

De Nederlandsche Bank N.V.
Toezicht nationale instellingen
Beleggingsondernemingen en
beleggingsinstellingen

PO Box 98
1000 AB Amsterdam
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Trade Register 3300 3396

Re:
Amendment of supervision framework for Proprietary Traders

Dear Sir or Madam,

Investment firms holding a licence to perform the investment activity of "proprietary trading" only (annex I, part A, item 3 of the Markets in Financial Instruments Directive, MiFID) have since 1 January 2014 under specific conditions been designated by DNB as "local firm" in the sense of Article 4(1)(4) of the Capital Requirements Regulation (CRR), which exempts these firms from the scope of the CRR. Instead, a national framework of capital requirements has applied to these firms since that date, including a solvency requirement that is at all times at least equal to the total net margin requirements of the clearing members under whose responsibility and guarantee the investment firm performs proprietary trading.

The European Banking Authority (EBA) has performed extended preliminary assessments and has queried DNB on this Dutch framework for "local firms" for the application of the CRR. The EBA takes the view that DNB's interpretation of the term "local firm" as referred to in Article 4(1)(4) CRR is too broad. The EBA bases itself on a strict interpretation and application of the CRR, in particular the scope exemptions laid down in this Regulation, in view of countering regulatory arbitrage and unfair competition in the financial markets. In short, the EBA takes the view that a "local firm" as referred to in Article 4(1)(4) of the CRR may be active as a proprietary trader both on the derivative and cash markets, but that this investment activity in the cash markets is limited "exclusively to transactions performed to hedge positions in derivatives markets." Transactions in the cash markets – e.g. proprietary trading in units in collective investment undertakings like Exchange-Traded Funds (ETFs) – that do not have the purpose of hedging previous and directly related derivatives transactions, according to the EBA fall outside of the scope of the definition of "local firm" in the CRR.

Date
13 November 2017

Your reference

Our reference
T030-168869096-235

Handled by
Kortekaas, G. (Gerben)
(NATIN_BOBI)

Annexes

Date

13 November 2017

Our reference

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The EBA informed DNB on Friday 3 November 2017 that it is to initiate a Breach of Union Law (BUL) investigation¹ against DNB as it takes the view that DNB has applied the definition of "local firm" in a manner that is incompatible with Union law.

DNB is of the opinion that the current national regime is appropriate and proportional from the prudential perspective. DNB nonetheless had its interpretation of the term "local firm" thoroughly analysed, both internally and externally, further to the preliminary investigation initiated by the EBA. DNB has come to the conclusion that its interpretation is legally untenable, and has therefore decided to discontinue the current national prudential regime for "local firms". DNB has informed the EBA of its intention to take immediate action to apply the CRR to the investment firms concerned.² At the same time DNB believes that it would be disproportional to apply and enforce all capital requirements ensuing from the CRR with immediate effect. This is why you will have until 31 March 2018 to comply with the CRR requirements pertaining to your institution. We expect you to report to us by 12 May 2018³ at the latest about the CRR capital requirement that applies to your institution. If as at 31 March 2018, your institution's capital falls short of the relevant requirement, we will ask you to draw up a capital restoration plan that justifies the conclusion that you will comply with the CRR within a reasonable term to be set by DNB, but definitely by 31 December 2019 at the latest.

If you have an application currently in progress for obtaining a licence for the investment activity of "proprietary trading", you will be subject to this transition trajectory, in addition to the application procedure. This trajectory will be confirmed by means of a requirement included in the licence.

The policy change also means that your exemption to the bonus cap will lapse. Until 31-12-2019, the AFM will not be enforcing the bonus cap for investment firms holding a licence to perform the investment activity of "proprietary trading" only. The Minister of Finance will consult with the AFM and the sector in the period ahead to discuss the new remuneration regulations for this sector.

¹ See Article 17 of the EBA Regulation ([link](#)).

² Proprietary traders are subject to the capital requirements stated in Articles 92 or 96 of the CRR. For investment firms that satisfy all the conditions referred to in Article 96(1)(b) of the CRR, the capital requirement based on Section 96(2) of the CRR is calculated as the sum of risk-weighted items relating to credit and market risk and the fixed overheads capital requirement.

³ One of the consequences of the discontinuation of the national prudential regime for "local companies" is that the bi-annual reporting duty will lapse, and that your institution will have to adhere to the regular quarterly reporting requirement. Accordingly, 12 May 2018 is the deadline for submitting to DNB the quarterly report for the first quarter of 2018 (with reference date 31 March 2018). As this is a Saturday, the deadline will be extended to the first following business day, being 14 May 2018.

Yours faithfully,
De Nederlandsche Bank N.V.



Jan Sijbrand

Date
13 November 2017

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