

DE NEDERLANDSCHE BANK N.V.

Supervisory Regulation permitting Non-Deduction of Intangible Assets from Regulatory Capital

Supervisory Regulation of De Nederlandsche Bank N.V. dated 11 December 2007, no. Juza/2007/02375/CLR, setting rules regarding the recognition of assets as intangible assets as referred to in Articles 91(3), under(c), and 95(3), under (e), of the Decree on Prudential Rules for Financial Undertakings (Besluit prudentiële regels Wft) (Supervisory Regulation permitting Non-Deduction of Intangible Assets from Regulatory Capital)

De Nederlandsche Bank N.V.;

Having consulted the representative organisations pursuant to section 1:28 of the Financial Supervision Act (*Wet op het financieel toezicht*);

Having regard to Article 89(2), under (b), of the Decree on Prudential Rules for Financial Undertakings (*Besluit prudentiële regels Wft*);

DECIDES:

Article 1

1. Assets which, consequent on the introduction of the international accounting standards/international financial reporting standards, are recognised in the consolidated, the subconsolidated or the company balance sheet as intangible assets as a result of reclassification of balance sheet items, may be included as ordinary balance sheet items and, hence, be excluded from the application of Article 91(3), under(c), or, as applicable, Article 95(3), under (e), of the Decree on Prudential Rules for Financial Undertakings (*Besluit prudentiële regels Wft*).

2. If the provisions of paragraph 1 above are implemented, the assets recognised as ordinary balance sheet items shall be risk-weighted, in conformity with the provisions of the Supervisory Regulation on Solvency Requirements for Credit Risk (*Regeling solvabiliteitseisen voor het kredietrisico*). The present paragraph only applies to financial undertakings as referred to in Article 1:1, under (h), of the Supervisory Regulation on Solvency Requirements for Credit Risk (*Regeling solvabiliteitseisen voor het kredietrisico*).

Article 2

This Regulation shall enter into force on 31 December 2007.

Article 3

This Regulation shall be cited as the Supervisory Regulation permitting Non-Deduction of Intangible Assets from Regulatory Capital (*Regeling uitsluiting solvabiliteitsaftrek immateriële activa*).

This Regulation and the appurtenant explanatory notes shall be published in the *Staatscourant* (Government Gazette).

De Nederlandsche Bank N.V.,

/s/ Ms. A.J. Kellermann
Executive Director

Explanatory notes

Legal basis

Pursuant to Article 89(2) of the Decree on Prudential Rules for Financial Undertakings (*Besluit prudentiële regels Wft*) (hereinafter referred to as the Decree), De Nederlandsche Bank N.V. (hereinafter referred to as De Nederlandsche Bank) must set rules regarding:

- (a) the recognition of hybrid instruments as regulatory capital components as referred to in Articles 90 to 98 of the Decree, and
- (b) the recognition (or non-recognition) of certain assets as intangible assets.

The present Regulation solely implements the obligation to set rules as contained in Article 89(2), under (b), of the Decree. The obligation to set rules as contained in Article 89(2), under (a), of the Decree is implemented in a separate Regulation of De Nederlandsche Bank (Supervisory Regulation on the Recognition of Hybrid Instruments as Regulatory Capital Components (*Regeling gelijkstelling hybride instrumenten met eigenvermogensbestanddelen*)).

Scope and extension

The present Regulation has been derived from section 4003–04.7A of the Credit System Supervision Manual 1992 (*Handboek Wtk 1992*) of De Nederlandsche Bank. For banks, management companies of undertakings for collective investment in transferable securities (UCITS), investment firms, clearing institutions and electronic money institutions, it constitutes a continuation of existing policy under said section 4003-04.7A, as converted earlier into Article 3:1 of the Supervisory Regulation on Innovative Financial Instruments and Intangible Assets (*Regeling innovatieve financiële instrumenten en immateriële activa*).

The basis for this continuation of existing policy is constituted by Article 89(2), under (b), of the Decree.

A new element has been introduced in that the scope of the policy has been extended to include insurers. The Credit System Supervision Manual 1992 (*Handboek Wtk 1992*) did not apply to insurers, and no separate regulation for insurers was in force.

Article 1(1)

This Article covers all financial undertakings as referred to in the Financial Supervision Act (*Wet op het financieel toezicht*), notably banks, investment firms, clearing institutions, electronic money institutions, undertakings for collective investment in transferable securities (UCITS) and insurers.

Article 1(1) basically provides that assets which, consequent on the introduction of the IAS/IFRS on 1 January 2005, must be recognised as intangible assets owing to reclassification (and which, before that time, were not or were not necessarily covered by the definition of intangible assets) need not be deducted from regulatory capital pursuant to Article 91(3) of the Decree or, as applicable, Article 95(3) of the Decree. This concerns not only assets which were held at the time of introduction of the IAS/IFRS – and which may, as a result of depreciation, no longer feature on the balance sheet – but all intangible assets which, prior to the introduction of the IAS/IFRS, did not have or did not necessarily have to be classified as intangible assets and which, hence, did not have to be deducted from regulatory capital. Article 1(1) provides for a prudential filter which, on the one hand, seeks to ensure a neutral transition to the IAS/IFRS and which, on the other, equally applies to financial undertakings switching to the IAS/IFRS at a later date (after 1 January 2005). The aim is to adjust for the reclassification of assets which were previously classified under the Dutch GAAP in a different way and which would, in the event of strict application of the prudential rules, lead to deductions from regulatory capital. An open wording is used so as to ensure that the present Regulation will not stand in

the way of possible subsequent developments (such as adjustment of the accounting rules under Title 9 of Volume 2 of the Dutch Civil Code (*Burgerlijk Wetboek*)).

Article 1(1) does not cover intangible assets (under whatever name) which are classified as 'intangible assets' under the IAS/IFRS and which were already classified as intangible assets under Dutch GAAP prior to the introduction of the IAS/IFRS in 2005.

Examples

Examples of intangible assets within the meaning of Article 1(1) – and which, hence, need not be deducted from regulatory capital – are software and loan servicing rights shown as assets in the balance sheet, even if they have been acquired as a result of mergers with or take-overs of other undertakings. Considering the forthcoming revision of the definitions of regulatory capital in the context of the Basle Accord and Solvency II, nothing can yet be said about other situations or circumstances.

Article 1(2)

Intangible assets which are not deducted from regulatory capital pursuant to the present Regulation are to be included in the calculation the risk-weighted solvency requirements under the Supervisory Regulation on Solvency Requirements for Credit Risk (*Regeling solvabiliteitseisen voor het kredietrisico*) (which only covers banks and investment firms).

De Nederlandsche Bank N.V.,

/s/ Ms. A.J. Kellermann
Executive Director