

Unofficial translation of *Vrijstellingsregeling Wft*.

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(Text valid as of: 08-11-2007)

Exemption Regulations pursuant to the Financial Supervision Act

The Minister of Finance,

Pursuant to sections 2:59(1), 2:64(1), 2:74, 2:79(1), 2:85(1), 2:91(1), 2:95(1), 2:104(1), 3:3, 3:5(3), 3:6(3), 3:7(3), 3:111(1), 4:3(3), 4:7, 5:5, 5:68(2) and 5:87 of the Financial Supervision Act (*Wet op het financieel toezicht*, Wft);

Determines:

Chapter 1. Introductory provisions

§ 1.1. Definitions

Article 1

In these regulations these definitions shall apply, unless stated otherwise:

- a. the Decree: the Decree on Supervision of the Conduct of Financial Enterprises (Besluit Gedragstoezicht financiële ondernemingen) under the Wft;
- b. credit manager: an intermediary in a transition of claims under credit agreements who assists the acquiring business in managing and performing those agreements;
- c. the Act: the Wft.

Chapter 2. Exemption from the part of the Act entitled Market Access for Financial Enterprises

§ 2.1. Provision of investment objects

Exemption as referred to in Section 2:59(1) of the Act;

Article 2

1. The following are exempt from section 2:55(1) of the Act:

- a. providers of investment objects to the extent that these investment objects:
 - 1°. are offered to fewer than one hundred consumers;
 - 2°. are part of a series of investment objects as defined in Section 1(bb) of the Decree that encompass fewer than twenty investment objects;
 - 3°. have a value that cannot be determined in accordance with the rules in Article 110 of the Decree if it were applicable; or
 - 4°. are offered for a nominal value per investment object of at least EUR 50,000; and
- b. providers of investment objects to the extent that they provide financial services to:
 - 1°. consumers working for them or falling under their responsibility in any other fashion;
 - 2°. consumers working for or falling under the responsibility of other legal entities with which they are associated in a formal or factual control structure; or
 - 3°. consumers with whom they are associated in a formal or factual control structure.

2. Paragraph (1), preamble and part a, only apply to the extent that the provider makes a statement, in an offer of investment objects as specified in paragraph 1 and in advertising materials and documents holding out prospects of such an offer, that it is not obliged to be licensed under the Act for the offer and is not subject to the supervision of the Netherlands Authority for the Financial Markets (*Autoriteit Financiële Markten*, AFM).

§ 2.2. Provision of credit

Exemption as referred to in Section 2:64(1) of the Act

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Article 3

An exemption from the provisions in section 2:60(1) of the Act shall be granted to businesses that acquire the legal title to claims under agreements concerning credit that they themselves did not conclude as the counterparty, insofar as the management and performance of those agreements is carried out in accordance with the agreement by a credit manager that is permitted, pursuant to the Act, to mediate in matters of credit or to offer credit, and insofar as that credit manager provides the information specified in Article 68 of the Decree in the manner prescribed in that Article.

§ 2.3. Offers of rights of participation

Exemption as referred to in Section 2:74 of the Act

Article 4

1. Those offering participation rights in an investment institution are exempted from Section 2:65(1) of the Act:
 - a. insofar as those rights may only be acquired for a consideration of at least EUR 50,000 per participant;
 - b. insofar as those rights have a nominal value for each right of EUR 50,000; or
 - c. as specified in Section 1:12(1) of the Act;
 - d. if it is a starter fund as specified in the Regulations on Seed Capital for Technostarters Regulations (*Regeling seed capital technostarters*);
 - e. if:
 - 1°. less than 50% of their balance sheet total consists of investments, and
 - 2°. less than 50% of their total revenue realised is generated by investments; or
 - f. if the rights are being offered to directors, members of the supervisory board or employees of that investment institution or to directors, members of the supervisory board or employees of a company or institution associated with that investment institution in a formal or factual control structure.
2. Paragraph (1) only applies to the extent that the offerers make a statement, in an offer of participation rights as specified in paragraph 1 and in advertising materials and documents holding out prospects of such an offer, that they are not obliged to be licensed under the Act to offer these participation rights and are not subject to the supervision of the AFM.
3. The provisions of paragraph (1) shall not apply to managers to the extent that they offer participation rights in investment institutions that maintain reserves within the context of a life-course savings scheme as specified in Section 19g of the Wages and Salaries Tax Act 1964 (*Wet op de loonbelasting 1964*).
4. Fulfilment of the criteria specified in paragraph (1), part e, is calculated irrespective of the presentation in the annual financial statements and is established on the balance sheet date at the close of the financial year.

§ 2.4. Advice

Exemption as referred to in Section 2:79(1) of the Act

Article 5

1. The following are exempt from section 2:75(1) of the Act:
 - a. advisers, to the extent that they advise on investment objects as specified in Article 2(1), paragraph a;
 - b. advisers to the extent that they give advice on insurance policies to:
 - 1°. legal entities in which they participate;
 - 2°. companies in which they hold shares; or
 - 3°. legal entities or companies in which other legal entities or companies, with which they are associated in a formal or factual control structure, hold a partnership or are a partner;

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- c. [cancelled;]
 - d. advisers to the extent that they also act as intermediaries in relation to the recommended financial product and are exempted as intermediaries under Article 6(1) preamble and at part c;
 - e. advisers on insurance policies to the extent that they also act as intermediaries in relation to the recommended insurance and are exempted as intermediaries under Article 7 preamble and at parts c or d;
 - f. advisers whose principal profession is something other than the provision of financial services, and whose principal profession gives them an insight into the financial situation of a consumer, to the extent that they advise that consumer, without receiving any commission for doing so from the offerer, and the advice they provide is an extension of their principal profession;
 - g. the State of the Netherlands to the extent that it advises within the context of public information on health care insurance or medical expenses insurance as a supplement to health care insurance;
 - h. municipalities as defined in Article 6(1), part f, insofar as they are also advising on the insurance in relation to which they mediate;
 - i. advisers as defined in Article 6(1), part g, insofar as they are also advising on the insurance in relation to which they mediate; and
 - j. advisers insofar as they are providing advice on financial products other than credit to:
 - 1°. consumers working for them or falling under their responsibility in any other fashion;
 - 2°. consumers working for or falling under the responsibility of other legal entities with which they are associated in a formal or factual control structure; or
 - 3°. consumers or, if the advice relates to insurances or reinsurance mediation, clients with whom they are associated in a formal or factual control structure.
2. Paragraph (1), preamble and part f, only apply if the advice merely forms a marginal element of the adviser's total work and if he does not also offer the recommended financial product or does not also provide an investment service in relation to the recommended financial product, mediate, act as authorised agent or as sub-authorised agent.
 3. Paragraph (1), preamble and part a, only apply if the relevant adviser states, in all advertising material and non-obligatory precontractual information concerning the investment object, that he is not subject to the supervision of the AFM as regards advice relating to the investment object.
 4. Paragraph (1), preamble and part d, only apply if the other business specified in Article 6(1), part c, is entirely responsible for providing the advice.

§ 2.5. Provision of intermediary services

Exemption as referred to in Section 2:85(1) of the Act

Article 6

1. The following are exempt from section 2:80(1) of the Act:
 - a. intermediaries, to the extent that they mediate on investment objects as specified in Article 2(1), paragraph a;
 - b. intermediaries who are not credit managers, insofar as their work relates only to the collection of claims under credit agreements;
 - c. intermediaries insofar as they mediate in financial products in respect of which an other business, with which they are associated in a formal or factual control structure, is permitted under the Act to offer them or mediate in them;
 - d. intermediaries in credit for goods which is not used to supply the benefit of investment objects or financial instruments to a consumer;
 - e. intermediaries, with the exception of credit intermediaries, insofar as they are mediating for:
 - 1°. consumers working for them or falling under their responsibility in any other fashion;
 - 2°. consumers working for or falling under the responsibility of other legal entities with which they are associated in a formal or factual control structure; or
 - 3°. consumers or, if the financial services relate to insurances or reinsurance mediation, clients with whom they are associated in a formal or factual control structure;
 - f. municipalities insofar as they mediate in health care insurance or medical expenses insurance to supplement health care insurance between financial service providers and consumers whose income does not exceed 130% of the relevant assistance standard as specified in Chapter 3 of

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- the Work and Social Assistance Act (*Wet werk en bijstand*); and
- g. intermediaries who hold a licence granted under section 2:96 of the Act for the provision of investment services, insofar as they are not mediating in insurance or mortgage credit.
2. Paragraph (1), preamble and part a, only apply if the relevant intermediary states, in all advertising material and non-obligatory precontractual information concerning the investment object, that he is not subject to the supervision of the AFM as regards offering the investment object.
 3. Paragraph (1), preamble and part c, only apply if the relevant other business is entirely responsible for providing the mediation.
 4. The exemption in paragraph (1), preamble and at part d, above shall only apply if the term of the goods credit is no greater than the expected economic lifespan of the movable property provided, or no greater than the period of the service, and if the related goods credit intermediary:
 - a. does not advise the consumer on the financial product for which he mediates; and
 - b. has a different principal professional activity than mediating in goods credit, and the goods credit serves to provide the benefits of a movable item or for the provision of a service.

Article 7

Insurance intermediaries are exempt from section 2:80(1) of the Act insofar as:

- a. their work relates only to processing losses or collecting premiums;
- b. they act as intermediaries for:
 - 1°. legal entities in which they participate;
 - 2°. companies in which they hold shares; or
 - 3°. legal entities or companies in which other legal entities or companies, with which they are associated in a formal or factual control structure, hold a partnership or are a partner;
- c. they mediate in hail damage insurance, horse and livestock insurance or glass insurance, with the exception of greenhouse glass insurance;
- d. they are travel agencies or travel organisations, and the insurance policies in which they mediate are cancellation insurance policies or insurances concluded with a view to a journey or a holiday, if at least one employee at the relevant branch of the travel agency or travel organisation has:
 - 1°. a valid diploma for the exit qualifications, listed in Part 4 of Appendix B to the Decree;
 - 2°. a diploma for travel agency business professional skills (*vakbekwaamheid voor het reisbureaubedrijf*) issued by the designated authority (*Stichting Examens en Proeven voor het Reisbureaubedrijf*, SEPR) after 1 July 1992;
 - 3°. a 'travel insurance' certificate issued by SEPR;
 - 4°. a diploma for Upper Vocational Secondary Education in Retail Trading (*Middelbaar Middenstands Onderwijs*), department of Tourism and Recreation Secondary Education (*Middelbaar Toeristisch en Recreatief Onderwijs*), issued pursuant to Section 29 of the Secondary Education Act (*Wet op het voortgezet onderwijs*);
 - 5°. a diploma for Upper Vocational Secondary Education in Business and Administration (*Middelbaar economisch en administratief onderwijs*), department of Tourism and Recreation Secondary Education (*Middelbaar Toeristisch en Recreatief Onderwijs*), issued after 1 January 1994 pursuant to Section 29 of the Secondary Education Act;
 - 6°. a diploma for Upper Secondary Vocational Education (*Middelbaar beroepsonderwijs*), Economics Sector, Department of Tourism and Recreation, issued pursuant to Section 29 of the Secondary Education Act;
 - 7°. a diploma for Management Staff: Travel (*Middenkaderfunctionaris reizen*) issued pursuant to Section 7.4.6 of the Adult and Vocational Education Act (*Wet educatie en beroepsonderwijs*);
 - 8°. a diploma for Independently Working Employee: Travel (*Zelfstandig werkend medewerker reizen*) issued pursuant to Section 7.4.6 of the Adult and Vocational Education Act;
 - 9°. a diploma for Management Staff: Tourist Information (*Middenkaderfunctionaris toeristische informatie*) issued pursuant to Section 7.4.6 of the Adult and Vocational Education Act, provided that this diploma was issued in part for the passing of the exam for the Holiday Travel (*Vakantiereizen*) course; or
 - 10°. a diploma for Independently Working Employee: Tourist Information (*Zelfstandig werkend medewerker toeristische informatie*) issued pursuant to Section 7.4.6 of the Adult and Vocational Education Act, provided that this diploma was issued in part for the passing of the

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exam for the Holiday Travel (*Vakantiereizen*) course.

§ 2.6. Reinsurance intermediary services

Exemption as referred to in Section 2:91(1) of the Act

Article 8

Intermediaries in reinsurance are exempt from Section 2:86(1) of the Act insofar as they provide financial services to clients with whom they are associated in a formal or factual control structure.

§ 2.7. Acting as an authorised agent or sub-authorised agent

Exemption as referred to in Section 2:95(1) of the Act

Article 9

Authorised agents and sub-authorised agents are exempt from section 2:92(1) of the Act insofar as they conclude insurance policies with:

- a. consumers working for them or falling under their responsibility in any other fashion;
- b. consumers working for or falling under the responsibility of other legal entities with which they are associated in a formal or factual control structure; or
- c. consumers or, if the financial services relate to insurance policies or reinsurance mediation, clients with whom they are associated in a formal or factual control structure.

§ 2.8. Provision of investment services

Exemption as referred to in Section 2:104(1) and (2) of the Act

Article 10

1. Investment enterprises established in Australia, the United States of America or Switzerland are exempt from Section 2:96 of the Act insofar as the supervision of the provision of the relevant investment services is undertaken by a supervisory body in the country where they are established and if they have demonstrated this to the AFM, prior to the provision of investment services in the Netherlands, by means of:
 - a. a statement issued by the relevant supervisory body; or
 - b. a written reference to the website of the relevant supervisory body, if the information set out in the preamble can be obtained in this way.
2. For the application of paragraph 1, 'supervisory body' is also deemed to include an organisation which is not a supervisory institution as defined in Section 1:1 of the Act and which is a self-regulatory organisation, charged with exercising supervision over the provision of investment services, appointed or recognised as such by a supervisory institution.
3. The investment enterprises specified in paragraph 1 will immediately report to the AFM if they are no longer being supervised in the country where they are established for the investment services they provide in the Netherlands.

Article 11

1. Persons in possession of a licence or waiver as specified in Section 2:75 of the Act for providing advice on life assurance or mortgage credit are exempt from Section 2:96 of the Act if they are permitted under Section 2:76(2) and (5) to provide advice on life insurance or mortgage credit, or if they were in possession of a licence or waiver as specified in Section 2:75 of the Act on Providing Advice on Financial Instruments (*Wet voor het adviseren over financiële instrumenten*) immediately prior to the date when the Financial Instruments Markets Directive (Implementation) Act (*Wet implementatie richtlijn markten voor financiële instrumenten*) came into effect, insofar as they:

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- a. provide investment services as defined in parts a or d of the definition of 'providing an investment service' in Section 1:1 of the Act;
 - b. do not hold any of their clients' money or securities; and
 - c. pass on orders to investment institutions entitled to offer participation rights in the Netherlands and to credit institutions and investment enterprises entitled to provide investment services in the Netherlands.
2. Paragraph (1) applies, *mutatis mutandis*, to persons who had applied for a licence or waiver as specified in Section 2:75 of the Act on Providing Advice on Financial Instruments prior to the date on which the Financial Instruments Markets Directive (Implementation) Act came into effect, if no decision had yet been issued on the application when that Act came into operation. These persons are permitted to continue their work without a licence or waiver until the point when an irrevocable decision has been made on their applications.

Article 12 [Cancelled with effect from 01-11-2007]

Article 13

Investment enterprises are exempt from Section 2:96 of the Act insofar as they provide investment services as private participation companies in relation to shares in their own issued share capital.

Article 14

The following are exempt from section 2:96 of the Act:

- a. managers of an individual asset whose shares may only be held by a circle of individuals related by blood or marriage, insofar as they manage individual assets of persons belonging to that circle; and
- b. managers of an individual asset who form an association whose sole purpose is to manage individual assets of a circle of individuals related by blood or marriage, insofar as they manage individual assets of persons belonging to that circle.

Chapter 3. Exemption from the part of the Act entitled Prudential Supervision of Financial Enterprises

§ 3.1. Managers, investment institutions, investment enterprises and custodians

Exemption as referred to in Section 3:3 of the Act

Article 15

1. Investment institutions as defined in Article 4(1), parts a to e inclusive, and investment institutions in which participation rights are only offered to directors, members of the supervisory board or employees of that investment institution or to directors, members of the supervisory board or employees of a legal entity, company or institution linked to that investment institution under a formal or factual control structure, are exempt from the provisions in the part of the Act entitled Prudential Supervision of Financial Enterprises, with the exception of Section 3:7.
2. Managers and custodians are exempt from the provisions in the part of the Act entitled Prudential Supervision of Financial Enterprises, insofar as they manage investment institutions as defined in paragraph (1) or are charged with the custody of the assets of that investment institution.
3. Paragraph (2) shall not apply to managers insofar as they manage investment institutions as defined in Article 4(2).

Article 16 [Cancelled with effect from 01-11-2007]

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Article 17 [Cancelled with effect from 01-11-2007]

Article 18

1. Investment enterprises as defined in Articles 11, 13 and 14 are exempt from the provisions in the part of the Act entitled Prudential Supervision of Financial Enterprises, with the exception of Section 3:7.
2. The exemption specified in paragraph (1) is only applicable, as it relates to investment enterprises as defined in Article 11, insofar as they fulfilled the requirements applicable under the part of the Act entitled Prudential Supervision of Financial Enterprises, for advising on financial instruments at the date when the Financial Instruments Market Directive (Implementation) Act came into operation.

§ 3.2. Inviting of repayable funds from the public

Exemption as specified in Section 3:5(3) of the Act

Article 19

1. Court bailiffs as defined in Section 1(c) of the Court Bailiffs Act (*Gerechtsdeurwaarderswet*) are exempted from Section 3:5(1) of the Act insofar as they hold repayable funds in an account as specified in Section 19 of the Court Bailiffs Act.
2. Civil Law Notaries as defined in Section 1(1)(a) of the Civil Law Notaries Act (*Wet op het notarisambt*) are exempted from Section 3:5(1) of the Act insofar as they hold repayable funds in an account as specified in Section 25 of the Civil Law Notaries Act.

Article 20

Foundations (stichtingen) are exempted from section 3:5(1) of the Act if:

- a. their sole activity is the temporary management of repayable funds for those entitled to those funds, or those who are found to be entitled to those funds; and
- b. they work only for lawyers who are not themselves entitled to the repayable funds, as evidenced by a written agreement between the foundation in question and the lawyers in question.

Article 21

Persons or companies who invite, receive or have repayable funds in return for the issue of bearer securities as part of a sales transaction in the wholesale, industrial or retail sectors are exempted from Section 3:5(1) of the Act, insofar as:

- a. they sell up to a maximum of one quarter of the sales price in securities per sales transaction; and
- b. they submit annual financial statements, as defined in Article 361(1) of Book 2 of the Netherlands Civil Code, to the Dutch Central Bank (*De Nederlandsche Bank*, DNB) each year within six months after the end of the financial year, containing a report of the total amount of:
 - 1°. sales transactions; and
 - 2°. securities issued.

Article 22

Money transaction offices as defined in Section 1(a) of the Act on Money Transaction Offices (*Wet inzake de geldtransactiekantoren*), which are registered as specified in Section 2(1) of that Act, are exempted from Section 3:5(1) of the Act insofar as they invite, receive or have repayable funds in order to undertake a money transaction as defined in Section 1(c)(3°) of that Act.

Article 23

1. Trust offices entitled to operate in the Netherlands under Section 2 of the Supervision of Trust Offices Act (*Wet toezicht trustkantoren*) are exempted from Section 3:5(1) of the Act, insofar as:

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- a. the inviting, receiving or having of the repayable funds stems directly from administrative activities undertaken pursuant to an agreement between the trust office and those from whom the funds are invited, under which the trust office provides services as specified in Section 1(d)(2°) of the Act on the Supervision of Trust Offices;
 - b. they are managing the repayable funds temporarily; and
 - c. they separate the repayable funds from the trust office's funds by maintaining the repayable funds in a separate account.
2. Section 25 of the Civil Law Notaries Act applies, *mutatis mutandis*, to the separate account specified in paragraph (1) at c.

Article 24

1. Foundations are exempted from section 3:5(1) of the Act if:
 - a. they work only for trust offices entitled to operate in the Netherlands under Section 2 of the Act on the Supervision of Trust Offices;
 - b. their sole activity is the temporary management of repayable funds belonging to those with whom a trust office as specified in sub-paragraph a has entered into an agreement as specified in Article 23(1)(a), insofar as:
 - 1°. the repayable funds are only invited, received or had by the foundation to perform the said agreement, and the inviting, receiving or having of the repayable funds stems directly from administrative activities undertaken by the trust office pursuant to that agreement; and
 - 2°. the foundation only disburses the funds if those with whom the trust office entered into the agreement have given instructions to the trust office to that effect; and
 - c. their policy is determined or jointly determined by persons whose trustworthiness is beyond doubt in terms of the Act on the Supervision of Trust Offices.
2. The exemption specified in paragraph (1) only applies to the extent that the foundations specified in paragraph (1) arrange an unconditional guarantee for all obligations arising from the inviting, receiving or having of the repayable funds, issued by the trust office in question or a business forming part of the same group as that trust office, and that trust office or that company has own funds which are positive for the entire duration of the guarantee.

§ 3.3. Security and guarantee funds

Exemption as specified in Section 3:6(3) of the Act

Article 25

Security and guarantee funds are exempted from Section 3:6(1) of the Act to the extent that they offer securities or guarantees benefiting:

- a. natural persons or companies which are not legal entities and in terms of which an obligation for less than EUR 10,000 per beneficiary per potential incident of loss is entered into for each security or guarantee that is offered; or
- b. legal entities.

§ 3.4. Use of the word 'bank'

Exemption as specified in Section 3:7(3) of the Act

Article 26

Providers of financial services entitled to offer credit in the Netherlands are exempted from Section 3:7(1) of the Act insofar as they use the word '*voorschotbank*' or a translation of it in their name or in the exercise of their business.

Article 27

'*Gemeentelijke kredietbanken*' incorporated subject to the provisions in Section 4:36 of the Act and in

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relation to which Section 4:37 of the Act is applied are exempted from Section 3:7(1) of the Act.

Article 28

Investment institutions incorporated by a financial enterprise [\[vertaling van beleggingsinstelling/financiële onderneming/beleggingsmaatschappij/beleggingsfonds/ lijkt niet in overeenstemming met vertaling in Bgfo/Wft\]](#) entitled to run a banking business in the Netherlands, investment institutions which have a manager belonging to the same group as such a financial enterprise and investment institutions whose participation rights are offered to the public through the mediation of such a financial enterprise are exempted from Section 3:7(1) of the Act, if:

- a. they are an investment company and the financial enterprise referred to in the preamble or the manager mentioned in the preamble determines the day-to-day policy of the investment company;
- b. they are an investment fund and the financial enterprise referred to in the preamble or the manager mentioned in the preamble is the manager of the investment fund;
- c. they are an investment institution whose participation rights are offered to the public through the mediation of the financial enterprise mentioned in the preamble, and that financial enterprise has concluded an agreement to that effect with the investment institution or with its manager;
- d. they include the name of the financial institution in their own name; and
- e. it is clear from their name that the organisation at issue is an investment institution.

Article 29

1. An exemption from section 3:7(1) of the Act applies to:

- a. giro investors [*beleggersgiro*'s] managing accounts for investment institutions which are exempted under Article 28, which investment institutions have, on opening the account, acquired claims in securities or participation rights in an investment institution, and by means of which account transactions in securities or participation rights in an investment institution may be accomplished; and
- b. investment enterprises whose work is aimed at offering the facility to acquire claims in securities or participation rights in an investment institution by opening an account, and by means of which account transactions in securities or participation rights in an investment institution may be accomplished, which work is undertaken for investment institutions which are exempted under Article 28.

2. Article 28, parts d and e, shall apply, *mutatis mutandis*.

Article 30

Subsidiaries of a financial enterprise which is entitled to operate a banking business in the Netherlands are exempted from Section 3:7(1) of the Act if the obligations of the subsidiary are guaranteed by that financial enterprise.

Article 31

Persons or companies which mediate or act as intermediaries as specified in Section 4:3(1) of the Act for a financial enterprise entitled to operate a banking business in the Netherlands are exempted from Section 3:7(1) of the Act to the extent that they use the name of that financial enterprise when they mediate or act as intermediaries.

§ 3.5. Regime for banks affiliated to a central credit institution

Exemption as referred to in Section 3:111(1) of the Act

Article 32

The banks affiliated to the Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A. are exempted from supervision by the DNB for compliance with the provisions under Sections 3:10, 3:17, 3:18, 3:57 and 3:63 of the Act, to the extent that the Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A. and the

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affiliated banks comply with Section 3:111(1) of the Act.

Chapter 4. Exemption from the part of the Act entitled Supervision of the Conduct for Financial Enterprises

§ 4.1. Work as intermediary in the inviting of repayable funds from the public

Exemption as specified in Section 4:3(3) of the Act

Article 33

1. Those undertaking the work specified in Section 4:3(1) of the Act are exempted from that subsection, to the extent that:
 - a. they do this work for foundations as specified in Articles 20 or 24;
 - b. they do this work for persons or companies as specified in Article 21; or
 - c. they do this work for financial enterprises entitled to operate banking businesses in the Netherlands; or
 - d. they are money transaction offices as specified in Section 1(e) of the Act on Money Transaction Offices (*Wet inzake de geldtransactiekantoren*) registered as specified in Section 2(1) of that Act and they undertake work for a money transaction as specified in Section 1(c)(3°) of that Act.
2. The following conditions apply to the exemption specified in paragraph (1), preamble and at part c:
 - a. the work is undertaken on the basis of a written agreement between the intermediary and the financial enterprise, and this agreement is intimated to the Financial Markets Authority;
 - b. the intermediary's financial records show that the funds were received in the name of the relevant financial enterprise; and
 - c. the intermediary indicates, when doing his work, which financial enterprise he is working for.

§ 4.2. Investment institutions

Exemption as specified in Section 4:7 of the Act

Article 34

1. Investment institutions as defined in Article 4(1), parts a to e inclusive, and investment institutions in which participation rights are only offered to directors, members of the supervisory board or employees of that investment institution or to directors, members of the supervisory board or employees of a legal entity, company or institution linked to that investment institution under a formal or factual control structure, are exempted from the provisions in the part of the Act entitled Supervision of the Conduct of Financial Enterprises.
2. Managers and custodians are exempted from the provisions in the part of the Act entitled Supervision of the Conduct of Financial Enterprises, insofar as they manage investment institutions as defined in paragraph (1) or are charged with the custody of the assets of such investment institutions.
3. Paragraph (2) shall not apply to managers insofar as they manage investment institutions as defined in Article 4(3).

§ 4.3. Investment enterprises

Exemption as specified in Section 4:7 of the Act

Article 35

Investment enterprises as defined in Article 10 are exempted from the provisions under part 4.2.1 and Sections 4:13, 4:14, 4:17, 4:26, 4:83, 4:84, 4:87(2), preamble and at part b, of the Act.

Article 36

Unofficial translation of *Vrijstellingsregeling Wft*.

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1. Investment enterprises as defined in Articles 11, 12 and 14 are exempted from the provisions in the part of the Act entitled Supervision of the Conduct of Financial Enterprises.
2. The exemption specified in paragraph (1) is only applicable, as it relates to investment enterprises as defined in Article 11, insofar as they fulfil the requirements applicable under the part of the Act entitled Supervision of the Conduct of Financial Enterprises for advising on financial instruments at the date when the Financial Instruments Market Directive (Implementation) Act came into operation and to the extent that they:
 - a. recommend financial instruments or pass on orders for these financial instruments at the expense of the clients in question with such a frequency or on such a scale this does not, in the circumstances, amount to merely promoting their own enterprise; and
 - b. refrain from charging unreasonably high commissions or other payments for the provision of the services specified in sub-paragraph a.

Article 37

Investment enterprises as specified in Article 13 are exempted from the provisions in the part of the Act entitled Supervision of Financial Enterprises, with the exception of Sections 4:20, 4:22, 4:23, 4:24, 4:25, 4:88 and 4:89.

Article 38 [Cancelled with effect from 01-11-2007]

§ 4.4. Financial service providers

Exemption as specified in Section 4:7 of the Act

Article 39

Financial service providers are exempted from the part of the Act entitled Supervision of the Conduct of Financial Enterprises, to the extent that they provide financial services other than those relating to credit to:

- a. consumers working for them or falling under their responsibility in any other fashion;
- b. consumers working for or falling under the responsibility of other legal entities with which they are associated in a formal or factual control structure; or
- c. consumers or, if the financial services relate to insurances or reinsurance mediation, clients with whom they are associated in a formal or factual control structure.

Article 40

Municipal credit banks to which Section 4:37 of the Act applies are exempted from the provisions in the part of the Act entitled Supervision of the Conduct of Financial Enterprises, with the exception of Section 4:20, to the extent that they provide financial services relating to current accounts and their associated payment facilities in the context of managing clients' money as part of an integrated assistance plan.

Article 41

1. Financial service providers are exempted from Section 4:9(2) of the Act to the extent that they provide financial services relating to:
 - a. current accounts including their associated payment facilities;
 - b. savings accounts and their associated savings facilities, unless they are savings accounts whose interest payments are linked to the price movements of financial instruments admitted to trade on a market in financial instruments.
2. Financial service providers are exempted from Section 4:23(1) and (2) of the Act to the extent that they provide financial services relating to financial products, with the exception of:

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- a. complex products as defined in Section 1(d) of the Decree;
- b. savings accounts and the associated savings facilities whose interest payments are linked to the price movements of financial instruments admitted to trade on a market in financial instruments;
- c. financial instruments;
- d. credit involving amounts in excess of EUR 1,000;
- e. mortgage credit;
- f. insurance related to the full or partial loss of a client's income, not being insurance to cover a risk connected to the fulfilment of payment obligations under a credit agreement;
- g. combinations of two or more of the financial products specified in parts a to h of the definition of financial product contained in Section 1:1 of the Act.

§ 4.5. Offerers

Exemption as specified in Section 4:7 of the Act

Article 42

Those offering complex products as specified in Section 1(d) of the Decree are exempted from Section 150 of the Decree insofar as the complex products are ones for which the consumer pays a single premium or makes a single payment.

Article 43

1. Offerers of investment objects as defined in Article 2(1)(a) are exempted from the provisions in the part of the Act entitled Supervision of the Conduct of Financial Enterprises.
2. Offerers are exempted from the part of the Act entitled Supervision of the Conduct of Financial Enterprises, to the extent that they provide financial services, with the exception of credit, to:
 - 1°. consumers working for them or falling under their responsibility in any other fashion;
 - 2°. consumers working for or falling under the responsibility of other legal entities with which they are associated in a formal or factual control structure; or
 - 3°. consumers or, if the advice relates to insurance, clients with whom they are associated in a formal or factual control structure.
3. Offerers of credit are exempted from Section 4:9(2) of the Act insofar as it relates to persons specified in Section 4:9(2) of the Act who do no work in relation to providing credit except for the collection of claims.
4. Enterprises to which the exemption specified in Article 3 applies are exempted from the provisions in the part of the Act on Supervision of the Conduct of Financial Enterprises.
5. Offerers of insurance are exempted from Section 4:9(2) of the Act insofar as it relates to persons specified in Section 4:9(2) of the Act who do no work in relation to insurance policies except for the processing of losses and collection of premiums.
6. Offerers of health care insurance as defined in Section 1(b) of the Health Care Insurance Act (*Zorgverzekeringswet*) are exempted from Section 4:17(1) of the Act, Section 57(1), preamble and part c of the Decree and also Section 77(1) preamble and part c of the Decree.
7. Paragraph (1) only applies if the relevant offerer states, in advertising material and documentation holding out the prospect of an offer of the investment object, that he is not subject to the supervision of the AFM as regards offering the investment object.

Article 44

Medical expenses insurers as defined in Section 1(f) of the Health Care Market Regulation Act (*Wet marktordening gezondheidszorg*) are exempted from Sections 4:19, 4:20(1) and (3), 4:22 and part 4.2.5 of the Act. This exemption does not apply in relation to the provisions of Sections 57(1), preamble and parts a and c or Section 61(1), preamble and part b of the Decree, insofar as the medical expenses insurers enter into agreements for medical expenses insurance otherwise than by means of a distance

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contract.

§ 4.6. Advisers

Exemption as specified in Section 4:7 of the Act

Article 45

1. The following are exempted from the part of the Act entitled Supervision of the Conduct of Financial Enterprises:
 - a. advisers, to the extent that they advise on investment objects as specified in Article 2(1), paragraph a;
 - b. advisers to the extent that they give advice on insurance to:
 - 1°. legal entities in which they participate;
 - 2°. companies in which they hold shares; or
 - 3°. legal entities or companies in which other legal entities or companies, with which they are associated in a formal or factual control structure, hold a partnership or are a partner;
 - c. advisers on insurance to the extent that they also act as intermediaries in relation to the recommended insurance and are exempted under Article 47(1), preamble and at part d;
 - d. the State of the Netherlands to the extent that it advises on health care insurance or medical expenses insurance as a supplement to health care insurance in the context of public information;
 - e. advisers whose principal profession is something other than the provision of financial services, and whose principal profession gives them an insight into the financial situation of consumers, to the extent that they advise consumers, without receiving any commission for doing so from the offerer, and the advice they provide is an extension of their principal profession;
 - f. advisers to the extent that they give advice on financial instruments to persons who are acting in the exercise of a profession or business and to the extent that they do not also provide investment services.
2. Paragraph (1), preamble and part e, only apply if the advice merely forms a marginal element of the adviser's total work and if he does not also offer the recommended financial product or does not also provide an investment service in relation to the recommended financial product, mediate, act as authorised agent or act as sub-authorised agent.
3. Paragraph (1), preamble and part a, only apply if the advisers state, in advertising material and other non-obligatory precontractual information concerning the investment object, that they are not subject to the supervision of the AFM as regards the provision of advice on the investment object.

Article 46

1. Advisers on financial instruments who also provide investment services are exempted from Sections 4:9(2) and 4:15(1) and (3) of the Act.
2. Advisers on participation rights in an investment institution are exempted from Sections 4:9(2), 4:15(1), 4:17(1), preamble and part b, and 4:20 of the Act, to the extent that they advise on participation rights in themselves or in investment institutions which they manage.
3. Advisers on financial instruments as specified in Appendix B to the Investment Services Directive (*Richtlijn beleggingsdiensten*) who are also managers of collective investment institutions are exempted from Sections 4:9(2), 4:15(1), 4:17(1) preamble and at part b, and 4:20 of the Act.
4. Advisers on financial instruments who do not additionally provide investment services are exempted from Section 4:20 of the Act if they provide advice to persons acting in the exercise of their profession or trade.

§ 4.7. Intermediaries

Exemption as specified in Section 4:7 of the Act

Article 47

Unofficial translation of *Vrijstellingsregeling Wft*.

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1. The following are exempted from the part of the Act entitled Supervision of the Conduct of Financial Enterprises:
 - a. intermediaries, to the extent that they mediate on investment objects as specified in Article 2(1), at a;
 - b. intermediaries who are not credit managers, insofar as their work relates only to the collection of claims under credit agreements;
 - c. intermediaries to the extent that they mediate for insurance to:
 - 1°. legal entities in which they participate;
 - 2°. companies in which they hold shares; or
 - 3°. legal entities or companies in which other legal entities or companies, with which they are associated in a formal or factual control structure, hold a partnership or are a partner;
 - d. intermediaries in insurances as specified in Article 7, preamble and at parts c and d;
 - e. intermediaries in insurances as specified in Article 7, preamble and at part a;
 - f. municipalities insofar as they mediate in health care insurance or medical expenses insurance to supplement health care insurance between financial service providers and consumers whose income does not exceed 130% of the relevant assistance standard as specified in Chapter 3 of the Work and Social Assistance Act;
 - g. municipalities as defined in part f, insofar as they also provide advice on the insurance in relation to which they are acting as intermediaries.
2. Paragraph (1), preamble and at part e, only applies if the relevant intermediary states, in advertising material and documentation holding out the prospect of an offer of the investment object, that he is not subject to the supervision of the AFM as regards his intermediary activities for the investment object.
3. Paragraph (1), preamble and part a, does not apply in relation to Section 4:104 of the Act.

Article 48

Intermediaries in insurances as specified in Article 6(1), part c, are exempted from Section 4:75(1) of the Act insofar as the other enterprise is entirely responsible for them, as specified in Article 6(3), and:

- a. is a financial enterprise holding a licence granted by the DNB to operate a banking business; or
- b. is a financial enterprise holding a licence granted by the DNB to operate an insurance business;
or
- c. is a mutual guarantee company as referred to in Section 2(1) of the Decree on the Scope of the Provisions of the Financial Supervision Act (*Besluit reikwijdtebepalingen Wft*), to which a statement under Sections 3 or 4 of that Decree has been granted.

Article 49

1. Intermediaries in credit for goods, as specified in Article 6(1) at part d, are exempted from the provisions of the part of the Act entitled Supervision of the Conduct of Financial Enterprises, with the exception of Sections 4:19, 4:20(1) to (5) inclusive, 4:16, 4:22, 4:25, 4:28, 4:29, 4:74, 4:92, 4:96(1), 4:94(3), and 4:99 of the Act.
2. Paragraph (1) only applies to the extent that the credit for goods does not extend beyond the anticipated economic lifespan of the moveable property supplied or the period of service provision, and if the credit for goods is for the supply of the use of moveable property or for the provision of a service, and if the relevant intermediary in credit for goods:
 - a. does not advise the consumer on the credit for goods; and
 - b. has a principal professional discipline other than mediation in credit for goods.

Article 50

1. Intermediaries in possession of a licence for the provision of investment services under Section 2:96 of the Act are exempted from Sections 4:9(1), 4:10(1) and 4:11(2) and (3) of the Act to the extent that they provide mediation in financial products other than insurances or mortgage credit.

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2. Advisers who are also intermediaries as specified in paragraph (1) are exempted from Sections 4:9(1), 4:10(1) and 4:11(2) and (3) of the Act insofar as they provide advice on the financial products in relation to which they act as intermediaries.

§ 4.8. Investment enterprises

Exemption as specified in Section 4:7 of the Act

Article 51

Investment enterprises are exempted from Sections 85 and 86 of the Decree insofar as they provide investment products to professional investors.

§ 4.9. Reinsurance intermediaries

Exemption as specified in Section 4:7 of the Act

Article 52

Reinsurance intermediaries are exempted from Sections 4:16(1), 4:17(1) and 4:99 of the Act and, if at least one of the de facto managers of the relevant reinsurance intermediary has at least three years of relevant work experience, also from Sections 5 to 7 inclusive of the Decree. For advisory and intermediary activities respectively, reinsurance intermediaries are also exempted from Sections 4:72 or 4:73 of the Act respectively.

Chapter 5. Exemption from the part of the Act entitled Supervision of the Conduct of Financial Markets

§ 5.1. Offering securities

Exemption as specified in Section 5:5 of the Act

Section 52a

The provisions under Chapter 5.1 of the part of the Act entitled Supervision of the Conduct of Financial Markets do not apply to offers to the public or arranging admission to trade on a regulated market of participation rights in an investment institution which are directly or indirectly repurchased or repaid at the request of the holder and at the expense of the assets.

Article 53

1. Those who offer securities to the public or admit them to be traded on a regulated market which is situated or operating in the Netherlands are exempted from Section 5:2 of the Act, insofar as it involves:
 - a. securities, not being in the nature of shares, issued by a Member State or a decentralised government body of a Member State, a public international institution to which one or more Member States are affiliated, the European Central Bank or the central bank of a Member State;
 - b. shares in the capital of a central bank of a Member State;
 - c. securities which are irrevocably and unconditionally guaranteed by a Member State or by the decentralised government bodies of a Member State;
 - d. securities issued by an association or non-profit organisation intended for the acquisition of resources required for it to realise its non-commercial objectives;
 - e. securities, not being in the nature of shares, issued by a bank, insofar as these securities:
 - 1°. are continually on offer to the public or form parts of offers to the public or admissions to trade on a regulated market, where there are at least two separate offers or admissions of securities of an identical category or class over a period of twelve months;
 - 2°. are not subordinated, convertible or swappable;
 - 3°. do not provide entitlement to subscribe for or acquire other categories of securities and are not linked to a derivative;

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- 4°. incorporate the receipt of refundable deposits;
 - 5°. are covered by a deposit guarantee system as specified in Directive 94/19/EC of the European Parliament and of the Council of the European Union of 30 May 1994 on deposit guarantee schemes (OJEC L 135);
 - f. securities, not being in the nature of shares, issued by a bank where the total consideration value of the offer is less than EUR 50 million, this threshold amount being calculated over a period of twelve months, if these securities:
 - 1°. are continually on offer to the public or form parts of offers to the public or admissions to trade on a regulated market, where there are at least two separate offers or admissions of securities of an identical category or class over a period of twelve months;
 - 2°. are not subordinated, convertible or swappable; and
 - 3°. do not provide entitlement to subscribe for or acquire other categories of securities and are not linked to a derivative.
2. Offering securities to the public and admitting securities to be traded on a regulated market situated or operating in the Netherlands are exempted from the provisions in Chapter 5.1 of the part of the Act entitled Supervision of the Conduct of Financial Markets, to the extent that it concerns securities which form part of an offer under which the total consideration value of the offer, calculated over a period of twelve months, does not exceed EUR 2.5 million.
 3. Paragraph (2) only applies insofar as the offerers state, in advertising material and documentation holding out the prospect of the offer or admission, that they are not obliged to obtain a licence under the Act and are not subject to the supervision of the AFM as regards offering securities to the public or admitting securities to be traded on a regulated market situated or operating in the Netherlands.
 4. Those who prepare a prospectus in accordance with Chapter 5.1 of the Act, notwithstanding paragraph (1), preamble and parts a, c, f and paragraph (2), may ask the AFM to approve such a prospectus. In that case, Sections 5:9(1), 5:9a and 5:10 of the Act shall apply, *mutatis mutandis*.

Article 54

1. Those who offer securities to the public are exempted from Section 5:2 of the Act, to the extent that:
 - a. Section 5:3(2) of the Act, Article 53 or Article 55 applied to an earlier offer of the same securities to the public;
 - b. Section 5:4 of the Act or Article 53(1) applied to an earlier admission of the same securities to be traded on a regulated market; or
 - c. a prospectus that had been approved by the AFM or a supervisory body in another Member State was made generally available in relation to an earlier offer of the same securities to the public in the Netherlands or in relation to an earlier admission of the same securities to be traded on a regulated market situated or operating in the Netherlands;
2. Offering shares or share depositary receipts to the public is exempted from the provisions in Chapter 5:1 of the part of the Act entitled Supervision of the Conduct of Financial Markets, insofar as Section 5:4, preamble and at part a, of the Act apply to the admission thereof to be traded on the regulated market and insofar as a prospectus that had been approved by the AFM or a supervisory body in another Member State was made generally available in relation to an earlier admission to be traded on the same regulated market of the same shares or share depositary receipts of the same category or class;
3. Offering shares or share depositary receipts arising from the conversion or swap of other securities or from the exercise of rights associated with other securities to the public is exempted from the provisions in Chapter 5:1 of the part of the Act entitled Supervision of the Conduct of Financial Markets, insofar as:
 - a. a prospectus that had been approved by the AFM or a supervisory body in another Member State was made generally available in relation to the offer of those other securities; and
 - b. the shares or share depositary receipts being offered are in the same category or class as the securities previously offered.

Article 55

Unofficial translation of *Vrijstellingsregeling Wft*.

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Those who offer securities to the public are exempted from Section 5:2 of the Act to the extent that the securities are offered to persons, not being qualified investors, who have concluded a written mandate agreement with an asset manager entitled to provide investment services under the law of the Netherlands and who is entitled in terms of that agreement to undertake or realise transactions at his own discretion without taking orders from or consulting with the granter of the mandate.

§ 5.2. Operating on markets in financial instruments

Exemption as referred to in Section 5:68(2) of the Act

Article 56

The following are exempted from section 5:68 of the Act:

- a. investment institutions as specified in Article 4, parts d, e and f, and their managers;
- b. investment institutions as specified in Section 1:12(1), preamble and part (a) of the Act, and their managers;
- c. those subject to Section 3:2 of the Act.

§ 5.2a. Public bids for securities

Exemption as referred to in Section 5:81(2) of the Act

Section 56a

Offerers are exempted from Section 5:74(1) of the Act insofar as making a public bid for securities:

- a. not directly or potentially associated with a voting right, with the exception of non-cancellable depository receipts; or
- b. that they have issued themselves.

Article 56b

Offerers are exempted from section 5:79 of the Act insofar as they acquire securities:

- a. in standard trade on markets in financial instruments;
- b. subject to the application of Articles 92a, 201a or 336 of Book 2 of the Netherlands Civil Code; or
- c. in consequence of a public bid whose registration period coincides partly or entirely with a public bid issued by a third party for securities in the target company.

Article 56c

Offerers are exempted from Section 8(1) of the Decree on Public Offers under the Financial Supervision Act (*Besluit openbare biedingen Wft*) insofar as it relates to stating in the bid notice the information specified in Appendix B, paragraph 1.1, Appendix C, part 1 and Appendix D, part 1 of that Decree, and to the extent that the offerers are announcing or issuing a public bid for participation rights in an investment institution where the participation rights can be repurchased or repaid directly or indirectly at the expense of the assets on request by the holder.

§ 5.3. Application of a code of conduct by institutional investors

Exemption as specified in Section 5:87 of the Act

Article 57

Investment institutions as defined in Article 4, parts a to e inclusive, and investment institutions in which only participation rights are offered to directors, members of the supervisory board or employees of that investment institution or to directors, members of the supervisory board or employees of a legal entity, company or institution linked to that investment institution under a formal or factual control structure, are exempted from Section 5:86(1) of the Act.

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Chapter 6. Transitional provisions

§ 6.1. Special Conditions

Exemption as specified in Sections 2:59(1), 2:64(1), 2:79(1), 2:85(1), 2:91(1), 2:95(1) and 2:104(1) and (2) of the Act

Article 58

1. Legal entities as specified in Article 20(5), part a, of the Exemption Regulations pursuant to the Financial Services Act (*Vrijstellingsregeling Wfd*) and, insofar as Section 2:80(1) of the Act is concerned, sub-intermediaries in credit as specified in Article 20(5) at part b of the Exemption Regulations pursuant to the Financial Services Act who have applied for a licence or waiver under paragraph 1 of that Article, where no decision has been made on the application at the time of the Act entering into force, are exempted from Sections 2:55(1), 2:60(1), 2:75(1), 2:80(1), 2:86(1), 2:92(1) and 2:96 of the Act.
2. Paragraph (1) applies until the AFM has decided on the application specified in that paragraph. Sections 31(2) to (4) inclusive of the Act Implementing and Amending the Financial Supervision Act (*Invoerings- en aanpassingswet Wet op het financieel toezicht*) shall apply, mutatis mutandis.

Chapter 7. Final provisions

Article 59 [Cancelled with effect from 01-11-2007]

Article 60

The Exemption Regulations pursuant to the Act on the Supervision of the Securities Trade 1995 [*Vrijstellingsregeling Wet toezicht effectenverkeer 1995*] are hereby revoked.

Article 61

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

Article 62

These regulations may be cited as the Exemption Regulations pursuant to the Financial Supervision Act.

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

The Minister of Finance,
G. Zalm