

Toezicht nationale
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Onderwerp:

Information Form on Prudential requirements 3rd country investment firms.

Datum

16 december 2014

Kenmerk

2014/904898

Information Form Prudential Requirements for Third-Country Investment Firms in the Netherlands

PRUDENTIAL REQUIREMENTS UNDER DUTCH LAW

De Nederlandsche Bank NV (DNB) exercises prudential supervision over investment firms that offer investment services and/or activities in the Netherlands.

By this form DNB, together with market conduct supervisor Stichting Autoriteit Financiële Markten (AFM), collects information from investment firms with registered offices outside the European Economic Area (EEA) that are entitled to pursue business in the Netherlands. At the same time, the form provides information on the prudential rules applying to these investment firms in the Netherlands.

1.1 Prudential requirements pursuant to the Financial Supervision Act (*Wet op het financieel toezicht* or *Wft*)

An investment firm having its registered office outside the EEA, which provides investment services or pursues investment activities in the Netherlands is subject to prudential supervision by DNB, and must meet prudential requirements in respect of:

- a. minimum own funds (pursuant to Section 3:54(1) in conjunction with Section 3:53(1) of the *Wft*);
- b. solvency (pursuant to Section 3:58(1) in conjunction with Section 03:57(1) of the *Wft*);
- c. the periodic submission of financial statements under Section 3:82(1) in conjunction with Section 3:72(1) of the *Wft*; and
- d. controlled operational policy and outsourcing, pursuant to Section 3:22 in conjunction with Section 3:17(2), opening words and paragraph c, and (3) of the *Wft* and Section 3:18 of the *Wft*.

1.2 Exemption Regulation

- a. **Exemption from authorization requirement:** Pursuant to Section 10 (1) of the Exemption Regulation under the *Wft* (Vrijstellingsregeling *Wft*), provides that investment firms having their registered office in the designate states the United States, Switzerland or Australia are conditionally exempted from the authorisation requirement referred to in Section 2:96 of the *FSA (Wft)*.
- b. **Exemption from prudential supervision:** Pursuant to Section 18 of the Exemption Regulation, these investment firms are also exempted from prudential supervision, provided that they focus exclusively on professional investors in the Netherlands.

1.3 Third country Investment firms not covered by the Exemption Regulation

Parties not covered by the Exemption Regulation must meet the prudential requirements in the *Wft* regarding minimum own funds, submission of statements, and conducting controlled and ethical operations.

It will remain possible for these parties to apply for **dispensation from submitting statements**, with due regard to Section 3:72(8) *Wft*. Thereto the applicant must demonstrate:

- 1) that the investment firm cannot reasonably be expected to satisfy this prudential requirement and
- 2) that the objectives of the provisions from which the firm seeks dispensation are achieved otherwise.

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DNB will at any rate attach the following stipulations to the dispensation:

- the applicant's provision of investment services in the Netherlands must be targeted exclusively at professional investors;
- the investment services that the applicant provides in the Netherlands must be subject to supervision by the supervisory authority/authorities of the country of origin for the full term of the relevant dispensation;
- the applicant must notify DNB without delay if at any time it is no longer subject to supervision by one or more supervisory authorities in the country of origin or no longer meets the requirements of the relevant supervisory authority/authorities;
- the applicant must furnish a copy of its latest annual financial statements and attached external auditor's report;
- the applicant must furnish a recent statement regarding its assets under management in the Netherlands, and
- the applicant must furnish an 'in control statement' focusing on the provisions of Section 3:17(2), opening words and subsection c.3 and Section 3:18(1) and (3), opening words and subsection a of the *Wft*.

<http://www.toezicht.dnb.nl/en/7/51-229812.jsp>.

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1. YOUR REQUEST TO DNB

Please indicate your request to DNB and complete the questions in the Information Form:

- Exemption from prudential supervision pursuant to Section 18 of the Exemption Regulation *Wft*.
- Dispensation from submitting statements pursuant to Section 3:72(8) *Wft*.
- Other:

2. COMPANY INFORMATION**Datum**

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2.1 Firm's name:

Location of registered office:

Address, Postal code:

.....

Country (home state):

Telephone no. /email address:

Website:

Contact:

2.2 Name of Netherlands branch:

Address, Postal code:

.....

Telephone no. / email address:

Website:

Contact:

2.3 What business does your firm pursue in the Netherlands?

- o That of a credit institution as meant in Section 4(1) of the CRR read in conjunction with Section 2:13 Wft, which is permitted to provide investment services and/or pursue investment activities in the Netherlands.
- o That of an investment firm as defined in Article 4(1), under (1) of Directive 2004/39/EC ('Mifid Directive') holding an authorization pursuant to Section 2:96 Wft for marketing investment services / activities in the Netherlands.
- o That of an investment firm operating under an exemption provided by the Authority for the Financial Markets, pursuant to Section 10 of the Exemption Regulation under the Wft regarding the authorization requirement laid down in Section 2:96 Wft.

o Other (please comment):

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2.4 What investment services / activities does your institution perform in its Home State?

1.

2.

3.

4.

5.

2.5 What is the profile of your clients?

1. Professional clients in the Netherlands

Pension funds O Yes, Number: / O No

Other professional clients O Yes, Number: / O No

Total assets under management in the Netherlands:

2. Non-professional clients in the Netherlands: O Yes, Number:..... / O No

Total assets under management in the Netherlands:

3. Total assets under management worldwide

4. Comment:

2.6 Does the firm provide safekeeping of funds and/or financial instruments for the account of clients?

O Yes

O No

Comment:

3. FINANCIAL DETAILS *(For third country investment firms not covered by the Exemption Regulation only !)*

DNB requests investment firms from non - designated states and investment firms not covered by the Exemption Regulation, to enclose the following information with this form:

- 3.1 a copy of its **latest annual financial statements** and attached external auditor's report;
- 3.2 an **In Control Statement** regarding the firm's controlled and ethical operational policy as referred to in Section 3:17 (2) opening words and paragraph (c) and (3), and Section 3:18(1) and (3), opening words and paragraph (a), of the Wft issued by a competent compliance officer or by your external auditor;
- 3.3 a current overview of the firm's **Assets Under Management in the Netherlands**, broken down by investor type: pension funds, other professional investors and non-professional investors *(if not yet provided under 1.5)*;
- 3.4. A current overview of the **Assets Under Management worldwide** *(if not yet provided under 1.5)*.

4. INFORMATION ON HOME SUPERVISOR

- 4.1 **Home Supervisor's** name, address, telephone number, website.

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- 4.2 Registration type and number with the **Home Supervisor**.

.....

- 4.3 Name, address, telephone number, website for the **Additional Home Supervisor** (if any).

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4.4 Registration type and number with the **Additional Home Supervisor** (if any).

.....

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4.5 Please give a resume of the prudential requirements the firm has to comply with in its home state and the manner in which compliance is achieved.

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4.6 Please state the reporting requirements the firm has to comply with in its home state and the manner in which compliance is achieved.

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4.7 What other relevant legal requirements does the firm face in its home state and in what manner does the firm meet those requirements?

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5. OTHER RELEVANT INFORMATION

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.....
.....

6. SIGNATURE PAGE

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We, the undersigned, have answered the above questions truthfully and in full.

Name: Signature:

Position*

Town/City: Date:

and

Name: Signature:

Position*

Town/City: Date:

Instructions: * This form must be signed by two authorized signatories of the firm, including at least one of its directors.

Please send this form by email (preferred) or post, including the enclosures referred to at Question 2, to:

De Nederlandsche Bank NV
Division National Institutions
Investment Firms and Investment Schemes Department
stating, in the subject line, "Inquiry Prudential Requirements Third-Country Investment Firms"

printed, signed and scanned to: NATIN-BOBI@dnb.nl (former: tpb-bb@dnb.nl).

or by post to: P.O. Box 98
1000 AB AMSTERDAM
the Netherlands