section 4:14(1) of the Act shall provide for:
  - a. clear decision-making procedures and a clear and adequate organisational structure;
  - b. a clear and adequate division of duties, powers and responsibilities;
  - c. unequivocal reporting lines; and
  - d. an adequate system of information provision and communication; and
  - e. adequate internal control procedures in order to ensure that decisions and procedures are observed at all levels.
2. The operations shall be in accordance with the nature, size, risks and complexity of the business and the activities of the investment firm.
3. The operations shall be documented in a clear manner.
4. An investment firm shall ensure that employees performing several functions cannot by doing so be prevented from performing one of these functions in a sound, honest and professional manner.
5. Employees of an investment firm and other persons directly engaged in providing investment services or performing investment activities shall possess the necessary professional competence and knowledge to discharge the responsibilities entrusted to them.
6. The effectiveness of the organisational structure and of the procedures and measures shall be assessed in an independent manner at least once a year. For this purpose, the investment firm shall have an organisational unit that performs an internal control function. The investment firm shall ensure that any shortcomings identified are remedied.

### **Section 31a**

The organisational unit referred to in Section 31(6) shall have the following duties:

- a. to adopt and implement a monitoring plan for examining and assessing the soundness and effectiveness of the systems, internal control procedures and rules;
- b. to make recommendations based on the results of the activities referred to under (a);
- c. to check whether these recommendations are followed up; and
- d. to report at least once a year to the persons determining the day-to-day policy of the investment firm and to the body, if there is one, responsible for supervising the policy and the general affairs of the investment firm with regard to matters concerning internal control and the measures taken in the event that shortcomings are found.

### **Section 31b**

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An investment firm shall have procedures and measures in place which ensure the integrity, constant availability and security of automated data processing.

### **Section 31c**

1. An investment firm shall have an organisational unit that performs a compliance function in an independent and effective manner.
2. The organisational unit referred to in Subsection (1) shall have the following duties:
  - a. to monitor compliance with the statutory rules and with internal rules drawn up by the investment firm itself;
  - b. to advise the persons responsible for providing investment services or performing investment activities as regards compliance with statutory and internal rules;
  - c. to supervise the soundness and effectiveness of the internal rules and procedures;
  - d. to assess the effectiveness of the procedures drawn up and the measures taken in order to rectify inadequacies found as regards compliance with statutory and internal rules; and
  - e. to report at least once a year to the persons determining the day-to-day policy of the investment firm and to the body, if there is one, responsible for supervising the policy and the general affairs of the investment firm with regard to matters concerning compliance with statutory and internal rules. The annual reports shall state in particular whether measures were taken in the event that shortcomings were found.
3. The organisational unit performing the compliance function shall have the necessary authority, means, expertise and access to all the required information that will enable it to carry out its duties in an independent and effective manner.

### **§ 5.2. Market conduct aspects of the operations**

#### **Provisions implementing Sections 4:14(2), opening words and (c) and 4:15(2), opening words and (b)(2°) of the Act**

### **Section 32**

1. A provider as referred to in Section 4:15(1) or (3) of the Act that advises a consumer or, in the case of insurance, client, shall, insofar as this advice results in the conclusion of an agreement with the consumer or client in respect of the recommended product, retain the information that it obtained in accordance with Section 4:23(1)(a) of the Act, as well as the data concerning the financial product sold, for a minimum period of one year from the moment that the advice was issued.
2. A provider as referred to in Section 4:15(1) or (3) of the Act that advises a consumer or, in the case of insurance, client, without also offering the recommended financial product to the consumer or client, and without also acting as a broker, authorised agent or authorised sub-agent in respect of the recommended financial product, shall retain the information that it obtained in accordance with Section 4:23(1)(a) of the Act, as well as the data concerning the recommended financial product, for a minimum period of one year from the moment that the advice was issued.
3. A broker, authorised agent or authorised sub-agent as referred to in Section 4:15(1) or (3) of the Act that advises a consumer or, in the case of insurance, client, shall, insofar as this advice results in the conclusion of an agreement with the consumer or client in respect of the recommended product, retain the information that it obtained in accordance with Section 4:23(1)(a) of the Act, as well as the data concerning the recommended financial product, for a minimum period of one year from the moment that the advice was issued.
4. Subsections (1), (2) and (3) shall not apply to financial enterprises which, when issuing advice, do so exclusively in accordance with a standardised and systemised procedure that is verifiable by the Netherlands Authority for the Financial Markets, and which can demonstrate to the Netherlands Authority for the Financial Markets by means of this procedure what information they obtain about consumers or clients in accordance with Section 4:23(1)(a) of the Act and what advice is given to consumers or clients on the basis of the information thus obtained.
5. A provider, broker, authorised agent or authorised sub-agent as referred to in Section 4:15(1) or (3)

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of the Act which, further to advice that it issued, enters into an agreement with a consumer or, in the case of insurance, client, or which provides brokerage services in the establishment of an agreement regarding a financial product other than that on which it advised the consumer or client, shall be able to demonstrate to the Netherlands Authority for the Financial Markets during a minimum period of one year following the establishment of the agreement that the consumer or client made the decision to enter into that agreement.

### **Section 33**

A credit provider as referred to in Section 4:15(1) or (3) of the Act shall retain the information that it obtained pursuant to Section 4:34(1) of the Act and Sections 113 and 114, as well as the credit agreement it offered if that agreement was established, for a minimum period of five years from the day on which that agreement was fulfilled.

### **Section 34**

1. The operations of a management company, collective investment scheme or custodian as referred to in Section 4:14(1) of the Act shall at least comprise procedures and measures which ensure that:
  - a. each transaction in which the collective investment scheme is involved can be reconstructed;
  - b. the managed assets of the collective investment scheme are invested in accordance with the investment policy and the rules laid down by or pursuant to the Act;
  - c. there is a functional separation between performing legal acts in respect of the assets of the collective investment scheme and monitoring and administering these acts;
  - d. the calculated net asset value of the collective investment scheme is reliable, correct and consistent;
  - e. the process of determining the net asset value is kept separate within the management company or the investment company from the other activities performed by the management company or the investment company;
  - f. the calculation of the net asset value of the collective investment scheme is in line with the financial accounts;
  - g. the risks attached to the investment process are controlled and analysed in a systematic manner; and
  - h. where possible, systematic, accessible and up-to-date records exist of unit holders in the collective investment scheme which clearly present any arrangements made with the unit holders.
2. The measures and procedures referred to in Subsection (1), opening words and (f), shall ensure in any case that the sub-accounts used in determining the net asset value are reconciled with the trial balance sheet at least once a month, and that any differences resulting therefrom are analysed and adjusted.
3. The procedures and measures referred to in Subsection (1)(g) of an undertaking for collective investment in transferable securities shall comprise in any case a procedure for determining the value of financial derivatives that are not traded on a regulated market or on any other market in financial instruments.
4. A management company shall set up separate operations as referred to in Subsection (1) for every collective investment scheme under its management.

### **Section 35**

1. An investment firm shall record the data of all the investment services, ancillary services and investment activities it performs in order to enable the supervision of its compliance with the provisions arising from the Act for the purpose of implementing the Markets in Financial Instruments Directive.
2. The investment firm shall retain the data referred to in Subsection (1) for a minimum period of five years.
3. An investment firm shall retain the data in respect of the agreement referred to in Section 4:89(2) of the Act at least for the duration of the relationship with the client.

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4. An investment firm shall retain the data referred to in Subsections (1) and (3) on a permanent carrier, in such a format and in such a manner that:
  - a. the Netherlands Authority for the Financial Markets can quickly access the data and reconstruct every stage of the processing of a transaction;
  - b. all changes, as well as the content of the data before changes were made, can be easily retrieved;
  - c. the data cannot be manipulated or changed in other ways.
5. The Netherlands Authority for the Financial Markets shall compile a list of the minimum data which an investment firm must retain under the provisions arising from the Act for the purpose of implementing the Markets in Financial Instruments Directive.

### **Section 35a**

1. An investment firm as referred to in Section 4:14(1) of the Act shall have procedures and measures in place for preventing and dealing with conflicts of interest between the investment firm and its clients or between the clients themselves.
2. The procedures and measures referred to in Subsection (1) shall be designed to ensure that relevant persons engaged in different business activities involving a risk of a conflict of interest as referred to in Subsection (1), perform these activities with a degree of independence that is proportionate to the scope of the activities of the investment firm and the group of which it is part, and to the extent of the risk that a client's interests will be harmed.
3. Where necessary and appropriate in order to ensure the degree of independence referred to in Subsection (2), the procedures and measures referred to in Subsection (1) shall comprise:
  - a. procedures to prevent or monitor the exchange of information between relevant persons performing different activities involving a risk of a conflict of interest, if the exchange of this information may be harmful to a client's interests;
  - b. control over the activities of relevant persons whose main duties consist in performing activities in the name of, or providing services to clients who may have conflicting interests;
  - c. the exclusion of any direct link between the remuneration of relevant persons who are primarily engaged in one activity and the remuneration of or the income generated by other relevant persons who are primarily engaged in another activity, if these activities may give rise to a conflict of interest;
  - d. measures aimed at preventing or limiting the risk that a person exerts such influence on the manner in which a relevant person performs investment services, investment activities or ancillary services, that this will or may give rise to a conflict of interest;
  - e. measures aimed at preventing or monitoring a relevant person's simultaneous or successive involvement in different investment services, investment activities or ancillary services if such involvement may give rise to conflicts of interest.
4. If the degree of independence referred to in Subsection (2) cannot be guaranteed when procedures or measures as referred to in Subsection (1) are determined or applied, the investment firm shall provide for alternative or supplementary procedures or measures.

### **Section 35b**

An investment firm as referred to in Section 4:14(1) of the Act shall lay down the data relating to the types of investment services, investment activities or ancillary services performed by or in the name of the firm that gave rise or may give rise to a conflict of interest entailing a material risk that the interests of one or more clients will be harmed.

### **Section 35c**

1. An investment firm as referred to in Section 4:14(1) of the Act shall have procedures and measures in place concerning personal transactions.
2. The procedures and measures referred to in Subsection (1) shall be designed to ensure that if a

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relevant person is engaged in performing activities that may give rise to a conflict of interest, or if a relevant person, on account of an activity he performs in the name of the investment firm, has access to information as referred to in Section 5:53(1) of the Act or to other confidential information about clients or transactions with or for clients:

- a. no personal transaction is conducted by or in the name of that relevant person that is contrary to Sections 5:56 or 5:58 of the Wft;
- b. no personal transaction is conducted by or in the name of that relevant person that involves the abuse or the illegal disclosure of the confidential information referred to in the opening words;
- c. no personal transaction is conducted by or in the name of that relevant person which is or may be contrary in other ways to the provisions arising from the Act for the purpose of implementing the Markets in Financial Instruments Directive;
- d. the relevant person does not, otherwise than in the normal course of his profession or business, advise another person to enter into a transaction in a financial instrument which, had it been a personal transaction by the relevant person, would not have been allowed under Subsection (2)(a), (b) or (c) or would fall within Section 35h(a) or (b) or Section 164(3); and
- e. the relevant person does not issue information or advice to another person, otherwise than in the normal course of his profession or business, if the relevant person knows or can reasonably be expected to know that the other person will or may enter into a transaction in a financial instrument which, had it been a personal transaction by the relevant person, would not have been allowed under Subsection (2)(a), (b) or (c), or would fall within Section 35h(a) or (b) or Section 164(3);
- f. the relevant person does not issue information or advice to another person, otherwise than in the normal course of his profession or business, if the relevant person knows or can reasonably be expected to know that the other person will or may advise a third party to enter into a transaction in a financial instrument which, had it been a personal transaction by the relevant person, would not have been allowed.

#### **Section 35d**

An investment firm as referred to in Section 4:14(1) of the Act shall ensure that relevant persons are aware of its measures and procedures as referred to in Section 35c(1).

#### **Section 35e**

1. The procedures and measures referred to in Section 35c(1) shall have the effect that an investment firm is notified immediately of every personal transaction.
2. An investment firm shall keep a record of personal transactions of which it was notified or which it established, stating where appropriate whether the transaction concerned is allowed.
3. Where activities are outsourced, the investment firm shall ensure that the enterprise to whom the activity is outsourced keeps a record of data in respect of personal transactions. This data shall be provided to the investment firm immediately if such is requested.
4. Subsections (1) to (3) shall not apply to successive personal transactions, with the exception of the first personal transaction, which are carried out on a relevant person's behalf in accordance with prior instructions issued by the relevant person, if the instructions remain in force without change.

#### **Section 35f**

Sections 35c, 35d and 35e(1) to (3) shall not apply to:

- a. personal transactions conducted in the context of individual asset management, whereby the assets are managed on a discretionary basis and whereby no prior communication took place about the transaction between the asset manager and the relevant person or another person as referred to in Section 1(x.1)(3°) or (4°) at whose expense the transaction is carried out;
- b. personal transactions in units in undertakings for collective investment in transferable securities, if neither the relevant person nor a person as referred to in Section 1(x.1)(3°) or (4°) at whose expense the transactions are carried out is involved in the management of the undertaking concerned.

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### **Section 35g**

1. If an investment firm performs or commissions investment research of which the results are intended or may be assumed to be disseminated among clients or among the general public, either under the investment firm's own responsibility or under the responsibility of a legal person belonging to the same group as the investment firm, Section 35a(2) to (4) shall apply accordingly in respect of the financial analysts involved in the performance of investment research and other relevant persons whose responsibilities or commercial interests may be contrary to the interests of the parties among whom the results of the investment research are disseminated.
2. On application, the Netherlands Authority for the Financial Markets may grant dispensation from the provisions applicable pursuant to Subsection (1), if the investment firm intends to disseminate the results of investment research performed by a third party not belonging to the group of which the investment firm is part, and the investment firm:
  - a. does not make any radical changes to the recommendations in the research report;
  - b. does not present the research as research it performed itself; and
  - c. satisfies itself that the party that performed the research fulfils obligations with regard to the performance of the research that are equivalent to the provisions arising from this Decree regarding the performance of investment research.

### **Section 35h**

An investment firm that performs or commissions investment research and intends to disseminate the results of this research among clients or the general public shall ensure that:

- a. the financial analysts involved in the research or other relevant persons do not conduct transactions on behalf of the investment firm or other persons in financial instruments to which the investment research relates, or in associated financial instruments, except as a market maker, if they are aware of the moment of dissemination or the content of the investment research and this information is not in the public domain, until the recipients of the research results have had a reasonable opportunity to act upon these results;
- b. the financial analysts involved in the research or other relevant persons involved in the performance of investment research do not conduct any personal transactions that are inconsistent with the current recommendations in financial instruments to which the investment research relates, or in associated financial instruments, save in exceptional cases and in those cases where prior consent was received from the organisational unit performing the compliance function referred to in Section 31c;
- c. the investment firm itself, the financial analysts and other relevant persons involved in the performance of the research do not accept any payment from parties that have a material interest in the subject of the research;
- d. the investment firm itself, the financial analysts and other relevant persons involved in the performance of investment research do not promise issuing institutions as referred to in Section 5:53(4) of the Act favourable treatment in their research; and
- e. before the dissemination of the research results, issuing institutions as referred to in Section 5:53(4) of the Act, relevant persons who are not financial analysts and other persons cannot inspect the draft report for the purpose of checking the correctness of the factual claims in this research or for other purposes, except in order to check the fulfilment of the issuing institution's legal obligations if the draft report contains a recommendation or guide price.

## **Chapter 6. Outsourcing activities**

### **Provisions implementing Section 4:16(2) and (3) of the Act**

#### **Section 36**

This chapter shall not apply to:

- a. management companies of undertakings for collective investment in transferable securities having their registered office in another Member State, undertakings for investment in transferable securities having their registered office in another Member State and any custodians

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- affiliated to these undertakings; and
- b. management companies of collective investment schemes having their registered office in a designated state, collective investment schemes having their registered office in a designated state and any custodians affiliated to these collective investment schemes.

### **Section 37**

A financial enterprise shall not outsource activities if this constitutes an obstacle to the proper supervision of compliance with the part of the Act that relates to the Supervision of the Conduct of Financial Enterprises.

### **Section 38**

1. If a management company or custodian outsources one or more activities in the context of the management of a collective investment scheme or the custody of the assets of a collective investment scheme:
  - a. the third party shall be able, at any moment desired by the management company, the investment company managed by the management company or the custodian, to account for the activities it performs and to provide the management company, the investment company managed by the management company or the custodian with insight into these activities;
  - b. the management company or the custodian may issue instructions to the third party at any time about the performance of the activities, and terminate the outsourcing with immediate effect if this is in the interest of the investors;
  - c. the third party, in view of the nature of the assignment, shall be demonstrably capable of carrying out the assignment in accordance with the Act; and
  - d. if the outsourcing concerns activities regarding the management of an undertaking for collective investment in transferable securities:
    - 1°. the implementation of the investment policy shall be outsourced exclusively to a third party which has been granted a licence or recognition to manage collective investment schemes or individual assets and which is subject to prudential supervision;
    - 2°. where activities are outsourced to a third party from a state that is not a Member State or designated state, the cooperation between the supervisors and the competent authorities in the state where the third party has its registered office shall be guaranteed under an agreement; and
    - 3°. the interests of the third party shall not be contrary to those of the management company, the custodian or the unit holders in the collective investment scheme.
2. A management company shall not outsource the determination of the investment policy of a collective investment scheme.
3. Any agreement entered into by a management company or a custodian in the context of outsourcing the management of the collective investment scheme or the custody of the assets of the collective investment scheme shall be laid down in writing.

### **Section 38a**

1. An investment firm shall not outsource activities if this is detrimental to the quality of its independent internal assessment procedure as referred to in Section 31(6).
2. Subsection (1) shall not apply to banks that have a licence as referred to in Section 2:11 of the Act and that are allowed to provide investment services or perform investment activities in the Netherlands.

### **Section 38b**

1. An investment firm that outsources activities to a third party shall ensure that the latter has the necessary expertise to this end and exercises due care and vigilance in performing these activities.
2. Subsection (1) shall not apply to banks that have a licence as referred to in Section 2:11 of the Act and that are allowed to provide investment services or perform investment activities in the

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### **Section 38c**

1. An investment firm that outsources activities to a third party shall ensure that:
  - a. the outsourcing is not detrimental to the responsibility of the persons determining the day-to-day policy;
  - b. the outsourcing does not change the investment firm's relationship with and obligations to its clients under the provisions arising from the Act for the purpose of implementing the Markets in Financial Instruments Directive;
  - c. the conditions which the investment firm must fulfil in order to obtain and retain a licence as referred to in Section 2:96 of the Act are not undermined; and
  - d. the outsourcing does not obstruct compliance with regulations attached to the licence as referred to in Section 2:96 of the Act.
2. Subsection (1), opening words and (a) shall not apply to banks that have a licence as referred to in Section 2:11 of the Act and that are allowed to provide investment services or perform investment activities in the Netherlands.

### **Section 38d**

1. An investment firm that outsources activities to a third party shall lay down the mutual rights and obligations in a written agreement.
2. The investment firm shall ensure that:
  - a. the third party has the expertise, the capacity and every licence required by law to perform the outsourced activities in a reliable and professional manner;
  - b. the third party performs the outsourced activities efficiently, and establish methods to assess the third party's performance level;
  - c. the third party properly monitors the performance of the outsourced activities and controls the associated risks in an adequate manner;
  - d. the investment firm takes appropriate action if it appears that the third party does not perform the activities efficiently and with due observance of the statutory regulations;
  - e. the investment firm retains the necessary expertise in order to exercise effective control over the outsourced activities;
  - f. the third party notifies the investment firm of any development that may have a fundamental effect on this party's capability to perform the outsourced activities efficiently and with due observance of the statutory requirements;
  - g. the investment firm can terminate the outsourcing agreement if necessary, without this termination affecting the continuity or the quality of the services it provides to clients;
  - h. the third party cooperates with the supervisory authorities where the outsourced activities are concerned;
  - i. the investment firm, its auditors and the supervisory authorities have access to the data concerning the outsourced activities and the supervisory authorities can carry out or commission an on-site inspection;
  - j. the third party protects all confidential information relating to the investment firm and its clients;
  - k. the investment firm and the third party have a contingency plan that provides for emergency procedures and for a periodic inspection of the emergency facilities when this is necessary in view of the outsourced activities.
3. The supervisory authorities shall only avail themselves of the opportunity referred to in Subsection (2)(i) of carrying out or commissioning an on-site inspection at the third party's premises, if it cannot be established in any other way that the third party complies with the provisions laid down in or pursuant to the Act with regard to the outsourced activities.
4. Subsections (1), (2) and (3)(a), (b), (d), (e) and (g) shall not apply to banks that have a licence as referred to in Section 2:11 of the Act and that are allowed to provide investment services or perform investment activities in the Netherlands.

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### **Section 38e**

1. Without prejudice to Sections 38b and 38c, an investment firm that outsources the management of individual assets of a non-professional investor to a third party in a non-Member State shall ensure that:
  - a. the third party has a licence to manage individual assets or is registered in a register in its home state, and is subject to prudential supervision; and
  - b. a collaboration agreement has been concluded between the supervisors and the supervisory authority of the non-Member State.
2. If the provisions of Subsection (1) are not fulfilled, the investment firm may outsource the activities concerned if it notifies the Netherlands Authority for the Financial Markets of the outsourcing agreement in advance and the latter does not raise objections within a reasonable period.
3. The Netherlands Authority for the Financial Markets shall lay down policy rules in respect of the cases in which it will not raise objections within the meaning of Subsection (2).
4. The Netherlands Authority for the Financial Markets shall publish a list of supervisory authorities in non-Member States with which it has concluded a collaboration agreement as referred to in Subsection (1)(b).

## **Chapter 7. Dealing with complaints**

### **§ 7.1. Internal complaints procedure Provisions implementing Section 4:17(3) of the Act**

#### **Section 39**

An investment firm or financial services provider as referred to in Section 4:17(1) of the Act shall present all the persons within its company that are involved in handling complaints from clients or consumers about financial services or financial products of the financial services provider with a description of the procedure to be followed in handling those complaints.

#### **Section 40**

With a view to the proper handling of complaints from clients or consumers about financial services or financial products of an investment firm or financial services provider as referred to in Section 4:17(1) of the Act, the investment firm or financial services provider shall keep proper records of those complaints, containing at least the following information:

- a. the name and address of the client or consumer who filed a complaint;
- b. the complaint, with a note of the date on which it was received;
- c. a description of the complaint; and
- d. an account of the manner in which the financial enterprise handled the complaint.

#### **Section 41**

An investment firm or financial services provider shall retain the information referred to in Section 40 for a period of at least one year after it settled the complaint.

#### **Section 42**

A management company as referred to in Section 4:17(1) of the Act shall provide for procedures and measures which ensure that complaints from unit holders in collective investment schemes under its management are settled with due care, in a verifiable and consistent manner and within a reasonable period.

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## **§ 7.2. Recognised disputes body**

### **Provisions implementing Section 4:17(3) of the Act**

#### **Section 43**

1. Our Minister shall recognise a disputes body as referred to in Section 4:17(1)(b) of the Act on application, if the applicant has demonstrated that it can comply with Sections 44 to 48.
2. Our Minister shall decide on an application for recognition within four months after the application was submitted. The decision period may be extended no more than twice, each time by two months.
3. Our Minister may attach conditions to a recognition.
4. Within six months after the end of each calendar year, a recognised disputes body shall provide Our Minister with:
  - a. an overview of the financial services providers affiliated to the disputes body during the past calendar year; and
  - b. a statement of the number of disputes filed and handled during the past calendar year, as well as a general representation of the nature of the disputes and the outcome of the dispute resolution.
5. A recognised disputes body shall notify Our Minister immediately about changes to the regulations referred to in Section 45(1) and about the composition of the board referred to in Section 44. In the event of changes to the composition of this board, the disputes body shall state the age, qualifications and professional background of the board member concerned.
6. A recognised disputes body shall provide Our Minister upon request with the information that Our Minister needs in order to perform his duties as described in this division.
7. Our Minister may withdraw a recognition:
  - a. at the request of the disputes body;
  - b. if the details and documents that were submitted in order to obtain the recognition prove to be incorrect or incomplete to such an extent that the recognition would have been refused, or would not have been granted without conditions, if the correct details had been fully known when the application was considered;
  - c. if the disputes body no longer complies with Subsections (4) or (6), Sections 44, 45, 46, 47 or 48 or a condition attached to the recognition.
8. Our Minister shall publish a decision to recognise a disputes body or to withdraw the recognition of a disputes body in the Government Gazette.

#### **Section 44**

1. A recognised disputes body shall ensure the independence and expertise of the board responsible within its organisation for handling the dispute.
2. The independence of the board shall be sufficiently guaranteed if its members:
  - a. during the year preceding the acceptance of their position, did not work for or hold any position with a professional organisation for financial services providers, and did not work for or hold a position with a financial services provider in respect of whose financial products and financial services disputes may be submitted to the disputes body for consideration; and
  - b. from the acceptance of their position, do not work for or hold any position with a professional organisation for financial services providers, and do not work for or hold a position with a financial services provider in respect of whose financial products and financial services disputes may be submitted to the disputes body for consideration.
3. To guarantee the expertise of the board, the chairman of the board in any case shall have the title of Master of Laws (*meester in de rechten*).

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4. The procedure to be followed in the appointment of a member of the board shall be laid down in writing.

#### **Section 45**

1. A recognised disputes body shall possess and act in accordance with dispute resolution regulations, which shall comprise at least the following:
  - a. a clear description of the disputes that may be submitted to the disputes body for consideration;
  - b. rules about the submission of a dispute and a clear description of the parties that may submit a dispute;
  - c. if there is a possibility to do so: the rules under which a member of the board referred to in Section 44(1) can be challenged by the parties, based on facts or circumstances that would impede an impartial or independent opinion on the part of that member;
  - d. rules about the consideration of a dispute by the disputes body;
  - e. rules about offering the parties, on equal terms, the opportunity to make their views known to the disputes body verbally and in writing, where desired with the assistance of third parties;
  - f. rules about the conditions under which an expert may be requested to issue an opinion;
  - g. rules about the conditions under which witnesses and experts may be heard, or asked for information;
  - h. rules about the parties' opportunity to take note of all the facts and arguments advanced by the other party, and of statements made by witnesses and experts, and to respond to them;
  - i. rules about the conditions under which a dispute may be settled by means of accelerated written proceedings or a preliminary opinion;
  - j. rules about the kind of rules on which the disputes body bases its decisions;
  - k. rules about the possibility that the resolution of a dispute results in a non-binding opinion;
  - l. the provision that the resolution of a dispute will only result in a binding opinion if the financial services provider expressly agreed to this beforehand;
  - m. rules about the determination of the level of the amount that, if owed, must be paid upon submission of the dispute;
  - n. rules about the possibility of ordering the parties to pay the costs of the consideration of a dispute, and the determination of a maximum amount applicable in this respect;
  - o. rules about the form, content and announcement of the outcome of the opinion referred to under (k) and (l), whereby it shall be stipulated in any case that this outcome will be communicated to the parties supported by reasons, signed and in writing; and
  - p. if an appeal can be lodged against a decision, the rules about the communication of the possibility of an appeal, the manner and period in which an appeal must be lodged, as well as the consideration of that appeal.
2. A recognised disputes body shall keep the regulations referred to in Subsection (1) available and shall provide them free of charge to any interested party on request.

#### **Section 46**

A recognised disputes body shall ensure that the costs of submitting a dispute are limited to such an extent as not to impede access to the disputes body in an unreasonable manner.

#### **Section 47**

A recognised disputes body shall ensure that the consideration of a dispute ends within a reasonable period.

#### **Section 48**

A recognised disputes body shall not stipulate as a condition of affiliation that a financial services provider wishing to affiliate must observe rules other than those relating to the submission of a dispute to the disputes body or the further consideration of a dispute by the disputes body.

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## **Chapter 8. Level of care to be exercised when rendering services**

### **Part 8.1. Supply of information**

#### **§ 8.1.1. Introductory provision**

**Provision implementing Sections 4:22(1), 4:72(3), opening words and (a) and 4:73(3), opening words and (a) of the Act**

#### **Section 49**

1. A financial enterprise shall supply the information to be supplied to the consumer or client pursuant to this part and Sections 4:72(1) and 4:73(1) of the Act in writing, except where stipulated otherwise in this part. The financial enterprise may supply the information via another durable medium, if it has satisfied itself that the consumer or client possesses the necessary equipment to take note of the information to be supplied in this manner.
2. The financial enterprise shall supply the information referred to in Subsection (1) in Dutch. The information may be supplied in a different language:
  - a. if the consumer or client makes a request to this end and the financial enterprise agrees to this;
  - b. if the parties decided that the law of another state would apply to the agreement regarding a financial product; or
  - c. where the information consists of a Financial Information Leaflet regarding units in a collective investment scheme and the Netherlands Authority for the Financial Markets has agreed to this at the management company's request.
3. Subsections (1) and (2) shall not apply to the supply of information concerning the provision of investment services.

#### **Section 49a**

1. An investment firm shall supply the information to be supplied to the client pursuant to this part and Sections 4:20(3), 4:90b(3) and (8) and 4:90c(3) of the Act in writing, except where stipulated otherwise in this part or in those sections. The investment firm, having obtained the client's permission, may supply the information via another permanent carrier if that is appropriate for the context in which it does business with the client.
2. An investment firm, having obtained the client's permission, may supply the information to be supplied under Sections 58a to 58e and 59a that is not directed at the client personally via its website if:
  - a. using the website is appropriate for the context in which it does business with the client;
  - b. the client is informed electronically of the address of the website and the place on the website where the information can be obtained;
  - c. the information is up-to-date and remains accessible on the website for as long as the client needs to access it.
3. The investment firm supplying information to the client via electronic communication shall be appropriate for the context in which the investment firm does business with the client if there is proof that the client has regular access to the Internet. The fact that the client provides an e-mail address for doing business shall in any case count as proof thereof.

#### **§ 8.1.1a. Client classification**

**Provision implementing Section 4:18c(3) of the Act**

#### **Section 49b**

A client that has been classified as a non-professional investor may, at his written request, be treated as a professional investor by an investment firm if the provisions of Section 4:18c of the Act are complied with, and:

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- a. the investment firm issues a written warning to the client about the lower protection level and the fact that the investor compensation scheme does not apply; and
- b. the client confirms in a separate document that he is aware of the consequences attached to the lower protection level.

**§ 8.1.2. General information about management companies, collective investment schemes, custodians, investment firms and credit institutions  
Provisions implementing Section 4:22(1) of the Act**

**Section 50**

1. A management company shall keep the following information available on its website:
  - a. the information about itself, the collective investment schemes under its management and the custodians affiliated to the collective investment schemes which must be included in the Trade Register pursuant to any statutory regulation;
  - b. the agreement referred to in Section 4:43(1) of the Act;
  - c. its licence; and
  - d. every decision of the Netherlands Authority for the Financial Markets to grant dispensation from the provisions arising from this Act with regard to the management company itself, the collective investment schemes under its management and any custodian affiliated to these schemes.

The management company shall supply this information to anyone upon request on payment of a fee not exceeding the cost price.

2. Each month, a management company shall, for the benefit of the unit-holders in a collective investment scheme under its management, publish on its website a statement with explanatory notes of the details specified below, whereby the moments of compilation must be at least one week apart. The statement shall be co-signed by the custodian where applicable and shall contain at least the following information:
  - a. the total value of the investments of the collective investment scheme;
  - b. an overview of the composition of the investments;
  - c. the number of outstanding units; and
  - d. insofar as the units in the collective investment scheme are repurchased or repaid either directly or indirectly out of the assets at the unit-holders' request: the most recent net asset value of the units, stating the moment when this net asset value was determined.

The custodian shall supply this information to the unit holders in the collective investment scheme upon request, on payment of a fee not exceeding the cost price.

3. A collective investment scheme having its registered office in a designated state whose units are repurchased or repaid either directly or indirectly out of the assets at the unit holders' request, shall disclose the net asset value of the units to anyone upon request. The net asset value shall be determined at the most recent moment of admission and withdrawal of unit holders in the collective investment scheme.
4. Subsections (1) to (3) shall not apply to management companies of undertakings for collective investment in transferable securities having their registered office in another Member State.

**Section 51**

1. An investment firm or credit institution shall inform anyone with a justified interest upon request of the systems as referred to in Section 212a of the Bankruptcy Act in which the investment firm or the credit institution takes part.
2. An investment firm or credit institution shall inform anyone with a justified interest upon request of the principal rules applicable to the operation of the systems referred to in Section 212a of the Bankruptcy Act in which the investment firm or the credit institution takes part.
3. Subsections (1) and (2) shall not apply to investment firms having their registered office in another

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**§ 8.1.2a. Supply of information by investment firms  
Provisions implementing Section 4:19(4) of the Act**

**Section 51a**

1. The information supplied by an investment firm to a non-professional investor:
  - a. shall contain the name of the investment firm;
  - b. shall be accurate and shall not highlight the potential benefits of an investment service or financial instrument without also giving a correct and clear indication of the potential risks;
  - c. shall be adequate and, because of its presentation, understandable to the average member of the group to which it is addressed; and
  - d. shall not obscure or play down important matters, statements or warnings.
2. If the information provides a comparison of investment services, ancillary services, persons performing these services or financial instruments:
  - a. the comparison shall be meaningful and presented in a correct and balanced manner;
  - b. the information sources used for the purpose of the comparison shall be stated; and
  - c. the principal facts and assumptions used for the purpose of the comparison shall be stated.
3. If the information contains an indication of the past results achieved by a financial instrument, a financial index or an investment service:
  - a. this indication shall not be the most prominent feature of the statement;
  - b. the information shall contain appropriate data concerning the results for the immediately preceding five years or for the entire period in which the financial instrument was offered, the financial index was determined or the investment service was provided, if this period is shorter than five years, or for a longer period set by the enterprise, which shall always be a multiple of full 12-month periods;
  - c. the reference period and the information source shall be clearly indicated;
  - d. the information shall contain a clear warning that these are past results and do not constitute a reliable indicator for future performance;
  - e. where the indication is based on data denominated in a currency different from that of the Member State in which the non-professional investor resides, the information shall clearly state the currency concerned and contain a warning that currency fluctuations may result in a higher or lower investment return; and
  - f. where the indication is based on gross results, the information shall specify the effect of commissions, fees and other charges.
4. If the information contains or refers to notional past results, it shall concern a financial instrument or a financial index, and:
  - a. the notional past results shall be based on the actual past results achieved by one or more financial instruments or financial indices that are identical to or constitute the underlying security for the financial instrument involved;
  - b. Subsection (3)(a), (b), (c), (e) and (f) shall apply accordingly to actual past results referred to under (a); and
  - c. the information shall contain a clear warning that these are notional past results and that past results do not constitute a reliable indicator for future performance.
5. If the information contains data concerning future performance:
  - a. this performance shall not be based on or refer to notional past results;
  - b. this performance shall be based on reasonable assumptions that are supported by objective data;
  - c. the effect of commissions, fees and other charges shall be specified if the information is based on gross results; and
  - d. the information shall contain a clear warning that such forecasts do not constitute a reliable indicator for future performance.

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6. If the information refers to a particular tax treatment, it shall clearly state that this treatment depends on the client's individual circumstances and may be subject to change in the future.
7. The information shall not use the supervisory authority's name in such a way as to claim or suggest that the latter supports or recommends the investment firm's products or services.

### **§ 8.1.3. Advertisements and other non-obligatory pre-contractual information Provisions implementing Section 4:22(1) of the Act**

#### **Section 52**

1. If a financial enterprise supplies information about a complex product in an advertisement other than a television or radio advertisement, it shall on that occasion also supply information about the principal financial risks of that product, which are made clear by means of a risk indicator, amongst other things, and, where an investment object is concerned, the principal other risks attached to that product.
2. If a financial enterprise supplies information about a complex product in a television advertisement, it shall on that occasion also supply information about the principal financial risks of that product by displaying a risk indicator, and, where an investment object is concerned, the principal other risks attached to that product.
3. If a financial enterprise supplies information about a complex product in a radio advertisement, it shall on that occasion also supply information about the principal financial risks of that product and, where an investment object is concerned, the principal other risks attached to that product.
4. If, prior to the establishment of an agreement regarding a complex product, a financial enterprise supplies information about that product, it shall on that occasion also refer to the Financial Information Leaflet or, in the case of units in an undertaking for collective investment in transferable securities having its registered office in another Member State, to the simplified prospectus referred to in Article 27(1) of the Collective Investment Schemes Directive.
5. If, prior to the establishment of an agreement regarding a complex product, a financial enterprise supplies information about a historical or future investment returns other than in a television or radio advertisement, it shall on that occasion also supply information about the principal costs and the principal financial risks of that product, and, where an investment object is concerned, about the principal other risks attached to that product.
6. If a financial enterprise supplies information about a historical or future investment return of a complex product in a television or radio advertisement, it shall, on that occasion or at any other moment prior to the establishment of an agreement regarding that product, also supply information about the principal costs of that product.
7. If, prior to the establishment of an agreement regarding a complex product, a financial enterprise supplies information about a guaranteed investment return, it shall on that occasion or, if the information is supplied in an advertisement, at any moment prior to the establishment of the agreement regarding that product, also supply information about the principal conditions of that guarantee.
8. Section 49(1), first sentence shall not apply to the provision of information in an advertisement as referred to in this section.
9. Subsections (1) to (8) shall not apply in the case of a complex product, not being a unit in a collective investment scheme, in respect of which only financial services are provided to persons acting in the course of their business or profession.
10. Subsection (1), with the exception of the obligation to provide a risk indicator, and Subsections (3) to (7) shall not apply to investment firms insofar as they provide investment services or ancillary services with regard to units in collective investment schemes.

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### **Section 53**

1. If a financial enterprise supplies information about an effective interest rate or the monthly payments of credit in a credit advertisement that is not a television or radio advertisement, it shall on that occasion, in addition to the effective lending rate and the monthly payment, also disclose the following information:
  - a. the credit sum or credit limit applied in calculating that rate or that monthly payment;
  - b. the term or theoretical term applied in calculating that rate or that monthly payment;
  - c. the total price of the credit applied in calculating that rate or that monthly payment;
  - d. whether this involves installment credit or revolving credit; and
  - e. where applicable, the insurance to be taken out and security to be provided for the benefit of the provider in order to be eligible for the credit.
2. If a financial enterprise, in a credit advertisement on television or on the radio, supplies information about an effective interest rate or the monthly payment of credit, it shall also supply:
  - a. information in that advertisement about the total price of the credit applied in calculating that rate or that monthly payment, and the credit sum or credit limit applied in calculating that rate or that monthly payment; and
  - b. at any other moment prior to the establishment of a credit agreement to which the advertisement relates, in addition to the effective interest rate, the monthly payment the credit sum or credit limit applied in calculating that rate or that monthly payment and the total price of the credit applied in calculating that rate or that monthly payment, information about:
    - 1°. the term or theoretical term applied in calculating that rate or that monthly payment;
    - 2°. whether this involves installment or revolving credit; and
    - 3°. where applicable, the insurance to be taken out and security to be provided for the benefit of the provider in order to be eligible for the credit offered.
3. In calculating the monthly payment referred to in Subsections (1) and (2), a financial enterprise shall include all the costs owed by the consumer in order to be eligible for the credit concerned. The information referred to in Subsections (1) and (2) shall only relate to types of credit that are representative of the type of credit actually provided by the financial enterprise.
4. If the information referred to in Subsection (1), opening words and (a) to (c), Subsection (2)(b), opening words and (b)(1°) and, where applicable, Subsections (6) and (7) is supplied in a credit advertisement that is not a television or radio advertisement, the financial enterprise shall present this information combined in a table that does not include any other information.
5. If a financial enterprise, in a credit advertisement, advertises goods or services to be purchased on credit, it shall on that occasion also provide information about the effective interest rate.
6. If a financial enterprise, in a credit advertisement, supplies information about an effective interest rate or about credit fees that apply for a limited period, or, in a credit advertisement, supplies information about a variable credit fee that differs for a limited period from the variable credit fee applicable at the time of the advertisement to agreements regarding credit of the same type, size and duration:
  - a. it shall on that occasion also supply information about the period during which the effective interest rate or the credit fee offered is applicable;
  - b. it shall on that occasion also supply information about the level of the effective interest rate or the credit fee after the end of this period, or, if the level of this effective interest rate or this credit fee is variable or cannot yet be determined, it shall supply information about the variable credit fee applicable at the time of the advertisement to agreements regarding credit of the same type, size and duration, and point out that the effective interest rate may be higher in the future; and
  - c. it shall base the other information about the features of the credit, to be supplied pursuant to Subsections (1) or (2), on the effective interest rate or on the credit fee after the end of this period, on the understanding that the information on the total price of the credit is based on the full term of the credit.
7. As the monthly payment as referred to in this section, the advertisement shall state the weighted average monthly payment applicable to the credit. If the credit is wholly or partly interest-only, the

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advertisement shall, without prejudice to Subsection (6), state the weighted average monthly payment applicable during the interest-only period and the weighted average monthly payment owed when the credit is repaid.

8. If a financial enterprise supplies information about the level of the creditfee in a credit advertisement, it shall on that occasion also supply information about the effective interest rate.
9. If a financial enterprise supplies information about the level of a discount on an effective interest rate or on a lending fee in a credit advertisement, it shall on that occasion also supply information about the effective interest rate or the lending fee to which the discount applies.
10. If a financial enterprise supplies information about the effective interest rate in a credit advertisement, it shall refer to this rate as "the effective annual interest rate".
11. A financial enterprise:
  - a. shall not include statements in a credit advertisement which highlight the ease or the speed with which the credit is provided;
  - b. shall not state in a credit advertisement that current credit agreements will play no part or a secondary part in the consideration of a credit application; and
  - c. shall keep a credit advertisement free of features of the credit in which tax advantages have been incorporated.
12. If a financial enterprise supplies information as referred to in Subsections (1) and (2) or information about a specific product in a credit advertisement, it shall on that occasion also supply information about the availability of the credit prospectus referred to in Section 4:33(1) of the Act. The first sentence shall not apply to credit advertisements where the credit is part of a complex product.
13. If a financial enterprise supplies information about the features of the credit referred to in Subsection (1) and in Subsection (2), opening words and (b), opening words and (1°), Subsection (4) shall apply accordingly.
14. Section 49(1), first sentence shall not apply to the provision of information in an advertisement as referred to in this section.

#### **Section 54**

The Netherlands Authority for the Financial Markets may lay down rules concerning the manner in which the information referred to in Sections 52 and 53 is presented or formulated, the manner of calculating the historical or future returns, costs and risks as referred to in Section 52(1), (2), (3), (5) and (6), and the manner of calculating the costs of insurance and security rights as referred to in Section 53(1)(e) and (2)(b)(3°).

#### **Section 55**

1. An advertisement regarding a management company or collective investment scheme shall in any case contain the following information:
  - a. the name of the management company or collective investment scheme;
  - b. the fact that this entity is a management company or collective investment scheme;
  - c. the fact that the management company or the collective investment scheme is included in the register kept by the Netherlands Authority for the Financial Markets; and
  - d. if the entity is an undertaking for collective investment in transferable securities: where the prospectus referred to in Section 4:49(1) of the Act can be obtained.
2. Subsection (1)(c) and (d) shall not apply to radio and television advertisements.
3. Without prejudice to Section 52, an advertisement regarding an undertaking for collective investment in transferable securities that is not a television or radio advertisement shall, where applicable, expressly point out that:

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- a. the undertaking for collective investment in transferable securities invests primarily in financial derivatives;
- b. the undertaking for collective investment in transferable securities follows a share or bond index;
- c. the value of the assets managed by the undertaking for collective investment in transferable securities may greatly fluctuate as a result of the investment policy; or
- d. the undertaking for collective investment in transferable securities has been granted a dispensation as referred to in Section 136(2), specifying the state, the public body or the international organisation that issues or guarantees the financial instruments referred to in Section 136(2) in which the undertaking for collective investment in transferable securities invests more than 35 percent of the assets it manages.

## **Section 56**

The Netherlands Authority for the Financial Markets may lay down further rules concerning the format of warning sentences in advertisements by investment firms.

### **§ 8.1.4. Obligatory pre-contractual information**

**Provisions implementing Sections 4:20(1) and (2), 4:22(1), 4:73(3), opening words and (a) and 4:90b(10) of the Act**

## **Section 57**

1. Prior to the establishment of an agreement regarding a financial product or financial service, a financial services provider shall supply a consumer or, in the case of insurance, client, with at least the following information:
  - a. its name and address, and, if the financial services provider is a legal person, the name given in its articles of association and the trade name or trade names;
  - b. the nature of its financial services;
  - c. insofar as Section 4:17 of the Act applies: its internal complaints procedure as referred to in Section 4:17(1)(a) of the Act, and the recognised disputes body to which it is affiliated; and
  - d. its registration in the register kept by the supervisory authority.
2. In derogation from Section 49(1), the information referred to in Subsection (1) and in Section 4:73(1) of the Act may be supplied verbally at the client's request, if the financial product is an insurance product and immediate cover is required. In that case, the financial services provider shall also supply the information to the client immediately after concluding the agreement in accordance with Section 49(1).

## **Section 58 [To enter into force on 1 October 2009]**

### **Section 58a**

1. Before providing an investment service or ancillary service, an investment firm shall supply a non-professional investor with the following information:
  - a. information about the mutual rights and obligations arising from the agreement regarding the investment service or ancillary service;
  - b. the information referred to in Section 58b about the agreement or the investment services or ancillary services;
  - c. the other information required pursuant to Sections 58b to 58e.
2. In derogation from Subsection (1), an investment firm may supply the information referred to in Subsection (1) immediately after the start of providing an investment service or ancillary service, if:
  - a. it was unable to observe the time limits referred to in Subsection (1) because the agreement was concluded, at the request of the non-professional investor, by means of a long-distance communication technology which prevents it from supplying the information in accordance with Subsection (1); or
  - b. the investment firm complies with Section 79(1) in relation to the non-professional investor as if

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this investor were a consumer and the investment firm were a financial services provider.

3. If an advertisement of an investment firm contains an offer to enter into an agreement regarding a financial instrument or an investment service or ancillary service, or contains an invitation to make such an offer and indicates how a response can be provided, this advertisement shall also include the information relevant to the offer or the invitation as referred to in Sections 58b to 58e.
4. Subsection (3) shall not apply if the offer or the invitation is directed at a non-professional investor, and the latter is referred to another document or other documents with regard to a response, which document or documents contain this information, either individually or in combination.

### **Section 58b**

1. The information referred to in Section 58a(1)(b) and (c) shall contain the following details:
  - a. the name, address and contact details of the investment firm;
  - b. the languages in which the client can communicate with the investment firm and receive documents and other information;
  - c. methods of communication between the investment firm and the client, including those concerning the submission and receipt of orders;
  - d. a statement to the effect that the investment firm has a licence, as well as the name and contact address of the supervisory authority which issued the licence;
  - e. a statement to the effect that the investment firm performs investment services through a tied agent, specifying the Member State in which this agent is registered in a register;
  - f. the nature, frequency and timetable of the reports on the performance of the service which the investment firm issues to the client in accordance with Sections 69, 70, 71 and 71a;
  - g. if the investment firm holds financial instruments or funds of the client's, a brief description of the measures it has taken to protect these financial instruments or funds, as well as an outline of the guarantee scheme applicable to the firm;
  - h. a description, which may be an outline, of the policy on conflicts of interest pursued by the investment firm in accordance with Section 35a;
  - i. if the client makes a request to this end, further particulars of the policy on conflicts of interest.
2. In managing individual assets, an investment firm shall establish a suitable evaluation and comparison method, based on the client's investment objectives and the types of financial instruments in the client's portfolio, which will enable the client to assess the firm's performance.
3. In managing individual assets of a non-professional investor, an investment firm shall, in addition to the information referred to in Subsection (1), also provide the client where applicable with information in respect of:
  - a. the valuation method and frequency of the financial instruments in the client's portfolio;
  - b. the particulars of any transfer of the discretionary management of all or part of the financial instruments or funds in the client's portfolio;
  - c. every evaluation or comparison benchmark, as referred to in Subsection (2), against which the results of the portfolio are assessed;
  - d. the types of financial instruments that may be included in the portfolio and the types of transactions that may be conducted in these instruments, as well as their limitations;
  - e. the management objectives, the extent of the risk entailed by the investment firm's scope for assessment, as well as any specific restrictions to this scope for assessment.

### **Section 58c**

1. The information referred to in Section 58a(1)(c) shall include a general description of the nature and risks of financial instruments that is sufficiently detailed to enable non-professional investors to take an investment decision.
2. Where applicable, the description of the risks referred to in Subsection (1) shall also contain the following information:
  - a. the risks attached to the type of financial instrument concerned, including an explanation of the

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- b. leverage effect and its consequences and the risk of losing the entire investment;
  - b. the volatility of the price of the relevant type of financial instrument, and any limitations in the existing market for these instruments;
  - c. the possibility that the client, in conducting transactions in such instruments, might incur additional financial and non-financial liabilities, including conditional liabilities, in addition to the acquisition costs;
  - d. any margin requirements or similar requirements applicable to the relevant type of financial instrument.
3. An investment firm that supplies a non-professional investor with information about a financial instrument, for which a prospectus has been published in accordance with the Prospectus Directive, shall inform the client where this prospectus can be obtained.
  4. If it may be assumed that the risks attached to a financial instrument consisting of two or more different financial instruments are greater than the risks attached to each of these financial instruments individually, the investment firm shall provide an adequate description of the different financial instruments making up the instrument and of the risk-enhancing interaction between these instruments.
  5. Where the financial instrument concerned involves a third-party guarantee, the investment firm shall provide a non-professional investor with sufficient particulars about the guarantee and the guarantor.
  6. For the purposes of Section 4:20(1) of the Act, a Financial Information Leaflet that complies with the provisions arising from Section 66(2) and (3) of this Decree or a simplified prospectus that complies with Article 28 of the Collective Investment Schemes Directive shall be regarded as appropriate information in relation to a unit in a collective investment scheme.

#### **Section 58d**

1. Where applicable, the information referred to in Section 58a(1)(c) shall include information on the circumstance that a third party may hold financial instruments or funds belonging to the non-professional investor on the investment firm's behalf, as well as information on its statutory responsibility for the third party's actions or omissions and for the consequences for the client if the third party is declared insolvent.
2. If a third party may hold financial instruments belonging to a non-professional investor in an omnibus account on the investment firm's behalf, insofar as the applicable law allows this, the investment firm shall inform the client accordingly and issue a clear warning about the risks this entails.
3. If it is not possible under the applicable law to distinguish financial instruments belonging to a non-professional investor, held by a third party on an investment firm's behalf, from the financial instruments belonging to that third party or the investment firm itself, the investment firm shall inform the client accordingly and issue a clear warning about the risks this entails.
4. If an account in which financial instruments or funds belonging to a non-professional investor are held is governed by the law of a non-Member State, the investment firm shall inform the client accordingly and point out that this may affect the rights attached to these financial instruments or funds.
5. An investment firm that holds financial instruments or funds belonging to a non-professional investor shall inform the latter of the existence and conditions of the real security rights or rights of priority which it has or may have in respect of these financial instruments or funds, and of any settlement right it has in respect of these financial instruments or funds. Where applicable, it shall also inform the client that a custodian has or may have a real security right, a right of priority or a settlement right in respect of these instruments or funds.
6. An investment firm that holds financial instruments belonging to a non-professional investor shall, well before it conducts securities financing transactions in respect of those financial instruments, or uses such financial instruments in other ways at its own expense or at the expense of another client, supply the client prior to the use of these instruments with clear, complete and accurate information about its obligations and responsibilities relating to the use of these financial instruments, including the conditions for their restitution, and about the risks attached to that use.

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#### **Section 58e**

1. The information referred to in Section 58a(1)(c) shall include information about the costs and associated charges, which, where applicable, shall consist of the following elements:
  - a. the total price of the financial instrument, investment service or ancillary service, including all associated costs, and, if no exact price can be given, the assumptions underlying the calculation of the total price;
  - b. the commissions charged by the investment firm;
  - c. a specification of the foreign currency concerned and the applicable conversion rate and exchange charges, if a part of the total price must be paid or is denominated in foreign currency;
  - d. a statement to the effect that transactions relating to the financial instrument or the investment service may entail further costs for the non-professional investor, which costs are not paid through or charged by the investment firm;
  - e. the arrangements with regard to payment or other types of performance in exchange for the provision of the investment service or ancillary service.
2. For the purposes of Section 4:20(1) of the Act, a Financial Information Leaflet that complies with the provisions arising from Section 66(2) and (3) of this Decree or a simplified prospectus that complies with Article 28 of the Collective Investment Schemes Directive shall be regarded as appropriate information in relation to a unit in a collective investment scheme with regard to the costs and associated charges attached to the collective investment scheme, including the opening and closing commissions.

#### **Section 58f**

1. The investment firm shall provide professional investors with a general description of the nature and risks of financial instruments that is sufficiently detailed to enable them to take an investment decision.
2. Section 58c(2) and (4) shall apply accordingly to the description of the nature and risks referred to in Subsection (1).
3. If an account in which financial instruments or funds belonging to a professional investor are held is governed by the law of a non-Member State, the investment firm shall inform the client accordingly and point out that this may affect the rights attached to these financial instruments or funds.
4. An investment firm that holds financial instruments or funds belonging to a professional investor shall inform the latter of the existence and conditions of the real security rights or rights of priority which it has or may have in respect of these financial instruments or funds, and of any settlement right it has in respect of these financial instruments or funds. Where applicable, it shall also inform the client that a custodian has or may have a real security right, a right of priority or a settlement right in respect of these instruments or funds.
5. An investment firm shall supply a professional investor with the information referred to in this section before providing an investment service or ancillary service.
6. Section 58c(6) shall apply accordingly.

#### **Section 59**

Before executing an order regarding a financial instrument at the expense of a non-professional investor, an investment firm shall supply this investor with the following information about its order execution policy:

- a. an explanation of the relative weight which the investment firm assigns, in accordance with Section 4:90(a)(2) of the Act, to the factors referred to in Section 4:90a(1) of the Act, or of the manner in which it determines the relative weight of these factors;
- b. an overview of the execution venues on which the investment firm draws to a significant extent in order to fulfil its obligation to take all reasonable measures to ensure that the execution of client orders always generates the best possible result;

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- c. a clear warning that a specific instruction from the client may prevent the investment firm from taking the measures it established and laid down in its order execution policy so as to ensure that the execution of the order concerned generates the best possible result in respect of the elements to which this instruction applies.

## Section 60

1. Without prejudice to Sections 57 and 58, a life insurer shall, where applicable, supply a client with at least the following information prior to the establishment of a life insurance agreement:
  - a. its legal form;
  - b. the amount of the payment or payments that it undertakes to make, or, insofar as this amount cannot be accurately determined beforehand, a precise description of that payment or those payments, as well as the factors determining the level of the payment or payments;
  - c. a description of the options available to the client or the party entitled to a payment under the agreement;
  - d. a precise description of the currency in which the premium or payment is denominated if this is a currency other than the euro, or of the units or other entities in which the premium or payment is expressed, or, if a performance is delivered that is non-monetary, of that performance;
  - e. a precise description of the conversion method if a payment involves a conversion into euros or another currency;
  - f. the nature of the securities, including shares or other units in a collective investment scheme, if the payment is expressed in such securities;
  - g. the manner of calculating and appropriating the share in the profits, if the agreement provides for a right to a share in the profits;
  - h. the term of the agreement;
  - i. the premium owed for the main cover and, if the agreement provides for one or more ancillary payments, the premiums owed for each of the ancillary payments and, if these premiums fluctuate during the term, a description in the greatest possible detail of the manner in which they are calculated and of the factors determining the amount of these premiums;
  - j. a statement as to whether the premium is owed once only or periodically;
  - k. the period during which premiums are owed;
  - l. if the payment is expressed in units in a collective investment scheme:
    - 1°. the costs withheld from the premium referred to under (i), divided into initial costs, recurrent costs and purchase and selling costs;
    - 2°. the costs withheld from the value of the units, divided into initial costs, recurrent costs and purchase and selling costs;
    - 3°. the costs charged annually by the management company of the collective investment scheme for managing the units in that collective investment scheme;
    - 4°. the effect of the average annual percentage of the costs referred to under (1°), (2°) and (3°) on the return and the payment attached to the agreement;
    - 5°. the manner in which the costs referred to under (1°), (2°) and (3°) are spread over the term of the agreement with the client;
  - m. a description of the consequences of a premium increase or decrease, including paying up the policy, and, if the agreement provides for this option, of surrendering the policy, and a statement of the surrender value during at least the first 10 years of the term, specifying the investment return rate applied for the purpose of the calculation;
  - n. the manner in which the client can exercise his right to cancel the agreement, as referred to in Section 4:63 of the Act;
  - o. the manner in which the agreement can be terminated and the notice period to be observed in that respect;
  - p. a general indication of the tax treatment of agreements of the type concerned, including the tax treatment of premiums, payments and the tax consequences of a surrender;
  - q. the law that will govern the agreement, or the choice of law proposed by the provider;
  - r. the costs charged in addition to the gross premium;
  - s. the financial risk attached to the agreement, and the extent to which this risk is borne by the client; and
  - t. the other policy conditions.
2. In derogation from Subsection (1), the information referred to in that subsection may be supplied immediately after the establishment of the agreement, or when the policy is issued at the latest, if the

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client has the right to dissolve the agreement within 30 calendar days of the day on which he received the information, with retroactive effect to the date when the agreement was concluded, without owing a penalty and without giving reasons, and the client has been informed about the manner in which he can exercise that right.

3. Insofar as the financial risk under a life insurance agreement is borne by the client, the life insurer may agree with the client that any increase or decrease in the value of the investments occurring after the establishment of the agreement shall remain for the client's account if the client dissolves the agreement in accordance with Subsection (2) with retroactive effect to the date when the agreement was concluded.
4. If a payment under a life insurance agreement is expressed in units in a collective investment scheme, the life insurer shall present the client upon request with information about the investment policy of the collective investment scheme, which information shall address the following aspects:
  - a. the objective of the investment policy and the reference portfolio applied for management purposes;
  - b. restrictions placed on the investment policy; and
  - c. the investment titles that are permitted, and the derived instruments that can be used.
5. Subsection (1), opening words and (m) shall not apply if the client is an employer that concludes an agreement for the benefit of its employees in connection with a pension commitment it has made.

## Section 61

1. Without prejudice to Section 57, a non-life insurer shall, where applicable, supply a client with at least the following information prior to the establishment of a non-life insurance agreement:
  - a. its legal form;
  - b. the law governing the agreement, or the choice of law proposed by the non-life insurer; and
  - c. the name and address of the claims settling agent referred to in Section 4:71(1)(e) of the Act.
2. In derogation from Subsection (1), the information referred to in that subsection may be supplied immediately after the establishment of the agreement, or when the policy is issued at the latest, if the client has the right to dissolve the agreement within 14 calendar days of the day on which he received the information, without owing a penalty and without giving reasons, and the client has been informed about the manner in which he can exercise that right.

## Section 62

If, in the case of a non-life insurance agreement, a risk is situated in another Member State, the information to be supplied to the client shall be given in accordance with the rules applicable in that other Member State that implement Articles 31 and 43 of Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (OJEC L 228).

## Section 63

1. Without prejudice to Section 57, a funeral provisions insurer shall, where applicable, supply a client with at least the following information prior to the establishment of a funeral provisions insurance agreement or an agreement providing for the formation of a fund to pay for a natural person's funeral:
  - a. its legal form;
  - b. a description of the performance that the funeral provisions insurer undertakes to deliver;
  - c. a description of the options available to the client or the insured person under the agreement;
  - d. a statement as to whether the premium is owed once only or periodically;
  - e. the period during which premiums are owed;
  - f. a specification of the indexation applied to the insured performance or to the premium;
  - g. the other possibilities open to the provider for changing the insured performance or the premium;
  - h. a specification or indication of the surrender value or paid-up value, or a specification of the manner in which these values are calculated;

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- i. the manner in which the client can exercise his right to cancel the agreement, as referred to in Section 4:63 of the Act;
  - j. the manner in which the agreement can be terminated and the notice period to be observed in that respect;
  - k. the law that will govern the agreement, or the choice of law proposed by the funeral provisions insurer;
  - l. a specification of the funeral company that will take care of the funeral arrangements, or of the manner in which it is decided which funeral company will take care of the funeral arrangements;
  - m. the other policy conditions, and
  - n. in the case of an agreement providing for the formation of a fund as referred to in Section 4:18(2) of the Act: information about the manner in which the funds paid in will be invested.
2. If the notice period referred to in Subsection (1)(j) is longer than one year, the funeral provisions insurer shall explicitly state this to the client in a conspicuous manner, failing which a notice period of one year shall apply, regardless of the provisions of the agreement.
  3. In derogation from Subsection (1), the information referred to in that subsection may be supplied immediately after the establishment of the agreement, or when the policy is issued at the latest, if the client has the right to dissolve the agreement within 30 calendar days of the day on which he received the information, with retroactive effect to the date when the agreement was established, without owing a penalty and without giving reasons, and the client has been informed about the manner in which he can exercise that right.
  4. If, in derogation from Subsection (1), a funeral provisions insurer, in establishing an agreement providing for the formation of a fund as referred to in Section 4:18(2) of the Act, supplies the information referred to in that subsection immediately after the establishment of the agreement, or when the policy is issued at the latest, in accordance with Subsection (3), the funeral provisions insurer shall agree with the client that any increase or decrease in the value of the investments occurring after the establishment of the agreement shall remain for the client's account if the client dissolves the agreement pursuant to Subsection (3) with retroactive effect to the date when the agreement was established.

#### **§ 8.1.5. Financial Information Leaflet Provisions implementing Section 4:22(1) of the Act**

##### **Section 64**

1. This division shall not apply to management companies of undertakings for collective investment in transferable securities having their registered office in another Member State.
2. This division shall not apply to financial enterprises insofar as they manage or perform, or assist in the management or performance of, agreements on complex products.

##### **Section 65**

1. A provider of a complex product shall keep a Financial Information Leaflet available on its website and supply the Financial Information Leaflet immediately free of charge at the request of a consumer or, in the case of units in a collective investment scheme, client.
2. If a complex product is offered through a intermediary, authorised agent or authorised sub-agent, this intermediary, authorised agent or authorised sub-agent shall supply a Financial Information Leaflet immediately and free of charge at the consumer's or client's request, unless the provider and the intermediary, authorised agent or authorised sub-agent agreed that the provider would fulfil this obligation itself.
3. Subsection (1) shall not apply to complex products, with the exception of units in a collective investment scheme, that exclusively involve the provision of financial services to parties other than consumers.
4. Subsection (1) shall apply accordingly to financial enterprises that compile a complex product as referred to in Section 1(d)(1°), (4°) or (7°) and make that product generally available on the market to

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consumers or, in the case of units in a collective investment scheme, clients.

## **Section 66**

1. A Financial Information Leaflet shall include information about the following subjects:
  - a. the purpose of the Financial Information Leaflet;
  - b. the nature and purpose of the complex product;
  - c. the financial risks of the complex product, which are made clear by means of a risk indicator, amongst other things, and, in the case of an investment object, the other risks attached to that product;
  - d. the consumer's obligations;
  - e. whether or not a contractual right exists to cancel the agreement regarding the complex product prematurely, and the costs and other consequences attached to such a cancellation;
  - f. the consequences if the consumer dies;
  - g. example investment returns and the costs of the complex product; and
  - h. other subjects to be designated by ministerial regulation.
2. In derogation from Subsection (1), a Financial Information Leaflet concerning a unit in a collective investment scheme shall include information about the following subjects:
  - a. the identification of the document as a Financial Information Leaflet, the specification of the collective investment scheme concerned and a brief description of the collective investment scheme;
  - b. the purpose of the Financial Information Leaflet and the fact that the collective investment scheme is included in the register kept by the Netherlands Authority for the Financial Markets;
  - c. the nature and purpose of the collective investment scheme;
  - d. the financial risks of the unit in a collective investment scheme, made clear by means of a risk indicator, amongst other things;
  - e. the unit holder's obligations;
  - f. the costs and, where available, the historical return of the unit;
  - g. whether or not a contractual right exists to cancel the agreement regarding the complex product prematurely, and the costs and other consequences attached to such a cancellation;
  - h. tax aspects of the units in the collective investment scheme;
  - i. the address where the prospectus referred to in Section 4:49(1) of the Act and the annual accounts can be obtained free of charge upon request;
  - j. a contact person who unit holders can approach if they have any questions;
  - k. the fact that the Netherlands Authority for the Financial Markets is the supervisory authority for the Financial Information Leaflet;
  - l. the date on which the Financial Information Leaflet was updated; and
  - m. other subjects to be designated by ministerial regulation.
3. A Financial Information Leaflet shall not contain any information on subjects other than those referred to in Subsections (1) or (2).
4. The Netherlands Authority for the Financial Markets shall lay down rules concerning the manner in which the information about the subjects referred to in Subsections (1) and (2) is provided in the Financial Information Leaflet, and concerning the calculation of the investment returns, costs and risks as referred to in Subsection (1)(c) and (g) and Subsection (2)(d) and (f).
5. With regard to a Financial Information Leaflet concerning units in an undertaking for collective investment in transferable securities, the Netherlands Authority for the Financial Markets shall lay down further rules implementing the Collective Investment Schemes Directive.

### **§ 8.1.6. Supply of information during the term of an agreement**

**Provisions implementing Section 4:20(3), opening words and (b), (4) and (5) of the Act**

## **Section 67**

1. During the term of an agreement regarding an investment object, the provider shall supply the consumer with at least the following information:

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- a. a set of annual accounts audited by an auditor or by an expert competent to audit the annual accounts under the law of the state where the provider has its registered office, the explanatory notes to which contain at least a breakdown of the provider's total selling costs, production costs, management costs and administrative costs, a breakdown of these costs per series of investment objects to which the investment object belongs, as well as the total sum of the funds invested by consumers in the series of investment objects. A provider with its registered office in the Netherlands shall compile the annual accounts as much as possible in accordance with Title 9 of Book 2 of the Dutch Civil Code (*Burgerlijk Wetboek*) or the international accounting standards. A provider with its registered office in another Member State shall compile the annual accounts in accordance with the regulations of the Fourth Council Directive based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies (Directive 78/660/EEC of 25 July 1978) (OJEC L 222) and of the Consolidated Accounts Directive, or in accordance with the international accounting standards. The other providers shall compile the accounts in an equivalent manner. The annual accounts shall specify the principles underlying their compilation;
  - b. a valuation of the series of investment objects to which the investment object belongs, carried out at least once a year, by an independent expert in the year concerned; and
  - c. other subjects to be designated by ministerial regulation.
2. The provider shall keep the information referred to in Subsection (1), opening words and (a) and (b) available on its website for a minimum period of three years.
  3. The Netherlands Authority for the Financial Markets may lay down rules concerning the manner of presenting or formulating the information referred to in Subsection (1), and concerning the calculation of the costs referred to in Subsection (1)(a).

#### **Section 68**

1. During the term of a credit agreement involving a variable lending fee, the provider shall inform the consumer of any change in the lending fee, whereby it shall also inform the consumer about the change in the effective annual interest rate.
2. During the term of a credit agreement, the provider shall supply the consumer upon request with an itemised summary of the outstanding balance. On this occasion, the provider may charge a fee that must not exceed the amount of the actual costs.
3. Up to one year after the fulfilment of a credit agreement, the credit provider shall supply the consumer upon request with an itemised statement, which shall be free of charge.

#### **Section 69**

1. An investment firm which, at a client's expense, executed an order regarding a financial product that does not implement a decision relating to individual asset management, shall immediately provide the client with the principal information about the execution of this order.
2. An investment firm which executed an order as referred to in Subsection (1) for a non-professional investor shall, without prejudice to Subsection (1), notify the client of the execution of the order immediately and at the latest on the first working day after the execution of the order. If the investment firm receives a confirmation of execution from a third party, the investment firm shall notify the client of this at the latest on the first working day after receipt of the confirmation from this third party, unless this third party already informed the client immediately.
3. In derogation from Subsections (1) and (2), an investment firm which executed an order as referred to in Subsection (1) regarding bonds serving to finance a mortgage loan, shall inform the client that took out this loan about the execution of the order when disclosing the credit sum, but no later than one month after the execution of the order.
4. If an investment firm periodically executes orders regarding units in a collective investment scheme for a non-professional investor, the investment firm may provide the notification referred to in Subsection (2) once every six months.
5. Upon request, an investment firm shall supply the client with information about the status of the

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latter's order.

6. Where applicable, and where relevant in accordance with Table 1 of Annex 1 to the Regulation implementing the Markets in Financial Instruments Directive, the notification referred to in Subsection (2) shall contain the following information:
  - a. the identification details of the party making the notification;
  - b. the name or a different description of the client;
  - c. the trading day;
  - d. the trading time;
  - e. the type of order;
  - f. the identification details of the execution venue;
  - g. the identification details of the financial instrument;
  - h. the purchase or sale;
  - i. the nature of the order, if it is not a buy or sell order;
  - j. the quantity;
  - k. the price per unit;
  - l. the total fee;
  - m. the total costs charged, and a breakdown of these costs if the non-professional investor requests this;
  - n. the client's responsibilities with regard to the completion of the transaction, including the payment or delivery term and the investment account details insofar as these details and responsibilities were not communicated to the client at an earlier stage;
  - o. the fact that the client's counterparty was the investment firm itself, a person pertaining to the group of which the investment firm is part or another client of the investment firm, unless the order was executed via a trading system that enables anonymous trade.
7. If an investment firm executes an order regarding financial instruments in tranches, it may, for the purpose of Subsection (6)(k), provide the client with information about the price of each individual tranche or about the average price. If the investment firm supplies information about the average price, it shall provide the non-professional client upon request with information about the price of each individual tranche.
8. An investment firm may supply the information referred to in Subsection (6) by means of standard codes, provided it also supplies an explanation of the codes used.

## **Section 70**

1. An investment firm that manages individual assets shall provide the client with a periodic summary of the portfolio management activities carried out on the client's behalf, unless this summary has already been supplied by a third party.
2. Insofar as the periodic summary referred to in Subsection (1) relates to the assets of a non-professional investor, it shall, where applicable, contain the following information:
  - a. the name of the investment firm;
  - b. the name or a different description of the non-professional investor's investment account used for management purposes;
  - c. a specification of the content and valuation of the portfolio, including details of each financial instrument held, its market value or, if this value is not available, its actual value, the cash balance at the start and the end of the reporting period, as well as the portfolio results for the reporting period;
  - d. the total cost amount over the reporting period, with a separate breakdown detailing in any case the total management fees and the total execution fees and stating, where applicable, that a more detailed breakdown can be provided upon request;
  - e. a comparison of the results of the portfolio over the summary period and each of the evaluation or comparison benchmarks agreed between the investment firm and the client;
  - f. the total amount in dividends, interest and other payments received over the reporting period in connection with the client's portfolio;
  - g. information about corporate actions through which rights are obtained relating to financial instruments in the portfolio;

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- h. where applicable, the information referred to in Section 69(6)(c) to (l) in respect of every transaction carried out during the reporting period, unless the client wants to receive information per transaction in accordance with Subsection (5).
3. Insofar as the periodic summary referred to in Subsection (1) relates to the assets of a non-professional investor, the investment firm shall provide this summary once every six months.
4. In derogation from Subsection (3), an investment firm shall provide the periodic summary referred to in Subsection (1) in relation to the assets of a non-professional investor:
  - a. once a quarter, if the non-professional investor has made a request to that effect;
  - b. at least once a year if Subsection (5) applies, unless the periodic summary relates to transactions in securities as referred to in Subsection (c) of the definition of a security in Section 1:1 of the Act, or in financial instruments as referred to in Subsections (d) to (j) of the definition of a financial instrument in that section; or
  - c. once a month, if the agreement concerned allows a portfolio with a leverage effect.
5. The investment firm shall point out to its clients who are non-professional investors that they have the right to make a request as referred to in Subsection (4)(a).
6. If the client wants to receive information on each transaction carried out, the investment firm shall provide the principal information about the transaction immediately after the completion of this transaction.
7. If the client is a non-professional investor and wants to receive information per transaction, the investment firm shall send the client a confirmation of the transaction which includes the information referred to in Section 69(6), at the latest on the first working day following the execution of that transaction or, if the investment firm receives a confirmation of execution from a third party, at the latest on the first working day after receipt of the confirmation from this third party. The first sentence shall not apply if the third party sends a confirmation to the client containing the same information immediately after carrying out the transaction.

## **Section 71**

1. If an investment firm, in the context of individual asset management, carries out transactions or manages an investment account for a non-professional investor whereby an unhedged open position exists as a result of a transaction in which a conditional obligation was assumed, the investment firm shall also notify this client of losses in excess of a threshold agreed in advance between the investment firm and the client.
2. The notification referred to in Subsection (1) shall be made no later than at the end of the working day on which the threshold is exceeded or, if the threshold is exceeded on a day that is not a working day, at the end of the next working day.

## **Section 71a**

1. An investment firm shall send a client for which it holds financial instruments or funds a summary of the financial instruments or funds at least once a year. If the information is part of another periodic summary provided to a client, the investment firm shall have complied with the first sentence.
2. Subsection (1) shall not apply to banks where it concerns deposits they hold on behalf of clients.
3. The summary referred to in Subsection (1) shall contain the following information:
  - a. details of all the financial instruments or funds which the investment firm holds for the client at the end the reporting period;
  - b. the extent to which financial instruments or funds of the client's were used for securities financing transactions; and
  - c. the profit realised by the client on account of his or its participation in securities financing transactions, and the basis on which this profit was realised.

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4. If a client's portfolio includes revenue from non-final transactions, the information referred to in Subsection (3)(a) shall be based either on the trading date or on the settlement date, if the summary applies the same basis for all these details.
5. An investment firm, which holds financial instruments or funds for a client and also manages individual assets for that client, may include the summary referred to in Subsection (1) in the periodic summary of the portfolio management activities.

## Section 72

1. An authorised agent or authorised sub-agent who effected insurance at an insurer's expense shall state the insurer's name in the policy or in the appendix to the policy and, in the event of co-insurance, the share which he accepted on the insurer's behalf. In the event of non-life insurance he shall also state every change in the share he accepted on the insurer's behalf in an appendix to the policy.
2. If, after the authorised agent or authorised sub-agent has effected the insurance or, in the event of non-life insurance, the share in the insurance accepted by the authorised agent or the authorised sub-agent has changed, the client is not provided or not provided immediately with a policy or an appendix to the policy, the authorised agent or authorised sub-agent shall supply the details referred to in Subsection (1) to the client within four weeks after the insurance was effected or the change was made. If the insurance is part of a intermediary's portfolio, however, the authorised agent or authorised sub-agent shall supply these details to this intermediary within two weeks.
3. If, after insurance has been effected or, in the event of non-life insurance, the share in the agreement accepted by the insurer, the client is not provided or not provided immediately with a policy or an appendix to the policy stating the insurer's name and, in the event of co-insurance, the latter's share or the change in this share, the broker of whose portfolio the insurance is part shall supply these details to the client within four weeks after the agreement was concluded or the change was made.
4. Subsections (2) and (3) shall not apply if the insurance was cancelled within the applicable period and the client or other stakeholders can no longer derive any rights from the insurance.
5. Upon request, the authorised agent or authorised sub-agent or the intermediary involved shall inform the client immediately of the insurer's name and, in the event of co-insurance, of the respective shares accepted by the insurers or of changes made to these shares.

## Section 73

1. During the term of a life insurance agreement, a life insurer shall, where applicable, supply the client with at least the following information:
  - a. any change in its trade name or trade names, the name given in its articles of association, its legal form or its address;
  - b. any change in the policy conditions;
  - c. where this is not shown from a change in the policy conditions: any change in the agreement with regard to the subjects referred to in Sections 57(1)(c) and 60(1)(b) to (m) and (o) to (s), or in the regulations applicable to those subsections;
  - d. the annual profit sharing;
  - e. if the payment is expressed in units in a collective investment scheme: an annual statement for the preceding year of:
    - 1°. the value development of the accrued capital;
    - 2°. the premiums paid by the client, as referred to in Section 60(1)(i);
    - 3°. the costs settled with the client, as referred to in Section 60(1)(l)(1°), (2°) and (3°);
    - 4°. the return realised on the accrued capital;
  - f. if the agreement concerns life insurance linked to a mortgage loan, and the payment is expressed in units in a collective investment scheme: an annual projection of the size of the final capital, based on a pessimistic forecast or the historical investment return;
  - g. if the payment is expressed in units in a collective investment scheme: the manner in which the collective investment scheme is managed;
  - h. if the client requests this: a specification of the paid-up value on the maturity date of the

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insurance, stating the rate of return applied for the purpose of the calculation, or a specification of the costs owed on account of the surrender and the current surrender value.

2. If the payment is expressed in units in a collective investment scheme, the life insurer, without prejudice to Subsection (1), opening words and (h), shall provide the client who asks for his premiums to be increased or reduced or his policy to be paid up in full: with a statement adjusted to the new premium in accordance with Section 60(1)(l)(1°), (2°) and (3°);
3. Subsection (1), opening words and (e), (f) and (h) and Subsection (2) shall not apply if the client is an employer who concluded the agreement for the benefit of its employees in connection with a pension commitment it made.

#### **Section 74**

During the term of a funeral provisions insurance agreement or an agreement providing for the formation of a fund to pay for a natural person's funeral, a funeral provisions insurer shall, where applicable, supply the client with at least the following information:

- a. any change in its trade name or trade names, the name given in its articles of association, its legal form or its address;
- b. any change in the policy conditions; and
- c. where this is not shown from a change in the policy conditions: any change in the agreement with regard to the subjects referred to in Sections 57(1)(c) and 63(1)(b) to (h), (j) and (l), or in the regulations applicable to those subsections.

#### **Section 75**

During the term of a non-life insurance agreement, a non-life insurer with its registered office outside the Netherlands that operates in the Motor Vehicle Liability sector by providing services to the Netherlands shall notify the client within two weeks of a change in the name or address of the claims assessor referred to in Section 4:71(1)(e) of the Act.

#### **§ 8.1.7. Supply of information in the context of a distance agreement Provisions implementing Section 4:20(1), (2), (3), opening words and (b), (4) and (5) of the Act**

#### **Section 76 [Cancelled from 1 November 2007]**

#### **Section 77**

1. In derogation from Section 57 and without prejudice to Sections 60 to 63, a financial services provider shall, where applicable, supply a consumer with at least the following information prior to the establishment of a distance agreement:
  - a. its name and address, and, if the financial services provider is a legal person, the name given in its articles of association and the trade name or trade names;
  - b. the nature of its financial services;
  - c. insofar as Section 4:17 of the Act applies: its internal complaints procedure as referred to in Section 4:17(1)(a) of the Act, and the recognised disputes body to which it is affiliated;
  - d. its registration in the register kept by the supervisory authority;
  - e. the name of the Chamber of Commerce and Industry in whose Trade Register it is registered, and the number of the registration;
  - f. the principal features of the financial product;
  - g. the risks attached to the financial product;
  - h. the total costs, or, if the exact costs cannot be given, the assumptions underlying the calculation of the costs, so as to enable the consumer to verify the costs;
  - i. the circumstance that the consumer may owe other amounts that are not paid via or imposed by the financial services provider;
  - j. the additional costs attached to the use of distance communication technology;
  - k. the manner of payment by the consumer and the manner in which the distance agreement will be carried out;

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- l. restrictions to the period of validity of the information supplied;
  - m. the minimum term of the distance agreement;
  - n. the contractual right to terminate the distance agreement prematurely and, where applicable, the fine attached to the exercising of that right;
  - o. whether or not the right referred to in Section 4:28 (1) and (2) of the Act applies, the duration of and the conditions for exercising that right, including information about the amount that the consumer may have to pay, the consequences of not exercising that right and the manner in which that right can be exercised;
  - p. the existence of guarantee funds or other compensation schemes applicable to the distance agreement that do not come under Directive 1994/19/EC of the European Parliament and of the Council of the European Union of 30 May 1994 on deposit-guarantee schemes (OJEC L 135) and Directive 1997/9/EC of the European Parliament and of the Council of the European Union of 3 March 1997 on investor-guarantee schemes (OJEC L 084);
  - q. the language or languages in which the terms and conditions of the distance agreement and the information referred to in this section will be supplied, and the language or languages in which the financial services provider will communicate during the term of the distance agreement;
  - r. the law that will govern the formation of relations with the consumer prior to the establishment of the distance agreement, the law that will govern that agreement and the competent court; and
  - s. the other terms and conditions of the distance agreement.
2. A financial services provider that provides financial services in respect of life insurance shall comply with Subsection (1), opening words and (f), (g), (h), (m), (n) and (s) by supplying the information referred to in Section 60(1)(h), (i), (l), (m), (n), (o), (p), (r), (s) and (t).
3. A financial services provider that provides financial services in respect of funeral provisions insurance shall comply with Subsection (1), opening words and (n) by supplying the information referred to in Section 63(1)(h), (i) and (j).

## **Section 78**

1. If a distance agreement was established at the consumer's request using a long-distance technology via which the information referred to in Section 77 cannot be supplied in writing or via another durable medium as referred to in Section 49(1) prior to the establishment of the agreement, the financial services provider may supply the information to the consumer immediately after the establishment of the distance agreement.
2. In derogation from Section 77(1), opening words, the financial services provider shall supply a consumer with the information referred to in that section:
  - a. if the distance agreement concerns non-life insurance: at the latest when the policy is issued;
  - b. if the distance agreement concerns life insurance or funeral provisions insurance, or if the distance agreement provides for a fund to pay for a natural person's funeral: at the latest when the policy is issued. If the distance agreement concerns life insurance, or if the distance agreement provides for a fund to pay for a natural person's funeral, of which the value depends on developments in the financial markets, the consumer shall have the right to dissolve the agreement within 30 calendar days of the day on which he received the information, with retroactive effect to the date when the agreement was established, without owing a penalty and without giving reasons, and the consumer shall be informed by the financial services provider about the manner in which he can exercise that right.
3. Insofar as the financial risk under a distance agreement regarding life insurance is borne by the consumer, the financial services provider may agree with the consumer that any increase or decrease in the value of the investments occurring after the establishment of the agreement shall remain for the account of the consumer if the consumer dissolves the agreement with retroactive effect to the date when the agreement was established.
4. Funeral provisions insurers that enter into distance agreements providing for a fund to pay for a human being's funeral, and that supply, in accordance with Subsection (2)(b), the information referred to in that subsection at the latest when the policy is issued, shall agree with the consumer that any increase or decrease in the value of the investments occurring after the establishment of the agreement shall remain for the account of the consumer if the consumer dissolves the agreement

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pursuant to Subsection (2)(b) with retroactive effect to the date when the agreement was established.

## **Section 79**

1. Where the telephone is used for making unsolicited calls to promote the establishment of a distance agreement, a financial services provider shall clearly inform a consumer at the beginning of each call of the identity of the financial services provider and of the commercial objective of the call. In derogation from Section 77, the financial services provider may confine itself – provided that this has the consumer's express approval – to informing the consumer about:
  - a. the identity of the person contacting the consumer and this person's relationship to the financial services provider;
  - b. the principal features of the financial product or the financial service;
  - c. the total costs, or, if the exact costs cannot be given, the assumptions underlying the calculation of the costs, so as to enable the consumer to verify the costs;
  - d. the circumstance that the consumer may owe other amounts that are not paid via or imposed by the financial services provider;
  - e. the applicability of the right referred to in Section 4:28(1) and (2) of the Act, the duration of and the conditions for exercising that right, including information about the amount that the consumer may have to pay, and the consequences of not exercising that right; and
  - f. the circumstance that other information is available at the consumer's request, whereby the nature of that information shall be disclosed to the consumer.
2. If a distance agreement is established via voice telephony, a financial services provider shall supply the consumer with the information referred to in Section 77(1) immediately after the establishment of the distance agreement. If the agreement concerns life insurance, funeral provisions insurance or non-life insurance, Section 78(2), opening words and (a), Section 78(2), opening words and (b) and Section 78(3), respectively, shall apply accordingly.
3. Section 49(1), first sentence shall not apply to the provision of information as referred to in Subsection (1).

## **Section 80**

During the term of a distance agreement, a financial services provider shall supply the consumer upon request with the terms and conditions of the agreement. Furthermore, the consumer may demand the use of a different long-distance means of communication, unless this is incompatible with the established distance agreement.

### **Part 8.2. Other provisions regarding the level of care to be exercised when rendering services**

#### **§ 8.2.1. Obligation of investment firms to obtain information**

#### **Provisions implementing Section 4:23(3)(a) and (b) and Section 4:24(4)(e) and (5) of the Act**

### **Section 80a**

1. The information referred to in Section 4:23(1), opening words and (a) of the Act shall enable the investment firm to establish that a transaction to which its advice or individual asset management relates:
  - a. meets the client's investment objectives;
  - b. is of such a nature that the client can bear the financial risks associated with his investment objectives; and
  - c. is of such a nature that the client, in view of his experience and knowledge, can understand the investment risks attached to the transaction or the management of his portfolio.
2. The information referred to in Subsection (1), opening words and (a) shall include data concerning the duration of the period in which the client wants to hold the investment, as well as the client's risk tolerance and investment objective.
3. The information referred to in Subsection (1), opening words and (b) shall include data concerning

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the source and extent of the periodic revenue, the client's capital and financial obligations.

4. An investment firm advising a professional investor about a financial instrument shall act in accordance with Subsection (1)(b) if it assumes that this client can bear the financial risks associated with the latter's investment objectives.
5. An investment firm issuing advice about financial instruments or managing individual assets for a professional investor shall act in accordance with Subsection (1)(c) if it assumes that this client has the necessary experience and knowledge.

#### **Section 80b**

1. An investment firm that provides an investment service other than individual asset management, without issuing advice, shall, when assessing the suitability referred to in Section 4:24(1) of the Act, ascertain whether the client has the necessary experience and knowledge to understand the risks attached to the financial instrument involved and the investment service involved.
2. An investment firm as referred to in Subsection (1) that provides an investment service for a professional investor shall act in accordance with Subsection (1)(c) if it assumes that this client has the necessary experience and knowledge.
3. If the client conducted a series of transactions regarding financial instruments before 1 November 2007 or procured an investment service several times before that date, the investment firm may assume that the client has the experience and knowledge referred to in Subsection (1) with regard to that financial instrument or investment service.

#### **Section 80c**

1. The information about the client's knowledge and experience referred to in Section 4:23(1)(a) of the Act, insofar as it is relevant to advice on financial instruments or individual asset management, and the information referred to in Section 4:24(1) of the Act shall, in terms of volume, be proportional to the type of client, the nature and extent of the investment service and the type of financial instrument envisaged, its complexity and the risks attached to it, and shall contain data concerning:
  - a. the types of investment services and financial instruments with which the client is familiar;
  - b. the nature, volume and frequency of the client's transactions in financial instruments and the period in which these were conducted; and
  - c. the client's level of education and profession or, where relevant, former profession or professions.
2. An investment firm shall refrain from encouraging a client not to provide the information referred to in Section 4:23(1)(a) and Section 4:24(1) of the Act.
3. An investment firm may rely on the information provided by the client in respect of the subjects referred to in Section 4:23(1)(a) and Section 4:24(1) of the Act, unless it knows or should know that this information is outdated, inaccurate or incomplete.

#### **Section 80d**

Financial instruments within the meaning of Section 4:24(4)(e) of the Act shall be considered to mean financial instruments, not being financial instruments as referred to in Subsection (c) of the definition of securities in Section 1:1 of the Act or financial instruments as referred to in Subsections (d) to (j) of the definition of a financial instrument in Section 1:1 of the Act, insofar as:

- a. there are regular opportunities to sell these instruments, convert them into cash or realise them in other ways for prices publicly available to the market participants which are either market prices or prices generated or validated by valuation systems that are independent from the issuing institution or collective investment scheme;
- b. these instruments entail no other obligations for the client than the payment of their acquisition costs; and
- c. information on the features of these instruments is available to the public that is easy to understand, so as to enable clients who are not professional investors to take a well-informed

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decision on a potential transaction in these financial instruments.

## **§ 8.2.2. Provisions implementing Section 4:25(1) of the Act**

### **Section 81**

1. The use of automatic calling systems without human intervention, faxes or electronic messages for transmitting unsolicited information to a consumer in order to promote the establishment of a distance agreement shall only be permitted with the consumer's prior consent. Granting this consent shall be free of charge to the consumer.
2. The use of long-distance communication technologies other than those referred to in Subsection (1) for transmitting unsolicited information or making unsolicited announcements to a consumer in order to promote the establishment of a distance agreement shall be permitted, unless the consumer concerned has indicated that he does not wish to receive information or announcements transmitted by means of these technologies. Facilities preventing a consumer from receiving unsolicited information shall be free of charge to the consumer.
3. A financial enterprise that obtained electronic contact details for electronic messages in the context of the sale of a financial product or the provision of a financial service may use these details for transmitting information promoting the establishment of a distance agreement with regard to similar financial products or financial services of its own, if, when the contact details were obtained, the consumer was clearly and expressly given the opportunity to raise objections, free of charge and in a simple manner, to the use of those electronic contact details, and, if the consumer did not take advantage of this opportunity, he is offered the opportunity whenever communication is established to raise objections under the same conditions to further use of his electronic contact details. Section 41(2) of the Personal Data Protection Act (*Wet bescherming persoonsgegevens*) shall apply accordingly.
4. Where electronic messages are used for promoting the establishment of a distance agreement, the following information shall be given at all times:
  - a. the real identity of the party on whose behalf the communication is transmitted, and
  - b. a valid postal address or number to which the recipient may address a request for termination of such communication.

### **Section 82**

1. A management company, investment company or investment firm shall not personally approach, either directly or indirectly, persons who are not professional investors, who are not unit holders in the collective investment scheme or to whom the investment firm has not provided any investment service before, otherwise than by means of a long-distance communication technology as referred to in Section 81, unless:
  - a. the person concerned has given explicit prior approval, either in writing or electronically; or
  - b. the person approached is only offered information material.
2. Subsection (1) shall not apply to:
  - a. management companies of undertakings for collective investment in transferable securities having their registered office in another Member State, undertakings for investment in transferable securities having their registered office in another Member State and any custodians affiliated to these undertakings; and
  - b. management companies of collective investment schemes having their registered office in a designated state, collective investment schemes having their registered office in a designated state and any custodians affiliated to these collective investment schemes.

### **Section 83**

1. A management company, investment company or custodian shall act in the interest of the unit holders in the collective investment scheme.

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2. A management company or investment company shall treat unit holders in comparable circumstances in the same manner.
3. A collective investment scheme shall not conduct transactions or arrange for transactions to be conducted at its own expense with such frequency or of such magnitude that these transactions, given the circumstances, apparently only serve to benefit the management company, the collective investment scheme or parties affiliated to the management company, the investment company or the custodian.
4. Subsections (1) to (3) shall not apply to:
  - a. management companies of undertakings for collective investment in transferable securities having their registered office in another Member State, undertakings for investment in transferable securities having their registered office in another Member State and any custodians affiliated to these undertakings; and
  - b. management companies of collective investment schemes having their registered office in a designated state, collective investment schemes having their registered office in a designated state and any custodians affiliated to these collective investment schemes.

#### **Section 84**

An investment firm shall refrain from conducting transactions at the expense of clients with such frequency or of such magnitude that, given the circumstances, these transactions apparently only serve to benefit the investment firm, unless these transactions are carried out on the client's express instructions, issued at the client's initiative.

#### **Section 85**

An investment firm shall not conduct a transaction at a client's expense, if the balances available in the client's name are insufficient to fulfil the obligations arising from that transaction.

#### **Section 86**

1. An investment firm shall see to it that clients with positions in financial instruments from which obligations may arise constantly have sufficient balances to be able to fulfil the current obligations resulting from those positions.
2. If a client as referred to in Subsection (1) has insufficient balances to fulfil current obligations arising from positions in financial instruments, the investment firm shall see to it that this client provides security with which these obligations can be fulfilled. If the client is unable to provide security, the investment firm shall close the positions as soon as possible but in any event within five working days, unless special circumstances occur.

### **Chapter 9. Duties to disclose**

#### **Part 9.1. Disclosure of changes by financial enterprises**

##### **§ 9.1.1. Management companies**

##### **Provisions implementing Section 4:26(3) of the Act**

#### **Section 87**

This division shall not apply to management companies of undertakings for collective investment in transferable securities having their registered office in another Member State, and to management companies of collective investment schemes having their registered office in a designated state.

#### **Section 88**

1. A management company shall notify the Netherlands Authority for the Financial Markets of any change in the details which this company or another financial enterprise provided earlier to a

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supervisory authority for the purpose of the assessment of the requirements made pursuant to the Act as regards the properness of:

- a. the persons determining or co-determining the policy of the management company, of an investment company under its management or of a custodian connected with a collective investment scheme under its management; or
  - b. the persons belonging to a body responsible for supervising the policy and the general affairs of the management company, of an investment company under its management or of a custodian affiliated to a collective investment scheme under its management.
2. The management company shall report the change in writing and immediately after it has taken note thereof in the normal course of its business.

## Section 89

1. A management company shall notify the Netherlands Authority for the Financial Markets in writing of the intention to amend the registration document referred to in Section 4:48(1) of the Act insofar as this concerns details regarding:
  - a. the activities of the management company and the types of collective investment schemes it manages or intends to manage, as referred to in section 1.b of Annex D;
  - b. the persons determining the day-to-day policy of the management company or of a custodian affiliated to a collective investment scheme under its management, as referred to in section 2.1.a of Annex D;
  - c. the persons determining or co-determining the policy of the management company or of a custodian affiliated to a collective investment scheme under its management, as referred to in section 2.1.b of Annex D;
  - d. the persons belonging to a body responsible for supervising the policy and the general affairs of the management company or of a custodian affiliated to a collective investment scheme under its management, as referred to in section 2.1.c of Annex D; or
  - e. the general information concerning the management company and the custodians, as referred to in section 3 of Annex D.
2. The management company shall not carry out the intention referred to in Subsection (1), opening words and (a) before the Netherlands Authority for the Financial Markets has consented to the amendment. The Netherlands Authority for the Financial Markets shall decide on this consent within four weeks of having received the notification.
3. The management company shall not carry out the intention referred to in Subsection (1), opening words and (b), (c) or (d) before the Netherlands Authority for the Financial Markets has consented to the amendment. The Netherlands Authority for the Financial Markets shall decide on this consent:
  - a. within six weeks of having received the notification; or
  - b. if the Netherlands Authority for the Financial Markets within two weeks of having received the notification requested the management company or a third party to provide further details, within four weeks of having received those details, but in any event within 13 weeks of having received the notification.
4. If the Netherlands Authority for the Financial Markets requests a third party to provide further details as referred to in Subsection (3)(b), it shall inform the management company accordingly.
5. Together with the notification referred to in Subsection (1), opening words and (b), the management company shall submit the following details with regard to persons to be appointed who will determine the day-to-day policy:
  - a. a statement of the name, private address and position;
  - b. a curriculum vitae;
  - c. a list of the relevant valid diplomas;
  - d. a copy of a valid identity document; and
  - e. a list of referees.

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6. Together with the notification referred to in Subsection (1), opening words and (c) and (d), the management company shall submit the following details with regard to persons to be appointed who will determine or co-determine the policy or will belong to a body responsible for supervising the policy and the general affairs:
  - a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position;
  - b. a copy of a valid identity document;
  - c. details with regard to the antecedents referred to in Section 13; and
  - d. a list of referees.
7. Subsection (6)(b),(c) and (d) shall not apply if the intended amendment concerns a person whose properness for the purpose of the Act has already been established by a supervisory authority.

### **Section 90**

A management company shall provide the Netherlands Authority for the Financial Markets with a copy of every agreement concluded with a custodian, and of amendments to an agreement concluded with a custodian, within two weeks of the agreement being signed or amended.

### **Section 91**

1. A management company shall notify the Netherlands Authority for the Financial Markets in writing of a change in the details, referred to in Section 4:50(1) of the Act, with the exception of Subsection (g), of a collective investment scheme under its management at least two weeks prior to the change.
2. A management company shall notify the Netherlands Authority for the Financial Markets in writing of an amendment to the articles of an undertaking for collective investment in transferable securities under its management that is an investment company at least two weeks prior to the amendment.

### **Section 92**

1. A management company that offers, from a branch office situated in another Member State, units in undertakings for collective investment in transferable securities under its management that have their registered office in the Netherlands, shall notify the Netherlands Authority for the Financial Markets and the supervisory authority of the other Member State in writing, at least one month in advance, of:
  - a. a change in the address in the Member State where documents may be requested;
  - b. a change in the identity of the persons determining the day-to-day policy of the branch office; or
  - c. the intention to cease offering units in undertakings for collective investment in transferable securities under its management from the branch office situated in the other Member State.
2. A management company that offers, from a branch office situated in another Member State, units in undertakings for collective investment in transferable securities under its management that have their registered office in the Netherlands, shall notify the Netherlands Authority for the Financial Markets in writing of the intention to change the financial services it provides from the branch office. The management company shall notify the supervisory authority of the other Member State in writing of the change at least one month in advance.
3. The management company shall not carry out the intention referred to in Subsection (2) before the Netherlands Authority for the Financial Markets has consented to the change. The Netherlands Authority for the Financial Markets shall decide on this consent within two months of having received the notification and shall consent to the change, unless the management company's operations or financial position are inadequate in view of the intended change.

#### **§ 9.1.2. Investment firms Provisions implementing Section 4:26(3) of the Act**

### **Section 93**

This division shall not apply to investment firms having their registered office in another Member State.

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#### **Section 94**

1. An investment firm shall notify the Netherlands Authority for the Financial Markets of any change in the details which this firm or another financial enterprise provided earlier to a supervisory authority for the purpose of the assessment of the requirements made pursuant to the Act as regards the properness of:
  - a. the persons determining or co-determining the policy of the investment firm; or
  - b. the persons belonging to a body responsible for supervising the policy and the general affairs of the investment firm.
2. The investment firm shall report the change in writing and immediately after it has taken note thereof in the normal course of its business.
3. Subsection (1) shall not apply to:
  - a. investment firms which hold a licence granted by the Dutch Central Bank (*de Nederlandsche Bank*) to conduct the business of a bank, or which hold a supervisory status certificate granted by the Dutch Central Bank to conduct the business of a financial institution; and
  - b. investment firms which hold a licence granted by the Netherlands Authority for the Financial Markets to manage an undertaking for collective investment in transferable securities.

#### **Section 95**

1. An investment firm shall notify the Netherlands Authority for the Financial Markets in writing of the intention to change:
  - a. the persons determining the day-to-day policy of the investment firm;
  - b. the persons determining or co-determining the policy of the investment firm; or
  - c. the persons belonging to a body responsible for supervising the policy and the general affairs of the investment firm.
2. An investment firm shall not carry out the intention referred to in Subsection (1) before the Netherlands Authority for the Financial Markets has consented to the change. The Netherlands Authority for the Financial Markets shall decide on this consent:
  - a. within six weeks of having received the notification; or
  - b. if the Netherlands Authority for the Financial Markets within two weeks of having received the notification requested the investment firm or a third party to provide further details, within four weeks of having received those details, but in any event within 13 weeks of having received the notification.
3. If the Netherlands Authority for the Financial Markets requests a third party to provide further details as referred to in Subsection (2)(b), it shall inform the investment firm accordingly.
4. Together with the notification referred to in Subsection (1)(a), the investment firm shall submit the following details with regard to persons to be appointed who will determine the day-to-day policy:
  - a. a statement of the name, private address and position;
  - b. a curriculum vitae;
  - c. a list of the relevant valid diplomas;
  - d. a copy of a valid identity document; and
  - e. a list of referees.
5. Together with the notification referred to in Subsection (1)(b) and (c), the investment firm shall submit the following details with regard to persons to be appointed who will determine or co-determine the policy or will belong to a body responsible for supervising the policy and the general affairs:
  - a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position;
  - b. a copy of a valid identity document;

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- c. details with regard to the antecedents referred to in Section 13; and
  - d. a list of referees.
6. Subsection (5)(b),(c) and (d) shall not apply if the change concerns a person whose properness for the purpose of the Act has already been established by a supervisory authority.
7. Subsections (1) to (5) shall not apply to:
- a. investment firms which hold a licence granted by the Dutch Central Bank to conduct the business of a bank, or which hold a supervisory status certificate granted by the Dutch Central Bank to conduct the business of a financial institution; and
  - b. investment firms which hold a licence granted by the Netherlands Authority for the Financial Markets to manage an undertaking for collective investment in transferable securities.

### **Section 96**

1. An investment firm shall notify the Netherlands Authority for the Financial Markets in writing, at least two weeks in advance, of a change in:
- a. the measures referred to in Section 4:83(2) of the Act;
  - b. the measures referred to in Section 4:87(1) and (2) of the Act;
  - c. the aspects of the operations in respect of which rules have been laid down pursuant to Section 4:14(2), opening words and under (a) and (b), insofar as this involves a significant change;
  - d. the aspects of the operations in respect of which rules have been laid down pursuant to Section 4:14(2), opening words and under (c), insofar as this involves a significant change;
  - e. the name and address of the investment firm's principal place of business and, if its registered office is not situated in the Netherlands, the address of the branch office and, where applicable, the location of its registered office;
  - f. the composition of a formal or actual control structure, if the investment firm is connected with persons in such a structure; or
  - g. the financial services provided by the investment firm or the financial products to which these services relate.
2. Subsection (1), with the exception of (b) and (d), shall not apply to:
- a. investment firms which hold a licence granted by the Dutch Central Bank to conduct the business of a bank, or which hold a supervisory status certificate granted by the Dutch Central Bank to conduct the business of a financial institution; and
  - b. investment firms which hold a licence granted by the Netherlands Authority for the Financial Markets to manage an undertaking for collective investment in transferable securities.

### **Section 97**

1. An investment firm having its registered office in the Netherlands that performs investment services from a branch office situated in another Member State, shall notify the Netherlands Authority for the Financial Markets and the supervisory authority of the other Member State in writing, at least one month in advance, of:
- a. a change in the financial services which it performs from the branch office;
  - b. a change in the address in the Member State where documents may be requested;
  - c. a change in the identity of the persons determining the day-to-day policy of the branch office; or
  - d. the intention to cease performing investment services from the branch office.
2. Subsection (1), opening words and (b) and (c) shall not apply to investment firms which comply with Section 92.

### **Section 98**

An investment firm having its registered office in the Netherlands that performs investment services by providing services into another Member State, shall notify the Netherlands Authority for the Financial

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Markets and the supervisory authority of the other Member State in writing, at least one month in advance, of:

- a. a change in the financial services which the investment firm performs in the other Member State; and
- b. the intention to cease performing investment services by providing services to the other Member State.

## **Section 99**

1. An investment firm having its registered office in the Netherlands, which performs investment services from a branch office situated in a state that is not Member State, shall notify the Netherlands Authority for the Financial Markets in writing, at least one month in advance, of:
  - a. a change in the address of the branch office;
  - b. a change in the identity of the persons determining the day-to-day policy of the branch office; or
  - c. the intention to cease performing investment services from the branch office.
2. An investment firm having its registered office in the Netherlands, which performs investment services from a branch office situated in a state that is not Member State, shall notify the Netherlands Authority for the Financial Markets in writing of the intention to change:
  - a. the financial services which it performs from the branch office; or
  - b. the measures aimed at promoting and enforcing honest and sound business operations.
3. The investment firm shall not carry out the intention referred to in Subsection (2) before the Netherlands Authority for the Financial Markets has consented to the change. The Netherlands Authority for the Financial Markets shall decide on this consent within two months of having received the notification and shall consent to the change, unless the investment firm's operations or financial position are inadequate in view of the intended change.
4. As soon as the investment firm carries out the intention referred to in Subsection (1)(c), it shall notify the Netherlands Authority for the Financial Markets immediately.
5. The notification referred to in Subsections (1) and (2) shall be accompanied by a translation of the information concerned insofar as the Netherlands Authority for the Financial Markets demands this.

### **§ 9.1.3. Group licence holders**

#### **Provisions implementing Section 4:26(3) of the Act**

## **Section 100**

A legal person as referred to in Section 2:105(1) of the Act shall notify the Netherlands Authority for the Financial Markets in writing, within two weeks, of a change in:

- a. the name and address of an affiliated enterprise;
- b. the legal form of an affiliated enterprise;
- c. if an affiliated enterprise is a legal person: the registered office, the name given in the articles of association and the trade name or trade names; or
- d. if an affiliated enterprise is registered in the Trade Register: the registration number.

### **§ 9.1.4. Financial services providers**

#### **Provisions implementing Section 4:26(3) of the Act**

## **Section 101**

This division shall not apply to:

- a. insurance brokers having their registered office in another Member State;
- b. financial services providers which hold a licence granted by the Dutch Central Bank to conduct the business of a credit institution or insurer, or which hold a supervisory status certificate granted

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- by the Dutch Central Bank to conduct the business of a financial institution;
- c. financial services providers having their registered office in another Member State or a designated state which conduct the business of a financial institution, credit institution or insurer; and
- d. reinsurance brokers having their registered office in another Member State.

## **Section 102**

1. A financial services provider shall notify the Netherlands Authority for the Financial Markets of any change in the details which this provider or another financial enterprise provided earlier to a supervisory authority for the purpose of the assessment of the requirements made pursuant to the Act as regards the properness of:
  - a. the persons determining or co-determining the policy of the financial services provider; or
  - b. the persons belonging to a body responsible for supervising the policy and the general affairs of the financial services provider.
2. The financial services provider shall report the change in writing and immediately after it has taken note thereof in the normal course of its business.
3. Subsections (1) and (2) shall not apply to financial services providers that are also a management company or an investment firm.

## **Section 103**

1. A financial services provider shall notify the Netherlands Authority for the Financial Markets in writing of the intention to appoint:
  - a. a person determining or co-determining the policy of the financial services provider; or
  - b. a person belonging to a body responsible for supervising the policy and the general affairs of the financial services provider.
2. A financial services provider shall not carry out the intention referred to in Subsection (1) before the Netherlands Authority for the Financial Markets has established that the properness of the person concerned is beyond doubt. The Netherlands Authority for the Financial Markets shall decide on the properness:
  - a. within six weeks of having received the notification; or
  - b. if the Netherlands Authority for the Financial Markets within two weeks of having received the notification requested the financial services provider or a third party to provide further details, within four weeks of having received those details, but in any event within 13 weeks of having received the notification.
3. If the Netherlands Authority for the Financial Markets requests a third party to provide further details as referred to in Subsection (2)(b), it shall inform the financial services provider accordingly.
4. Together with the notification, the financial services provider shall submit the following details with regard to the person concerned:
  - a. a statement of the name, date of birth, place of birth, nationality, private address, telephone and fax number and position;
  - b. a copy of a valid identity document;
  - c. details with regard to the antecedents referred to in Section 13; and
  - d. a list of referees.
5. Subsections (2) and (4)(b),(c) and (d) shall not apply if the intended appointment concerns a person whose properness for the purpose of the Act has already been established.

## **Section 104**

A financial services provider shall notify the Netherlands Authority for the Financial Markets in writing,

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within two weeks, of a change in:

- a. its name and address;
- b. its legal form;
- c. if it is a legal person: its registered office, name given in the articles of association and trade name or trade names;
- d. if it is registered in the Trade Register: the registration number;
- e. the financial services it provides or the financial products to which these services relate;
- f. if it is an insurance broker: the natural persons determining its policy; or
- g. if it is an authorised agent or an authorised sub-agent: the insurer to which its authorisation applies or the natural persons determining its policy.

#### **§ 9.1.5. Insurers**

##### **Provisions implementing Section 4:26(3) of the Act**

#### **Section 105**

A non-life insurer having its registered office in the Netherlands which operates in the Motor Vehicle Liability sector, or a non-life insurer having its registered office in a non-Member State which operates in the Motor Vehicle Liability sector from a branch office situated in the Netherlands, shall notify the Netherlands Authority for the Financial Markets in writing, within two weeks, of a change in the name or address of a loss adjuster as referred to in Section 4:70(2) of the Act that it has appointed in another Member State.

#### **Section 106**

A non-life insurer having its registered office outside the Netherlands which operates in the Motor Vehicle Liability sector by providing services to the Netherlands shall notify the Netherlands Authority for the Financial Markets in writing, within two weeks, of an amendment to the instrument of appointment of the claims assessor referred to in Section 4:71(3) of the Act.

#### **Part 9.2. Auditor's duty to disclose**

##### **Provision implementing Section 4:27(4) of the Act**

#### **Section 107**

1. The information to be provided by an auditor as referred to in Section 4:27(2) of the Act pursuant to Section 4:27(4) of the Act shall comprise:
  - a. the auditor's report issued to the directors and the Supervisory Board;
  - b. the management letters; and
  - c. correspondence between the auditor and the financial enterprise directly relating to the opinion on the truth and fairness of the annual accounts of the financial enterprise.
2. The management letters referred to in Subsection (1)(b) with regard to a management company and a collective investment scheme shall in any case include a statement from the auditor as to whether, and if so, to what extent, he assessed the operational structure.

#### **Section 108**

1. An auditor intending to provide the information referred to in Section 107 shall inform the financial enterprise of this intention.
2. If the financial enterprise so desires, it may itself provide the information to the Netherlands Authority for the Financial Markets. In that case, it shall inform the auditor accordingly. The auditor shall ascertain that the Netherlands Authority for the Financial Markets received the information and that the content of the information gives him no reasonable cause for supplying additional information to the Netherlands Authority for the Financial Markets.
3. If the auditor supplies written information to the Netherlands Authority for the Financial Markets, he shall immediately provide the financial enterprise with a copy of this information and, where

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applicable, of the covering letter.

## **Chapter 10. Additional rules on offering**

### **Part 10.1. Investment objects**

#### **Provisions implementing Section 4:30a(3) of the Act**

##### **Section 109**

For the purpose of this part and the provisions based upon it, the term 'affiliated party' shall have the following meaning, in derogation from Section 1(m):

- a. person that is connected with a provider of investment objects in a formal or actual control structure;
- b. person that can exercise a voting right, either directly or indirectly, or exercise certain rights in other ways in a provider of investment objects, in such a way as to exert material influence on the latter's commercial or financial policy;
- c. natural person who has a family relationship or a personal relationship with a director of a provider of investment objects, or with a natural person as referred to under (a) or (b), pursuant to which relationship he can influence the actions of that director or natural person in respect of the provider of investment objects; or
- d. legal person in which a director of a provider of investment objects or a natural person as referred to under (c) can exercise voting rights, either directly or indirectly, or exercise certain rights in other ways, in such a way as to exert material influence on the commercial or financial policy of that legal person.

##### **Section 110**

1. The investment object prospectus referred to in Section 4:30a(1) of the Act shall, where applicable, contain the following information:
  - a. the provider's name, legal form, date of incorporation, registered office and principal place of business;
  - b. a description of the formal or actual control structure in which the provider is connected with other persons and the parties affiliated with it;
  - c. the terms and conditions, as well as the manner in which these terms and conditions may be changed and the announcement of a change to the consumer;
  - d. a description of the principal features of the series of investment objects of which the investment object is part, including in any case the nature, the duration and the risks, which are made clear by means of a risk indicator, amongst other things, as well as the effects of those risks on the return to be realised by the consumer;
  - e. a description of the provider's activities with regard to the series of investment objects of which the investment object is part, where possible broken down into:
    - 1°. operational activities, specifying the location where these activities are carried out;
    - 2°. financing activities, where possible broken down into entering into credit agreements as a borrower and lending funds as a creditor; and
    - 3°. outsourcing activities, specifying the policy on the outsourcing of work, including at least a description of the work outsourced, the name and registered office of the third party to whom work has been outsourced, as well as the statement, where applicable, that the third party is an affiliated party;
  - f. a description of the manner in which it is decided whether the provider will pay out the returns to the consumer;
  - g. a description of the guarantees to be issued by the provider that are offered to the consumer;
  - h. a description of the transactions conducted with affiliated parties, including:
    - 1°. a statement as to whether a transaction takes place on market-based terms, and if not, the reason for this; and
    - 2°. if a transaction is not conducted on a regulated market or another market in financial instruments: a statement as to whether the transaction is based on an independent valuation, or whether the value can be determined by one or more of the parties involved in the transaction;
  - i. the annual costs per series of investment objects of which the investment object is part, and the

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- relevant assumptions underlying these costs; and
  - j. the annual data per series of investment objects of which the investment object is part, concerning the gross value, the financing, the performance fees and the interest income, including the valuation principles applied in this context, the point of departure being that the gross value is based on the open market value per series of investment objects.
2. Section 49 shall apply accordingly to the supply of the investment object prospectus by the provider of the investment object and the broker respectively.
  3. The Netherlands Authority for the Financial Markets may lay down rules concerning the manner in which the information referred to in Subsection (1) is included in the prospectus, and concerning the manner of calculating the costs, risks and returns referred to in Subsection (1).

## **Part 10.2. Credit**

### **§ 10.2.1. Credit prospectus**

#### **Provisions implementing Section 4:33(3) and (4) of the Act**

#### **Section 111**

Section 4:33(1) of the Act shall not apply to:

- a. mortgage lenders;
- b. credit providers, insofar as the credit is part of a complex product;
- c. credit providers, insofar as they manage or perform credit agreements; and
- d. credit providers, insofar as they offer credit in exchange for securities as referred to in Subsections (a) or (b) of the definition of a security in Section 1:1 of the Act granted as collateral for the repayment of the credit, to a consumer who is already the owner of the pledged securities as referred to in Subsections (a) or (b) of the definition of a security in Section 1:1 of the Act at the moment when the credit agreement is entered into, whereby, during the term of the credit agreement, the credit sum or the credit limit must not exceed 70 percent of the value of the pledged securities in the case of securities as referred to in Subsection (a) of the definition of a security in Section 1:1 of the Act, or not exceed 80 percent of the value of the pledged securities in the case of securities as referred to in Subsection (b) of the definition of a security in Section 1:1 of the Act, and:
  - 1°. these securities as referred to in Subsections (a) or (b) of the definition of a security in Section 1:1 of the Act are admitted to trading on a regulated market; or
  - 2°. the value of these securities as referred to in Subsections (a) or (b) of the definition of a security in Section 1:1 of the Act is apparent to everyone on account of a public price indication.

#### **Section 112**

1. The credit prospectus referred to in Section 4:33(1) of the Act shall contain the following information:
  - a. a description of the procedure to be followed for a credit application;
  - b. a general description of the criteria underlying the assessment of the consumer's creditworthiness, including at least two representative examples of the application of those criteria;
  - c. a statement of:
    - 1°. the fact that the credit provider participates in a credit registration system;
    - 2°. the name and registered office of the institution that maintains that system; and
    - 3°. the purpose and working method of that system, showing in any case in which situations the provider may ask for data regarding the consumer's creditworthiness, and that data regarding credit granted will be supplied by the provider to and registered by the institution that maintains the said system;
  - d. such indications or descriptions of the credit offered as to show whether it is revolving credit or another type of credit;
  - e. a description of the general conditions under which the provider is prepared to enter into credit agreements, including in any case, where applicable, the conditions in respect of:
    - 1°. security rights to be established for the benefit of the provider;

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- 2°. the amount owed by the consumer becoming due and payable before the term; and
  - 3°. the consumer's entitlement to full or partial early repayment;
  - f. if the establishment of a credit agreement obliges the consumer to enter into another agreement:
    - 1°. a description of the clause to this effect; and
    - 2°. the statement that the consumer has the right to decide with which other party the other agreement will be entered into, unless Section 33(b)(1°) of the Consumer Credit Act (*Wet op het consumentenkrediet*) does not apply to the credit;
  - g. the statement that the consumer, if he fails to fulfil his payment obligation, shall only owe compensation after a notice of default, unless Section 34(b) of the Consumer Credit Act does not apply to the credit; and
  - h. a note concerning the indication to be used pursuant to Section 53(10) in the following terms:

"The effective annual interest rate is a price indication for the credit that incorporates all the costs of the credit".
2. Subsection 1(f), opening words and under (2°) shall not apply to a clause as referred to in Section 33(b)(2°) of the Consumer Credit Act.
  3. A provider of revolving credit shall also include the following information in the prospectus:
    - a. four representative credit limits, together with the other features of the credit referred to in Section 53(1) and (2);
    - b. the points of departure in calculating the theoretical term;
    - c. where applicable: the level of the compensation that will be owed if the consumer still fails to fulfil his payment obligation after a notice of default;
    - d. where applicable: the level of the compensation owed in the case of early repayment by the consumer.
  4. A provider of credit other than revolving credit shall also include the following information in the prospectus:
    - a. four representative credit sums, together with the other features of the credit referred to in Section 53(1) and (2);
    - b. at least one example of a calculation that shows in what manner – based on the credit sum, the monthly payment and the term – the amount can be determined of the total lending fee owed by the consumer in the case of a regular fulfilment of the agreement;
    - c. where applicable: the level of the compensation that will be owed if the consumer still fails to fulfil his payment obligation after a notice of default; and
    - d. where applicable: the level of the compensation owed in the case of early repayment by the consumer, and at least one example of a calculation showing in what manner the amount of this compensation is determined.
  5. Section 49 shall apply accordingly to the credit prospectus.
  6. The Netherlands Authority for the Financial Markets may lay down rules concerning the manner in which the information referred to in Subsections (1), (3) and (4) is included in the credit prospectus.

#### **§ 10.2.2. Obligation to obtain information**

##### **Provisions implementing Sections 4:32(2) and 4:34(3) of the Act**

#### **Section 113**

1. A credit provider shall not enter into a credit agreement with a consumer where the credit sum or credit limit exceeds € 1,000, if it does not have sufficient information, laid down in writing or on another durable medium, about the consumer's financial position in order to assess whether entering into the agreement is justified and in order to avoid overextension of credit.
2. Subsection (1) shall not apply to credit providers, insofar as they offer credit in exchange for securities as referred to in Subsections (a) or (b) of the definition of a security in Section 1:1 of the Act granted as collateral for the repayment of a credit, to a consumer who is already the owner of the pledged securities as referred to in Subsections (a) or (b) of the definition of a security in Section 1:1 of the Act at the moment when the credit agreement is entered into, whereby, during the term of the

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credit agreement, the credit sum or the credit limit must not exceed 70 percent of the value of the pledged securities in the case of securities as referred to in Subsection (a) of the definition of a security in Section 1:1 of the Act, or not exceed 80 percent of the value of the pledged securities in the case of securities as referred to in Subsection (b) of the definition of a security in Section 1:1 of the Act, and:

- 1°. these securities as referred to in Subsections (a) or (b) of the definition of a security in Section 1:1 of the Act are admitted to trading on a regulated market; or
- 2°. the value of these securities as referred to in Subsections (a) or (b) of the definition of a security in Section 1:1 of the Act is apparent to everyone on account of a public price indication.

#### **Section 114**

1. Before entering into a credit agreement with a consumer where the credit sum or credit limit exceeds € 250, a credit provider shall consult the credit registration system in which it participates for details of credit previously granted to the consumer.
2. Subsection (1) shall not apply to credit providers as referred to in Section 113(2).
3. Section 4:32(1) of the Act shall not apply to credit providers as referred to in Section 113(2).

#### **Section 115**

1. To avoid overextension of credit, a credit provider shall lay down the criteria on which it bases the assessment of a consumer's credit application and it shall apply these criteria in assessing a credit application.
2. Subsection (1) shall not apply to credit providers as referred to in Section 113(2).

#### **Part 10.3. Units in a collective investment scheme**

##### **§ 10.3.1. Rules for all management companies, collective investment schemes and custodians Provisions implementing Sections 4:43(2), 4:48(2), 4:49(2), opening words and (e), 4:51(4) and 4:52(3) of the Act**

#### **Section 116**

The agreement as referred to in Section 4:43(1) of the Act to be concluded between a management company and a custodian shall stipulate in any case that:

- a. the custodian, in performing the custody services, act in the interest of the unit holders in the collective investment scheme;
- b. the custody in the name of the collective investment scheme be organised in such a way that the assets placed in custody can be deployed only by the management company and the custodian together;
- c. the custodian only release the assets placed in custody in exchange for a statement from the management company showing that their release is required for the purpose of the regular performance of the management function;
- d. under the law of the state where the management company has its registered office, the custodian be liable towards the collective investment scheme and the unit holders for the damage sustained by them insofar as this damage results from the imputable non-fulfilment or inadequate fulfilment of its obligations, even if the custodian entrusted the assets placed in its custody to a third party, either wholly or in part;
- e. if depositary receipts for units are issued, these receipts be signed by the custodian;
- f. a proposal to amend the terms and conditions applicable between the collective investment scheme and the unit holders be made by the management company and the custodian together; and
- g. if the agreement concerns the assets of an undertaking for collective investment in transferable securities, that the custodian:
  - 1°. ascertain that the offering, purchase, sale and withdrawal of and repayment on units take place at the expense of the collective investment scheme, in accordance with the Act or with

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- the articles or fund regulations of the collective investment scheme;
- 2°. ascertain that, in transactions involving the assets of the collective investment scheme, the consideration is paid within the customary periods;
- 3°. ascertain that the returns of the collective investment scheme are appropriated in accordance with the Act or with the articles or fund regulations of the collective investment scheme;
- 4°. ascertain that the value of the units is calculated in accordance with the Act or with the articles or fund regulations of the collective investment scheme; and
- 5°. follow the management company's instructions, unless these are contrary to the Act or to the articles or fund regulations of the collective investment scheme.

### **Section 117**

The registration document referred to in Section 4:48(1) of the Act shall contain at least the information listed in Annex D.

### **Section 118**

1. Without prejudice to Section 4:49(2), opening words and (a) to (d) of the Act, the prospectus referred to in Section 4:49(1) of the Act shall contain the information listed in Annex E.
2. The prospectus shall include separate sections containing the information on the following subjects:
  - a. the costs of the collective investment scheme and the manner in which these costs are charged to the result of the collective investment scheme, are offset against the managed assets or are charged in other ways, either directly or indirectly, to the unit holders in the collective investment scheme; and
  - b. the risks attached to the collective investment scheme.
3. The Netherlands Authority for the Financial Markets shall lay down rules concerning the manner in which the prospectus provides insight into the level of the costs of the collective investment scheme and the underlying calculation. Furthermore, the Netherlands Authority for the Financial Markets may lay down further rules concerning the manner in which the information listed in Annex E is included in the prospectus.

### **Section 119**

With regard to layout and content, a management company, collective investment scheme or custodian shall present the annual accounts, the annual report and the other information referred to in Section 4:51(1) of the Act in the format in which they were compiled pursuant to Title 9 of Book 2 of the Dutch Civil Code or the international accounting standards, without prejudice to Sections 121 to 124 and 146.

### **Section 120**

1. A management company shall make the annual accounts, the annual report and the other information referred to in Section 4:52(1) of the Act, and the half-yearly figures referred to in Section 4:52(2), available free of charge to unit holders in the collective investment scheme.
2. The annual accounts, the annual report and the other information referred to in Section 4:52(1) shall be publicly disclosed through publication on the management company's website. Simultaneously with the publication on its website, the management company shall announce in a national Dutch newspaper or notify each unit holder individually that unit holders can obtain a copy of the annual accounts, the annual report and the other information of the management company, the collective investment scheme or the custodian free of charge upon request.
3. The half-yearly figures referred to in Section 4:52(2) of the Act shall be publicly disclosed in accordance with Subsection (2).
4. The management company shall keep the information referred to in Subsections (2) and (3) available on its website for a minimum period of three years.

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### **Section 121**

1. The annual report of a collective investment scheme referred to in Section 4:51(1) of the Act shall contain a statement from the management company that it has a description of the operational structure of the collective investment scheme which complies with the provisions pursuant to Sections 3:17(2)(c) and 4:14(1) of the Act, and that the operations of the collective investment scheme are carried out effectively and in accordance with the description.
2. Subsection (1) shall not apply to the annual report of collective investment schemes having their registered office in a designated state.

### **Section 122**

1. The explanatory notes to the balance sheet and the profit and loss account of a collective investment scheme shall contain at least the following information:
  - a. a balanced overview of the developments in the investments during the financial year, in which the investments are distinguished by type;
  - b. an overview of the composition of the assets at the end of the financial year;
  - c. a comparative overview for the last three years of the net asset value of the collective investment scheme, the number of outstanding units and the net asset value per unit, shown as at the end of the financial year;
  - d. an indication of the extent to which assets other than financial instruments admitted to trading on a regulated market or another market in financial instruments were valued by an independent expert, the valuation method applied, and the regularity with which this valuation takes place;
  - e. the amount of the obligations, distinguished by type as at the end of the financial year, resulting from hedge transactions in respect of the price risk and exchange rate risk attached to the investments, insofar as these obligations are not shown in the balance sheet and the profit and loss account;
  - f. a detailed list of the assets of the collective investment scheme that classify as participating interests within the meaning of Section 389(1) of Book 2 of the Dutch Civil Code; and
  - g. if the collective investment scheme invests 95 percent or more of the managed assets in another collective investment scheme, either directly or indirectly: the information referred to in Subsections (a), (b), (c), (d) and (e) with regard to the other collective investment scheme.
2. Without prejudice to Section 379(3) of Book 2 of the Dutch Civil Code, the collective investment scheme shall state under the other information referred to in Section 4:51(1) of the Act the total personal interest which the directors of the management company or investment company had in every investment of the collective investment scheme at the start and the end of the financial year.

### **Section 123**

1. The explanatory notes to the balance sheet and the profit and loss account of a collective investment scheme shall contain the following information:
  - a. where applicable: the incorporation costs of the collective investment scheme, the manner in which these costs were charged to the result, offset against the managed assets or charged in other ways to the unit holders in the collective investment scheme, and which portion accrued to the management company, the custodian, the directors of the management company, investment company or custodian, or parties affiliated to the management company, investment company or custodian;
  - b. the costs, distinguished by type, incurred in respect of the management of the collective investment scheme, the custody of assets of the collective investment scheme, the auditor, the supervision of the collective investment scheme and the marketing, including the calculation basis and the manner in which these costs were charged to the result, offset against the managed assets or charged in other ways to the unit holders in the collective investment scheme;
  - c. the identifiable and quantifiable transaction costs, and the manner in which these costs were charged to the result, offset against the managed assets or charged in other ways to the unit holders in the collective investment scheme;
  - d. where applicable: the costs incurred or fees demanded in connection with the borrowing and lending of financial instruments, and the manner in which these costs were charged to the result,

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- offset against the managed assets or charged in other ways to the unit holders in the collective investment scheme, and to whom these fees accrued;
- e. where applicable: the costs of outsourcing activities in the context of the management of the collective investment scheme or the custody of the assets of the collective investment scheme, and the manner in which these costs were charged to the result, offset against the managed assets or charged in other ways to the unit holders in the collective investment scheme;
  - f. the total amount paid in fees for the introduction of unit holders if this amount exceeds 0.1 percent of the average managed assets the collective investment scheme, the manner in which this amount was charged to the result, offset against the managed assets or charged in other ways to the unit holders in the collective investment scheme, and, where applicable, the names of parties affiliated to the management company, investment company or custodian to whom these introductory commissions accrued;
  - g. all costs other than those referred to in Subsections (a) to (f), distinguished by type, which exceed 10 percent of the total costs, including the calculation basis, and the manner in which these costs were charged to the result, offset against the managed assets or charged in other ways to the unit holders in the collective investment scheme;
  - h. the manner in which the surcharges and discounts were calculated, to whom the surcharges and discounts accrued, and, where applicable, the manner in which they were incorporated in the annual accounts;
  - i. the other one-off costs paid by unit holders in the collective investment scheme at the time of admission and withdrawal, including the calculation basis;
  - j. a comparative overview of the costs, distinguished by type, to be incurred according to the prospectus referred to in Section 4:49(1) of the Act and the costs actually incurred;
  - k. the costs, distinguished by type, which result from direct or indirect investments in other collective investment schemes;
  - l. the level of the costs of the collective investment scheme in relation to its average net asset value, specifying the costs disregarded in that context; if the collective investment scheme invests on average 10 percent or more of its assets in other collective investment schemes, either directly or indirectly, the costs of the other collective investment schemes shall be taken into account in determining the level of the costs of the collective investment scheme, or the explanatory notes shall state that it is not possible to take the costs of another collective investment scheme into account, and why, and that the costs of that other collective investment scheme affect the result of the collective investment scheme;
  - m. if the collective investment scheme invests 95 percent or more of the managed assets in another collective investment scheme, either directly or indirectly: the level of the costs of the other collective investment scheme in relation to the average net asset value of the other collective investment scheme, specifying the costs disregarded in that context;
  - n. where applicable: the return commissions that did not accrue to the collective investment scheme, and to whom these return commissions did accrue;
  - o. where applicable: the items received by or promised to the management company, the directors of the management company, investment company or custodian, the custodian, the parties affiliated to the management company, investment company or custodian or third parties for executing orders for the benefit of the collective investment scheme; and
  - p. the turnover rate of the investments, and a comparison with the turnover rate of the investments realised in the previous financial year.
2. Subsection (1)(p) shall not apply to collective investment schemes which invest exclusively or nearly exclusively in immovable property.
  3. The Netherlands Authority for the Financial Markets shall lay down rules concerning the manner in which insight is provided into the level of the costs of the collective investment scheme referred to in Subsection (1)(l) and (m) and into the underlying calculation, and concerning the manner of calculating the turnover rate of the assets referred to in Subsection (1)(p).
  4. The explanatory notes to the balance sheet and the profit and loss account of a management company shall contain at least the following information:
    - a. where applicable: the return commissions received by the management company or its directors;
    - b. where applicable: the items received by or promised to the management company or its directors for executing orders for the benefit of the management company, or received by or promised to the collective investment schemes managed by the management company; and

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- c. the fees received in connection with the borrowing and lending of financial instruments of the collective investment schemes managed by the management company.
5. The information referred to in Subsections (1) and (4) shall be explained in words and figures.
  6. The explanatory notes to the balance sheet and the profit and loss account of the management company and the collective investment scheme shall set out the information referred to in Subsections (4) and (1) respectively in one section.

## Section 124

1. In the explanatory notes to its balance sheet and profit and loss account, a collective investment scheme shall address the following subjects:
  - a. where applicable: the agreements concluded with the parties affiliated to the management company, investment company or custodian, and a description of the main points of those agreements;
  - b. what percentage of the total transaction volume of the collective investment scheme was conducted via parties affiliated to the management company, investment company or custodian;
  - c. where applicable: a list of the types of transactions conducted via the parties affiliated to the management company, investment company or custodian, and the conditions under which these transactions take place. If a transaction with an affiliated party was not conducted under market-based conditions, the explanatory notes shall also state the name of the affiliated party, the price, the relevant conditions, the estimated value and the reason why the transaction was not in conformity with market standards;
  - d. where applicable: the total amount involved in transactions with the parties affiliated to the management company, investment company or custodian that are not conducted on a regulated market or another market in financial instruments;
  - e. where applicable: the fact that the collective investment scheme invests directly or indirectly in another investment company which is a party affiliated to the management company, investment company or custodian, or in another collective investment scheme which is managed by a party affiliated to the management company, investment company or custodian, and the conditions governing the sale or purchase of and repayment on the units in the other collective investment scheme;
  - f. where applicable: investments in parties affiliated to the management company, investment company or custodian, not being collective investment schemes, which make up more than 10 percent of the assets of the affiliated party or of the managed assets of the collective investment scheme, specifying the relationship with the affiliated parties and the country where the relevant affiliated parties have their registered office if this is a country other than the Netherlands;
  - g. if the management company or custodian outsourced activities in the context of the management of the collective investment scheme or the custody of the assets of the collective investment scheme: the name of the party to whom activities were outsourced, and a description of the activities that were outsourced;
  - h. if financial instruments are borrowed or lent:
    - 1°. the value of the financial instruments borrowed and lent; this information must be shown in the explanatory notes to the balance sheet, under the balance sheet item 'financial instruments'; and
    - 2°. the security obtained by the collective investment scheme;
  - i. if the collective investment scheme invests on average 20 percent or more of the managed assets in another collective investment scheme, either directly or indirectly:
    - 1°. where the most recent annual accounts and the most recent annual report of the other collective investment scheme can be obtained;
    - 2°. whether the other collective investment scheme is subject to supervision, and if so, where;
    - 3°. the relative interest of the collective investment scheme in the other collective investment scheme at the start and the end of the financial year of the collective investment scheme;
    - 4°. the net asset value of the units in the other collective investment scheme at the end of the most recent financial year of that other collective investment scheme;
    - 5°. the composition of the investment portfolio of the other collective investment scheme at the start and the end of the most recent financial year of that other collective investment scheme;
    - 6°. a description of the investment performance of the other collective investment scheme, based

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- on the most recent annual accounts of that other collective investment scheme; and
  - 7°. where applicable: the arrangements between the collective investment scheme and the other collective investment scheme about cost apportionment and to whom the benefit will accrue; and
  - j. if the collective investment scheme invests 95 percent or more of the managed assets in another collective investment scheme, either directly or indirectly: the investment policy of the other collective investment scheme.
2. The Netherlands Authority for the Financial Markets may lay down rules concerning the manner in which the information referred to in Subsection (1) is included in the annual accounts.

## **Section 125**

1. The half-yearly figures of a collective investment scheme shall contain at least the following information:
- a. the balance sheet and profit and loss account, as well as an overview of the movements in the equity capital of the investment company or in the managed assets of the unit trust, with due observance, insofar as the nature of these documents allows, of the provisions of Title 9 of Book 2 of the Dutch Civil Code or the international accounting standards;
  - b. an overview of the composition of the assets of the collective investment scheme;
  - c. a statement of the net asset value of the collective investment scheme and the number of outstanding units, and the net asset value per unit;
  - d. where applicable: the statement referred to in Section 122(2); and
  - e. where applicable: a statement to the effect that the collective investment scheme distributed interim dividend or intends to do so.
2. The half-yearly figures of a management company shall comprise at least the balance sheet and profit and loss account, as well as an overview of the movements in the equity capital, with due observance, insofar as the nature of these documents allows, of the provisions of Title 9 of Book 2 of the Dutch Civil Code, with the exception of Section 403, or the international accounting standards.
3. If the half-yearly figures of the management company or the collective investment scheme were audited by an auditor, the latter's opinion shall be added to the documents submitted to the Netherlands Authority for the Financial Markets pursuant to Section 4:51(2) of the Act.

### **§ 10.3.2. Supplementary rules for undertakings for collective investment in transferable securities**

#### **Provisions implementing Sections 4:51(4), 4:56(1) and 4:61 of the Act**

## **Section 126**

1. Section 4:56(1), first sentence of the Act shall not apply to undertakings for collective investment in transferable securities that are investment companies whose units are officially listed on a regulated market or another market in financial instruments and are traded exclusively on that regulated market or other market in financial instruments. In that situation, the investment company's articles of association shall specify the methods for calculating the net asset value of those units.
2. Furthermore, Section 4:56(1), first sentence of the Act shall not apply to undertakings for collective investment in transferable securities that are investment companies of which at least 80 percent of the units are traded on a regulated market or another market in financial instruments specified in the articles of association, if:
- a. the interests of the unit holders in the investment company are protected in a manner equivalent to the protection pursuant to the Act and this Decree;
  - b. the units are officially listed on a market in financial instruments of the Member State where they are traded;
  - c. the transactions which the investment company conducts in its units outside the regulated market or another market in financial instruments are carried out only at market price;
  - d. the articles specify the regulated market or the other market in financial instruments whose listing determines the price for the transactions which the investment company conducts in the state

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where this regulated market or other market in financial instruments is situated, outside the regulated market or the other market in financial instruments; and

- e. the articles specify the methods for calculating the net asset value of the units.

### **Section 127**

1. An undertaking for collective investment in transferable securities as referred to in Section 126 shall instruct an auditor to ascertain at least once a quarter that the calculation of the value of units takes place in accordance with its articles and this Decree, and that the investment company's assets are invested in accordance with its articles and with Sections 130 to 143, whereby the moments of ascertaining this must be at least one week apart.
2. An undertaking for collective investment in transferable securities as referred to in Section 126 shall buy or sell its units, whether or not through the agency of a third party, or issue these units in order to prevent a situation where the value of its units on the regulated market or another market in financial instruments differs from their net asset value by more than five percent.

### **Section 128**

The articles or the fund regulations of an undertaking for collective investment in transferable securities as referred to in Section 4:61(1) of the Act shall specify:

- a. the manner of determining the offering price, the selling or purchase price, and the amount upon repayment of the value of the units; and
- b. the nature of the costs that are charged to the result, are offset against the managed assets or are charged in other ways to the unit holders in the collective investment scheme.

### **Section 129**

An undertaking for collective investment in transferable securities as referred to in Section 4:61(1) of the Act which invests in units in other collective investment schemes which are managed by its own management company or which are managed by a management company with which its management company is connected in a formal or actual control structure, shall not charge any subscription or redemption fees in respect of the units in those other collective investment schemes.

### **Section 130**

The managed assets of an undertaking for collective investment in transferable securities as referred to in Section 4:61(1) of the Act shall be invested exclusively in:

- a. securities and money market instruments that are officially listed or traded on a market in financial instruments in a Member State;
- b. securities and money market instruments that are officially listed or traded on a market in financial instruments in a non-Member State, insofar as the articles or the fund regulations of the undertaking for collective investment in transferable securities provide for investment in these financial instruments;
- c. securities of which it is likely that they will be officially listed or admitted to trading on a regulated market or another market in financial instruments within one year of being issued, insofar as the articles or the fund regulations of the undertaking for collective investment in transferable securities provide for investment in these financial instruments;
- d. units in undertakings for collective investment in transferable securities for the offering of which a licence has been granted under Section 2:65 of the Act, or in undertakings for collective investment in transferable securities that are admitted in another Member State in conformity with the Collective Investment Schemes Directive, if these undertakings for collective investment in transferable securities do not, according to their articles or fund regulations, invest more than 10 percent of their managed assets in units in other collective investment schemes;
- e. units in collective investment schemes having their registered office in a designated state, or in collective investment scheme of which the supervision – in the opinion of the supervisory authorities in other Member States – is equivalent to the Collective Investment Schemes Directive, and in respect of which the cooperation between the supervisors and the supervisory authorities is sufficiently guaranteed, if:

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- 1°. the units in the collective investment schemes are repurchased or repaid either directly or indirectly out of the assets at the unit holders' request;
  - 2°. the sole objective of the collective investment schemes, according to their articles or regulations, is to invest in securities, money market instruments, deposits or financial derivatives on the basis of the principle of risk diversification;
  - 3°. the rules applicable to the collective investment schemes with regard to asset separation, borrowing and lending and selling securities and money market instruments from an unhedged position are equivalent to the regulations of the Collective Investment Schemes Directive; and
  - 4°. the collective investment schemes do not, according to their articles or fund regulations, invest more than 10 percent of their managed assets in units in other collective investment schemes;
- f. deposits;
- g. financial derivatives officially listed or traded on a market in financial instruments, insofar as their value depends on the financial instruments and deposits referred to in this section, financial indices, interest rates, exchange rates or currencies in which the undertaking for collective investment in transferable securities may invest pursuant to its articles or regulations;
- h. financial derivatives that are not traded on a regulated market or another market in financial instruments, if:
- 1°. their value depends on the financial instruments and deposits referred to in this section, financial indices, interest rates, exchange rates or currencies in which undertakings for collective investment in transferable securities may invest pursuant to their articles or regulations;
  - 2°. the counterparty is subject to prudential supervision and pertains to the categories recognised by the Netherlands Authority for the Financial Markets or a supervisory authority in another Member State; and
  - 3°. they are subject to reliable and verifiable valuation on a daily basis, and can be sold, liquidated or closed by an offsettable transaction at any time at their fair value at the initiative of the undertaking for collective investment in transferable securities; or
- i. money market instruments that are not traded on a regulated market or another market in financial instruments, if the issue or the issuer of these instruments is itself subject to regulations with a view to protecting investors and savings, and these instruments:
- 1°. are issued or guaranteed by a central, regional or local government authority, the central bank of a Member State, the European Central Bank, the European Union or the European Investment Bank, a non-Member State, a member of a federal state or a public international body to which one or more Member States belong;
  - 2°. are issued by an enterprise whose securities are traded on a regulated market or another market in financial instruments;
  - 3°. are issued or guaranteed by an institution subject to prudential supervision in a Member State, or by an institution subject to prudential supervision which is in any case equivalent to the prudential supervision applicable under Community law; or
  - 4°. are issued by other institutions that provide equivalent protection of the investor as that laid down in this subsection, opening words and (1°), (2°) and (3°), if the issuing institution is an enterprise whose total capital and reserves amount to at least € 10,000,000 and which presents and publishes its annual accounts in accordance with the Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies (OJEC L 222), or is a legal person which, within a group including one or more enterprises whose shares are officially listed on a regulated market or another market in financial instruments, is dedicated to the financing of the group, or is a legal person dedicated to the financing of securitisation vehicles which benefit from a banking liquidity line.

## Section 131

In derogation from Section 130, the managed assets of an undertaking for collective investment in transferable securities:

- a. can be invested, up to no more than 10 percent of the managed assets, in securities and money market instruments that are not officially listed or traded on a regulated market or another market in financial instruments;
- b. where an investment company is concerned: shall be invested in matters that are directly required for the performance of its operations; or
- c. shall be held in accessory liquid assets.

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### **Section 132**

The managed assets of an undertaking for collective investment in transferable securities as referred to in Section 4:61(1) of the Act shall not be invested in precious metals or certificates representing such metals.

### **Section 133**

1. The undertaking for collective investment in transferable securities as referred to in Section 4:61(1) of the Act shall regularly inform the Netherlands Authority for the Financial Markets of the types of financial derivatives pertaining to its assets, the underlying risks, the quantitative limits and the methods selected for estimating the risks attached to transactions in these financial instruments.
2. The total risk of the undertaking for collective investment in transferable securities shall not exceed twice the total net value of the assets. The total risk of a collective investment scheme shall be increased by no more than 10 percent of the total net value of its portfolio by its contracting short-term loans, in which case the total risk of the undertaking for collective investment in transferable securities shall not exceed 210 percent of the total net value of its portfolio.
3. The total risk of the undertaking for collective investment in financial derivative securities shall not exceed the total net value of the assets. In calculating the risk, account shall be taken of the current market value of the underlying assets, the counterparty risk, future market developments and the time available for liquidating the positions.
4. The managed assets of the undertaking for collective investment in transferable securities may, in the context of the investment policy and within the limits set by Section 137, be invested in financial derivatives, insofar as the total risk in respect of the underlying assets does not exceed the limits set by Sections 134, 135, 136(1) and 137. If the managed assets of the undertaking for collective investment in transferable securities are invested in index-linked financial derivatives, these investments shall not be added together for the purpose of the upper limit determined in the limits set in Sections 134, 135, 136(1) and 137.
5. The Netherlands Authority for the Financial Markets may lay down rules concerning the calculation of the risk, the manner of determining the current market value of the underlying assets, the types of obligations that result in a counterparty risk, the consideration of future market developments in the determination, and the methods which may be applied in calculating the risks, partly depending on the nature of the financial instrument in which the investment is made.

### **Section 134**

1. Of the managed assets of an undertaking for collective investment in transferable securities as referred to in Section 4:61(1) of the Act, no more than 10 percent shall be invested in securities and money market instruments issued by the same undertaking. An undertaking for collective investment in transferable securities shall invest no more than 20 percent of the managed assets in deposits held with one bank.
2. The counterparty risk of the undertaking for collective investment in transferable securities as regards a transaction in financial derivatives that are not traded on a regulated market or another market in financial instruments shall not exceed:
  - a. 10 percent of its assets if the counterparty is a credit institution; or
  - b. 5 percent of its assets in all other cases.
3. The total value of the securities and the money market instruments which the undertaking for collective investment holds in transferable securities in issuing institutions in which it invests more than five percent per institution shall not exceed 40 percent of the managed assets of the undertaking for collective investment in transferable securities. This limit shall not apply to deposits and transactions in financial derivatives that are not traded on a regulated market or another market in financial instruments which are held and conducted respectively with institutions subject to prudential supervision.

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4. Without prejudice to the individual limits set in Subsections (1) and (2), no more than 20 percent of the managed assets of the undertaking for collective investment in transferable securities shall be invested in one institution in a combination of:
  - a. securities and money market instruments issued by that institution;
  - b. deposits held with that institution; or
  - c. risks arising from transactions in financial derivatives that are not traded on a regulated market or another market in financial instruments, with regard to that institution.
5. In calculating the risks borne by the undertaking for collective investment in transferable securities in respect of investments as referred to in Subsections (1) to (4), the risk shall be determined on the basis of the maximum loss for the undertaking for collective investment in transferable securities in the event that a counterparty defaults. The Netherlands Authority for the Financial Markets may lay down further rules concerning the calculation of the counterparty risk and the security to be taken into account in that context in order to restrict the counterparty risk borne by the undertaking for collective investment in transferable securities.

### **Section 135**

1. In derogation from Section 134, no more than 25 percent of the managed assets of an undertaking for collective investment in transferable securities may be invested in bonds issued by a credit institution having its registered office in another Member State which, pursuant to the law of that Member State, is subject to special government supervision with a view to protecting the holders of these bonds, insofar as the returns on these bonds, in accordance with the law of that Member State, are invested in assets which offer adequate cover during the whole term of the bonds for the obligations resulting from them, and which, in the event of default on the part of the issuing institution, will be used with priority towards the redemption of the principal sum and payment of the interest accrued.
2. If more than five percent of the managed assets of an undertaking for collective investment in transferable securities is invested in bonds as referred to in Subsection (1) which were issued by one institution, the total value of these investments shall not exceed 80 percent of the assets of that issuing institution.

### **Section 136**

1. In derogation from Section 134(1), no more than 35 percent of the managed assets of an undertaking for collective investment in transferable securities may be invested in securities and money market instruments issued or guaranteed by a Member State, a public body with regulatory power in a Member State, a non-Member State or an international organisation to which one or more Member States belong.
2. Upon request, the Netherlands Authority for the Financial Markets may grant an undertaking for collective investment in transferable securities dispensation from Subsection (1) if:
  - a. its portfolio includes securities and money market instruments from at least six different issues by an issuing state, public body or international organisation referred to in Subsection (1);
  - b. the financial instruments of one and the same issue do not exceed 30 percent of the managed assets of the undertaking for collective investment in transferable securities;
  - c. the issuing state, the public body or the international organisation is specified in the articles or fund regulations of the undertaking for collective investment in transferable securities; and
  - d. the unit holders in the undertaking for collective investment in transferable securities enjoy protection that is equivalent to the protection resulting from Subsection (1) and Sections 134, 135 and 137.

### **Section 137**

1. The financial instruments referred to in Sections 135 and 136(1) shall not be taken into account for the purpose of the 40 percent limit referred to in Section 134(3).
2. The investments made in accordance with Sections 134, 135 and 136(1) in securities and money

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market instruments issued by one institution, or in deposits with or financial derivatives of that institution, shall together never make up more than 35 percent of the managed assets of the undertaking for collective investment in transferable securities.

3. In calculating the limits set in Sections 134, 135 and 136(1), enterprises counted as part of a group for the purpose of compiling consolidated accounts, shall together be regarded as one institution in accordance with the Consolidated Accounts Directive or other recognised international financial reporting rules, on the understanding that the investments as referred to in Section 134(1), first sentence in the individual enterprises pertaining to that group shall not exceed 20 percent of the managed assets of the undertaking for collective investment in transferable securities.
4. In determining the limits referred to in Sections 134, 135, 136(1) and 137, the assets of collective investment schemes, in whose units the undertaking for collective investment in transferable securities invests, shall not be added to the investments of the undertaking for collective investment in transferable securities.

### **Section 138**

1. In derogation from Section 134(1), no more than 20 percent of the managed assets of an undertaking for collective investment in transferable securities may be invested in shares and bonds of the same issuing institution if the fund regulations or the articles of the undertaking for collective investment in transferable securities provide that the investment policy of the undertaking for collective investment in transferable securities is aimed at following the composition of a particular share or bond index, and this index satisfies the following conditions:
  - a. the composition of the index is diversified;
  - b. the index is representative of the market to which it relates; and
  - c. the index is disclosed in an appropriate manner.
2. Upon request, the Netherlands Authority for the Financial Markets may grant dispensation from Subsection (1) if exceptional market conditions give cause to do so. In that case, no more than 35 percent of the managed assets of the undertaking for collective investment in transferable securities may be invested in shares and bonds of the same issuing institution.

### **Section 139**

1. Of the managed assets of an undertaking for collective investment in transferable securities as referred to in Section 4:61(1) of the Act, no more than 20 percent shall be invested in units in collective investment schemes as referred to in Section 130(d) or (e) that were issued by the same collective investment scheme.
2. The investments in units in collective investment schemes as referred to in Section 130(e) shall make up no more than 30 percent of the managed assets of the undertaking for collective investment of transferable securities.

### **Section 140**

1. A management company acting on the joint behalf of the undertakings for collective investment in transferable securities under its management as referred to in Section 4:61(1) of the Act shall acquire no more than 20 percent of the voting shares in the same issuing institution.
2. The managed assets of an undertaking for collective investment in transferable securities as referred to in Section 4:61(1) of the Act shall be invested in no more than:
  - a. 10 percent of the non-voting shares of the same issuing institution;
  - b. 10 percent of the bonds of the same issuing institution;
  - c. 25 percent of the units in a collective investment scheme whose units are repurchased from or repaid to the same collective investment scheme either directly or indirectly out of the assets at the unit holders' request; or
  - d. 10 percent of the money market instruments of the same issuing institution.

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3. The limits referred to in Subsection (2), opening words and (b), (c) and (d) may be disregarded if the gross value of the bonds or money market instruments or the net value of the units in a collective investment scheme cannot be calculated at the moment of acquisition.

#### **Section 141**

Section 140(1) and (2) shall not apply to the acquisition of or investments in:

- a. securities and money market instruments that were issued or are guaranteed by a Member State, a public body with regulatory power in a Member State, a non-Member State or an international organisation to which one or more Member States belong;
- b. shares in the capital of a legal person based in a non-Member State which, with due observance of the limits referred to in Sections 134, 135, 136(1), 137, 139 and 140, invests its assets primarily in securities of issuing institutions based in that state, if, under the law of that state, such a holding is the only way in which the undertaking for collective investment in transferable securities can invest in securities of issuing institutions in that state; or
- c. shares in the capital of a subsidiary of the investment company which performs certain management, consultancy or trading activities exclusively for the benefit of the investment company in the state where the subsidiary is based, with a view to repurchasing units at the unit holders' request.

#### **Section 142**

Sections 134 to 139 shall not apply during a period of six months following the first offering of the units in an undertaking for collective investment in transferable securities. During this period, the undertaking for collective investment in transferable securities shall observe the principles of risk diversification.

#### **Section 143**

1. The limits set in this division shall not apply where pre-emptive rights are exercised which are attached to securities and money market instruments pertaining to the assets of the undertaking for collective investment in transferable securities.
2. If the limits set in this division are exceeded through no fault of the undertaking for collective investment in transferable securities, or as a result of the exercise of pre-emptive rights, the undertaking for collective investment in transferable securities, with due observance of the unit holders' interests, shall take the necessary measures in order to reverse this transgression as soon as possible.

#### **Section 144**

An undertaking for collective investment in securities as referred to in Section 4:61(1) of the Act shall, within four weeks after a request to this effect from the Netherlands Authority for the Financial Markets, or within four weeks after the end of the financial year, provide the Netherlands Authority for the Financial Markets with a statement from an auditor showing that the undertaking for collective investment in transferable securities acted in accordance with Sections 130 to 143.

#### **Section 145**

When making the prospectus referred to in Section 4:50(2) of the Act generally available, the management company shall simultaneously provide the Netherlands Authority for the Financial Markets with a copy of the prospectus and of the Financial Information Leaflet of the undertaking for collective investment in transferable securities as referred to in Section 4:61(1) of the Act.

#### **Section 146**

1. The balance sheet and profit and loss account of an undertaking for collective investment in transferable securities or the explanatory notes thereto shall contain the following information:
  - a. credit balances with banks;
  - b. a breakdown of the overviews of investments referred to in Section 122(1)(a) and (b) into:

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- 1°. financial instruments that are officially listed on a regulated market;
  - 2°. financial instruments that are traded on a regulated market or another market in financial instruments;
  - 3°. securities as referred to in Section 130(c); and
  - 4°. financial instruments as referred to in Section 131(a);
  - c. a balanced overview of the net movements during the reporting period in the equity capital of the investment company or the managed assets of the unit trust as a result of and broken down into:
    - 1°. investment income;
    - 2°. other income;
    - 3°. taxes;
    - 4°. the appropriation, or proposed appropriation, of the net result;
    - 5°. the increase or decrease in the equity capital of the investment company or in the managed assets of the unit trust;
    - 6°. capital gains and losses on investments; and
    - 7°. other movements in the assets and liabilities; and
  - d. the amount of the obligations, distinguished by type as at the end of the financial year, resulting from operations concerning financial derivatives, insofar as these obligations are not shown in the balance sheet and the profit and loss account.
2. Without prejudice to Section 125(1), an undertaking for collective investment in transferable securities shall include in the half-yearly figures the information referred to in Subsection (1)(a) and (b) as it applied at the end of the first half of the financial year.

#### **Section 147**

1. An undertaking for collective investment in transferable securities as referred to in Section 4:61(1) of the Act shall, every time when it or its management company offers, sells, repurchases or repays on units, publish the price, the selling and repurchase price and the amount of the repayment on its management company's website. Upon request, the Netherlands Authority for the Financial Markets may decide that the undertaking for collective investment in transferable securities must publish this information once a month, if this is not harmful to the unit holders' interests.
2. Subsection (1) shall not apply to undertakings for collective investment in transferable securities as referred to in Section 126(1).
3. Without prejudice to Section 4:46a of the Act, an undertaking for collective investment in transferable securities as referred to in Section 126 shall inform the Netherlands Authority for the Financial Markets of the net asset value of the units at least twice a week and shall publish the net asset value of the units on its management company's website twice a month, whereby the moments of publication shall always be at least one week apart.
4. Upon request, an undertaking for collective investment in transferable securities as referred to in Section 4:61(1) of the Act shall supply a unit holder with information regarding the quantitative limits applicable to the risk management, the methods selected in that context and the recent developments in the risks and returns of the principal category of financial instruments.

#### **Part 10.4. Insurance**

##### **Provisions implementing Section 4:71(4) of the Act**

#### **Section 148**

1. The appointment of a claims assessor as referred to in Section 4:71(1)(e) of the Act shall not be terminated, unless the termination is linked with with the appointment of a successor.
2. The non-life insurer shall disclose the termination of the claims assessor's appointment within two weeks to the Netherlands Authority for the Financial Markets, on submission of the instrument of appointment of the claim assessor's successor, showing the latter's name, address and powers.

#### **Section 149**

1. The claims assessor shall cease to be a claims assessor by operation of law from the day when the

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debt rescheduling arrangement for natural persons, a moratorium on payments, the liquidation order, the dissolution referred to in Section 19 of Book 2 of the Dutch Civil Code, the administration order in respect of one or more of the assets referred to in Title 19 of Book 1 of the Dutch Civil Code, or the guardianship order is declared applicable.

2. The non-life insurer shall disclose the death, the declaring applicable of the debt rescheduling arrangement for natural persons, the moratorium on payments, the liquidation order, the dissolution referred to in Section 19 of Book 2 of the Dutch Civil Code, the administration order in respect of one or more of the assets referred to in Title 19 of Book 1 of the Dutch Civil Code, or the guardianship order in respect of the claims assessor within two weeks to the Netherlands Authority for the Financial Markets, on submission of the instrument of appointment of the claims assessor's successor effective from the day of the death, the declaring applicable of the debt rescheduling arrangement for natural persons, the moratorium on payments, the liquidation order, the dissolution referred to in Section 19 of Book 2 of the Dutch Civil Code, the administration order in respect of one or more of the assets referred to in Title 19 of Book 1 of the Dutch Civil Code, or the guardianship order. The instrument of appointment shall show the name, address and powers of the claims assessor's successor.

## **Chapter 11. Additional rules on brokerage services**

### **Part 11.1. General**

#### **Provisions implementing Section 4:73(3), opening words and (c) of the Act**

##### **Section 150**

1. The initial commission which a provider pays to a broker as referred to in Section 4:73(1) of the Act shall not exceed half the sum of that initial commission and the total ongoing commission in respect of the agreement concerned.
2. A provider shall pay the ongoing commission to a broker as referred to in Subsection (1) proportionally during a minimum period of 10 years after the establishment of the agreement concerned. If the term of the agreement is less than 10 years, the provider shall pay the commission proportionally during that term.
3. Subsections (1) and (2) shall not apply to agreements regarding complex products insofar as the provider concerned and the consumer, at least three months prior to the conclusion of the agreement, concluded an agreement through the agency of the same broker regarding a financial product that is part of the complex product concerned.

##### **Section 151**

1. If an agreement regarding a complex product is terminated prematurely during the first five years after its establishment, otherwise than through the death of the insured party or through the sale of the immovable property to which the complex product relates, the initial commission shall be reduced proportionally.
2. Subsection (1) shall not apply to agreements regarding complex products insofar as the provider concerned and the consumer, at least three months prior to the conclusion of the agreement, concluded an agreement through the agency of the same broker regarding a financial product that is part of the complex product concerned.

### **Part 11.2. Credit**

#### **Provisions implementing Section 4:74(2) and (3) of the Act**

##### **Section 152**

Section 4:74(1) of the Act shall not apply to:

- a. credit agreements where a mortgage interest is provided when the agreement is entered into, or credit agreements that already involve mortgage interest, if the credit is granted at an effective lending rate customary for mortgage financing by the provider concerned;

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- b. credit agreements, insofar as the credit is offered in exchange for securities as referred to in Subsections (a) or (b) of the definition of a security in Section 1:1 of the Act granted as collateral for the repayment of the credit, to a consumer who is already the owner of the pledged securities as referred to in Subsections (a) or (b) of the definition of a security in Section 1:1 of the Act at the moment when the credit agreement is entered into, whereby, during the term of the credit agreement, the credit sum or the credit limit must not exceed 70 percent of the value of the pledged securities in the case of securities as referred to in Subsection (a) of the definition of a security in Section 1:1 of the Act, or not exceed 80 percent of the value of the pledged securities in the case of securities as referred to in Subsection (b) of the definition of a security in Section 1:1 of the Act, and:
  - 1°. these securities as referred to in Subsections (a) or (b) of the definition of a security in Section 1:1 of the Act are admitted to trading on a regulated market; or
  - 2°. the value of these securities as referred to in Subsections (a) or (b) of the definition of a security in Section 1:1 of the Act is apparent to everyone on account of a public price indication.

### **Section 153**

1. Sections 154 to 158 shall apply exclusively to the provision of financial services regarding consumer credit.
2. The provisions of this part concerning the relationship between a provider and a broker shall apply accordingly to the relationship between a broker and a sub-broker.

### **Section 154**

A broker shall only be entitled to commission in respect of concluded agreements.

### **Section 155**

1. During the term of a credit agreement established through its brokerage services, a broker shall only be entitled to a monthly commission equalling a percentage of the outstanding balance in respect of that agreement, based on the amount of that balance on the last day of the month concerned.
2. The provider and the broker may change the commission percentage agreed with regard to the brokerage services, with the exception of the commission percentage for installment credit agreements already established, on the understanding that:
  - a. a percentage is agreed for a revolving period of at least one month; and
  - b. with regard to already established credit agreements, the percentage may only be changed after periods of 24 months, and only to the percentage applicable between the provider and the broker, at the moment when the change takes place, in respect of new agreements that are yet to be entered into.

### **Section 156**

During the period in which a consumer is at least two months in arrears in paying an instalment that is due, a broker shall not be entitled to commission in respect of the agreement concerned.

### **Section 157**

1. From the moment when a provider demands early repayment of the amount owed by a consumer in a case as referred to in Section 33, opening words and (c) of the Consumer Credit Act, the broker shall no longer be entitled to commission in respect of the agreement concerned.
2. From the moment when an agreement is dissolved by operation of law pursuant to Section 41(3) of the Consumer Credit Act, the broker shall no longer be entitled to commission in respect of the agreement concerned, on the understanding that if the dissolution is annulled pursuant to Section 42(2) of the Consumer Credit Act, the broker shall again be entitled to commission over the period starting at the moment when the dissolution was annulled.

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#### **Section 158**

1. A broker shall not be paid commission if it is not entitled to commission under this Decree.
2. Commission shall be paid exclusively by transferable funds.

#### **Part 11.3. Insurance**

##### **Provisions implementing Section 4:75(2) of the Act**

#### **Section 159**

1. The professional liability insurance referred to in Section 4:75(1) of the Act shall cover the liability of brokers on account of errors, omissions or negligence committed in the exercising of their profession and occurring in the territory covered by the Agreement on the European Economic Area.
2. The professional liability insurance shall be taken out with:
  - a. a financial enterprise that holds a licence granted by the Dutch Central Bank to conduct the business of a non-life insurer for the General Liability sector; or
  - b. a financial enterprise having its registered office in another Member State that may conduct the business of a non-life insurer from a branch office situated in the Netherlands or by providing services to the Netherlands.

#### **Section 160**

1. A comparable provision as referred to in Section 4:75(1) of the Act shall be understood to mean an unconditional guarantee for all obligations arising from liability on the part of brokers on account of errors, omissions or negligence committed in the exercising of their profession and occurring in the territory covered by the Agreement on the European Economic Area.
2. The unconditional guarantee shall be provided by:
  - a. a financial enterprise that holds a licence granted by the Dutch Central Bank to conduct the business of a bank;
  - b. a financial enterprise having its registered office in another Member State that may conduct the business of a bank from a branch office situated in the Netherlands or by providing services to the Netherlands; or
  - c. a bank that has its registered office in the United States of America, Japan, Australia, Canada or Switzerland and is supervised in the state where it has its registered office.

#### **Chapter 12. Supplementary rules on reinsurance brokerage services**

##### **Provision implementing Section 4:76(2) of the Act**

#### **Section 161**

Sections 159 and 160 shall apply accordingly to the professional liability insurance and the comparable provision referred to in Section 4:76(1) of the Act.

#### **Chapter 13. Supplementary rules on acting as a clearing institution**

##### **Provision implementing Section 4:78(1) of the Act**

#### **Section 162**

1. A clearing institution shall inform a client at the end of each trading day, either in writing or online, of the numbers and values of the financial instruments registered in the latter's name.
2. If the value of the obligations is calculated in accordance with the parameters agreed between the clearing institution and a client and the value of the financial instruments provides inadequate cover in relation to the obligations assumed by the client, the clearing institution shall inform the client of this immediately.

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## **Chapter 14. Supplementary rules on providing investment services and performing investment activities**

### **§ 14.1. General**

#### **Provisions implementing Sections 4:85(3), 4:86, 4:87(3), 4:88(3), 4:89(2) and 4:90(2) of the Act**

#### **Section 163**

1. With regard to layout and content, an investment firm having its registered office in the Netherlands shall present the annual accounts, the annual report and the other information referred to in Section 4:85(1) of the Act in the format in which they were compiled pursuant to Title 9 of Book 2 of the Dutch Civil Code or the international accounting standards.
2. With regard to layout and content, an investment firm having its registered office in a non-Member State shall present the annual accounts, the annual report and the other information referred to in Section 4:85(4) in the format in which they were compiled pursuant to the law of the state in which the investment firm has its registered office or the international accounting standards.

#### **Section 164**

1. An investment firm that executes client orders:
  - a. shall register orders executed in the name of clients immediately and correctly and shall allocate these orders immediately and correctly;
  - b. shall execute comparable client orders immediately and in the order in which they are received, unless the nature of the order or the prevailing market conditions preclude this or the client's interest necessitates a different course of action; and
  - c. shall inform a client who is a non-professional investor immediately of a problem that seriously hampers the correct execution of the latter's order, as soon as it becomes aware of that problem.
2. An investment firm that is responsible for monitoring or arranging the settlement of an executed order shall take all reasonable measures to ensure that all the financial instruments or funds of the client's received in settling this executed order are credited to the client's account immediately and correctly.
3. An investment firm shall not abuse information on current client orders and shall take all reasonable measures to prevent abuse of such information by its relevant persons.

#### **Section 164a**

1. An investment firm shall not execute a client order or own-account transaction together with another client order, unless:
  - a. it is unlikely that the combination of the orders and transactions is detrimental to the client involved;
  - b. it has informed the client that the combination may be detrimental to the latter;
  - c. it has adopted and implemented an order allocation policy that provides sufficiently accurately for a fair allocation of combined orders and that specifies, among other things, how the volume and price of orders are decisive for the manner in which part executions are allocated and processed.
2. If an investment firm combines an order with other client orders and the combined order is executed only in part, it shall allocate the transactions concerned in according with its order allocation policy.

#### **Section 164b**

1. An investment firm that combines an own-account transaction with a client order shall not allocate the transaction concerned in a manner detrimental to the client.
2. If an investment firm combines a client order with an own-account transaction and the combined order is executed only in part, it shall give the client order priority over its own transaction when allocating the transaction concerned.

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The investment firm shall only be allowed to allocate a transaction as referred to in the previous sentence proportionally in accordance with its order execution policy referred to in Section 59, if it can demonstrate that it would have been unable to execute the client order, or to execute it under the same favourable conditions, if the order had not been combined.

3. In the context of its order allocation policy as referred to in Section 59, an investment firm shall have procedures in place which prevent own-account transactions that are carried out together with client orders from being reallocated in a manner detrimental to the client.

## **Section 165**

1. An investment firm:
  - a. shall keep all the necessary records and accounts enabling it immediately at any time to distinguish the financial instruments and funds held for a client from financial instruments and funds held for other clients and its own financial instruments and funds;
  - b. shall keep the records and accounts referred to in Subsection (a) in such a way, that they are always accurate and in any event reflect the financial instruments and funds held for clients;
  - c. shall check at regular intervals whether the records and accounts referred to in Subsection (a) correspond to those of any third parties that may hold these financial instruments and funds;
  - d. shall ensure that the financial instruments of clients that are held by a third party in accordance with Section 165a are distinguishable from the financial instruments belonging to the investment firm itself and from the financial instruments belonging to the third party, by means of differently titled accounts on the books of the third party or other equivalent measures that achieve the same level of protection;
  - e. shall ensure that the client funds held in accordance with Section 165b are held in an account or accounts that is or are distinguishable from all the accounts used for holding funds belonging to the investment firm itself;
  - f. shall take appropriate organisational measures in order to keep to a minimum the risk of loss or reduction of the financial instruments and funds of clients, or their rights to these financial instruments or funds, on account of misuse of financial instruments and funds, fraud, mismanagement, the keeping of inadequate information or negligence.
2. The Netherlands Authority for the Financial Markets shall lay down rules concerning:
  - a. the measures to protect the client's rights and to prevent the use of the client's financial instruments or funds as referred to in Section 4:87(1) and (2) of the Act; and
  - b. the manner in which the client's consent as referred to in Section 4:87(1)(b) may be obtained for the use of the client's financial instruments by the investment firm at the latter's own expense.

## **Section 165a**

1. An investment firm holding financial instrument for a client in an account with a third party shall apply the necessary competence, care and vigilance in the selection, designation and periodic review of the third party and of the regulations for holding and taking custody of the financial instruments concerned. In doing so, the investment firm shall take account of the expertise and market reputation of the third party involved, and of all the statutory obligations or market practices relating to the holding of these financial instruments that may have a detrimental effect on the client's rights.
2. If the custody of financial instruments at another person's expense is subject to specific regulations in a jurisdiction in which an investment firm wants to hold these financial instruments of clients with a third party, the investment firm shall not hold these financial instruments in that jurisdiction with a third party that is not subject to the supervision of compliance with these rules.
3. An investment firm shall not hold financial instruments for a client with a third party in a non-Member State where the holding and custody of financial instruments at another person's expense is not subject to rules, unless:
  - a. the nature of the financial instruments or of the investment services relating to these instruments requires them to be held by a third party in that state; or
  - b. where it concerns financial instruments held for a professional investor, the latter requested the

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investment firm in writing to hold these instruments with a third party in that state.

#### **Section 165b**

1. An investment firm that receives funds from a client shall immediately pay these funds into one or more accounts with:
  - a. a central bank;
  - b. a bank that has been granted a licence as referred to in the Recast Banking Directive;
  - c. a bank that has been granted a licence in a non-Member State to conduct the business of a bank;
  - d. an approved money market fund.
2. Subsection (1) shall not apply to investment firms that have been granted a licence to conduct the business of a bank.
3. For the purpose of Subsection (1), opening words and (d), an approved money market fund shall be understood to mean an approved money market fund within the meaning of Article 18(2) of the Directive implementing the Markets in Financial Instruments Directive.
4. If the investment firm does not hold funds with a central bank, it shall apply the necessary competence, care and vigilance in the selection, designation and periodic review of the bank or the money market funds where the funds are deposited, and of the regulations for holding the funds concerned. In any event the investment firm shall take account of the expertise and market reputation of the bank or the money market fund in order to protect the rights of its clients, and of all the statutory obligations or market practices relating to the holding of client funds that may have a detrimental effect on the client's rights.
5. An investment firm that intends to hold funds with an approved money market fund shall have an internal complaints procedure in place under which clients can object to this.

#### **Section 165c**

1. An investment firm shall not enter into agreements regarding securities financing transactions in respect of financial instruments which it holds for a client, and shall not use such financial instruments in other ways at its own expense or at the expense of another of its clients, unless:
  - a. the client has granted its express prior approval to the use of the financial instruments under specified conditions, which can be demonstrated in the case of a non-professional investor by means of the latter's signature; and
  - b. the financial instruments of this client's are used exclusively under the specified conditions with which the client has approved.
2. An investment firm shall not enter into agreements regarding securities financing transactions in respect of financial instruments which it holds for a client in an omnibus account with a third party, and shall not use such financial instruments in other ways at its own expense or at the expense of another client, unless, without prejudice to Subsection (1):
  - a. the client has granted its express prior approval; or
  - b. the investment firm has systems and monitoring facilities in place which ensure that the financial instruments concerned belong to clients that have granted their express prior approval. Subsection (1)(a) shall apply accordingly to the granting of approval.
3. The investment firm's records shall include particulars about the client with whose approval the financial instruments were used, and about the number of financial instruments used belonging to every client that granted its approval, so as to ensure that any losses are allocated correctly.

#### **Section 165d**

An investment firm as referred to in Section 4:87(1) and (2) of the Act shall provide the Netherlands Authority for the Financial Markets once a year with an external auditor's report on the investment firm's compliance with Sections 165 to 165c.

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### **Section 166**

An asset manager that also manages an undertaking for collective investment in transferable securities with its registered office in the Netherlands shall not, in the context of individual asset management, invest the client's funds, either wholly or in part, in collective investment schemes under its management without the client's prior written consent.

### **Section 167**

The policy referred to in Section 4:88(1) of the Act shall be directed at recognising in any case the following situations:

- a. the investment firm, a relevant person or a person connected with the investment firm through a control relationship may achieve a financial gain or avoid a financial loss at the client's expense;
- b. the investment firm, a relevant person or a person connected with the investment firm through a control relationship has an interest in the result of a service performed for the client's benefit or a transaction conducted on the client's behalf that differs from the client's interest in this result;
- c. the investment firm, a relevant person or a person connected with the investment firm through a control relationship has a financial or other motive in giving precedence of the interest of another client or group of clients over the client's interest;
- d. the investment firm, a relevant person or a person connected with the investment firm through a control relationship conducts the same business as the client;
- e. the investment firm, a relevant person or a person connected with the investment firm through a control structure has received or will receive a commission in the form of money, goods or services from a person other than the client for an investment activity, investment service or ancillary service performed for the client's benefit, which commission differs from the customary commission or fee for this activity or service.

### **Section 167a**

1. An investment firm shall lay down the policy referred to in Section 4:88(1) of the Act in writing and shall ensure that this policy is implemented and maintained. The policy shall be proportional to the size and organisation of the investment firm and to the nature, scale and complexity of its business.
2. If the investment firm is part of a group, the policy shall also relate to conflicts of interest that may arise as a result of the structure and operations of other enterprises pertaining to that group.
3. The policy shall, with reference to the specific investment services, investment activities and ancillary services that are performed and provided by or in the name of the investment firm, describe the circumstances that constitute or may give rise to a conflict of interest which entails a material risk that the interests of a client may be harmed, as well as the procedures to be followed and measures to be taken in dealing with such a conflict.
4. The policy adopted in accordance with Subsection (1) shall specify the procedures to be followed and the measures to be taken in managing a conflict of interest as referred to in Section 4:88(1) of the Act.

### **Section 167b**

Where a conflict of interest proves to be unavoidable, an investment firm as referred to in Section 4:88(2) of the Act shall inform the client of this by means of a permanent carrier. On this occasion, the investment firm, with due observance of the features of the client, shall provide sufficient particulars as to enable the client to take a well-informed decision with regard to the investment service, investment activity or ancillary service in respect of which the conflict of interest has arisen.

### **Section 168**

1. An agreement as referred to in Section 4:89(1) of the Act shall contain at least the following information:
  - a. the services, distinguished by type, which the investment firm shall perform for the client in the

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- context of the agreement;
  - b. a specification of any restrictions with regard to the markets on which transactions in financial instruments will be settled on the client's behalf;
  - c. the costs, distinguished by type, other than the costs which are charged to the client in relation to an offer of securities as referred to in Chapter 5.1 of the Act, as well as the calculation underlying these costs;
  - d. the manner in which instructions from the client and messages from the investment firm will be issued and administered;
  - e. the manner in which funds or financial instruments of the client's will be settled, deposited and administered;
  - f. the manner in which the client's accounts can be used;
  - g. arrangements concerning the liability of the investment firm and the client respectively under the agreement;
  - h. a statement from the client that he has taken note of the information which the investment firm must supply to him by virtue of this Decree, and that he is aware of the risks attached to the investment;
  - i. the applicable law and the manner in which disputes will be resolved; and
  - j. the circumstances under which the agreement between the investment firm and the client will come to an end, the circumstances under which the agreement can be dissolved and the manner in which transactions in progress on or after the date of termination will be settled.
2. If the agreement relates to individual asset management, it shall also contain the following information:
- a. a breakdown of the managed assets into types of financial instruments and the value of the assets to be managed at the time when the agreement is concluded;
  - b. the client's objectives with regard to the asset management;
  - c. a specification of any qualitative and quantitative restrictions in respect of the financial instruments or categories of financial instruments in which investments may be made;
  - d. the manner in which the management is conducted as well as the client's involvement in the management activities, including arrangements regarding the authorisation granted to the investment firm; and
  - e. the frequency with which reports are issued to the client.

### **Section 168a**

1. An investment firm shall not pay or receive any commission, in return for providing an investment service or ancillary service, that is not required for the provision of the service concerned or facilitates this service.
2. Subsection (1) shall not apply to:
  - a. commissions paid by or to the client;
  - b. commissions paid by or to a third party, if:
    - 1°. the client is informed in a detailed, accurate and understandable manner of the existence, nature and amount of the commission or, where the amount cannot be ascertained, of the manner in which it is calculated, before the service concerned is provided; and
    - 2°. the payment of the commission benefits the quality of the service concerned and does not detract from the investment firm's obligation to promote the client's interests.
3. The investment firm shall satisfy the condition referred to in Subsection (2)(b), preamble and (1°) if it provides a summary of the essential conditions of the commission arrangements and if it informs the client of the possibility to obtain further details and supplies these details on the client's request.
4. The terms 'client' and 'third party' within the meaning of Subsection (2) shall also refer to persons acting on behalf of the client and the third party respectively.

## **Chapter 15. Final provisions**

### **Section 169**

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Section 3(1), opening words and (a) shall not apply to holders of a dispensation as referred to in Section 4:3(4) of the Act which was granted prior to 15 September 2004.

### **Section 170**

Until 1 October 2007, Section 6 shall not apply to financial services providers that do not perform insurance brokerage activities, act as authorised agents or act as authorised sub-agents, insofar as they did not comply with Section 17 of the Financial Services Decree (*Besluit financiële dienstverlening*) on 1 January 2006 and can demonstrate that they will comply with Section 6 from 1 October 2007.

### **Section 171**

1. For the purpose of Section 6(1)(a) and (2)(a), a diploma shall be valid if the diploma:
  - a. was obtained between 1 January 2000 and 1 October 2007; and
  - b. is stated in the first column of Annex F, and was issued by an institution stated in the second column for the exit qualifications referred to in the third column of the table.
2. For the purpose of Section 6(1)(a) and (2)(a), a diploma shall be valid if the diploma:
  - a. was obtained prior to 1 January 2000;
  - b. is stated in the first column of Annex F, and was issued by an institution stated in the second column for the exit qualifications referred to in the third column of the table; and
  - c. is held by a person who gained at least three years' relevant work experience in the period from 1 January 2000 to 1 January 2006.
3. If the diploma referred to in Subsections (1) or (2) is a diploma relating to mortgage loans or life insurance, the holder of the diploma shall, from 1 October 2007, also have the exit qualifications listed in sections 2.5 to 2.7 and 5.6 to 5.8 respectively of Annex B in the manner to be specified by Our Minister by ministerial regulation.
4. In addition to Subsections (1) and (2), Our Minister may designate another diploma by ministerial regulation as a valid diploma as referred to in Section 6(1)(a) and (2)(a). If a diploma designated pursuant to the previous sentence was obtained before 1 January 2000, it shall only be valid if the holder of the diploma gained at least three years' relevant work experience in the period from 1 January 2000 to 1 January 2006.
5. The institutions stated in the second column of Annex F shall by operation of law possess a recognition as referred to in Section 9 to issue the diplomas stated in the first column. Without prejudice to Subsections (1) and (2), a diploma as stated in the first column of Annex F that is issued after 1 January 2006 shall only be valid for the purpose of Section 6(1)(a) and (2)(a) if the institution stated in the second column possesses a recognition at the moment when the diploma is issued.

### **Section 172**

Section 28(2) shall not apply to persons who on 1 January 2006 were already directly engaged in performing financial services under the responsibility of the financial services provider referred to in Section 28(1).

### **Section 173**

Until 1 April 2007, Section 52(5) shall not apply to financial enterprises insofar as they:

- a. without prejudice to Section 65(1) provide the consumer or, in the case of units in a collective investment scheme, client with a Financial Information Leaflet prior to the establishment of the agreement;
- b. do not include in the information on the complex product which they provide to the consumer or, in the case of units in a collective investment scheme, client, a Financial Information Leaflet drawn up in accordance with the Decree on the Financial Information Leaflet (*Besluit financiële bijsluiter*) as it applied before the Financial Services Decree entered into force; and
- c. adequately inform the consumer in writing about the differences between the calculation of the

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investment returns, costs and risks for the purpose of the Financial Information Leaflet referred to in Section 66(1)(c) and (g) and (2)(d) and (f) respectively, and the calculations underlying the other information which they supply to the consumer or, in the case of units in a collective investment scheme, client.

#### **Section 174**

1. Sections 150 and 151 shall apply exclusively to agreements concluded after this Decree enters into force.
2. In derogation from Section 150(1), the initial commission paid by a provider to a broker in respect of agreements concluded prior to 1 January 2008 shall not exceed 80 percent of the sum of that initial commission and the ongoing commission in respect of the agreement concerned. With regard to agreements concluded from 1 January 2008 to 1 January 2009 and from 1 January 2009 to 31 December 2009, the percentage referred to in the previous sentence shall be 70 and 60 respectively.
3. Section 150(2) shall apply exclusively to agreements concluded prior to 1 January 2010.

#### **Section 175**

Sections 153 to 157 shall not apply to installment credit agreements concluded prior to 1 January 1992.

#### **Section 176**

Sections 122(1), opening words and (g), 123(1), opening words and (m) and 124(1), opening words and (j) shall apply with effect from the financial year commencing on or after the moment when this Decree enters into force.

#### **Section 177**

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

#### **Section 178**

This Decree shall be cited as: Decree on the Supervision of the Conduct of Financial Enterprises pursuant to the Act on Financial Supervision (*Besluit Gedragstoezicht financiële ondernemingen 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

The Minister of Finance,  
G. Zalm

Beatrix

Published on the second of November 2006

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

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#### **Annex A pertaining to Section 1(dd)**

1. In calculating the theoretical term of revolving credit, it shall be assumed that:
  - a. the credit agreement will be fulfilled in accordance with the level and duration of the instalment payments determined when the credit agreement was entered into;
  - b. no changes will be made to the lending fee, other than changes whose extent was determined when the credit agreement was entered into;
  - c. the outstanding balance equals the credit limit at the moment when the credit provider makes a sum of money available, or starts providing the enjoyment of a movable property or a security, or starts performing a service; and
  - d. the outstanding balance does not increase in any way other than by the addition of the lending fee charged.
2. In respect of revolving credit agreements where the lending rate per payment term, the payment term and the instalment – with the exception of the last instalment – remain the same, the theoretical term shall equal  $n$  payment terms, whereby  $n$  shall be the outcome of the following formula:  
$$(\log T - \log (T - im.K)) / \log (1 + im),$$
where:
  - \*  $T$  is the instalment amount;
  - \*  $im$  is one hundredth of the lending rate per payment term;
  - \*  $m$  is the number of payment terms per year;
  - \*  $K$  is the credit limit.
3. In respect of revolving credit agreements that do not meet the criteria stated in Subsection (2), the theoretical term shall be calculated as the total sum of the lengths of the payment terms that elapse before the outstanding balance has been reduced to zero.
4. In determining the theoretical term, the number of payment terms shall be rounded up to the nearest whole number.

#### **Annex B pertaining to Section 5**

##### **1. Basic module on professional competence**

1.1. Professional competence as referred to in Section 4:9(2) of the Act shall be assessed on the basis of the exit qualifications stated in sections 1.2 to 1.7.

1.2. The persons shall be able:

- a. to explain the terms 'consumer', 'client', 'producer', 'saving', 'dissaving' and 'borrowing' based on a simple economic cycle;
- b. to compile simple financial statements (revenue/expenditure and assets/liabilities) for a consumer household;
- c. to compile simple financial statements (revenue/expenditure and assets/liabilities) for a consumer household in relation to a moment in the future, taking account of the life-course model;
- d. to compile a simple asset plan for a consumer or client based on the consumer's or client's current and future financial position;
- e. to indicate the risks run by the consumer or client in respect of property, capital, income and death, and the measures to be taken in this connection;
- f. to name consumer-oriented or client-oriented information sources;
- g. to explain why prudential supervision and the supervision of financial market conduct are necessary in order to protect consumers or clients and give them confidence in the financial sector;
- h. to indicate which complaints procedures and extrajudicial dispute resolution procedures are available to consumers or clients;
- i. to identify and describe a consumer's or client's legal position; and
- j. to identify and describe a consumer's or client's tax position.

1.3. The persons shall be able, with regard to the provision of:

- a. current and savings accounts, including the related payment and savings facilities:

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- 1°. to describe the provider's role and duties in cash transactions and funds transfers; and
- 2°. to describe the provider's role and duties in attracting savings;
- b. credit:
  - 1°. to describe the provider's role and duties in granting consumer credit and mortgage loans;
  - 2°. to describe the credit provider's advisory and brokerage duties; and
  - 3°. to indicate where the credit provider operates at its own expense and risk, and to identify the risks it runs in that connection;
- c. insurance:
  - 1°. to identify the risks that the client may run;
  - 2°. to describe the provider's role and duties with regard to hedging the financial consequences of risks that the client may run;
  - 3°. to explain the principle of insurance;
  - 4°. to explain how the insurance agreement is established;
  - 5°. to describe the main features of insurance law;
  - 6°. to explain the structure of the insurance sector; and
  - 7°. to explain when the insurance agreement will be terminated; and
- d. securities, the units in collective investment schemes and investment objects:
  - 1°. to describe the role of collective investment schemes;
  - 2°. to name the features of investment companies and unit trusts;
  - 3°. to name and explain five investment categories;
  - 4°. to give reasons as to why investing in a collective investment scheme may be more suitable for the consumer than investing in separate funds; and
  - 5°. to name the features of investing by funds transfer (investment account) and to indicate the difference between this form of investment and investing via/in an investment company and a unit trust.

1.4. Where brokerage services in financial products are concerned, the persons shall be able:

- a. to explain the difference between direct sales by the provider and sales via an independent distribution channel;
- b. to describe the activities that the broker may carry out for the consumer or client;
- c. to name the areas in which brokers are active with regard to products of a bank, insurer, pension fund and institutional investors;
- d. to describe the various kinds of broker; and
- e. to describe the activities of other brokers.

1.5. The persons shall be able to describe the links between issuing institutions and final investors in the context of the performance of securities services.

1.6. The persons shall be able, with regard to the performance of financial services in respect of:

- a. current accounts, including the related payment facilities:
  - 1°. to describe how a current account is opened and what aspects require special attention;
  - 2°. to indicate how money is converted into another form and what aspects require special attention;
  - 3°. to describe products for over-the-counter payments and funds transfers;
  - 4°. to explain on which points a distance sale differs from a sale in the immediate presence of the financial enterprise; and
  - 5°. to explain what a money transfer is and why the Ministry of Justice closely monitors this product;
- b. credit:
  - 1°. to explain what consumer credit is, in which situations the product is suitable and what factors play a part in granting the credit;
  - 2°. to explain what a mortgage loan is, in which situations the product is suitable and what factors play a part in granting the loan; and
  - 3°. to describe the principal types of mortgage and interest terms;
- c. savings accounts, including related savings facilities, financial instruments and investment objects:
  - 1°. to describe savings products where the balance can be withdrawn on demand;
  - 2°. to describe savings products where a term is agreed; and
  - 3°. to describe the most common investment objects; and

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d. insurance:

- 1°. to describe the products with which risks can be insured in relation to property;
- 2°. to describe the products with which risks can be insured in relation to traffic, liability and legal assistance, income and occupational disability; and
- 3°. to describe the products with which risks can be insured in relation to life, death, health and healthcare.

1.7. The persons shall be able, with regard to:

- a. the regulation of the financial sector in general terms:
  - 1°. to name the conditions for a legally valid financial agreement;
  - 2°. to explain why the government regulates duties of care by law, what types of rules are used in this connection and to whom these rules apply;
  - 3°. to outline the content of the various types of rules;
  - 4°. to describe the territory and duties of the financial supervisory authorities; and
  - 5°. to describe the collective guarantee scheme;
- b. the part of the Act that relates to the Supervision of the Conduct of Financial Enterprises:
  - 1°. to set out the purpose of and the method;
  - 2°. to explain the terminology;
  - 3°. to indicate the scope;
  - 4°. to explain why the part relating to the Supervision of the Conduct of Financial Enterprises provides consistent rules for all distribution channels and branches;
  - 5°. to name the quality features of the distribution channel;
  - 6°. to indicate where and why the part relating to the Supervision of the Conduct of Financial Enterprises leaves scope for self-regulation;
  - 7°. to explain why a licensing system is required and how this system works; and
  - 8°. to explain where the part relating to the Supervision of the Conduct of Financial Enterprises fits in with international developments; and
- c. the supervision of market conduct aspects:
  - 1°. to name the requirements which financial enterprises must fulfil; and
  - 2°. to describe how and on which points the Netherlands Authority for the Financial Markets supervises financial enterprises.

## **2. Mortgage loans**

2.1. With regard to mortgage loans, professional competence as referred to in Section 4:9(2) of the Act shall be assessed on the basis of the exit qualifications stated in sections 2.2 to 2.4.

2.2. Where mortgage loans are concerned, the persons shall be able:

- a. to establish the consumer's credit need in terms of wishes and possibilities, partly on the basis of the consumer's future situation, in order to issue correct and justified advice;
- b. to collect and describe the necessary information, so as to ensure that all the relevant aspects are considered in the advice;
- c. to clarify (in general terms) the structure and operation of the housing and mortgage market, including the choice between buying and renting; and
- d. to take account of the roles and functions of the other parties that may be involved in the process of buying the property (estate agent, civil-law notary), so as to provide the consumer with clarity in this respect.

2.3. Where brokerage and advisory services in respect of mortgage loans are concerned, the persons shall be able:

- a. to inform the consumer about the legal framework of the purchase and acquisition of ownership of immovable property, and to apply the regulations in this respect correctly;
- b. to apply the statutory regulations concerning the most relevant commercial security rights and rights of enjoyment and to inform and advise the consumer accordingly;
- c. to apply the statutory regulations concerning financial services and the conditions arising from self-regulation, so as to ensure that these requirements are fulfilled;
- d. to apply the standards and conditions of the National Mortgage Guarantee Scheme (*Nationale Hypotheek Garantie*) correctly in a specific situation, so as to enable the consumer to take

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- advantage of this opportunity;
- e. to decide on the basis of the available information which repayment construction is best suited to the given situation, so as to enable the consumer to make a targeted choice;
- f. to chart the investment risk entailed by the capital accumulation for repayment purposes, so as to ensure a correct match with the client profile;
- g. to translate the mortality risk into correct advice about the life insurance policy or policies linked to the loan;
- h. to chart the aspect of capital sum insurance involved in the capital accumulation for repayment purposes and the client profile, and to include this aspect in correct advice about the loan;
- i. to explain the significance of the relevant non-life insurance policies (buildings, home contents) to the consumer and, where necessary, to include these in the mortgage advice;
- j. to explain the significance of the occupational disability risk in the context of the mortgage financing, and to translate the risk into correct advice about the occupational disability insurance linked to the loan;
- k. to explain the significance of the relevant capital sum insurance policies to the consumer and, where necessary, to include these in the mortgage advice;
- l. to explain special mortgage constructions (bridging, trust, bank guarantee) to the consumer and to apply these constructions as necessary;
- m. to determine what (additional) security is required in order to clarify the consequences of this to the consumer;
- n. to calculate the tax consequences of the purchase of the (owner-occupied) property or other expenditure object, and of its mortgage financing, in order to determine the gross and net (housing) costs;
- o. to represent the development of the gross and net costs over time, so as to make them clear to the consumer;
- p. to inform the consumer in general terms about the consequences of the proposed financing for gift tax and inheritance tax purposes;
- q. to explain the interest rate, so as to enable the consumer to draw comparisons with other types of mortgage;
- r. to assess an application in advance in order to estimate its chances of being accepted;
- s. to fill in an application form for a mortgage quote with the consumer, or to check an application form that has already been filled in;
- t. to explain the application process to the consumer;
- u. to interpret the mortgage quote issued by the provider and to inform the consumer accordingly, so as to enable the consumer to make a well-considered decision as regards accepting the quote; and
- v. to interpret the mortgage deed and other relevant documents and to answer questions from the consumer about these documents.

2.4. Where the administration and amendment of the mortgage loan agreement are concerned, the persons shall be able:

- a. in a situation of additional repayment, to calculate the lending fee owed on the basis of the available information;
- b. to estimate whether an adjustment of the loan is desirable, based on signals or periodic reviews;
- c. to identify the principal credit management terms, so as to be able to inform the consumer in this respect where applicable; and
- d. to identify the possible consequences of non-payment and to inform the consumer about these consequences.

2.5. Where financial instruments are concerned, the persons shall be able:

- a. to explain to the consumer why sound investment advice requires the compilation of a risk profile;
- b. to collect the information necessary for the risk profile about the consumer's financial position, experience and objectives;
- c. to chart the consumer's risk tolerance;
- d. based on the information collected, to determine the most appropriate risk profile for the consumer at this moment, and to substantiate why they arrived at this profile; and
- e. to determine which type of service matches the consumer's profile and wishes, and, where applicable, to refer the consumer to a different type of adviser.

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2.6. Where the establishment of transactions in financial instruments is concerned, the persons shall be able:

- a. to reach agreement with the consumer about the risk profile, including its signature by the consumer;
- b. to explain to the consumer what is meant by the risk and return information given with the strategic asset allocations and its implications for the consumer;
- c. to explain the assumptions underlying the strategic asset allocations and to comment on the risk and return information given;
- d. to determine, in consultation with the consumer, which of the strategic asset allocations applied by the various providers matches the selected risk profile;
- e. to explain why the choice made is a snapshot in time, and why it is important to reconsider this choice at regular intervals;
- f. to explain in what manner portfolio diversification can be achieved;
- g. to describe the advantages and disadvantages of investing in collective investment schemes;
- h. to explain what is involved in the types of investment policy that are most frequently pursued by collective investment schemes, as well as the features and risks of these types of investment policy;
- i. to explain the objects or financial instruments in which collective investment schemes invest, as well as the features and risks of these products;
- j. to explain to the consumer the information about the influence of the economic environment on the investment portfolio, as supplied by the collective investment schemes with these products;
- k. to issue specific advice as to which model portfolio (whether or not in combination with other products) is most compatible with the consumer's risk profile and wishes;
- l. to explain the features and risks of financial products, including but not restricted to the risk that the consumer has to make an additional payment or is left with a residual debt during or at the end of the term;
- m. to compare financial products with each other and to decide whether these products are suitable for a specific consumer.

2.7. Where the administration and amendment of the agreement regarding financial instruments are concerned, the persons shall be able:

- a. to record all the required details correctly in the client file, in such a way as to comply at least with the rules of the external supervisory authority;
- b. to decide whether the portfolio needs adjusting, given the risk profile established earlier;
- c. (at moments of amendment) to identify changes in the risk profile or the environment that make an adjustment of the strategic asset allocation desirable; and
- d. to translate these necessary amendments into specific advice about an adjustment of the strategic asset allocation.

### **3. Consumer credit**

3.1. With regard to consumer credit, professional competence as referred to in Section 4:9(2) of the Act shall be assessed on the basis of the exit qualifications stated in sections 3.2 to 3.4.

3.2. Where consumer credit is concerned, the persons shall be able:

- a. to establish the consumer's credit need in terms of wishes and possibilities, partly on the basis of the consumer's future situation, in order to issue correct and justified advice;
- b. to decide whether alternative solutions are possible to realise the financing objective; and
- c. to collect the necessary information, so as to ensure that all relevant aspects are considered in the advice.

3.3. Where brokerage and advisory services in respect of consumer credit are concerned, the persons shall be able:

- a. to apply the statutory regulations concerning the financial service and the conditions arising from self-regulation;
- b. to decide on the basis of the available information which type of credit is best suited to the given situation;

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- c. to determine what (additional) security is required and to clarify the consequences of this to the consumer;
- d. to apply the rules concerning power of disposal;
- e. to specify the variable term and the instalment amount, so as to clarify the (monthly) charges for the requested credit sum to the consumer;
- f. to estimate the tax consequences of the credit offer in order to calculate the gross and net costs in the correct manner, including if the credit relates to owner-occupied property;
- g. to inform the consumer about the relevant technical aspects of the credit;
- h. to explain the interest rate and any other costs, so as to enable the consumer to draw comparisons with other credit products;
- i. to assess an application in advance in order to estimate its chances of being accepted;
- j. to fill in an application form for consumer credit with the consumer, or to check an application form that has already been filled in;
- k. to explain the application process to the consumer;
- l. to communicate the result of the credit application to the consumer, and in so doing to provide insight into the considerations that played a part in the assessment;
- m. to interpret the credit agreement and other relevant documents and to answer questions from the consumer about these documents; and
- n. to explain the significance of the occupational disability risk in the context of the credit agreement, and to translate the risk into correct advice about the occupational disability insurance linked to the credit.

3.4. Where the administration and amendment of the consumer credit agreement are concerned, the persons shall be able:

- a. to estimate whether an amendment of the credit is desirable, based on signals or periodic reviews, so as to ensure that the credit provided is also appropriate in the long term;
- b. to define the principal credit management terms, so as to be able to inform the consumer in this respect where applicable;
- c. in a situation of additional repayment, to calculate the interest refund and the administrative costs for the consumer on the basis of the available information;
- d. to explain to the consumer how and when default interest will be charged; and
- e. to inform the consumer about the possible consequences of non-payment.

#### **4. Non-life insurance**

4.1. With regard to non-life insurance, professional competence as referred to in Section 4:9(2) of the Act shall be assessed on the basis of the exit qualifications stated in sections 4.2 to 4.5.

4.2. The persons shall be able, in respect of non-life insurance concerning property, traffic, transport, liability and legal assistance, income and occupational disability, and health and healthcare, hereinafter referred to as "non-life insurance":

- a. to identify and interpret the need and risks for the purpose of advising the client;
- b. to identify and interpret the preventative measures for the purpose of advising the client;
- c. to clarify the possible preventative measures for the purpose of advising the client;
- d. to select the most suitable policy conditions for the purpose of advising the client; and
- e. to compare the selected policy conditions for the purpose of advising the client.

4.3. Where brokerage and advisory services in respect of non-life insurance are concerned, the persons shall be able:

- a. to clarify the possible risks and types of insurance;
- b. to calculate the premium based on the available information;
- c. to fill in an application form correctly with the client;
- d. to check the correctness of an application form that has already been filled in; and
- e. to submit an application in the correct manner.

4.4. Where the administration and amendment of the non-life insurance agreement are concerned, the persons shall be able:

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- a. to inform the client in time about the decision regarding acceptance and to record this decision and any other information;
- b. to check the correctness of the policy documents and other information, to send these to the client and to record this information;
- c. to amend the advice in accordance with a change in the client's personal situation;
- d. to submit the desired amendments to an existing non-life insurance policy to the insurer and, after acceptance and receipt, to check the correctness of the amendments implemented and to record these amendments.

4.5. In the event of a claim against a non-life insurance policy, the persons shall be able:

- a. to advise the client and look after the client's interests in contacts with the insurer;
- b. to inform the client about the possible entitlement to compensation and to process the necessary information;
- c. where applicable, to call in an independent expert;
- d. to clarify any covered and non-covered claims to the client;
- e. to fill in a notification form correctly with the client;
- f. to check the correctness of a notification form that has already been filled in; and
- g. to submit the notification form and other information to the insurer in the correct manner.

## **5. Life insurance**

5.1. With regard to life insurance, professional competence as referred to in Section 4:9(2) of the Act shall be assessed on the basis of the exit qualifications stated in sections 5.2 to 5.8.

5.2. The persons shall be able:

- a. to identify and interpret the need, risks and (future) claims in relation to life insurance;
- b. to identify the client's (future) financial position;
- c. to identify alternative solutions by which the need for security can be met; and
- d. to select and compare the most suitable policy conditions.

5.3. Where brokerage and advisory services in respect of life insurance are concerned, the persons shall be able:

- a. to recommend a (supplementary) life insurance policy, so as to ensure a targeted choice and application;
- b. to clarify the possible types and statutory (tax) consequences for the purpose of advising the client;
- c. to clarify the possible conditions and risks of these types of insurance;
- d. to clarify the options in relation to (supplementary) life insurance in the event that the consumer is in poor health;
- e. to calculate the premium or single premium for (supplementary) insurance and to clarify this with the aid of the available information;
- f. to fill in an application form and the relevant other documentation for (supplementary) insurance correctly with the client;
- g. to check the correctness of an application form and relevant other documentation that has already been completed;
- h. to submit an application including relevant other documentation in the correct manner;
- i. to inform the client about the possibility that an application for (supplementary) insurance may not be accepted (without restrictions); and
- j. to explain the significance of the occupational disability risk and to translate the risk into correct advice about the occupational disability insurance linked to the life insurance.

5.4. Where the administration and amendment of the life insurance agreement are concerned, the persons shall be able:

- a. to inform the client in time about the decision regarding acceptance of the (supplementary) life insurance policy and to record this decision and any other information;
- b. to check the correctness of the policy documents and other information, to send these to the client and to record this information;

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- c. to amend the advice regarding an existing (supplementary) insurance policy in accordance with a change in the client's personal situation, and to adjust the insurance policy accordingly;
- d. to inform the client about amendments, amendment options and their consequences for an existing insurance policy; and
- e. to submit the desired amendments to an existing (supplementary) insurance policy to the insurer and, after acceptance and receipt, to check the correctness of the amendments implemented and to record these amendments.

5.5. In the event of a claim against an existing (supplementary) life insurance policy, the persons shall be able:

- a. to advise the client and look after the client's interests in contacts with the insurer;
- b. to inform the client about the possible entitlement to compensation and to process the necessary information;
- c. where applicable, to call in an independent expert;
- d. to clarify the consequences of non-payment of premiums and, where applicable, non-permitted claims to the client;
- e. to fill in a notification form correctly with the client;
- f. to check the correctness of a notification form that has already been filled in; and
- g. to submit the notification form and other information in the correct manner.

5.6. Where financial instruments are concerned, the persons shall be able:

- a. to explain to the consumer why sound investment advice requires the compilation of a risk profile;
- b. to collect the information necessary for the risk profile about the consumer's financial position, experience and objectives;
- c. to chart the consumer's risk tolerance;
- d. based on the information collected, to determine the most appropriate risk profile for the consumer at this moment, and to substantiate why they arrived at this profile; and
- e. to determine which type of service matches the consumer's profile and wishes, and, where applicable, to refer the consumer to a different type of adviser.

5.7. Where the establishment of transactions in financial instruments is concerned, the persons shall be able:

- a. to reach agreement with the consumer about the risk profile, including its signature by the consumer;
- b. to explain to the consumer what is meant by the risk and return information given with the strategic asset allocations and its implications for the consumer;
- c. to explain the assumptions underlying the strategic asset allocations and to comment on the risk and return information given;
- d. to determine, in consultation with the consumer, which of the strategic asset allocations applied by the various providers matches the selected risk profile;
- e. to explain why the choice made is a snapshot in time, and why it is important to reconsider this choice at regular intervals;
- f. to explain in what manner portfolio diversification can be achieved;
- g. to describe the advantages and disadvantages of investing in collective investment schemes;
- h. to explain what is involved in the types of investment policy that are most frequently pursued by collective investment schemes, as well as the features and risks of these types of investment policy;
- i. to explain the objects or financial instruments in which collective investment schemes invest, as well as the features and risks of these products;
- j. to explain to the consumer the information about the influence of the economic environment on the investment portfolio, as supplied by the collective investment schemes with these products;
- k. to issue specific advice as to which model portfolio (whether or not in combination with other products) is most compatible with the consumer's risk profile and wishes;
- l. to explain the features and risks of financial products, including but not restricted to the risk that the consumer has to make an additional payment or is left with a residual debt during or at the end of the term;
- m. to compare financial products with each other and to decide whether these products are suitable for a specific consumer.

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5.8. Where the administration and amendment of the agreement regarding financial instruments are concerned, the persons shall be able:

- a. to record all the required details correctly in the client file, in such a way as to comply at least with the rules of the external supervisory authority;
- b. to decide whether the portfolio needs adjusting, given the risk profile established earlier;
- c. (at moments of amendment) to identify changes in the risk profile or the environment that make an adjustment of the strategic asset allocation desirable; and
- d. to translate these amendments that are necessary into specific advice about an adjustment of the strategic asset allocation.

## 6. Authorisation

6.1.1. In the case of persons working for an authorised non-life insurance agent, professional competence as referred to in Section 4:9(2) of the Act shall be assessed on the basis of the exit qualifications listed in Sections 6.2 to 6.5 and 6.7 to 6.9.

6.1.2. In the case of persons working for an authorised life insurance agent, professional competence as referred to in Section 4:9(2) of the Act shall be assessed on the basis of the exit qualifications listed in Sections 6.2, 6.6 and 6.7 to 6.9.

6.2. The persons shall have:

- a. a thorough knowledge of general insurance law and of its application;
- b. a thorough knowledge of general underwriting and general policy provisions, and of their application;
- c. knowledge of the social security system;
- d. knowledge of general civil law and of the course of civil and criminal proceedings;
- e. knowledge of the law of obligations;
- f. a working knowledge of tax legislation;
- g. a working knowledge of reinsurance and reservation;
- h. a working knowledge of preventative measures;
- i. a thorough knowledge of the business organisations, the interest groups and the cooperative structures;
- j. knowledge of statutory supervision and, where applicable, self-regulation;
- k. knowledge of the broker's legal status; and
- l. knowledge of rules of conduct for insurers and brokers.

6.3. Where fire insurance is concerned, the persons shall have:

- a. a working knowledge of the fire insurance market;
- b. a thorough knowledge of the various types of fire insurance and of their application;
- c. a thorough knowledge of comprehensive perils insurance and of its application;
- d. knowledge of risk factors and preventative measures;
- e. knowledge of the principal tariff agreements and calculation models; and
- f. knowledge of the manner in which claims are settled.

6.4. Where transport insurance is concerned, the persons shall have:

- a. knowledge of delivery and transport conditions;
- b. a working knowledge of transport law;
- c. a thorough knowledge of the various types of goods-in-transit insurance and of their application;
- d. a thorough knowledge of the insurance of mechanical equipment;
- e. a working knowledge of transport insurance on conditions other than those applicable in the Netherlands;
- f. a thorough knowledge of pleasure craft insurance; and
- g. knowledge of the manner in which claims are settled.

6.5. Where miscellaneous risks insurance is concerned, the persons shall have:

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- a. knowledge of the social security system insofar as it is relevant to private medical miscellaneous risks insurance;
- b. a thorough knowledge of medical insurance, accident insurance and occupational disability insurance and of their application;
- c. a thorough knowledge of liability law and statutory obligations under liability insurance policies;
- d. a thorough knowledge of third-party insurance and companies' liability insurance and of their application;
- e. knowledge of other types of general liability insurance;
- f. a thorough knowledge of motor insurance and of its application;
- g. knowledge of other types of miscellaneous risks insurance; and
- h. knowledge of the manner in which claims are settled.

6.6. Where life insurance is concerned, the persons shall have:

- a. knowledge of the social security system insofar as it is relevant to life insurance;
- b. knowledge of the principles and terms applied in relation to life insurance;
- c. a thorough knowledge of the principal types of life insurance and of their application;
- d. a thorough knowledge of the rights entailed by a life insurance agreement;
- e. knowledge of tax legislation insofar as it is relevant to life insurance;
- f. knowledge of the laws and regulations in respect of pensions;
- g. knowledge of matrimonial property law, inheritance law and insolvency law insofar as it is relevant to life insurance; and
- h. knowledge of investment.

6.7. The persons shall have:

- a. a thorough knowledge of the structure of the insurance industry and the industrial column;
- b. a thorough knowledge of the various organisations and forms of cooperation as regards provincial companies and listed companies;
- c. a working knowledge of the internal organisation of the insurance business;
- d. a working knowledge of the financial management and the structure and meaning of the annual accounts; and
- e. knowledge of the various legal forms and the principal legal and tax consequences attached to them.

6.8. Where underwriting is concerned, the persons shall have:

- a. a thorough knowledge of the general aspects of risk assessment and underwriting methods in respect of non-life and life insurance;
- b. a thorough knowledge of editing of policy conditions and clauses and the ability to apply them;
- c. a thorough knowledge of the general aspects of claims settlement and of the settlement of payments under a life insurance policy, and the ability to apply them;
- d. knowledge of the various types of reserves and of the manner in which these shall be calculated;
- e. a thorough knowledge of the various types of reinsurance; and
- f. a thorough knowledge of the rules of conduct applicable to insurers and the ability to apply them.

6.9. The persons shall have:

- a. knowledge of the Act in general and a thorough knowledge of those provisions that concern the authorised agent;
- b. knowledge of the legal position of the authorised agent and the representative under the Dutch Civil Code;
- c. knowledge of the legislation on the supervision of the insurance industry; and
- d. a working knowledge of other national and European legislation insofar as it affects the insurance or insurance sales.

## **Annex C pertaining to Section 13**

### **1. Criminal antecedents as referred to in Section 13(a)**

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### **1.1. Convictions**

The person concerned has been convicted by a final judgment in the Netherlands or abroad with regard to an attempt to commit, preparation of, commissioning of, incitement to, co-perpetration of, complicity in or perpetration of:

- conducting or effecting transactions in certain securities in or from the Netherlands while in possession of inside information (Sections 5:53 and 5:56 of the Act);
- passing on inside information as referred to in Sections 5:53 and 5:56 of the Act, or expressly recommending that certain transactions be carried out without passing on the inside information (Section 5:57 of the Act);
- participation in a criminal and/or terrorist organisation (Sections 140 to 140a of the Criminal Code (*Wetboek van Strafrecht*));
- forgery of documents (Section 225 of the Criminal Code);
- deliberately providing untrue information (Section 227a of the Criminal Code);
- deliberately breaching the obligation to provide information (Section 227b of the Criminal Code);
- aggravated theft (Sections 311 and 312 of the Criminal Code);
- embezzlement (Sections 321 to 323 of the Criminal Code);
- prejudice to creditors or entitled parties (Sections 340 to 348 of the Criminal Code);
- deliberately handling stolen goods (Section 416 of the Criminal Code);
- money laundering (Sections 420bis to 420ter of the Criminal Code);
- infringement of a provision from financial supervision legislation which is a crime under Section 2 in conjunction with Section 6 of the Economic Offences Act (*Wet op de economische delicten*) and for which the person concerned was given a non-suspended prison sentence or a fine of at least the fourth category; or
- infringement of one or more penal provisions applicable abroad that are comparable with the foregoing.

## **2. Other criminal antecedents as referred to in Section 13(a)**

### **2.1. Convictions**

The person concerned has been convicted by a judgement in the Netherlands or abroad with regard to an attempt to commit, preparation of, commissioning of, incitement to, failed incitement to, co-perpetration of, complicity in or perpetration of:

*Criminal Code:*

- breach of public order and discrimination (Sections 131 to 151a);
- crimes endangering general safety (Sections 157 to 175);
- crimes against the public authorities (Sections 177 to 207a);
- currency offences (Sections 208 to 215);
- forgery offences other than currency offences (Sections 216 to 235);
- deliberately providing untruthful information (Section 227a);
- deliberately breaching the obligation to provide information (Section 227b);
- serious offences against public decency (Sections 242, 246, 243 to 245, 247 to 250, 250ter);
- threat of violence or crime (Section 285);
- violent crimes against life (Sections 287 to 294);
- assault (Sections 300 to 306);
- involuntary manslaughter and physical injury (Sections 307 to 309);
- simple theft (Section 310);
- aggravated theft (Section 311);
- robbery (Section 312);
- extortion (Section 317);
- embezzlement (Sections 321 to 323);
- fraud (Sections 326 to 337);
- prejudice to creditors or entitled parties (Sections 340 to 348);
- vandalism (Sections 350 to 354);
- serious offences committed by a public servant while in office (Sections 355 to 380);
- handling stolen goods and knowingly handling stolen goods (Sections 416 to 417bis);
- money laundering (Sections 420bis to 420quinquies);

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- giving a false name, academic title, etc. (Section 435);
- unauthorised conducting of an estate agency business (Section 436a);
- creating the impression of acting with official support or recognition (Section 435b);
- acting without authorisation during moratorium (Section 442);
- providing untruthful information (Section 447c); or
- breaching the obligation to provide information (Section 447d).

*State Taxes Act (Algemene wet inzake de rijksbelastingen, AWR):*

- infringement of tax legislation (Sections 68 and 69).

*Opium Act (Opiumwet):*

- the deliberate smuggling, preparation, sale, delivery, possession etc. of hard drugs (Section 2(1));
- the deliberate smuggling, preparation, sale, delivery, possession and production of soft drugs (Section 3(1)); or
- preparatory operations as regards the preparation, sale, delivery etc. and smuggling of hard drugs (Section 10a(1)).

*Economic Offences Act (Wet op de economische delicten, WED):*

Actions penalised by the WED, in particular prohibitory provisions from financial supervision legislation, Section 9 of the Disclosure of Unusual Transactions (Financial Services) Act (*Wet melding ongebruikelijke transacties*) and Sections 2(1), (2) and (6), 5, 6, 7 and 8 of the Identification (Provision of Services) Act 1993 (*Wet identificatie bij dienstverlening 1993*).

*Weapons and Ammunition Act (Wet wapens en munitie):*

- unrecognised production of weapons or ammunition, etc. (Section 9(1)), production, possession, etc. of certain weapons (Section 13(1));
- importing or exporting certain weapons or ammunition without consent, etc. (Section 14(1));
- transporting certain weapons or ammunition without a licence or permission (Section 22(1));
- prohibited possession of certain weapons or ammunition (Section 26(1)); or
- prohibited transfer of certain weapons or ammunition (Section 31(1)).

*Road Traffic Act 1994 (Wegenverkeerswet 1994):*

- involuntary manslaughter or injury (Section 6);
- failure to stop after an accident (Section 7);
- drunk driving (Section 8);
- driving a motor vehicle while disqualified from driving (Section 9);
- joyriding (Section 11); or
- refusal to cooperate in an investigation (Section 163).

*Penal provisions in other countries*

Convictions shall also include convictions in other countries for infringing one or more penal provisions applicable abroad that are comparable with those set out above.

## **2.2. Settlements with the Public Prosecutor**

The person concerned has made a compromise as referred to in Section 74 of the Criminal Code in respect of one or more of the criminal offences referred to in section 2.1 above. Compromises shall also include compromises with the competent authorities of other countries in respect of infringement of one or more penal provisions applicable in the country concerned that are comparable with those set out above.

## **2.3. (Conditional) dismissal, acquittal or discharge from prosecution**

The person concerned is not or no longer prosecuted, or is not or no longer prosecuted subject to

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conditions, or has been acquitted or discharged from prosecution, with regard to one or more of the criminal offences referred to in section 2.1 above.

Conditional or unconditional dismissal, foregoing of further prosecution, acquittal or dismissal from prosecution shall also include similar judgments and measures in other countries in respect of infringement of one or more of the penal provisions applicable in the country concerned that are comparable with those set out above.

#### **2.4. Other facts or circumstances**

Other facts or circumstances that may reasonably be relevant to the Netherlands Authority for the Financial Markets in assessing the properness of the person concerned, as evidenced by the official records or reports drawn up by officers competent to investigate criminal offences which show that the person concerned is or was involved in one or more of the criminal offences set out in section 2.1. Official records or reports shall also include similar documents with equal evidential value, drawn up by officers in other countries competent to investigate criminal offences in respect of penal provisions applicable in the country concerned that are comparable with those set out in section 2.1.

### **3. Financial antecedents as referred to in Section 13(b)**

#### **3.1. Personal**

- the person concerned experienced major personal financial problems, which resulted in legal proceedings, collection measures or the involvement of a debt-collection agency;
- a petition was filed in respect of the person concerned for a moratorium, bankruptcy, debt restructuring or a creditors' agreement, or such a petition was granted;
- the person concerned is currently involved, either in the Netherlands or elsewhere, in legal proceedings resulting from personal financial problems, or expects to be involved in such proceedings; or
- the personal financial obligations of the person concerned, measured by general standards, are disproportionate to this person's income or assets.

#### **3.2. Professional**

- the current or one of the former employers of the person concerned, or any company or legal person in which the person concerned holds or held a position as a person determining or co-determining the policy, exercises or exercised actual control over the policy, or is or was (jointly) responsible for the policy in other ways, experienced major financial problems which resulted in legal proceedings in the Netherlands or elsewhere;
- a petition for a moratorium or liquidation was filed or granted with regard to the current or one of the former employers, or with regard to any company or legal person in which the person concerned holds or held a position as a person determining or co-determining the policy, exercises or exercised actual control over the policy, or is or was (jointly) responsible for the policy in other ways; or
- the person involved was ordered to discharge outstanding debts resulting from liability for the liquidation of a company or legal person pursuant to the applicable provisions of Book 2 of the Dutch Civil Code (Sections 50a, 138, 149, 248, 259 and 300a).

#### **3.3. Other facts or circumstances**

Other facts or circumstances that suggest that the person concerned may be involved in one or more financial actions, insofar as these may reasonably be relevant to the Netherlands Authority for the Financial Markets in assessing this person's properness.

### **4. Supervision antecedents as referred to in Section 13(c)**

#### **4.1. Supervision antecedents**

- incorrect or incomplete information has been provided to a supervisor or supervisory authority;
- the person concerned, or a company or legal person in which the person concerned holds or held a position as a person determining or co-determining the policy, exercises or exercised actual control over the management, or is or was (jointly) responsible for the policy in other ways, has

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- been denied an admission, licence or dispensation by a supervisor or supervisory authority;
- an admission, licence or dispensation granted to the person concerned, or to a company or legal person in which the person concerned holds or held a position as a person determining or co-determining the policy, exercises or exercised actual control over the management, or is or was (jointly) responsible for the policy in other ways, has been withdrawn by a supervisor or supervisory authority;
- the person concerned, or his current or one of his former employers, or a company or legal person in which the person concerned holds or held a position as a person determining or co-determining the policy, exercises or exercised actual control over the management, or is or was (jointly) responsible for the policy in other ways, has come into conflict with a supervisor or supervisory authority, and this conflict resulted in any measure in respect of the person concerned or in respect of the company or legal person in which the person concerned holds or held a position as a person determining or co-determining the policy, exercises or exercised actual control over the policy, or is or was (jointly) responsible for the policy in other ways;
- the person concerned, or a company or legal person in which the person concerned holds or held a position as a person determining or co-determining the policy, exercises or exercised actual control over the management, or is or was (jointly) responsible for the policy in other ways, has been denied a certificate by the Minister of Justice with regard to the incorporation or amendment of the articles of association of a company on grounds referred to in Sections 68(2), 179(2), 125(2) and 235(2) respectively of Book 2 of the Dutch Civil Code.

#### **4.2. Other facts or circumstances**

Other facts or circumstances that suggest that the person concerned was involved in one or more actions in respect of which rules have been laid down in Dutch or foreign financial supervision legislation, which action or actions may reasonably be relevant to the Netherlands Authority for the Financial Markets in assessing this person's properness.

### **5. Fiscal antecedents under administrative law as referred to in Section 13(d)**

#### **5.1. Personal**

The person concerned has received a punitive fine pursuant to the State Taxes Act in respect of one or more of the criminal offences listed below:

- deliberately filing an incorrect or incomplete tax return (Section 67d);
- owing to an intentional act or gross negligence on the part of the taxpayer, a tax assessment was imposed for an inadequate amount, or an inadequate amount of tax was levied in other ways (Section 67e); or
- owing to an intentional act or gross negligence on the part of the taxpayer or the withholding agent, the tax was not paid, was not paid in full or was not paid within the specified period (Section 67f).

#### **5.2. Professional**

The current or one of the former employers, or any company or legal person in which the person concerned holds or held a position as a person determining or co-determining the policy, exercises or exercised actual control over the management, or is or was (jointly) responsible for the policy in other ways, has received a punitive fine pursuant to the State Taxes Act in respect of one or more of the criminal offences listed below:

- deliberately filing an incorrect or incomplete tax return (Section 67d);
- owing to an intentional act or gross negligence on the part of the taxpayer, a tax assessment was imposed for an inadequate amount, or an inadequate amount of tax was levied in other ways (Section 67e); or
- owing to an intentional act or gross negligence on the part of the taxpayer or the withholding agent, the tax was not paid, was not paid in full or was not paid within the specified period (Section 67f of the State Taxes Act).

#### **5.3. Other facts or circumstances**

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Other facts or circumstances that suggest that the person concerned may be involved in one or more tax-related actions that may reasonably be relevant to the Netherlands Authority for the Financial Markets in assessing this person's properness.

## **6. Other antecedents as referred to in Section 13(e)**

- the registration of the person concerned with the Dutch Securities Institute has been terminated by the latter institution;
- the person concerned is or has been subject to proceedings aimed at taking disciplinary or comparable measures by or on behalf of an organisation of his professional colleagues within or outside the Netherlands, which proceedings resulted in measures against the person concerned; or
- the person concerned is or has been involved in any conflict with his current or a former employer with regard to the correct performance of his duties or compliance with standards of conduct relating to those duties, and this conflict resulted in the imposition of a sanction under employment law against the person concerned (for instance in the form of a warning, reprimand, suspension or dismissal).

## **Annex D pertaining to Section 117**

### **1. Data concerning the management company's operations**

The management company's operations are to be divided into:

- a. the management company's activities; and
- b. the types of collective investment schemes which the management company manages or intends to manage.

### **2. Data concerning the persons who determine or co-determine the (day-to-day) policy of the management company and each custodian, or belong to a supervisory body of the management company and each custodian**

2.1. The names of:

- a. the persons determining the day-to-day policy of the management company and each custodian;
- b. the persons determining or co-determining the policy of the management company and each custodian; and
- c. the persons belonging to a body responsible for supervising the policy and the general affairs of the management company and each custodian.

2.2. A list of the principal activities performed by the persons referred to in section 2.1 outside the management company, the collective investment schemes under its management and each custodian, insofar as these activities are related to the operations of the management company, the collective investment schemes under its management and each custodian.

### **3. General data concerning the management company and the custodians**

3.1. The management company's name and legal form, the management company's registered office and the location of its principal place of business if this location is different from that of the registered office, as well as the date of incorporation and the length of time for which the legal person acting as the management company was incorporated if it was not established for an indefinite period.

3.2. The number under which the management company is registered in the Trade Register and the place of registration.

3.3. A description of the formal or actual control structure in which the management company is connected with other persons.

3.4. Where applicable: each custodian's name and legal form, each custodian's registered office and the location of its principal place of business if this location is different from that of the registered office, as well as the date of incorporation and the length of time for which the legal persons acting as custodians were incorporated if they were not established for an indefinite period.

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3.5. Where applicable: the number under which each custodian is registered in the Trade Register and the place of registration.

3.6. Where applicable: a description of the formal or actual control structure in which each custodian is connected with other persons.

3.7. Where applicable: the organisational structure of each custodian that holds the assets of more than one collective investment scheme in custody.

#### **4. Financial data concerning the management company and the custodians**

4.1. An auditor's report stating that the provisions arising from Sections 3:53 and 3:57 of the Act are complied with.

4.2. If available: an auditor's report stating that the annual accounts of the management company and each custodian have been audited. If the report contains reservations or a denial of opinion, the reasons for this shall be stated in the text of the report.

#### **5. Data concerning the supply of information**

5.1. The manner in which the management company regularly provides information.

5.2. The date on which the management company's annual accounts and half-yearly figures must be closed pursuant to its articles of association or Title 9 of Book 2 of the Dutch Civil Code.

5.3. The date on which each custodian's annual accounts must be closed pursuant to its articles of association or Title 9 of Book 2 of the Dutch Civil Code.

5.4. Mention of the fact that the articles of association, the annual accounts and annual reports of the management company and each custodian and the half-yearly figures of the management company are available on the website and that unit holders can obtain these documents free of charge from the management company.

#### **6. Data concerning the replacement of the management company or the custodian**

6.1. The rules and conditions that apply when the management company or the custodian is replaced.

6.2. A statement to the effect that a request for the withdrawal of the licence made to the Netherlands Authority for the Financial Markets pursuant to Section 1:104(1)(a) of the Act will be published in a national Dutch daily newspaper or announced to each unit holder individually, as well as on the management company's website.

### **Annex E pertaining to Section 118(1)**

#### **1. General data concerning the collective investment scheme**

1.1. The legal form of the collective investment scheme.

1.2. The name of the collective investment scheme, the registered office and location of the principal place of business of the collective investment scheme, the date of incorporation, the length of time for which the collective investment scheme was incorporated if it was not established for an indefinite period and, where applicable, the number under which the collective investment scheme is registered in the Trade Register and the place of registration.

1.3. If any activities have been or will be outsourced in the context of the management or custody of the assets of the collective investment scheme, at least the following data:

- a. a description of the operations that have been or will be outsourced; and
- b. the name of the third party or parties.

1.4. The names of consultants and consultancy firms whose services the collective investment scheme procures in respect of its investments. If an undertaking for collective investment in transferable securities is concerned: the activities of the consultants and consultancy firms, insofar as the engagement of their services has been laid down in an agreement, and the manner in which the costs of the activities are charged to the result of the collective investment scheme, offset against the managed assets or charged in other ways, either directly or indirectly, to the unit holders in the collective investment scheme, and this specification may be of relevance to the unit holders.

1.5. Where applicable: the name and the office address of the auditor that audited the annual accounts of

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the collective investment scheme for the last financial year.

1.6. Where applicable: the name of the custodian that holds the assets of the collective investment scheme in custody.

1.7. Where applicable: a description of the main points of the management and custody agreement between the management company and the custodian of the collective investment scheme and a statement to the effect that, upon request, a copy of the agreement can be obtained on payment of a fee not exceeding the cost price.

1.8. A statement to the effect that the custodian, under the law of the state where the collective investment scheme has its registered office, will be liable towards the collective investment scheme and the unit holders for the damage sustained by them insofar as this damage results from the imputable non-fulfilment or inadequate fulfilment of its obligations, even if the custodian entrusted the assets placed in its custody to a third party, either wholly or in part.

1.9. A description of the formal or actual control structure in which the investment company is connected with other persons.

1.10. The names of any other collective investment schemes managed by the management company of the collective investment scheme.

1.11. The manner in which unit holders can lodge complaints about the collective investment scheme with the management company.

## **2. Data concerning the persons who determine or co-determine the (day-to-day) policy of the investment company or belong to a supervisory body of the investment company**

The names of the persons who determine or co-determine the investment company's policy or who belong to a body responsible for supervising the investment company's policy and general affairs, a list of the principal activities performed by these persons outside the investment company insofar as these activities are related to the investment company's operations.

## **3. Data concerning amendments to the terms and conditions**

3.1. The manner in which the terms and conditions applicable between the collective investment scheme and the unit holders may be amended.

3.2. Mention of the fact that a proposal to amend the terms and conditions applicable between the collective investment scheme and the unit holders will be published in an advertisement in a national Dutch daily newspaper or announced to each unit holder individually, as well as on the management company's website, and that the proposed amendment will be explained on the management company's website.

3.3. Mention of the fact that an amendment to the terms and conditions applicable between the collective investment scheme and the unit holders will be published in an advertisement in a national Dutch daily newspaper or announced to each unit holder individually, as well as on the management company's website, and that the amendment will be explained on the management company's website.

3.4. The fact that an amendment to the terms and conditions applicable between the collective investment scheme and the unit holders entailing a reduction of the unit holders' rights or security or the imposition of charges on the unit holders will not be invoked towards the unit holders before three months have elapsed since the publication of the amendment as referred to in section 3.3, and that unit holders may withdraw under the usual terms and conditions during this period.

3.5. Mention of the fact that an amendment to the terms and conditions applicable between the collective investment scheme and the unit holders entailing a change in the investment policy will not be implemented before three months have elapsed since the publication of the amendment as referred to in section 3.3, and that unit holders may withdraw under the usual terms and conditions during this period.

## **4. Data concerning the supply of information**

4.1. The manner in which the collective investment scheme regularly provides information.

4.2. The date on which the annual accounts and the half-yearly figures of the collective investment scheme must be closed pursuant to its terms and conditions or Title 9 of Book 2 of the Dutch Civil Code, mention of the fact that these documents are available on the management company's website and that the unit holders can obtain these documents from the management company free of charge.

4.3. The locations where the licence of the management company of the collective investment scheme and the fund regulations or the articles of the collective investment scheme can be obtained.

4.4. Mention of the fact that anyone can obtain a copy of the fund regulations or the articles upon request, free of charge.

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4.5. Mention of the fact that, upon request, anyone can obtain the data concerning the management company, the collective investment scheme and, where applicable, the custodian which must be included in the Trade Register pursuant to any statutory regulation, on payment of a consideration not exceeding the cost price.

4.6. Mention of the fact that, upon request, the unit holders can obtain the following information on payment of a consideration not exceeding the cost price:

- a. a copy of the management company's licence;
- b. a copy of a decision taken by the Netherlands Authority for the Financial Markets to grant dispensation from the provisions arising from this Act with regard to the management company, the collective investment scheme under its management and any custodian affiliated to this scheme; or
- c. a copy of the statement referred to in Section 50(2).

4.7. Mention of the fact that the distribution of payments to the unit holders in the collective investment scheme, the composition of the payments and the manner in which these payments are distributed will be published by means of an advertisement in a national Dutch daily newspaper or announced to each unit holder individually, as well as on the management company's website.

## **5. Data concerning the activities and the investment policy**

5.1. A description of the investment objectives, including the financial objectives such as capital growth or revenue, the investment portfolio and the investment policy, where possible broken down according to economic sector and geographic spread, the nature of the assets in which investments are made and the risks attached to the investment policy and the nature of the assets in which investments are made.

5.2. The manner in which it is decided whether the returns of a collective investment scheme will be paid out or reinvested.

5.3. Any limits set to the investment activities and the manner in which these limits can be changed.

5.4. Where applicable: the authority to take out loans as a debtor or to lend financial instruments.

5.5. Where applicable: a description of the main points of agreements concluded with the parties affiliated to the management company, investment company or custodian;

5.6. If transactions are conducted with the parties affiliated to the management company, investment company or custodian:

- a. a description of the types of transactions concerned;
- b. a statement as to whether the transactions with the affiliated parties take place on market-based terms and conditions, and if not, the reason for this; and
- c. in the case of transactions not conducted on a regulated market or another market in financial instruments: a statement to the effect that the transaction is based in all cases on an independent valuation, or that a valuation by one or more of the parties involved in the transaction is also possible.

5.7. Where applicable: a statement to the effect that the collective investment scheme may invest in parties affiliated to the management company, investment company or custodian.

5.8. Where applicable: a statement to the effect that the collective investment scheme may invest in other collective investment schemes, either directly or indirectly.

5.9. If the collective investment scheme invests 20 percent or more of the managed assets in another collective investment scheme, either directly or indirectly:

- a. a description of the manner in which information is supplied about the other collective investment scheme; and
- b. where applicable: the arrangements between the collective investment scheme and the other collective investment scheme about cost apportionment and to whom the benefit will accrue.

5.10. Where applicable: a statement to the effect that the collective investment scheme invests in another investment company which is a party affiliated to the management company, investment company or custodian, or in another collective investment scheme which is managed by a party affiliated to the management company, investment company or custodian, and the conditions governing the sale or purchase of and repayment on the units in the other collective investment scheme.

5.11. If the collective investment scheme invests 95 percent or more of the managed assets in another collective investment scheme, either directly or indirectly: a description of the investment policy of the

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other collective investment scheme.

5.12. If the collective investment scheme invests 95 percent or more of the managed assets in another collective investment scheme, either directly or indirectly:

- a. the fact that the management company of the other collective investment scheme holds a licence as referred to in Section 2:65 of the Act and is subject to supervision in the Netherlands;
- b. mention of the fact that the other collective investment scheme:
  - 1°. is admitted in another Member State in accordance with the Collective Investment Schemes Directive;
  - 2°. is subject to supervision in that Member State;
  - 3°. where applicable: has made a notification as referred to in Section 2:72 of the Act and is included in the register referred to in Section 1:108 of the Act; and
  - 4°. is not subject to supervision in the Netherlands;
- c. the fact that the other collective investment scheme:
  - 1°. has its registered office in a designated state;
  - 2°. holds or does not hold a licence and is subject to supervision in that state, or is managed by a management company which holds or does not hold a licence in a third country and is supervised by a specified supervisory authority;
  - 3°. where applicable: has made a notification as referred to in Section 2:73 of the Act; and
  - 4°. is not subject to supervision in the Netherlands; or
- d. the fact that the other collective investment scheme:
  - 1°. has its registered office in a state which has not been designated pursuant to Section 2:66 of the Act;
  - 2°. holds or does not hold a licence and is supervised by a specified foreign supervisory authority, or is managed by a management company which holds or does not hold a licence and is supervised by a specified foreign supervisory authority; and
  - 3°. is not subject to supervision in the Netherlands.

5.13. Where applicable: the regulated market and the other markets in financial instruments where the financial enterprise in which the collective investment scheme invests are traded.

5.14. Where applicable: the manner in which and the terms and conditions on which third parties maintain the market in units on the instructions of the investment company or on the instructions of its management company.

5.15. If an undertaking for collective investment in transferable securities is concerned: the profile of the type of investor at which the collective investment scheme is directed.

5.16. If an undertaking for collective investment in transferable securities is concerned, and where applicable: the state, the public body with regulatory power or the international organisation to which one or more Member States belong, which issues or guarantees securities or money market instruments in which the collective investment scheme invests more than 35 percent of the managed assets, and the dispensation from this limitation pursuant to Section 136(2).

5.17. If an undertaking for collective investment in transferable securities is concerned: the categories of securities, money market instruments or financial derivatives in which the collective investment scheme may invest; a statement as to whether the collective investment scheme may conduct transactions in respect of financial derivatives, and if so, a clear indication as to whether the financial derivatives may be used in this way in order to hedge risks or to realise investment objectives, as well as the possible effect of the use of these securities, money market instruments or financial derivatives on the risk profile.

5.18. If an undertaking for collective investment in transferable securities is concerned, and where applicable: mention of the fact that the collective investment scheme invests primarily in financial derivatives or follows a share or bond index as referred to in Section 138(1).

5.19. If an undertaking for collective investment in transferable securities is concerned, and where applicable: mention of the fact that the value of the assets may greatly fluctuate as a result of the investment policy.

## **6. Data concerning costs and fees**

6.1. The incorporation costs of the collective investment scheme and the manner in which these costs are charged to the result of the collective investment scheme, offset against the managed assets or charged in other ways to the unit holders in the collective investment scheme, and which portion accrues to the management company, the custodian, to the directors of the management company, investment company or custodian, or to parties affiliated to the management company, investment company or custodian.

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6.2. The costs incurred in respect of the management of the collective investment scheme, the custody of the assets of the collective investment scheme, the auditor, the supervision and the marketing, including the calculation basis and the manner in which these costs are charged to the result, offset against the managed assets or charged in other ways to the unit holders in the collective investment scheme.

6.3. The identifiable and quantifiable transaction costs, and the manner in which these costs are charged to the result of the collective investment scheme, offset against the managed assets or charged in other ways to the unit holders in the collective investment scheme.

6.4. Where applicable: the costs incurred or fees demanded in connection with the borrowing and lending of financial instruments, and the manner in which these costs are charged to the result, offset against the managed assets or charged in other ways to the unit holders in the collective investment scheme, and to whom these fees accrue.

6.5. Where applicable: the costs of issuing orders to third parties to perform one or more activities in the context of the management of the collective investment scheme or the custody of the assets of the collective investment scheme, and the manner in which these costs are charged to the result, offset against the managed assets or charged in other ways to the unit holders in the collective investment scheme.

6.6. All costs other than those referred to in sections 6.1 to 6.5, distinguished by type, which exceed 10 percent of the total costs, including the calculation basis, and the manner in which these costs are charged to the result, offset against the managed assets or charged in other ways to the unit holders in the collective investment scheme.

6.7. If the level of the costs referred to in sections 6.1 to 6.6 is not known yet: the maximum amount of these costs.

6.8. The total sum of the costs referred to in sections 6.1 to 6.6.

6.9. The costs, distinguished by type, which result from direct or indirect investments in other collective investment schemes.

6.10. If the collective investment scheme has existed long enough to do this: the level of the costs of the collective investment scheme for each financial year, related to the average net asset value in that financial year, specifying the costs disregarded in calculating this value. If the collective investment scheme invests 10 percent or more of its assets in other collective investment schemes, either directly or indirectly, the costs of the other collective investment schemes must be taken into account in determining the level of the costs of the collective investment scheme, or the explanatory notes must state that it is not possible to take the costs of another collective investment scheme into account, and why, and that the costs of that other collective investment scheme affect the result of the collective investment scheme.

6.11. If the collective investment scheme invests 95 percent or more of the managed assets in another collective investment scheme, either directly or indirectly, and the other collective investment scheme has existed long enough to do this: the level of the costs of the other collective investment scheme for each financial year, related to the average net asset value of the other collective investment scheme in that financial year, specifying the costs disregarded in calculating this value.

6.12. The manner in which the surcharges and discounts are calculated and to whom the surcharges and discounts accrue, as well as all the other one-off amounts paid by the unit holders in the collective investment scheme at the time of admission and withdrawal, including the calculation basis.

6.13. Where applicable: a description of the arrangements regarding return provisions, specifying the parties to whom the return provisions accrue.

6.14. Where applicable: a description of arrangements regarding items received by or promised to the management company, the directors of the management company, investment company or custodian, parties affiliated to the management company, investment company or custodian or third parties for executing orders for the benefit of the management company or the collective investment scheme.

## **7. Data concerning the units**

7.1. The manner and the terms and conditions relating to the offering of the units.

7.2. The nature and the main features of the units in the collective investment scheme, including a description of any voting right attached to the units and of the form in which they can be traded and any restrictions to this trade.

7.3. A statement as to whether the collective investment scheme is listed on a regulated market or another market in financial instruments.

7.4. The manner and the terms and conditions relating to the sale or purchase of and repayment on the units.

7.5. Where applicable: the manner of determining the offering price, the selling or purchase price, and the amount upon repayment of the value of the units, in particular:

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- a. how and with what regularity these prices are calculated; and
- b. how, where and with what regularity these prices are published.

This obligation shall not apply to collective investment schemes whose units are officially listed on a regulated market or another market in financial instruments designated by the Netherlands Authority for the Financial Markets, or whose units are likely soon to be listed on such a market; nor shall this obligation apply to the investment companies referred to in Section 126(1).

7.6. A description of the regulations governing the determination and appropriation of the profit, and of the manner in which and frequency with which profit distributions will be made.

7.7. A statement to the effect that every unit of the same type gives an entitlement to a proportional share in the capital of the collective investment scheme insofar as this capital accrues to unit holders.

7.8. A statement to the effect that, except where provided free of charge, units will only be offered if the net price has been paid into the capital of the collective investment scheme within the specified periods.

7.9. If an undertaking for collective investment in transferable securities is concerned: a statement to the effect that the collective investment scheme is obliged, at the unit holders' request, to repurchase its units or repay the value of the units out of the assets, either directly or indirectly. This obligation shall not apply to the investment companies referred to in Section 126(1).

7.10. If an undertaking for collective investment in transferable securities is concerned: the locations in every Member State where the collective investment scheme places its units on the market or arranges for this to be done.

7.11. In the case of an undertaking for collective investment in transferable securities which offers units with different risk profiles:

- a. the types of units; and
- b. the manner in which a unit holder in the collective investment scheme can convert an investment in one type of unit into another type of unit offered in the collective investment scheme, and the costs attached to such a conversion for the unit holder.

7.12. In the case of a collective investment scheme whose units are repurchased or repaid, either directly or indirectly, out of the assets at the unit holders' request, insofar as reasonably foreseeable: the cases in which the repurchase of the units or the repayment of the value of the units may be suspended in the interest of the unit holders, and the manner in which the repurchase and repayment respectively may be suspended.

7.13. In the case of a collective investment scheme whose units are repurchased or repaid, either directly or indirectly, out of the assets at the unit holders' request: a statement to the effect that there are sufficient guarantees to ensure that, subject to statutory provisions and the cases referred to in section 7.12, the repurchase and repayment obligation can be fulfilled.

7.14. In the case of an investment company as referred to in Section 126(2): the regulated market or the other market in financial instruments in the state of trading whose listing determines the price for the transactions conducted by the investment company in that state outside the regulated market or the market in financial instruments.

## **8. Data concerning the risk profile of the collective investment scheme**

8.1. A statement to the effect that the value of the investments may either increase or decrease, and that the investors may not receive the full amount of the investment.

8.2. A description of each risk which investors may run on their investment, insofar as this risk is significant and relevant in the light of its consequences and probability. This description must contain a brief and clear explanation of each specific risk arising from a particular investment policy or relating to specific markets relevant to the collective investment scheme, including:

- a. the risk of the entire market or an investment category falling, which will affect the price and value of the investments;
- b. the risk of an issuing institution or a counterparty defaulting;
- c. where applicable: the risk that a settlement via a payment system does not take place in accordance with expectations, because the payment or the transfer of the financial instruments by a counterparty does not take place or takes place later than expected;
- d. the risk that a position cannot be liquidated in time at a reasonable price;
- e. the risk that the value of an investment is affected by exchange rate fluctuations;
- f. where applicable: the risk of losing assets placed in custody as a result of insolvency, negligence or fraudulent acts on the part of the custodian or a sub-custodian; and

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- g. the risk attached to a strong concentration of the investments in particular types or on particular markets.

8.3. Where applicable, the description referred to in section 8.2 shall also address the following factors that may affect the collective investment scheme:

- a. the yield risk, including the fact that the risk may vary in accordance with the choices possible under the investment policy, as well as the existence or absence of, or limitations to, any third-party guarantees;
- b. risks to the capital, including the potential risk of erosion caused by unit withdrawals and profit distributions that exceed the investment return;
- c. the dependence on a provider's or guarantor's performance, if the investment in the product entails a direct investment in a provider rather than an investment held by the provider;
- d. the inflexibility inherent in the product itself, including the risk of premature surrender, and restrictions on switching to other providers;
- e. the inflation risk;
- f. the risk of uncertainty about external factors, such as the applicable tax regime.

8.4. The information referred to in sections 8.1 to 8.3 shall be presented in order of importance, to be determined on the basis of the size and relevance of the risks.

8.5. Where applicable: a separate and identifiable statement to the effect that a collective investment scheme is divided into different categories of unit holders, whereby a separate investment policy applies to each individual category and one or more categories of unit holders may run financial risks under the investment policy that go beyond the capital which they accumulated for investment in the collective investment scheme.

8.6. If the collective investment scheme borrows or lends financial instruments:

- a. the maximum percentage of financial instruments that may be borrowed or lent in relation to the investment portfolio;
- b. a description of the security obtained by the collective investment scheme;
- c. a description of the types of institutions from which or to which financial instruments may be borrowed and lent respectively; and
- d. the risks attached to securities borrowing or lending.

8.7. If the collective investment scheme invests funds borrowed on behalf or at the expense and risk of the unit holders:

- a. the risks attached to investing funds borrowed on behalf or at the expense and risk of the unit holders in the collective investment scheme;
- b. mention of any obligation for the unit holders in the collective scheme to make up possible deficits of the collective investment scheme if the losses exceed the investment; and
- c. mention of the maximum size of the investments that may be purchased with borrowed funds. This maximum size may be indicated as an absolute value or as a percentage of the managed assets.

## **9. Data concerning the investment return realised by the collective investment scheme**

9.1. If the collective investment scheme has existed long enough to do this: the investment return realised by the collective investment scheme.

9.2. If the collective investment scheme has existed long enough to do this: a comparative overview of the development of the capital of the collective investment scheme and the income and expenditure of the collective investment scheme for the past three years, the annual accounts for the last three financial years, and, insofar as required under Book 2 of the Dutch Civil Code, the statements referred to in Section 393(5) of the Dutch Civil Code relating to those annual accounts, as well as the latest half-yearly figures.

## **10. Data concerning the termination of the collective investment scheme**

A description of the manner in which and the terms and conditions on which the collective investment scheme will be terminated and wound up, in particular in relation to the rights of the unit holders in the collective investment scheme.

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## 11. Data concerning the meeting of unit holders

11.1. The situations in which meetings of unit holders in the collective investment scheme will be held, the regulations for convening these meetings and the manner in which the voting right is arranged.

11.2. A statement to the effect that a notice convening a meeting of unit holders in a collective investment scheme will be published at least 14 days before the start of that meeting by means of an advertisement in a national Dutch daily newspaper or announced to each unit holder individually, as well as on the management company's website.

## 12. Data concerning asset valuation

12.1. A description of the determination of the net asset value of the collective investment scheme, specifying the regularity with which this valuation takes place as well as the currency in which the net asset value of the collective investment scheme is calculated. The valuation of the assets and liabilities shall be based on generally accepted standards.

12.2. Mention of the fact that the net asset value of the units in the collective investment scheme will be disclosed on the management company's website.

12.3. Mention of the circumstances under which and the manner in which unit holders will be compensated for an incorrectly calculated net asset value, in particular any maximum percentage of deviation, measured against the correctly calculated net asset value, for which compensation is granted.

## 13. Data concerning the tax system

13.1. A brief description of the tax system applicable to the collective investment scheme, including, where applicable, an indication that withholding tax will be deducted from revenue and capital gains which the collective investment scheme pays out to unit holders.

13.2. Officially published amendments to the applicable tax system of which it is certain that they will enter into force unchanged in terms of form and content, insofar as these amendments are of direct importance to the unit holders in the collective investment scheme.

## 14. Data concerning the policy regarding voting rights and voting behaviour

A description of the policy regarding the voting rights and voting behaviour of the collective investment scheme in respect of shares in other enterprises.

## Annex F pertaining to Section 171

Diploma	Institution	Exit qualifications
<i>General</i>		
Financial Institutions Orientation Course	NIBE-SVV	Section 1 of Annex B
General Banking Course	NIBE-SVV	Section 1 of Annex B
Banking Orientation Course	NIBE-SVV	Section 1 of Annex B
Insurance Introductory Course	SEA/SEFD	Section 1 of Annex B
Intermediary Foundation Course	SEA/SEFD	Section 1 of Annex B
A-General	SEA/SEFD	Section 1 of Annex B
Financial planning (IFAP1 and IFAP2)	NIBE-SVV	Section 1 of Annex B
FFP diploma. <sup>1</sup> and subsequent uninterrupted FFP PE	FFP	Section 1 of Annex B
<i>Consumer credit</i>		
Consumer credit	NIBE-SVV	Sections 1 and 3 of Annex B
Financing	SEA/SEFD	Sections 1 and 3 of Annex B
FFP diploma. <sup>1</sup> and subsequent uninterrupted FFP PE	FFP	Sections 1 and 3 of Annex B
Financial planning (IFAP1 and IFAP2)	NIBE-SVV	Sections 1 and 3 of Annex B
Consumer credit	SEA/SEFD	Sections 1 and 3 of Annex B
Consumer credit	Innovam	Sections 1 and 3 of Annex B
<i>Mortgage loans</i>		
Recognised Mortgage Consultant. <sup>2</sup>	SEH	Sections 1 and 2 of Annex B. Section 3 of Annex B insofar as the holder of the diploma, from 1/10/07, also has the exit qualifications listed in section 3 of Annex B in the manner to

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FFP diploma <sup>1</sup> and subsequent uninterrupted FFP PE	FFP	be specified by Our Minister. Sections 1 and 2 of Annex B. Section 3 of Annex B insofar as the holder of the diploma, from 1/10/07, also has the exit qualifications listed in section 3 of Annex B in the manner to be specified by Our Minister.
Mortgage Adviser and Insurance Brokerage B	SEA/SEFD	Sections 1 and 2 of Annex B. Section 3 of Annex B insofar as the holder of the diploma, from 1/10/07, also has the exit qualifications listed in section 3 of Annex B in the manner to be specified by Our Minister.
Financial planning (IFAP1 and IFAP2)	NIBE-SVV	Sections 1 and 2 of Annex B. Section 3 of Annex B insofar as the holder of the diploma, from 1/10/07, also has the exit qualifications listed in section 3 of Annex B in the manner to be specified by Our Minister.
Home Financing 2 and Insurance Brokerage B	NIBE-SVV/ SEA/SEFD	Sections 1 and 2 of Annex B, insofar as these sections do not concern capital sum insurance. Section 3 of Annex B insofar as the holder of the diploma, from 1/10/07, also has the exit qualifications listed in section 3 of Annex B in the manner to be specified by Our Minister.
<i>Investment products (variant b)</i>		
DSI registration as (Senior) Investment Adviser	(DSI)	Section 1 of Annex B
DSI registration as (Senior) Portfolio Manager	(DSI)	Section 1 of Annex B
<i>Investment products (variant a)</i>		
DSI registration as (Senior) Investment Adviser	(DSI)	Sections 1 and 5.6 to 5.8 of Annex B
DSI registration as (Senior) Portfolio Manager	(DSI)	Sections 1 and 5.6 to 5.8 of Annex B
FFP diploma <sup>1</sup> and subsequent uninterrupted FFP PE	FFP	Sections 1 and 5.6 to 5.8 of Annex B
Financial planning (IFAP1 and IFAP2)	NIBE-SVV	Sections 1 and 5.6 to 5.8 of Annex B
Asset planning	NIBE-SVV	Sections 1 and 5.6 to 5.8 of Annex B
<i>Authorised agent</i>		
Insurance Brokerage A and Authorised Agent	SEA/SEFD	Sections 1 and 6 of Annex B
<i>Non-life insurance</i>		
Insurance Brokerage B	SEA/SEFD	Sections 1 and 4 of Annex B
Recognised Insurance Agent (B)	SEA/SEFD	Sections 1 and 4 of Annex B
Insurance Brokerage A	SEA/SEFD	Sections 1 and 4 of Annex B
Statement as referred to in Section 4(8), second sentence of the Insurance Brokerage Business Act ( <i>Wet assuratiebemiddelingsbedrijf (Wabb)</i> )	Social and Economic Council	Sections 1 and 4 of Annex B
A-modules: General, Fire, Transport and Miscellaneous Risks	SEA/SEFD	Sections 1 and 4 of Annex B
Sector diplomas: Fire, Transport, Motor Insurance & Claims Processing and Miscellaneous Risks	SEA/SEFD	Sections 1 and 4 of Annex B
<i>Life insurance</i>		
Insurance Brokerage B	SEA/SEFD	Sections 1 and 5 of Annex B
Recognised Insurance Agent (B)	SEA/SEFD	Sections 1 and 5 of Annex B
Insurance Brokerage A	SEA/SEFD	Sections 1 and 5 of Annex B
Statement as referred to in Section 4(8), second sentence of the Insurance Brokerage Business Act	Social and Economic Council	Sections 1 and 5 of Annex B
A-modules: General and Life	SEA/SEFD	Sections 1 and 5 of Annex B
Life Sector Diploma	SEA/SEFD	Sections 1 and 5 of Annex B
FFP diploma <sup>1</sup> and subsequent uninterrupted FFP PE	FFP	Sections 1 and 5 of Annex B
Financial planning (IFAP1 and IFAP2)	NIBE-SVV	Sections 1 and 5 of Annex B
VP Life and Pension Practice	SEA/SEFD	Sections 1 and 5 of Annex B

<sup>1</sup>. Or diploma requirements considered equivalent by the FFP up to and including 2002.

<sup>2</sup>. Or registered otherwise with the SEH as a Recognised Mortgage Adviser.