

**Kingdom of the Netherlands-Netherlands: Publication of Financial Sector Assessment Program Documentation—Detailed Assessment of Observance on IOSCO Principles and Objectives of Securities Regulation**

This Detailed Assessment of Observance on IOSCO Principles and Objectives of Securities Regulation on The Kingdom of the Netherlands-Netherlands was prepared by a staff team of the International Monetary Fund as background documentation for the periodic consultation with the member country. It is based on the information available at the time it was completed on July 22, 2011. The views expressed in this document are those of the staff team and do not necessarily reflect the views of the government of Kingdom of the Netherlands-Netherlands or the Executive Board of the IMF.

The policy of publication of staff reports and other documents by the IMF allows for the deletion of market-sensitive information.

Copies of this report are available to the public from

International Monetary Fund • Publication Services  
700 19<sup>th</sup> Street, N.W. • Washington, D.C. 20431  
Telephone: (202) 623-7430 • Telefax: (202) 623-7201  
E-mail: [publications@imf.org](mailto:publications@imf.org) Internet: <http://www.imf.org>

**International Monetary Fund  
Washington, D.C.**

FINANCIAL SECTOR ASSESSMENT PROGRAM UPDATE

KINGDOM OF THE NETHERLANDS-  
NETHERLANDS

IOSCO PRINCIPLES AND OBJECTIVES OF SECURITIES  
REGULATION

DETAILED ASSESSMENT OF  
OBSERVANCE

JUNE 2011

INTERNATIONAL MONETARY FUND  
MONETARY AND CAPITAL MARKETS DEPARTMENT

Glossary .....	3
I. Executive Summary.....	5
II. Introduction .....	6
III. Information and Methodology Used for the Assessment .....	6
IV. Description of the Regulatory Structure.....	7
V. Market Structure .....	9
VI. General Preconditions for Effective Securities Regulation .....	12
VII. Main Findings.....	12
Tables	
1. Summary Implementation of the IOSCO Principles and Objectives of Securities Regulation.....	16
2. Recommended Action Plan to Improve Implementation of the IOSCO Principles and Objectives of Securities Regulation .....	22
3. Detailed Assessment of Implementation of the IOSCO Principles .....	26
Annex	
I. Status of Implementation of the New IOSCO Principles .....	91

**GLOSSARY**

AAFS	Audit Firms Supervision Act
AIFM	Alternative Investment Fund Management
AFM	Authority for Financial Markets
AFS	Act on Financial Supervision
AFSA	Audit Firm Supervision Act
AUM	Assets under Management
Bgfo	Decree on Conduct of Business Supervision of Financial Enterprises
BmFo	Decree on Market Access for Financial Undertakings
Bpr	Decree on Prudential Rules pursuant to the Act on Financial Supervision
CAD	Capital Adequacy Directive
CCP	Central Clearing Counterparty
CESR	Committee of European Securities Regulators
C& I	Compliance and Integrity Department
CIS	Collective Investment Schemes
CMC	Capital Markets Committee
CPSS-IOSCO	Committee on Payment and Settlement Systems-International Organization of Securities Commissions
CRA's	Credit Rating Agencies
CRB	Clearing Rule Book
DCC	Dutch Civil Code
DNB	De Nederlandsche Bank
DSI	Dutch Securities Institute
DUFAS	Dutch Asset Management Association
EC	European Commission
EMCF	European Multilateral Clearing Facility N.V.
ENDEX	European Energy Derivatives Exchange
ESMA	European Securities Markets Authority
ETFs	Exchange Traded Funds
EU	European Union
FEC	Financial Expertise Center
FIU	Financial Intelligence Unit
FRC	Financial Reporting Committee
FSAP	Financial Sector Assessment Program
IAD	Internal Audit Department
ICAAP	Internal Capital Adequacy Assessment Process
IFAC	International Federation of Accountants
IFRS	International Financial Reporting Standards
GAAP	General Accepted Accounting Principles
GALA	General Administrative Law Act
HFT	High Frequency Trading
IAD	Internal Audit Department
ICS	Investor Compensation Scheme
IFAC	International Federation of Accountants
ISAs	International Standards of Auditing
KIFID	Financial Services Complaint Tribunal
MiFID	Market in Financial Instruments Directive

MoF	Minister of Finance
MMoU	Multilateral Memorandum of Understanding
MoU	Memorandum of Understanding
MTFs	Multilateral trading facilities
NBA	Dutch Profession Accounting Organization
NIVRA	Netherlands Institute for Registered Accountants
Nrgfo	Regulation on Market Conduct Supervision of Financial Undertakings
NOVaA	Netherlands Order of Accountants
NYSE	New York Stock Exchange
IOSCO	International Organization of Securities Commissions
OTC	Over the Counter
PIE	Public Interest Entity
PO	Privacy Officer
PPO	Public Prosecution Office
RM	Regulated Market
SFRA	Supervision of Financial Reporting Act
SRA	Association of Chartered Accountants
SROs	Self-Regulatory Organizations
TOM MTF	The Order Machine Multilateral Trading Facility
UCITS	Undertakings for Collective Investment Schemes in Transferable Securities
US SEC	United States Securities and Exchange Commission
Wwft	Money Laundering and Terrorist Financing Act

## I. EXECUTIVE SUMMARY

- 1. As the primary supervisor of the securities market the Netherlands Authority for Financial Markets (AFMs) has developed a robust supervisory framework, which exhibits high levels of implementation of the International Organization of Securities Commissions (IOSCO) Principles.** For its supervision of intermediaries (investment firms and banks), the AFM uses a problem solving risk-based approach which is based on the development on an annual basis of themes across the financial sector that become the focus of on-site supervision, complemented with an institution based program of both off- and on-site supervision for high impact firms. Its supervision of markets also follows a risk-based approach, and thus a significant amount of the AFM's resources are currently dedicated to the supervision of Euronext Amsterdam, as well as to Euronext N.V., the latter along with the supervisors from the four remaining countries where Euronext holds licenses. Supervisory programs are implemented under a clear enforcement strategy. The AFM's main goal is to influence behavior and it uses the different tools at its disposal (including fines when necessary) to achieve such result. The AFM is perceived as a credible and effective enforcer.
- 2. The AFM's efforts are complemented by De Nederlandsche Bank (DNB)'s program of prudential supervision, which for investment firms is reasonable and credible.** It also follows a risk-based approach, whereby intensity of supervision is determined by the type of activities that the investment firms undertake. As a result, most supervisory resources are spent in the investment firms that conduct "riskier activities," including larger investment firms and investment firms with complex structure as well, and proprietary trading. Such firms are subject to on-site inspections on an annual cycle, while the remaining firms are visited under a three year cycle. DNB has recently strengthened its approach toward compliance with reporting obligations, and has started to impose orders for incremental penalty. As a result compliance with such obligations has improved.
- 3. Gaps in the legal framework for issuers, in the case of the AFM, and on management of collective investment schemes, in the case of DNB, have imposed limitations to the supervision that they carry out on such type of participants.** The AFM has limited legal authority to request information from issuers in order to ensure their compliance with financial reporting standards, which limits the effectiveness of the review that it conducts on their annual and semi-annual reports. In the case of management companies, the legal framework does not subject some types of management companies to solvency requirements nor to the review of qualified holdings, and the reporting obligations established by the law for all management companies are not sufficient from a prudential perspective. To a certain extent due to those limitations, but also possibly because of limited resources, DNB does not conduct on-site inspections of management companies, except if there is a signal of concern, or a management company is in the same group of an investment firm, or if it holds a license as management company and investment company.

4. **More importantly, both supervisors have limited authority to issue rules.** The current legal framework prescribes very narrowly the cases where DNB and the AFM can issue rules. As a result their ability to react in a swift manner to emerging risks in the financial sector is very limited.

## II. INTRODUCTION

5. **An assessment of the level of implementation of the IOSCO Principles in the Netherlands securities market was conducted from November 25 to December 14, 2010 as part of the Financial Sector Assessment Program (FSAP) by Ana Carvajal, Monetary and Capital Markets Department.** An initial IOSCO assessment was conducted in 2004. At that time the structure for financial regulation in the Netherlands was in transition to a twin peak approach. Since then significant changes in laws and regulations took place and the twin peak approach has consolidated. The AFM has had the opportunity to use and test the authority given to it by the Act on Financial Supervision (AFS), as well as other Acts, such as the Supervision of Financial Reporting Act (SFRA), and so has DNB. As a result the assessor has had at her disposal additional information to assess the scope and effectiveness of the powers that these new laws provided to the financial supervisors. Furthermore important changes in market structure—which pose regulatory and supervisory challenges—have taken place. All these developments and changes should also be taking into account in explaining differences in the grades received in 2004 vis-à-vis this new assessment.

## III. INFORMATION AND METHODOLOGY USED FOR THE ASSESSMENT

6. **The assessment was conducted based on the IOSCO Principles and Objectives of Securities Regulation and its Methodology adopted in 2003 and updated in 2008.**<sup>1</sup> In June 2010 IOSCO approved a revision to the IOSCO Principles, which mainly resulted in the addition of nine new Principles. However, a revised methodology has not been developed yet. As a result this assessment has been conducted based on the current methodology. Nevertheless the authorities agreed to hold exploratory discussions on the status of implementation of the new principles. A summary of such discussions is included as an annex to this assessment.

7. **Certain comments must be made in regard to the scope of this assessment.** Given the twin peak model, the framework for DNB is assessed in relation to its functions as the prudential supervisor for the securities market (Principles 17, 22, 24, and 29). Principles 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, and 13 are also assessed, but with limited scope, that is, in connection with the functions that DNB performs in the securities market. Finally Principle 30 is not assessed due to the existence of a separate standard for securities settlement systems.

---

<sup>1</sup> In 2008 IOSCO only updated the footnotes of the Methodology.

8. **The assessor relied on:** (i) a self-assessment developed by the AFM with the participation of the DNB; (ii) the review of relevant laws, and other relevant documents provided by the authorities including annual reports; (iii) meetings with the Chairman of the AFM and other members of the Executive Board and Management Directors of the AFM, staff of both supervisory authorities, and other public authorities, in particular representatives of the Ministry of Finance (MoF); as well as (iv) meetings with market participants, including issuers, banks, investment firms, fund managers, market operators, external auditors, and law firms.

9. **The assessor wants to thank both the AFM and DNB for their full cooperation** as well as their willingness to engage in very candid conversations regarding the regulatory and supervisory framework in the Netherlands. The assessor also wants to extend her appreciation to all other public authorities and market participants with whom she met.

#### IV. DESCRIPTION OF THE REGULATORY STRUCTURE

10. **The structure of financial regulation in the Netherlands follows a functional (“twin peaks”) approach.** Such an approach is embedded in the Act on Financial Supervision (AFS), which charges DNB with prudential supervision and the AFM with conduct supervision of all participants in the financial sector. The AFS is clear in relation to the core mandates of the AFM and DNB, and their objectives. According to Section 1:24 prudential supervision shall focus on the solidity of financial enterprises and their contribution to the stability of the financial sector. Pursuant to Section 1:25 conduct of business supervision shall focus on orderly and transparent financial market processes, integrity in relations between market parties and due care in the provision of services to clients. Such respective mandates appear to be well understood not only by the financial supervisors, but also by market participants. This conclusion is supported by a recent study commissioned by the MoF as part of the reports required by the AFS.

11. **The AFM is the primary authority responsible for the supervision of securities markets in the Netherlands, with the participation of DNB in prudential supervision.** In addition to its responsibility in conduct supervision, the AFM has specific responsibilities stemming from other laws: (i) Supervision of statutory auditors (Audit Firm Supervision Act); (ii) Supervision over financial reporting by issuers (Act on Supervision of Financial Reporting); and (iii) consumer protection in relation to mainly exempted issuers that engage in “abusive” offerings (Consumer Protection Enforcement Act). Similar to many other securities regulators, the AFM does not have the mandate to hear individual complaints of customers. Rather this is a mandate of the Financial Services Complaint Tribunal (KIFID) and the Financial Ombudsman.

12. **The AFS contains several provisions aimed at fostering coordination and cooperation among the AFM and DNB.** In particular: (i) collaboration for the purposes of developing regulations to ensure that they are equivalent whenever possible—the law further

details areas in which such coordination is expected; (ii) consultation of one another (and reasonable time to provide an opinion) in connection with licensing of market participants; and (iii) consultation in connection with the imposition of certain “enforcement” measures. A covenant between the authorities has further detailed such obligations.

**13. Exchanges, Multilateral Trading Facilities (MTFs), and central clearing counterparties (CCPs) have a limited role in oversight of the Dutch market.** As is the case with other exchanges, Euronext and ENDEX perform certain oversight functions over its members, in order to ensure fair and orderly markets. However, in the Dutch market their role is only complementary to that of the AFM, which actually can be considered the front line supervisor for purposes of detecting unfair practices. The AFM has also taken over the responsibility to review prospectus, as well as periodic and continuous disclosure by issuers. LCH Clearnet S.A. and the European Multilateral Clearing Facility (EMCF), in their conditions of central clearing counterparties, oversee clearing members to ensure that trades are clear and settled with no disruptions to the market. All of these infrastructure providers are subject to the (indirect) oversight of the AFM and DNB. Furthermore, there are Memoranda of Understanding (MoUs) in place among the regulators of the countries where Euronext and LCH Clearnet SA operate to ensure coordination of such oversight.

**14. Certain private organizations are having an important role in enhancing professional standards but do not meet the conditions of self-regulatory organizations (SROs).** In particular, the Dutch Securities Institute (DSI) is a private entity that has developed a system of registration with fit and proper requirements for individuals that provide investment services. Membership is voluntary; but once an entity has become a member, registration of the individuals through which it provides investment services is mandatory. DSI currently has 510 members which are institutions licensed by the AFM and DNB, 605,000 individuals with 700,000 registrations (a person can be registered to provide more than one investment service), which entails the whole investment services industry. In addition to requirements for registration, the DSI has developed a code of conduct and its violation can be sanctioned with a fine, a suspension of registration or even de-registration. The DSI has in fact applied such sanctions. Its sanctions are public (disclosed on its website). However, securities firms and the individuals that carry functions on their behalf can choose not to register with DSI and fulfill the fit and proper requirements of the AFS in another way. Thus, DSI rules do not have the “binding” status required by the principles to be considered a SRO for the purposes of this assessment. The Dutch Asset Management Association (DUFAS) is also playing a role in enhancing market standards for the Collective Investment Schemes (CIS) industry. It has developed a code of governance for CIS, and it monitors membership compliance with it through an independent third party. Membership is also voluntary, but as of November 2010 roughly 99 percent of the institutions licensed to provide asset management services were members of it. For the same reasons as DSI, it cannot be considered an SRO for the purposes of this assessment.

15. **The framework for the securities markets rests in the definition of a list of activities that are subject to authorization or licensing:** Those activities include: (i) offering of securities to the public; (ii) the provision of investment services and activities;<sup>2</sup> (iii) the management of collective investment schemes; and (iv) the operation of a regulated market. In addition the provision of statutory audits and ratings used for regulatory purposes are also subject to licensing. The AFM is the entity responsible for the authorization of offerings and the licensing of all the activities listed above with the exception of operators of regulated markets, which are licensed by the MoF upon a recommendation of the AFM. Banks licensed by DNB can provide investment services and activities themselves, without a separate license from the AFM. Credit Rating Agencies (CRAs) oversight, including licensing, will soon be transferred to the European Securities Markets Authority (ESMA).

## V. MARKET STRUCTURE

### Issuers

16. **As of October 2010, there were 115 companies listed in Euronext Amsterdam, for a total market capitalization of € 462.712 millions.** The market is highly concentrated. The top ten companies represent roughly 74 percent of total market capitalization. The bulk of new listings in Euronext take place in the Paris segment. In 2010, only six out of 71 new listings took place in other segment of Euronext, and only one new listing took place in Euronext Amsterdam.

### Intermediaries

17. **As of November 2010 there were 49 banks and 263 investment firms—of which 243 were located in the Netherlands—authorized to carry out investment services in the Netherlands.** Overall banks (or their investment firms' affiliates) are the main participants in the securities markets, in terms of trading volumes and assets under management. Approximately 90 percent of the investment firms are dedicated to asset management. The remaining investment firms trade on their own account, are market makers or give advice.

---

<sup>2</sup> Providing an investment service includes: (i) to receive and forward, in the pursuit of a profession or business, client orders with regard to financial instruments; (ii) to execute, in the pursuit of a profession or business, orders with regard to financial instruments for the account of those clients; (iii) to manage an individual capital; (iv) to provide advice with regard to financial instruments in the pursuit of a profession or business; (v) to underwrite or place financial instruments when they are offered on a firm commitment basis, in the pursuit of a profession or business; and (vi) to place financial instruments when they are offered without a firm commitment basis, in the pursuit of a profession or business. Performing an investment activity includes: (i) acting for its own account, in the pursuit of a profession or business; and (ii) operating a multilateral trading facility, in the pursuit of a profession or business.

The majority of the investment firms are not leveraged, rather they largely fund their activities with own capital.

18. **As of November 2010, there were 120 firms licensed to manage CIS.** 113 were located in the Netherlands; of which 93 are management companies, and 20 are investment companies. These firms have a total of 389 CIS under management, of which 55 are umbrella funds with a total of 559 sub funds. There are roughly 800 foreign CIS authorized in the Netherlands.

### **Collective Investment Schemes**

19. **Assets under management (AUM) by CIS reached € 392 billion at end 2009.** During 2009 AUM in Dutch investment funds significantly increased driven by large-scale restructuring operations carried out at some big pension funds and strongly recovering stock markets. The main components of this increase were a one-off deposit of € 174 billion by pension funds in the context of restructurings, and a € 42 billion price gain on investments. As a result of this growth the euro market share of Dutch investment funds grew to 8 percent. By end 2009, the Dutch sector ranked fifth after Luxembourg, Germany, France and Ireland.

20. **The bulk of the CIS authorized in the Netherlands are non-UCITS (Undertakings for Collective Investment Schemes in Transferable Securities).** They do not benefit from the passport regime, but have more flexibility in terms of the assets in which they invest and the possibility to use leverage. Bond funds make the largest segment of the Dutch investment fund industry (43 percent) followed by equity funds (42 percent). The share of Dutch pension funds in the holding unit of Dutch investment funds rose from 44 to 76 percent at end 2009.

### **Markets**

21. **The main market in the Netherlands is Euronext Amsterdam, which is operated by Euronext Amsterdam, a fully owned subsidiary of Euronext NV.** Euronext NV operates Eurolist and Liffe Connect. Eurolist is a cash market that integrates the markets of Brussels, Paris, the Netherlands, and Lisbon into a single market with the same rules for access as well as listing requirements. Starting in 2010 it has also integrated a cash market from London through the London gateway. Eurolist is a centralized electronic order driven market, where priority is assigned based on price and time and quotes are anonymous. LCH Clearnet SA, a bank registered under French Law, provides central counterparty and clearing services. Settlements are made via Euroclear in a DVP T+3 basis. Liffe Connect is a regulated market for derivatives. Trading mechanisms are order driven for futures and quote driven for options. LCH Clearnet S.A. provides central counterparty and clearing services.

22. **There are also three MTFs licensed in the Netherlands: New York Stock Exchange (NYSE) Arca Europe, Alternext, and TOM.** The first two are operated by Euronext. NYSE Arca Europe operates a central limit order book for trading blue chips stocks from 14 countries: Austria, Czech Republic, Denmark, Finland, Germany, Hungary, Ireland, Italy,

Norway, Spain, Sweden, Switzerland, the United Kingdom and the United States. Alternext is an alternative market for medium size companies. Both Alternext Amsterdam and NYSE Arca Europe make use of NYSE Euronext management and operating structure. Thus in practice they are considered trading segments of NYSE Euronext, whereby only the applicable trading rules for each trading segment vary. TOM is a MTF for cash markets recently licensed; and currently in the process of obtaining a license to operate also a MTF for derivatives. MTFs licensed in other countries in Europe are also important venues for trading of Dutch securities, in particular Chi-X Europe, which operates from London.

23. **MTFs have created competition vis-à-vis Euronext, but are also leading to market fragmentation.** Some estimates indicate that roughly 30 percent of trading volumes have already moved to MTFs, and it is expected that they will reach 50 percent in the near future. Such development are making more difficult for investment firms to comply with their best execution obligations. Order routing systems are helping to address such challenge.<sup>3</sup> In addition, the New York Stock Exchange (NYSE) has recently announced its intention to develop a consolidated tape which will increase transparency vis-à-vis the public. However, the problem of liquidity fragmentation itself remains. In this regard, while orders are routinely routed to the execution venue offering the best price; there is often only a small amount of stock bid or offered at that location and such prices; larger orders need to be re-routed, perhaps several times, to get filled; which is costly.

24. **Supervisors, as well, face challenges due to market fragmentation** both in regard to market surveillance for purposes of detecting unfair practices, as well as to supervise compliance with best execution. Here also technological advances are helping to address the challenges. Under the auspices of the Committee of European Securities Regulators (CESR), the European supervisors have developed a transaction report that allows supervisors to have all the transaction information coming from other jurisdictions for the securities for which they are the competent authority, which is critical for market supervision. On the other hand, a consolidated transaction tape will also be a very useful tool to supervise compliance with best execution obligations.

25. **Other types of electronic platforms that do not operate under the same levels of transparency are also developing in Europe.** Some crossing networks appear to be operating in a similar way as MTFs but technically would not fit the definition included in Market in Financial Instruments Directive (MiFID) and as a result have not been subject to regulation, including transparency requirements, raising concerns about an unlevel playing field. These types of networks do not appear to be present in the Netherlands; however given the pan-European nature of the market they do affect transparency for the whole market, including the Netherlands. On the other hand, systematic internalization is not been widely

---

<sup>3</sup> In the context of the Netherlands TOM has developed a router system that it expects to offer to banks and investment firms on a commercial basis.

used. As of mid 2009 it was estimated that roughly only once percent of trading volumes in Europe were taken place through systemic internalizers—mostly UK participants.

26. **There is also a specialized energy market licensed in the Netherlands, the European Energy Derivatives Exchange (ENDEX).** It is estimated that ENDEX has roughly 20 percent market share in future contracts, with the physical delivery of gas or power for the Dutch national grid as an underlying commodity. The balance is traded bilaterally between professional market parties. As a result, trading volumes on ENDEX are limited.

## VI. GENERAL PRECONDITIONS FOR EFFECTIVE SECURITIES REGULATION

27. **There are a number of general preconditions necessary for the effective regulation of securities markets that appear to be in place in the Netherlands.** There are no significant barriers to entry and exit for market participants. Competition is encouraged and foreign participation is welcomed. The legal and accounting system supports the implementation of requirements and effective regulation of market participants. The commercial law is up-to-date, and so are corporate governance standards. The legislation regarding insolvency is sophisticated. The regulators have legally enforceable powers of decision and action. The taxation framework is supportive to the operations of the industry in the jurisdiction.

## VII. MAIN FINDINGS

28. **Principles for the regulator (Principles 1–5):** The supervisors work under a clear legal framework that provides for a functional approach to supervision whereby the AFM is responsible for conduct supervision and DNB for prudential supervision of financial markets. In practice the AFM and DNB enjoy operational independence; however certain features of the legal framework could pose threats to such independence. Both the AFM and DNB operate under a strong framework of accountability to the MoF and the public. Overall the AFM and DNB have sufficient powers to supervise the securities markets. However their limited rulemaking authority can affect their ability to react swiftly to market developments. The AFM also has limited powers in relation to issuers which is affecting its ability to supervise compliance with financial reporting standards. The AFM has had sufficient resources to carry out its mandate in the securities market. The resources dedicated by DNB to supervise securities intermediaries appear to be limited. Both the AFM and DNB operate under a framework of procedural fairness imbedded in the General Administrative Law (GALA). Their decisions are subject to judicial review. The AFM and DNB have developed comprehensive integrity policies designed to ensure high professional standards; whose compliance is overseen by specialized departments.

29. **Principles for self-regulation (Principles 6–7):** There are no organizations which have the legal power to establish binding rules of eligibility for participants in securities markets activities, or which have the legal power to bar a person from participating in the

securities markets, except for the AFM and DNB. Exchanges and central clearing counterparties perform certain oversight functions over their members (see paragraph 13). As providers of infrastructure services they all have been subject to the oversight of the AFM (exchanges) and the AFM and DNB (central clearing counterparties).

30. **Principles for enforcement (Principles 8–10):** The AFM and DNB have extensive investigative powers not only over regulated entities but also over third parties. They can request information from any person, as well as inspect business documents and business premises of any person, without prior notice. Regulated entities are subject to record keeping obligations for a period of five years. They are also required to have in place mechanisms to minimize the potential for anti-money laundering. Both the AFM and DNB have at their disposal a wide range of enforcement measures, including public warnings, instructions, orders for incremental penalties and administrative fines (up to € 8 million). As the primary authority responsible for the securities markets, the AFM has developed a robust supervisory framework that follows a risk based approach. The AFM has a clear strategy toward enforcement, which is based on the principle of influencing behavior. It uses all the tools at its disposal (including fines) to achieve such result. DNB has complemented such efforts with a reasonable and credible framework for the prudential supervision of investment firms. It has recently strengthened its approach toward compliance with reporting obligations, and has started to impose orders for incremental penalties. As a result, compliance with such obligations has improved. As a whole the system works effectively, but limitations exist in two areas: prudential supervision of management companies and criminal enforcement.

31. **Principles for cooperation (Principles 11–13):** The AFM and DNB are subject to general obligations to cooperate with one another, as well as specific areas where such cooperation is required in the form of exchange of information, notification or even consultation to one another. The AFS also requires them to cooperate with foreign regulators. The system differentiates between regulators from European Union (EU) Member States, for which this obligation even entails instances where consultation is required, and other non-EU States. In both cases there is a general obligation to exchange information. Both the AFM and DNB are authorized to provide assistance to foreign authorities from both member and non-Member States. For such purposes they can use the same investigative powers that they have for purposes of conducting their own investigations. The AFM is signatory of the IOSCO Multilateral Memorandum of Understanding (MMoU), as well as many bilateral MoUs. DNB is also signatory of multiple bilateral MoUs. International cooperation is largely centralized in the AFM. There is ample evidence of the AFM's capacity and willingness to cooperate with foreign regulators.

32. **Principles for issuers (Principles 14–16):** Issuers of public offerings or whose securities are admitted to listing are required to submit a prospectus for the approval of the AFM, which content is in line with the IOSCO principles. Issuers whose securities are admitted to trading must submit annual and semi-annual reports and are required to communicate to the regulated market and the AFM price-sensitive information, as soon as

possible. The AFM has issued guidance in regard to the latter obligation. Financial statements must be prepared in accordance with International Financial Reporting Standards (IFRS) as adopted in EU for issuers that consolidate. Issuers that submit company only statements can issue them in accordance to local General Accepted Accounting Principles (GAAP). Auditors that conduct statutory audits are subject to the oversight of the AFM, which has developed a comprehensive supervisory framework for them, including regular on-site inspections. The framework requires that auditors be independent. The AFM has limited powers to enforce issuers' compliance with financial reporting standards. The system to enforce compliance with the obligation to launch a mandatory tender offer, or to pay a fair price is based on a private right of action, whereby the company or a shareholder can file a suit before the Enterprise Chamber of the Amsterdam Court of Appeals, which is a specialized tribunal. The AFM does not have the authority to file a suit for breach of those obligations. The AFM, on the other hand, has authority to enforce compliance with procedural aspects related to the tender offer, including the approval of the offering memorandum.

33. **Principles for collective investment schemes (Principles 17–20):** Management of collective investment schemes is subject to licensing by the AFM. Licensing requirements include fit and proper requirements, as well as compliance with a set of operational requirements aimed at ensuring sound and controlled business. Management companies are also subject to minimum capital requirements, but only UCITS management companies are subject to a solvency ratio and review of qualifying holdings. CIS constituted as unit trusts are required to have an independent depository; while there are other safeguards for CIS constituted as investment companies. Management companies are required to submit annual and semi-annual records, but there are no additional reporting requirements for prudential supervision. DNB conducts off-site supervision of management companies, but on-site supervision is only conducted when there is a signal of problems, for management companies that are part of the same group of an investment firm or for management companies that also hold an investment firm license. The bulk of the supervisory resources of the AFM are spent on thematic inspections, which are complemented by institution oriented inspections for the high impact firms on a one year cycle. CIS must have a prospectus, which content is in line with the IOSCO Principles. The prospectus must include information on valuation of assets. Illiquid assets must be subject to valuation by an independent expert on an annual basis. The prospectus must also indicate the conditions under which redemption takes place, as well as the conditions to suspend redemption. Suspension of redemptions must be notified to the AFM

34. **Principles for intermediaries (Principles 21–24):** The provision of investment services or investment activities requires a license by the AFM. Banks can also provide such services, without the need for a separate license but the AFM must be consulted. Licensing requirements include fit and proper requirements, as well as compliance with a set of operational requirements aimed at ensuring sound and controlled business. Investment firms are subject to minimum capital requirements. DNB receives quarterly and monthly reporting

to supervise compliance with prudential requirements. It conducts on-site inspections of high impact firms (roughly 25 percent of the firms) under a one year cycle. All other firms are visited under a three year cycle. The bulk of the supervisory resources of the AFM are spent on thematic inspections, which are complemented by institution oriented inspections for the high impact firms on a one year cycle. Market intermediaries are required to have a risk management function, a compliance function and an internal control function. In the latter two cases the respective departments must be independent from management, and are required to report on their findings to the Board on an annual basis. Investment firms have several obligations vis-à-vis their customers in relation to information disclosure and suitability. In addition they are required to hold their assets on bank accounts under strict rules of segregation. The AFM has developed a plan to deal with the event of their insolvency. There is also an investor compensation scheme, which is funded by levies on market participants. Insolvency of an investment firm is subject to the framework applicable to corporations.

**35. Principles for secondary markets (Principles 25–30):** Both regulated markets and MTFs are subject to licensing and oversight, and operational requirements are substantially the same. The AFM has a system of differentiated oversight, depending on the scale of operation, securities traded and type of investors that participate in a trading venue. Currently most of its supervisory resources are dedicated to Euronext. It supervises the Amsterdam segment on a real-time basis for purposes of price-sensitive information and on T+1 for purposes of detecting unfair practices. The AFM, along with the supervisory authorities of the United Kingdom, France, Belgium and Portugal have recently revised the MoU for the supervision of Euronext NV. The arrangements set up in such MoU appear to be working well. The framework allows for a coordinated approval process which has been effectively used to deal with critical developments such as co-location and direct access. The arrangements have also led to coordinated on-site inspections. Market manipulation and insider trading can be pursued administratively or in the criminal courts. Through MoUs and more generally CESR-Pol European supervisors, including the AFM are seeking to exchange views on enforcement cases. The AFS requires pre and post-trade transparency for equity markets, for regulated markets (RM), and MTFs. Post trade transparency is required for Over the Counter (OTC) in shares, and systematic internalizers. There are no transparency requirements for other markets, although it appears that the markets for government debt and corporate debt – which in the Netherlands are for professionals—do enjoy a good level of transparency via Bloomberg or other data vendors. DNB and the AFM indirectly supervise securities clearing and settlement. They do not directly monitor large exposures, but they do receive monthly information from LCH Clearnet S.A. on such positions. LCH Clearnet S.A. on the other hand, has mechanisms to address large exposures, including intraday margining.

**Table 1. The Netherlands: Summary Implementation of the IOSCO Principles and Objectives of Securities Regulation**

Principle	Grading	Findings
<p><b>Principle 1.</b> The responsibilities of the regulator should be clearly and objectively stated.</p>	FI	<p>The responsibilities of the AFM and DNB are clearly established by law, mainly in the AFS. The mandates are also well understood by market participants, and there do not appear to be gaps or inequities. The AFS requires the AFM and DNB to cooperate with one another. They have signed a covenant. There is also a covenant for coordination in regard to criminal enforcement with the Public Prosecution Office and the Financial Investigations Unit.</p>
<p><b>Principle 2.</b> The regulator should be operationally independent and accountable in the exercise of its functions and powers.</p>	BI	<p>In practice the AFM and DNB enjoy operational independence; however certain features of the legal framework could pose threats to such independence. The legal framework provides for a high degree of accountability to the MoF and the public. The authorities have to submit annual reports to the MoF both on the performance of their duties and the budget, which are in turn submitted to Parliament. Decisions of the AFM and the DNB that affect third parties are subject to judicial review.</p>
<p><b>Principle 3.</b> The regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers.</p>	BI	<p>The supervisors have licensing powers, as well as broad supervisory and enforcement powers. Their limited rulemaking authority can affect their ability to react swiftly to emerging risks. The AFM has limitations in its powers vis-à-vis issuers, and licensing of regulated markets is still retained by the MoF. The AFM has the necessary resources to carry out its functions; while the resources of DNB for the supervision of securities intermediaries appear to be limited.</p>
<p><b>Principle 4.</b> The regulator should adopt clear and consistent regulatory processes.</p>	FI	<p>Both the AFM and DNB are subject to general obligations of fairness, based on the General Administrative Law Act.</p>
<p><b>Principle 5.</b> The staff of the regulator should observe the highest professional standards.</p>	FI	<p>The AFM has developed an integrity policy aimed at ensuring high professional standards. Such policy deals with issues such as insider trading, confidentiality, ancillary activities, etc. Compliance with the policy is monitored by the Compliance and Integrity Department which conducts reviews of staff on a risk-basis, and of Board Members and high management of an annual basis. DNB's integrity policy is similar to that of the AFM. Monitoring of compliance is also vested in the Compliance and Integrity Department.</p>

Principle	Grading	Findings
<p><b>Principle 6.</b> The regulatory regime should make appropriate use of SROs that exercise some direct oversight responsibility for their respective areas of competence and to the extent appropriate to the size and complexity of the markets.</p>	Not assessed	<p>There are no organizations with legal power to set up general binding rules of eligibility for participation in securities markets activities, or to ban a person from participating in securities activities, other than the AFM and DNB. DSI and DUFAS are becoming increasingly involved in raising the professionalism of participants in the Dutch securities market. However their rules do not have the “binding” nature required by the principles to consider them SROs for the purposes of this assessment. The exchanges, MTFs and central clearing counterparties have some oversight role over members.</p>
<p><b>Principle 7.</b> SROs should be subject to the oversight of the regulator and should observe standards of fairness and confidentiality when exercising powers and delegated responsibilities.</p>	FI	<p>Exchanges, MTFs, and central clearing counterparties have been subject to oversight by the financial supervisors. Furthermore the AFM has entered into MoUs with the regulatory authorities of the countries where Euronext and LCH Clearnet S.A. operate.</p>
<p><b>Principle 8.</b> The regulator should have comprehensive inspection, investigation, and surveillance powers.</p>	FI	<p>The supervisors have broad supervisory, investigative and enforcement powers over regulated entities. The AFS requires regulated entities to keep records, including records on transactions for a period of five years. Regulated entities are required to have in place mechanisms to minimize AML. In particular they are required to conduct customer due diligence and to report suspicious transactions.</p>
<p><b>Principle 9.</b> The regulator should have comprehensive enforcement powers.</p>	FI	<p>The supervisors have broad powers to request information, inspect business documents, and enter into business premises of third parties. They can also take testimony. Although they cannot take it under oath, failing to attend a request or not attending it truthfully constitutes a criminal offense. Both supervisors have a range of enforcement measures to address violations to securities laws and regulations including public warnings, instructions, and orders for incremental penalties and administrative fines (which can reach a maximum of € 8 million).</p>
<p><b>Principle 10.</b> The regulatory system should ensure an effective and credible use of inspection, investigation, surveillance and enforcement powers and implementation of an effective compliance program.</p>	BI	<p>Overall the supervisors have implemented a credible and effective supervisory and enforcement program. However, DNB should achieve a better balance between off site and onsite supervision in particular for management companies. Criminal enforcement appears not to be effective enough; at least the results are not always visible.</p>

Principle	Grading	Findings
<p><b>Principle 11.</b> The regulator should have the authority to share both public and nonpublic information with domestic and foreign counterparts.</p>	FI	<p>The AFM and DNB are subject to general obligations to cooperate with one another, as well as specific areas where such cooperation is required, in the form of exchange of information, notification or even consultation to one another. The AFS also requires them to cooperate with foreign regulators. The system differentiates between regulators from EU member states, for which this obligation even entails instances where consultation is required, and other non EU states. In both cases there is a general obligation to exchange information.</p>
<p><b>Principle 12.</b> Regulators should establish information sharing mechanisms that set out when and how they will share both public and nonpublic information with their domestic and foreign counterparts.</p>	FI	<p>There is a covenant between the AFM and DNB that further details their obligations to exchange information, consult one another and cooperate. The AFM is signatory of the IOSCO MMOU, and to multiples bilateral MoUs. DNB is also signatory to multiple MoUs.</p>
<p><b>Principle 13.</b> The regulatory system should allow for assistance to be provided to foreign regulators who need to make inquiries in the discharge of their functions and exercise of their powers.</p>	FI	<p>The AFS allows the AFM and DNB to provide assistance to both supervisors from Member States as well as non-Member States. To do that, they have the same investigative powers that the AFS provide them to carry out their own investigations. International cooperation is largely centralized in the AFM. There is ample evidence of the AFM's capacity and willingness to cooperate with foreign regulators.</p>
<p><b>Principle 14.</b> There should be full, timely and accurate disclosure of financial results and other information that is material to investors' decisions.</p>	FI	<p>Issuers who want to offer securities to the public or have them admitted to trading are required to submit a prospectus for approval of the AFM. In addition, issuers admitted to trading are required to present annual and semiannual reports. They are also required to communicate material events as soon as possible. The AFM has developed guidance to assist issuers in complying with the latter obligation.</p>
<p><b>Principle 15.</b> Holders of securities in a company should be treated in a fair and equitable manner.</p>	BI	<p>The Dutch Civil Code (DCC) provides for a framework for shareholders rights. The system requires mandatory tender offers by the person that has acquired 30 percent of the shares (or control over them) of a listed company, the mandatory tender offer must be directed to the remaining shares and the price must be fair. The AFM is in charge of supervising that the mandatory tender offer meets the requirements set forth in the AFS. It does not have the power to file a suit if the person failed to launch a tender offer in spite of meeting the threshold, nor if the price offered is not fair. The company or</p>

Principle	Grading	Findings
		shareholders themselves can file such suit.
<p><b>Principle 16.</b> Accounting and auditing standards should be of a high and internationally acceptable quality.</p>	PI	<p>Issuers that are required to consolidate must prepare their annual and semi-annual financial statements according to IFRS as adopted in EU. Foreign issuers are allowed to use US, Canadian, or Japanese GAAP.</p> <p>Auditors must apply the auditing standards approved by the Dutch Auditing Association, which are almost identical to the International Standards of Auditing (ISA).</p> <p>The AFM has limited powers to supervise issuers' compliance with financial reporting standards.</p>
<p><b>Principle 17.</b> The regulatory system should set standards for the eligibility and the regulation of those who wish to market or operate a collective investment scheme.</p>	BI	<p>Management of CIS requires a license by the AFM. Eligibility standards include fit and proper requirements, as well as compliance with a set of operational requirements aimed at ensuring sound and controlled business. Management companies are also subject to capital requirements, but only UCITS management companies are subject to solvency ratio and review of qualified holdings. Reporting requirements are not sufficient to support prudential supervision. DNB relies almost entirely on off-site supervision for the prudential supervision of management companies and CIS. The AFM conducts both thematic and institution based on-site inspections, the latter on high impact firms, on a one year cycle.</p>
<p><b>Principle 18.</b> The regulatory system should provide for rules governing the legal form and structure of collective investment schemes and the segregation and protection of client assets.</p>	BI	<p>CIS can be constituted as an investment company (usually a limited company) or as a trust. In both cases the law clearly establishes the rights of unit holders, as well as the separation of the assets of the unit holders. The prospectus must provide information in regard of the structure and its risks. Only CISs constituted as unit trusts are required to have an independent depository, but there are other safeguards for CIS constituted as investment companies.</p>
<p><b>Principle 19.</b> Regulation should require disclosure, as set forth under the principles for issuers, which is necessary to evaluate the suitability of a collective investment scheme for a particular investor and the value of the investor's interest in the scheme.</p>	BI	<p>CIS are required to issue a prospectus, which should include all the information necessary for investors to form an opinion about the risks, costs and structure of the CIS. A risk factor must be included in the prospectus and the Financial Information Leaflet. Prospectus for UCITS are subject to approval by the AFM; while in the case of non-UCITs the AFS requires a certification by an external auditor on compliance of the prospectus with regulatory</p>

Principle	Grading	Findings
		requirements, for purposes of registration. However, the AFM has limited authority to intervene in a non-UCITS offering (through the registration process).
<b>Principle 20.</b> Regulation should ensure that there is a proper and disclosed basis for assets valuation and the pricing and the redemption of units in a collective investment scheme.	FI	The prospectus must include information about the method used to calculate the net asset value, the frequency of such calculation and the currency used. If applicable, it must include information about the method used to calculate the price at which the unit will be offered, repurchased, or redeemed. Prices of illiquid assets must be evaluated by an independent expert on an annual basis. The AFM has issued guidance on the valuation of illiquid assets. The prospectus must also state the conditions for redemptions, as well as suspensions of redemption.
<b>Principle 21.</b> Regulation should provide for minimum entry standards for market intermediaries.	FI	The provision of investment services or investment activities requires a license by the AFM. Banks can also provide such services, without the need for a license from the AFM, but they are required to meet the same eligibility requirements than investment firms, and the AFM must be consulted. Eligibility standards include fit and proper requirements, as well as compliance with a set of operational requirements aimed at ensuring sound and
	FI	controlled business. The AFM conducts both thematic and institution based on-site inspections, the latter on high-impact firms, on a one year cycle.
<b>Principle 22.</b> There should be initial and ongoing capital and other prudential requirements for market intermediaries that reflect the risks that the intermediaries undertake.	FI	Investment firms are subject to minimum capital requirements. They are also subject to a solvency ratio, in similar terms than banks. DNB receives quarterly and monthly reports to supervise compliance with prudential requirements. It conducts on-site inspections of high impact firms (roughly 25 percent of the firms) under a one year cycle. All other firms are visited under a three year cycle. Visits do not necessarily entail the same level of scrutiny than an on-site inspections.
<b>Principle 23.</b> Market intermediaries should be required to comply with standards for internal organization and operational conduct that aim to protect the interests of clients, ensure proper management of risk, and under which management of the intermediary accepts primary responsibility	FI	Investment firms are required to have a risk management function, a compliance function and an internal control function. In the latter two cases the respective departments must be independent from management, and are required to report to the board of the company on their findings on an annual basis. Investment firms

Principle	Grading	Findings
for these matters.		have several obligations vis-à-vis their customers in relation to information disclosure and suitability, and best execution. In addition they are required to hold their assets on bank accounts under strict rules of segregation. All such obligations apply equally to banks that provide investment services.
<b>Principle 24.</b> There should be a procedure for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk.	FI	The AFM has developed a plan to deal with the eventuality of a failure of a financial institution. There is an investor compensation scheme in place. The resolution of an investment firm is done under the general framework for corporate insolvency.
<b>Principle 25.</b> The establishment of trading systems including securities exchanges should be subject to regulatory authorization and oversight.	FI	The operation of a regulated market or a multilateral trading facility is subject to licensing. In the first case by the MoF on recommendation of the AFM. In the latter by the AFM, as part of the license for an investment firm. The framework provides a level playing field for MTFs vis-à-vis regulated markets, in relation to their operational requirements.
<b>Principle 26.</b> There should be ongoing regulatory supervision of exchanges and trading systems, which should aim to ensure that the integrity of trading is maintained through fair and equitable rules that strike an appropriate balance between the demands of different market participants.	FI	The AFM conducts real time supervision of Euronext Amsterdam, as well as supervision on T+1 basically aimed at detecting market abuse and insider trading. The supervisors of Belgium, the U.K., France, and Portugal recently signed a revised MoU that established the arrangements for a coordinated approach to the supervision of Euronext N.V. Such arrangements have allowed for approvals to be decided collectively, as well as for a coordinated approach to on-site inspections. The AFM has also established mechanisms to oversee ENDEX and the MTFs licensed by it, such as reporting obligations and meetings with the Board.
<b>Principle 27.</b> Regulation should promote transparency of trading.	BI	The AFS requires pre-and post-trade transparency on shares for RM and MTFs; and post-trade for systematic internalizers and OTC. A consolidated tape is under review. There are also concerns about the waivers on transparency connected to large trade blocks. There are no transparency requirements for other markets, but there appears to be a good level of transparency in the corporate and government bond markets.
<b>Principle 28.</b> Regulation should be designed to detect and deter manipulation and other unfair trading practices.	FI	Insider trading and market manipulation constitutes both an administrative infraction and a criminal offense. Both misconducts are described in broad terms, and apply not only to securities and derivatives but to any financial

Principle	Grading	Findings
		product. The AFM coordinates with other supervisors through its MoUs but also in the context of Europe through CESR-Pol.
<b>Principle 29.</b> Regulation should aim to ensure the proper management of large exposures, default risk, and market disruption.	FI	DNB and the AFM jointly supervise securities clearing and settlement. They do not directly monitor large exposures, but they do receive monthly information from LCH Clearnet S.A. on such positions. LCH Clearnet S.A. on the other hand, has mechanisms to address large exposures, including intraday margining.
<b>Principle 30.</b> Systems for clearing and settlement of securities transactions should be subject to regulatory oversight, and designed to ensure that they are fair, effective and efficient and that they reduce systemic risk.	N/A	Not assessed.

### Recommended action plan and authorities' response

#### *Recommended action plan*

**Table 2. The Netherlands: Recommended Action Plan to Improve Implementation of the IOSCO Principles and Objectives of Securities Regulation**

Principle	Recommended Action
<b>Principle 2</b>	<ul style="list-style-type: none"> <li>The MoF should consider further clarifying the conditions under which the powers to take back a function or set aside rules of the supervisors would be exercised.</li> <li>A legal reform should be pursued to incorporate specific provisions for the adequate legal protection of the supervisory authorities against legal suits in the AFS.</li> </ul>
<b>Principle 3</b>	<ul style="list-style-type: none"> <li>A legal reform should be pursued to expand the rule-making authority of the AFM and DNB.</li> <li>A legal reform should be pursued to strengthen the powers of the AFM in relation to issuers as described in Principles 15 and 16. The licensing of regulated markets should be a responsibility of the AFM.</li> <li>DNB should review whether enough resources have been allocated to the prudential supervision of securities intermediaries.</li> </ul>
<b>Principle 6</b>	<ul style="list-style-type: none"> <li>The DSI is performing a critical role for the securities industry, although currently on a voluntary basis. In the medium term the AFM might wish to review whether a more formal SRO arrangement is advisable. That would allow the AFM to rely more on the DSI, while at the same time subjecting it to oversight. In such case, a reform to the AFS—to incorporate a regime for SROs—would be warranted.</li> </ul>

Principle	Recommended Action
<b>Principle 9</b>	<ul style="list-style-type: none"> <li>• The MoF jointly with the AFM might wish to review whether assignment of some of additional investigative powers to the AFM as detailed in Principle 9 could further enhance its enforcement capacity.</li> <li>• The AFM should review whether to allow for disclosure of enforcement actions, even before a decision has been taken, on a more general basis.</li> </ul>
<b>Principle 10</b>	<ul style="list-style-type: none"> <li>• DNB should strike a better balance between off and on-site supervision of management companies.</li> <li>• DNB should periodically assess the balance between visits and on-site inspections for investment firms.</li> <li>• The AFM, DNB and the MoF should coordinate with the PPO to review whether enough disclosure exists in connection with criminal enforcement, and whether additional resources are needed for criminal enforcement of securities laws.</li> </ul>
<b>Principle 14</b>	<ul style="list-style-type: none"> <li>• A legal reform should be pursued to increase the threshold of € 50,000 used for purposes of exempting an issue from the requirement of a prospectus. The authorities informed that EU members have agreed to increase the amount to € 100,000.</li> </ul>
<b>Principle 15</b>	<ul style="list-style-type: none"> <li>• A legal reform should be pursued to establish additional mechanisms to enforce compliance with the mandatory tender offer and the fair price obligation, e.g., providing the AFM directly with the authority over these issues or the authority to file suits before the Enterprise Chamber of the Amsterdam Court of Appeals.</li> </ul>
<b>Principle 16</b>	<ul style="list-style-type: none"> <li>• A legal reform should be pursued to strengthen AFM's authority to enforce compliance with the financial reporting standards. Such reform should properly address the limitations described in this Principle, in particular: (i) the limitations in the authority of the AFM to request information from issuers; (ii) the tight schedule under which the AFM has to file the suits before the Enterprise Chamber of the Court of Appeals; (iii) the limitations to share information among departments, and (iv) the need to request the review of the whole financial report when filing a suit to enforce compliance with the publication of a recommendation.</li> <li>• The MoF jointly with the AFM should consider extending IFRS to issuers that are not required to consolidate.</li> </ul>
<b>Principle 17</b>	<ul style="list-style-type: none"> <li>• A legal reform should be pursued to remove the licensing exemption for management companies who only offer units below 50,000. The authorities stated that this exemption will be removed with the implementation of the Alternative Investment Fund Managers (AIFM) Directive.</li> <li>• A legal reform should be pursued to eliminate the differences in capital requirements and review of qualifying holdings for UCITs management companies' vis-à-vis non-UCITs management companies.</li> <li>• A legal reform should be pursued to provide DNB with the authority to impose reporting requirements on CIS and their management companies for purposes of prudential supervision.</li> <li>• The MoF jointly with the AFM should consider extending IFRS to all CIS.</li> <li>• DNB should reach a better balance between off-site supervision and on-site inspections of management companies.</li> <li>• The AFM should periodically assess the balance between thematic and institution based inspections.</li> </ul>

Principle	Recommended Action
<b>Principle 18</b>	<ul style="list-style-type: none"> <li>• A legal reform should be pursued to require all CIS to have an independent depository. In adopting a common approach for all CIS the authorities might wish to consider strengthening the requirement to have a “depository” by imposing that it be a licensed entity, such as a credit institution, and providing it with broader oversight/custodial functions.</li> </ul>
<b>Principle 19</b>	<ul style="list-style-type: none"> <li>• A legal reform should be pursued to provide the AFM with more clear powers to “intervene” or “hold-back” an offering as required by the Principles. In connection with it, the AFM jointly with the MoF should review whether the system of “certification” by external auditors has provided a comparable level of “oversight” as the vetting process of the AFM.</li> </ul>
<b>Principle 20</b>	<ul style="list-style-type: none"> <li>• The AFM and the MoF might wish to explore whether rules on the conditions for open-end funds should be developed. The authorities should also explore whether specific rules are needed in connection with suspensions of redemptions.</li> </ul>
<b>Principle 21</b>	<ul style="list-style-type: none"> <li>• The assessor welcomes the legislative initiative to establish a suitability requirement for directors, which would strengthen the current fit and proper requirements by allowing the supervisors to carry out a more comprehensive assessment that includes specific competences.</li> </ul>
<b>Principle 24</b>	<ul style="list-style-type: none"> <li>• The assessor welcomes the initiative of the AFM to seek mechanisms to receive timely information from KIFID in relation to complaints received against individuals and firms, since this is critical input for a risk-based supervisory approach.</li> <li>• The AFM and DNB should conduct scenario analysis and crisis simulations exercises, which could eventually help them to determine whether improvements are needed to the plan developed by the AFM, or to their covenant.</li> </ul>
<b>Principle 25</b>	<ul style="list-style-type: none"> <li>• The AFM should include the guidance on licensing of regulated markets in its website, once it is finalized.</li> </ul>
<b>Principle 27</b>	<ul style="list-style-type: none"> <li>• The AFM should continue to actively engage in the MiFID review process to improve market quality and transparency of equity market trading in a competitive multi trading venue environment. In particular, the AFM and MoF should continue to contribute to the European reforms pursued to address concerns regarding the waivers on transparency for block trades. In the same manner, a consolidated tape should also be pursued to enhance post trade transparency.</li> <li>• A legal reform should be pursued to impose reporting requirements on OTC derivatives markets. The MoF jointly with the AFM should review whether additional transparency is needed in other markets, including government and corporate bond markets.</li> </ul>
<b>Principle 28</b>	<ul style="list-style-type: none"> <li>• A legal reform should be pursued to allow for the implementation of the client-ID in the Netherlands in order to help the AFM to reduce the duration of its investigations; therefore contributing to the overall effectiveness of its market surveillance.</li> <li>• The AFM jointly with the MoF should consider whether additional investigative powers for the AFM to access telephone and internet service providers’ records are desirable.</li> <li>• Strengthening of CESR- Pol is desirable. In the long run further centralization of supervision might be necessary.</li> </ul>
<b>Principle 29</b>	<ul style="list-style-type: none"> <li>• A comprehensive legal framework for clearing and settlement should be adopted.</li> </ul>

*Authorities' response to the IOSCO assessment*

**The authorities of the Netherlands would like to express their appreciation to the IMF and the assessment team for their effort, time and resources spent to prepare the Financial Sector Assessment Program of the Netherlands.** The FSAP has been a useful exercise and has given the authorities insight in the current state of the regulatory framework and the supervisory practice in the Netherlands as well as the risks in the financial sector. The authorities would also like to thank the IMF for the fruitful conversations on the importance of addressing risks that could harm the financial sector and the public and the discussions on how to see to these risks effectively on national and European level. The authorities believe that the European and international cooperation will benefit from the FSAP conducted by the IMF, as it will prove to be a valuable tool for countries and international bodies to understand, compare and learn from other regulatory frameworks and practices.

**We are grateful for the opportunity to comment on the findings and recommendations in the assessment.** The authorities are pleased with the overall outcome that the Netherlands exhibits high level of implementation of the IOSCO Principles. The AFM has gained a reputation of a credible and effective enforcer in the field of conduct-of-business. This is the result of its focus on a clear risk-based enforcement strategy. Prudential supervision is considered reasonable and credible.

**The assessment has also identified some areas for improvement.** This is currently under review by the AFM, DNB and the MoF. In this regard, the MoF will send the Parliament an official statement on the specific areas where the authorities will take action in response to the recommendations of the IMF.

**The authorities have taken good notice of the findings and the comments of the assessor.** With a single exception, all principles are fully or broadly implemented, which reflects that the objectives of the core principles are adequately met. With regard to the principles 3, 10, 15, 16, 17, 18, 19 and 27, the authorities note that these principles are not fully implemented in this assessment in comparison with the FSAP in 2004. The authorities would like to emphasize that this is the result of the fact that the financial crisis has put the standard of observance in a different perspective. As a result, the regulatory framework and practice in the Netherlands was subject to a more stringent assessment of the IMF compared to the FSAP in 2004. The authorities agree with the IMF that supervisors worldwide should raise the bar to higher levels. However the authorities would like to stress that the assessment should by no means be interpreted as an indication that the supervisory framework exhibits a lower level of observance compared to the FSAP in 2004. On the contrary, supervision has been strengthened over the years: the AFM has since 2006 been given more supervisory tasks and broader powers, for example in the areas of financial reporting and supervision of auditors.

**In conclusion, the authorities believe that the findings of the IMF are in line with current practice and will review and further take into account the recommendations.** In light of the importance to cooperate at European and international level to enhance the regulatory system and practice, the authorities look forward to continue the discussions with the IMF and other regulators worldwide to take on the challenge to build a stronger and more robust framework for the financial sector.

**Table 3. The Netherlands: Detailed Assessment of Implementation of the IOSCO Principles**

<b>Principles Relating to the Regulator</b>	
<b>Principle 1.</b>	The responsibilities of the regulator should be clear and objectively stated.
Description	<p><b>Responsibilities</b></p> <p>The AFM is the primary authority responsible for the supervision of securities markets in the Netherlands, with the participation of DNB in prudential supervision. In addition to its responsibility in conduct supervision—stemming from the AFS—the AFM has specific responsibilities stemming from other laws: (i) Supervision of statutory auditors (Audit Firm Supervision Act); (ii) Supervision over financial reporting by issuers (Act on Supervision of Financial Reporting); and (iii) consumer protection in relation to exempted issuers that engage in “abusive” offerings (Consumer Protection Enforcement Act). As with many regulators, the AFM does not have the mandate to hear individual complaints of customers. Rather this is a mandate of KIFID and the Financial Ombudsman.</p> <p>The AFS is clear in relation to the core mandates of the AFM and DNB and their objectives. According to Section 1:24, prudential supervision shall focus on the solidity of financial enterprises and their contribution to the stability of the financial sector. Pursuant to Section 1:25, conduct of business supervision shall focus on orderly and transparent financial market processes, integrity in relations between market parties and due care in the provision of services to clients. Such respective mandates appear to be well understood not only by the financial supervisors, but also by market participants. This conclusion is supported by a recent study commissioned by the MoF as part of the reports required by the AFS (see additional information in Principle 2).</p> <p>Both the AFM and DNB are subject to the GALA. In particular the investigative powers of both authorities are to be interpreted in connection with such Act.</p> <p><b>Gaps or Inequities</b></p> <p>Overall there do not appear to be gaps in the scope of authority of the AFM and DNB vis-à-vis securities markets. Furthermore there are certain issues that have an impact in both conduct and prudential supervision and, as a result, both supervisors have authority to monitor them on an on-going basis. Such issues are mainly fit and proper requirements, safeguarding of controlled and sound operations (AFS Articles 3:17 and 4:14); Annual Reports (AFS Articles 3:71, 4:51, and 4:85) and the approval of certain key regulatory measures (AFS Article 1:47).</p> <p>In addition, the ‘twin peak’ approach seeks to foster a similar approach to prudential and conduct regulation across different types of participants in the securities markets (and the financial sector as a whole).</p> <p><b>Cooperation</b></p> <p>The AFS contains several provisions aimed at fostering coordination and cooperation among</p>

	<p>the AFM and DNB. In particular:</p> <ul style="list-style-type: none"> <li>• Collaboration for the purposes of developing regulations to ensure that they are equivalent whenever possible. The law further details areas in which such coordination is expected, including on issues of use of enforcement powers, properness, expertise and sound and controlled operations (Section 1:46.1).</li> <li>• Consultation of one another (and reasonable time to provide an opinion) in connection with licensing of market participants (Section 1:47a and 1:48).</li> <li>• Consultation in connection with the imposition of certain “enforcement” measures, including the appointment of a conservator, the withdrawal of a license, the imposition of a prohibition, and the dismissal of a director of a regulated entity (Section 1:47).</li> </ul> <p>Such obligations have been further developed in a covenant between the two authorities, which deals with:</p> <ul style="list-style-type: none"> <li>• Consultation of regulations;</li> <li>• Consultation of licensing;</li> <li>• Consultation of enforcement measures; and</li> <li>• Information exchange, including details on the information that should be exchanged on a regular basis and without prior request, as well as coordination of information requests vis-à-vis market participants.</li> </ul> <p>Overall the authorities believe that such framework has allowed for coordination and cooperation to work well in practice. To a large degree such opinion is confirmed by the recent study commissioned by the MoF. The study concluded that in its daily practice, the cooperation between the supervisors is effective, while operating from their own expertise, culture, objectives, and responsibilities. Financial institutions do not experience major problems.</p> <p>There is also a covenant between the AFM, the Public Prosecutor, and the Financial Intelligence and Investigations Unit, in the enforcement area. Pursuant to such covenant such authorities meet once per month in order to decide which cases will be pursued administratively versus those that would be pursued criminally. For such meetings the AFM prepares a detailed report with all the cases under investigation, along with a recommendation on which venue should be used to pursue it. A similar covenant exists between DNB, the Public Prosecutor, and the Financial Intelligence and Investigations Unit.</p> <p>Both DNB and the AFM are also part of the Financial Expertise Centre (FEC), which is a cooperative effort by various investigative and enforcement agencies. It was established in 1998, via decree. This group deals with cases of common interest for the FEC participants, e.g., fraud in the housing market.</p>
Assessment	Fully implemented.
Comments	Regulation of hedge funds and/or hedge fund managers is not covered by the current IOSCO methodology. The annex provides information on the status of implementation of the new IOSCO Principle on hedge funds regulation.
<b>Principle 2.</b>	The regulator should be operationally independent and accountable in the exercise of its functions and powers.
Description	<p><b>Independence</b></p> <p>Pursuant to the AFS the mandate of the financial supervisors is delegated from the MoF. According to Dutch law, delegation is the transfer, by an administrative authority, of its power to take decisions to another power or authority, who will exercise the power under its own responsibility (Section 10:13 of the GALA). Within the context of the AFS, the AFM has been delegated conduct supervision while DNB has been delegated the prudential supervision of market participants (Sections 1:25 and 1:24, respectively).</p> <p>According to the AFS, if the MoF considers that the supervisor (the AFM or DNB) has</p>

<p>seriously failed to perform its duties, it can carry out directly one or more of such duties or entrust it to the other supervisor (Section 1:43). Prior to taken such measure, the supervisor must be given the opportunity to perform its duties properly within a period specified by the Minister, except in urgent situations.</p> <p>To carry out their mandates, the financial supervisors have been given specific powers, including licensing, supervision, and the power to investigate and take enforcement measures. Licensing of operators of regulated markets has been retained by the MoF, but a recommendation must be sought from the AFM.</p> <p>The financial supervisors do not have broad rule-making authority; rather they only have such authority in the specific cases that the AFS law explicitly has given it to them—usually for very technical aspects. All other rulemaking authority is in the hands of the legislator (government and parliament) or the MoF. Pursuant to Section 1:29 the MoF can issue rules if he/she considers that the rules developed by the regulator are contrary to the law, a treaty or binding decree or impose an unreasonable burden on the market. However, the MoF can only exercise such authority after having given the supervisor a period to remove any shortcoming.</p> <p>The supervisors must provide the MoF with information necessary to assess the feasibility of policy intentions and intended regulatory regulations. The MoF may also require data for an investigation into the adequacy of the AFS or the manner in which the supervisors implement the AFS (Sections 1:41 and 1:42). Certain rules of confidentiality apply.</p> <p>Both the AFM and DNB are mostly funded by annual levies on market participants which currently cover roughly two thirds of the budget of the AFM and three quarters of the budget of DNB, while the remaining portion of their budgets is covered by the government. Under the AFS, the Minister may lay down rules with respect to the structure of the budget (Section 1:32). Within such framework, each supervisor prepares a budget proposal. Such a proposal is consulted during the budget preparation process with the industry via an advisory panel of representative organizations. The final version of the budget is approved by the supervisory board, in the case of the AFM or the governing board in the case of DNB, who submit it to the MoF. The MoF can only withdraw approval of the budget if it is contrary to law or public interest (AFS Section 1:30(5)). During the year, if there are substantial differences between the approved budget and the actual budget, the financial supervisors must notify the MoF (Section 1:35).</p> <p>There are no special provisions on legal protection applicable to the financial supervisors. As a result the general rules of the civil code in connection with liability apply to them (Volume 6, Chapter 3 of the DCC). According to those rules, an employer is liable for the actions of his/her employee. Thus, staff is adequately protected against suits. As per the civil code, the institutions themselves could be held liable. According to both the AFM and DNB to this date, the conditions of the DCC have been interpreted restrictively in legal literature and court cases. In this regard the highest court set the standard for liability stating that a supervisor would not be liable if it acted as a reasonable supervisor, therefore providing deference to the decisions of the supervisors. Such jurisprudence is of mandatory application by the lower courts.</p> <p>Pursuant to Section 1:27 the members of the supervisory board of the AFM are appointed by the MoF, for a maximum period of four years. Members can be reappointed twice. They can only be removed for unsuitability, incompetence or for other important reasons related to the person involved. Pursuant to Section 1:26 the members of the Executive Board of the AFM are appointed by royal decree, upon recommendations from the supervisory board, for renewable periods of four years, without limitations on the number of reappointments. They can only be removed for due cause. (Section 1:26.2).</p> <p>The members of DNB's Governing Board are appointed by the Crown through a Royal Decree for renewable terms of seven years. Section 12(3) of the Bank Act 1998 states that the President and the Executive Directors of the Governing Board may be suspended or relieved from office,</p>
---

only if they no longer fulfil the conditions required for the performance of their duties or if they have been found guilty of serious misconduct.

### **Accountability**

Several provisions on the AFS aimed at ensuring accountability of the financial supervisors to the government and the public.

The financial supervisors must prepare an Annual Report on the performance of their duties and the policies pursued, including in respect to quality assurance. Such report must be submitted to the MoF by May 1 and a copy of it is sent to Parliament. Such report must be kept in electronic format (Section 1:36).

The financial supervisors must submit to the MoF proposals to amend their articles of association (Section 1:37).

They are also required to prepare annual financial statements (AFS Sections 1:33 and 1:34). An auditor designated by each of them must provide an opinion on: (i) their fair presentation (ii) a report on whether the collection and deployment of resources is in accordance by law; and (iii) whether management and organization under this Act meet the requirement of efficiency. Approval of the accounting report is given by the ministers and may only be withheld if the report is contrary to law or public interest. In implementing this obligation the AFM and DNB have given the auditing of their financial statements to an entity that does not fall under the oversight of the AFM.

The AFS also requires periodic evaluations (every five years) by the MoF of the performance of duties by the financial supervisors. The MoF must submit a report to Parliament on the efficiency and effectiveness of the supervisor performance (Section 1:33). The AFS required that a first evaluation took place three years after the entry in force of the Act (Section 1:44) Such a report was recently sent to Parliament. The AFS also requested a report on the collaboration of supervisors within such same time frame (which has been discussed elsewhere in this assessment). (Idem) All such reports are available to the public.

Specific means for accountability vis-à-vis market participants have been imbedded in the AFS. In particular, the AFS requires consultation with the industry on the budget, supervisors' profits and losses, and the costs for enterprises relating to the performance of their duties (Section 1:39). Such consultations must be carried out twice a year and their results must be made available to the public via a report. The AFS also requires consultation in connection with the use by the financial regulators of their rulemaking powers (Section 1:28).

### **Transparency Policy**

Section 1:89 prevents the staff from the AFM and DNB from making any further (or other) use of confidential data or information supplied or obtained pursuant to their functions, and from making it public in any further or other way than it is required for the performance of their duties or required pursuant to the AFS. The AFS defines confidential information as to include commercially sensitive information and information that could disproportionately invade personal privacy.

In such a context, e.g., the general policy of the AFM in the area of enforcement is to be cautious with regard to disclosing information relating to current or future investigations. While the privacy considerations of persons or enterprises under investigation are important, they are not decisive. Social unrest or strong speculation, with reference to certain investigations by the AFM, can be a reason for the AFM to disclose. If the AFM discloses with regard to current investigations, it does so in a neutral manner and states that the results of the investigation are not yet known—and therefore the result may also be that no offense has been committed. On the other hand the AFS requires the AFM to make public any administrative fine imposed.

	<p><b>Judicial Review</b></p> <p>The GALA provides a framework for decision-making by any public authority that is applicable to the AFM and DNB. The application of GALA means that a person affected by a decision can file a notice of objection to a decision of the AFM or DNB. The decision on the notice of objection can subsequently be appealed in administrative court.</p>
Assessment	Broadly implemented.
Comments	<p>The line between independence and accountability is difficult to draw. After conversations with the supervisors, the MoF and market participants the assessor concludes that in practice the MoF has not interfered with day-to-day decisions of the supervisors. However certain features of the legal framework—depending on how they are used in practice—could pose threats to independence. Such features are discussed below:</p> <ul style="list-style-type: none"> <li>• The authority of the MoF to take from the supervisors some of its functions and carry them out directly or delegate them to the other supervisor. The authorities however consider that the high level of transparency of the Dutch system would make politically impossible for the MoF to use such power without suffering serious political ramifications; which means that in practice such power would not be used (and has not been used in the past).</li> <li>• The authority provided to the MoF to set aside rules enacted by the supervisors. The authorities highlighted that this power has not been used.</li> <li>• The authority of the MoF to request information to assess the AFS or the way that the supervisors have implemented the Act; insofar as it could include information on individual entities and cases.</li> <li>• The authority of the MoF to approve the budget of the supervisors. In practice the MoF has requested the supervisors to reduce their budgets; however the authorities emphasized that such reductions were agreed upon and that the MoF has not interfered with the allocation of resources.</li> <li>• In the case of the AFM, the retention of the licensing authority by the MoF in connection with regulated markets. However, the authorities emphasized that the AFM has been responsible for developing the specific requirements that potential market operators must meet at the licensing stage, and the licensing is subject to a recommendation from the AFM.</li> </ul> <p>The authorities further explained that some of these provisions are not unique to the framework of the supervisors; rather they are applicable to all independent administrative bodies in the Netherlands. The supervisory authorities actually enjoy a higher level of independence, since they were excluded from other provisions that could more directly pose a threat to independence such as the power of the MoF to set policy rules with regard to the exercise of duties by an independent administrative body (Article 21 of the Independent Administrative Authorities Framework Act).</p> <p>Both staff and the supervisors appear to be adequately protected against suits arising from the performance of their duties, as a result of the general provisions in the civil code and court jurisprudence. However it might be advisable to have a special provision that expressly deals with such issue.</p>
<b>Principle 3.</b>	The regulator should have adequate powers, proper resources, and the capacity to perform its functions and exercise its powers.
Description	<p><b>Powers</b></p> <p>DNB and the AFM have been given licensing, supervisory, investigative, and enforcement powers. However, their rulemaking authority is limited to the specific cases where the AFS explicitly allows them to issue regulations, which is usually only on technical issues. As a result, in most cases, regulations are issued by the MoF, although usually based on a</p>

	<p>recommendation of the supervisors.</p> <p>There are two areas where the powers of the AFM are limited. One relates to licensing of the operators of regulated markets, which has been retained by the MoF. The other relates to its powers vis-à-vis issuers, in particular in regard to compliance with financial reporting standards, as further described in Principle 16.</p> <p><b>Resources</b></p> <p>Overall, the AFM has sufficient resources to carry out its mandate. The AFM has at its disposal technological resources, which are key for market supervision. The current system of mixed funding (fees paid by participants and government funding) has so far provided it with sufficient resources to carry out their mandates.</p> <p>Although the business model of investment firms and fund managers significantly reduces prudential concerns, the amount of resources that DNB has allocated to the supervision of this sector appears to be limited, as will be further explained below.</p> <p><b>Personnel</b></p> <p>The number of personnel at the AFM appears to be sufficient—roughly 500. Out of such number, roughly 150 are directly involved in supervisory functions. The AFM is a professional organization with skilled employees. The average age of employees in the AFM is 38 years. More than 50 percent of the professional staff has a legal or economic background, and 67 percent of the staff has at least 10 years of experience. The AFM has focused on increasing the flexibility of staff within the AFM. In 2010 the AFM introduced a trainee program where, on an ongoing basis, trainees will work at three different departments of the AFM over a period of 2 years. Initiatives are also in place to motivate current staff to fulfill different type of functions within the AFM. Furthermore the AFM is aware of the importance of on-going training and dedicates roughly 2 percent of its budget to training. It also has an extensive Management Development Program. The AFM is able to pay salaries that are competitive with the private sector.</p> <p>The number of staff at DNB dedicated to supervision of securities firms appears to be limited (12 vis-à-vis roughly 360 firms). The staff has the right skill set. The team is composed by professionals (bachelors degree and up) from a wide variety of disciplines. The age range between 30-50 years.</p>
Assessment	Broadly implemented.
Comments	<p>The grade is mostly attributed to the limitations in the AFM’s authority vis-à-vis issuers as described in Principles 16, as well as the resources limitations faced by DNB. To a lesser degree, the grade takes into consideration the fact that the licensing of regulated markets is still retained by the MoF—although the assessor acknowledges that in such cases, the system requires a recommendation from the AFM.</p> <p>The IOSCO Principles do not explicitly refer to rulemaking as one of the powers that a securities regulator should have. The assessor considers, however, that in the context of the Dutch system, the lack of broad rulemaking authority has in practice affected the ability of the AFM and DNB to act in a swift manner in situations where it has considered necessary a regulatory response to a development of the financial sector; and therefore recommends a reform of the AFS to provide the AFM and DNB with rulemaking powers so that they can issue rules when they deem it is necessary.</p> <p>DNB should review current resource allocation to the prudential supervision of the securities market.</p>
<b>Principle 4.</b>	The regulator should adopt clear and consistent regulatory processes.
Description	The AFS contains general principles that should guide the financial supervisors in the

performance of their respective mandates. In particular, Section 1:38 states that the supervisor, in performing its duties under the Act, must ensure:

- a timely preparation and implementation;
- the quality of the procedures followed in this respect;
- the treatment of due care of any party that comes into contact with the supervisor; and
- the treatment with due care of objections and complaints received.

### **Clear and Transparent Procedures**

#### *Rulemaking*

Whenever the financial supervisors issue binding regulations, they are required to consult an eligible representative delegation from the institutions under their supervision (AFS Section 1:28). Only in special circumstances both the AFM and DNB are authorized to lay down temporary binding regulation without such consultation process.

The AFM has developed standards for its consultation process that encompass issues such as timeframe, transparency of the process, and format (expert panels, open hearings, and the internet).

Furthermore, the culture of consultation extends beyond their rulemaking authority. For example, the AFM consults with the market its supervisory strategy, including its enforcement strategy. The AFM also holds consultations twice a year with a number of CEOs of leading participants.

#### *Use of committees*

There are also a number of expert committees that the AFM makes use of, to enrich its decision making process, including the Capital Markets Committee and the Financial Reporting Committee. The CMC advises the AFM regarding case-based reasoning, legislative issues, and interpretations in the field of public offerings, market abuse, prospectus-related issues, financial reporting and the supervision of audit firms. The Financial Reporting Committee (FRC) advises on themes related to financial reporting.

#### *Licensing*

Requirements for licensing are established by the AFS and further developed in regulations. Laws and regulations are available in the AFM and DNB websites. Only the guidance developed in connection with the licensing of market operators is not on the website, but the AFM explained that it is still in the development stage and that in the meantime any interested party can request a copy of it.

The AFS establishes deadlines for the AFM and DNB to process licensing requests. There are also clear procedures in regard to the consultation that they have to do to one another; as well as regarding consultation to other supervisory authorities from member states of the EU.

#### *Enforcement*

The AFS is clear on the type of enforcement measures that can be used by supervisors. Furthermore, for purpose of the imposition of administrative fines the Penalty Act and the Decree on Administrative Penalties in the Financial Sector categorizes breaches into minor, medium and serious and provides the parameters for the fines that can be applied in each case (as further described in Principle 9). The AFS does not refer to the procedures that the AFM or DNB should use in connection with the imposition of a sanction. However it does contain a set of principles on due process. In particular, it states that the person in charge of making a

decision on administrative measures from participating in the investigation, thus protecting the separation of the adjudication function.

#### *Internal Audit*

The AFM has an internal audit department (IAD) in charge of overseeing whether the departments of the AFM are performing their functions adequately. The IAD reports directly to the Chairman of the Management Board and the Audit Committee of the Supervisory Board. It prepares an annual plan on processes and departments to audit, based on an assessment of the risks involved in the different processes and departments, as well as the feedback from heads of departments and board. Their goal is to audit at least all major and high risk processes and departments of the AFM within a specific period of time (within the last five years it has audited all major and high risk departments and processes). For each process the audit starts with an identification of the risks involved and the mechanisms in place to manage them. A sample of files is reviewed and based on such review the department provides an opinion with a rating, the level of risk (high, medium, low) of the process and recommendations. The time frame for implementation of the recommendations is usually within 3-12 months. The IAD provides quarterly reports to the Chairman of the Management Board and half yearly to the Audit Committee of the Supervisory Board on the status of implementation of high and medium risks. The IAD has an annual evaluation of its performances with the Management Board and the audit committee.

DNB also has an IAD in charge of overseeing whether the departments of DNB are performing their functions adequately. The IAD reports to the governing body.

#### **Procedural Fairness**

The GALA provides a framework for decision-making by any public authority that is applicable to the AFM and DNB. The application of GALA means that every administrative decision must be based on sound reasons (GALA Section 3:46) and according to the principles of subsidiary and proportionality. The reasons shall be presented when the decision is notified to the party concerned (GALA Section 3:47). The decision will not take effect until it has been notified to the party concerned (GALA Section 3:40).

Based on Section 4:7 and 4:8 any party negatively affected by the licensing process is entitled to a hearing whenever the AFM or DNB have the intention to make a negative administrative decision (refusal or withdrawal of a license or imposition of a fine). Furthermore, a person affected by a decision can file a notice of objection to a decision of the AFM or DNB. The decision on the notice of objection can subsequently be appealed in administrative court.

#### **Transparency Policy**

Section 1:89 prevents the staff from the AFM and DNB from making any further (or other) use of confidential data or information supplied or obtained pursuant to their functions, and from making it public in any further (or other) way than it is required for the performance of their duties or required pursuant to the AFS. The AFS defines confidential information as to include commercially sensitive information and information that could disproportionately invade personal privacy.

In such context, for example, the general policy of the AFM in the area of enforcement is to be cautious with regard to disclosing information related to current or future investigations. Thus, as a general policy, the AFM does not disclose pending investigations. However, social unrest or strong speculation with reference to certain investigations by the AFM can be a reason for the AFM to disclose. If the AFM discloses with regard to current investigations, it does so in a neutral manner and states that the results of the investigation are not yet known—and therefore the result may also be that no offense has been committed. On the other hand the AFS requires

	<p>the AFM and DNB to make public any administrative fine imposed.</p> <p><b>Investor Education</b></p> <p>The website of the AFM includes dedicated sections for investors and market participants. There is also an electronic newspaper, interpretation of important issues and papers and reports on several subjects, which can be consulted on the website. The AFM has developed various digital ‘tools’ in recent years to assist consumers to find their way in making financial choices or to test their own financial knowledge. The most recent tools relate to mortgages. For the development of these tools the AFM has worked in cooperation with the National Institute for Family Finance Information.</p>
Assessment	Fully implemented.
Comments	
<b>Principle 5.</b>	The staff of the regulator should observe the highest professional standards.
Description	<p>The AFM has developed an integrity policy, that deals with key issues such as :</p> <ul style="list-style-type: none"> <li>• <b>Screening:</b> persons are screened on reliability (via criminal record, statement of previous employer and integrity statement of the employee) prior to entering to work with the AFM.</li> <li>• <b>Confidentiality:</b> AFS Section 1:89 requires that any person who performs any duty for the purpose of the Act or of resolutions passed pursuant to the Act are prohibited from using confidential information, supplied or obtained pursuant to the Act, except as required for the performance of his duties.</li> <li>• <b>Insider trading:</b> employees with access to the data systems of the AFM required pre-clearance for all transactions concerning securities that could be subject to insider information (basically all securities listed in Euronext or Alternext). Staff with holdings on such securities prior to the beginning of their engagement with the AFM, is allowed to keep them, provided that they keep their accounts “passive.” The framework for insider trading remains applicable for six months more after the staff has ended his/her contract with the AFM.</li> <li>• <b>Gifts, invitations and external appearances:</b> all gifts from supervised entities and other companies that the AFM is working with, or intended to work with, of up to € 50, have to be notified to the Compliance Officer. Gifts with an estimated value of more than € 50 may in principle not be accepted by the AFM. All business invitations require the consent of the manager of the department and requests for advice can be submitted to the Compliance Officer. All compensations for external performances (e.g., fees for speeches or presentations at conferences) during work hours have to be transferred to the bank account of the AFM.</li> <li>• <b>Information security policy:</b> It consists of a combination of physical and procedural measures. For instance: clear desk policy, e-mail and internet policy, visitor’s policy, rules for using IT equipment, procedures for home office, etc.</li> <li>• <b>Policy ancillary activities:</b> all proposed (business) activities of employees that are not associated with the core activities of the AFM have to be submitted to the AFM, if there is a possibility for damage to the company's image, conflict of interest, or loss of credibility.</li> <li>• <b>Whistle-blowers procedure:</b> This scheme gives employees of the AFM the possibility to report alleged abuse within the organization.</li> <li>• <b>Decision-making and signatory regulation:</b> all decisions, concerning legal actions, have to be signed by at least one person at a managerial level and must always be signed by at least two persons.</li> </ul> <p>Such a policy is an integral part of the contract with the AFM staff. The AFM has developed several mechanisms to assist staff in complying with it. During their first days at work, employees received a detailed instruction on the policy by the Compliance &amp; Integrity (C&amp;I) Department. All employees also receive a similar presentation when updates are made (latest on</p>

	<p>April 2010). On a yearly basis the AFM also provides training to all new staff on how to deal with dilemmas concerning integrity. Complex integrity issues are treated and discussed recurrently within the integrity commission. The integrity commission consists of various employees (including a member of the Executive Board) who represent several departments of the AFM. The results are published on the intranet and incorporated into the Q&amp;A's.</p> <p>Monitoring compliance with the integrity policy is the responsibility of the department of C&amp;I, which reports directly to the Executive Board. The C&amp; I conducts risk-based reviews of compliance of staff with the integrity policy, based on signals on the likelihood that an employee could breach the policy. It conducts roughly 60-65 investigations on a yearly basis. Members of both Boards of the AFM and high management are subject to annual reviews of compliance. In 2009 the department detected 12 incidents of minor breaches to the integrity policy, this year it detected four. The decline is attributed to the active work that the institution is doing in raising staff's understanding of the integrity policy.</p> <p>Under employment law, criminal, civil or administrative actions can be taken when there is failure to adhere to the integrity standards. The violations and measures are decided on by the Public Prosecution Office or the criminal, civil and administrative court. At least once a year C&amp;I informs the AFM about all violations that have been made on an anonymous basis. DNB has developed a similar integrity policy; which is also part of the contract with DNB staff. To monitor compliance with such policy DNB created a C&amp;I Department. The C&amp;I operates independently from any divisions and departments. If necessary, the head of C&amp;I also has access to the Supervisory Board of DNB. The department reports regularly on its activities to the Governing and Supervisory Boards.</p> <p><b>Privacy</b></p> <p>The AFM and DNB must act in accordance with the Data Protection Act.</p> <p>The policies on privacy are laid down in a "privacy manual," in the case of the AFM and a regulation on privacy in the case of DNB. In the case of the AFM, monitoring implementation of such a manual is the responsibility of a Privacy Officer (PO). The PO has access to all systems where data is processed. Furthermore, the PO monitors the quality of the internal policies on personal data processing and personal data protection. The AFM must notify the PO before starting a personal data processing operation. The PO keeps a register of these notifications. Every person that is a data subject has the right to obtain confirmation from the AFM as to whether or not data relating to him is processed. The AFM provides the PO information on the purposes of the operation, the categories of data concerned, the recipients to whom the data is disclosed, and any available information about the source of the data. With that information the data subject has the ability to obtain rectification, remove or block data relating to him.</p> <p>In the case of DNB, monitoring of compliance with privacy obligations is carried out via the "system administrators."</p>
Assessment	Fully implemented.
Comments	
<b>Principles of Self-Regulation</b>	
<b>Principle 6.</b> The regulatory regime should make appropriate use of SROs that exercise some direct oversight responsibility for their respective areas of competence and to the extent appropriate to the size and complexity of the markets	
Description	<p>There are no organizations with legal power to set up general binding rules of eligibility for participation in securities markets activities, or to ban a person from participating in securities activities, other than the AFM and DNB. There are, however, two private organizations that are having a role in enhancing market standards: the DSI and the DUFAS.</p> <p>The DSI is a private entity that has developed a system of registration for individuals that</p>

	<p>provide investment services. Membership is voluntary; but once an entity has become a member, registration of its personnel becomes mandatory. DSI currently has 510 members, 605,000 individuals with 700,000 registrations (a person can be registered to provide more than one investment service), which entails the whole capital markets industry. The DSI has developed a code of conduct and its violation can be sanctioned by a tribunal with a fine, a suspension of registration or even de-registrations. The DSI has in fact applied such sanctions. Its sanctions are public (disclosed on its website). The DSI is providing an important service of ensuring a level of professionalism of the individuals that carry out investment services. Furthermore a covenant of private-public partnership exists between the AFM and the DSI. However, securities firms and the individuals that carry functions for them can choose not to register with DSI and fulfill the fit and proper requirements of the AFS in another way. Thus, DSI rules do not have the “binding” status required by the principles to be considered an SRO.</p> <p>The DUFAS is also playing a role in enhancing market standards for the CIS industry. It has developed a code of governance for CIS, and it monitors members’ compliance with it through an independent third party. Membership is also voluntary, but as of November 2010 roughly 99 percent of the institutions licensed to provide asset management services were members of it. However for similar reasons as those stated for DSI, it cannot be considered a SRO for the purposes of this assessment.</p> <p>As with other exchanges, Euronext and ENDEX perform certain oversight functions over its members aim to ensure fair and orderly markets. However in the Dutch market their role is only complementary to that of the AFM, which actually can be considered the front line supervisor for purposes of detecting unfair practices. LCH Clearnet and EMCF, in their conditions of central clearing counterparties, perform certain oversight functions over clearing members aim to ensure that trades are clear and settled with no disruptions to the market.</p>
Assessment	Not assessed.
Comments	The DSI is performing a critical role for the securities industry, although currently on a voluntary basis. In the medium term, the AFM might wish to review whether a more formal SRO arrangement is advisable. That would allow the AFM to rely more on DSI while at the same time subjecting it to oversight. In such case, a reform to the AFS—to incorporate a regime for SROs—would be warranted.
<b>Principle 7.</b>	SROs should be subject to the oversight of the regulator and should observe standards of fairness and confidentiality when exercising powers and delegated responsibilities.
Description	<p>As indicated in Principle 6, there are no private organizations that meet the definition of SRO.</p> <p>Due to their role as infrastructure providers exchanges, MTFs and central clearing counterparties establish rules of access, and oversee members’ compliance with such rules. In turn, they are all subject to public oversight. In this regard, Euronext, ENDEX and the three MTFs licensed by the AFM are subject to oversight by the AFM, as described in Principles 25 and 26. Furthermore in the case of Euronext, the five supervisors of the countries where Euronext operates (including the AFM) have signed a revised MoU to jointly address its oversight. Such MoU provides a coordinated approach to reach decisions on key issues, including rules, as well as for on-site supervision.</p> <p>LCH Clearnet S.A. and EMCF are also subject to oversight by the AFM, as described in Principle 29. In both cases, such oversight is based on the licensing of the RMs for which they provide services (Euronext and TOM, respectively).</p> <p>In the first case, there is also multilateral MoU among the supervisors of the countries where LCH Clearnet S.A. operates, including the AFM, to jointly address its oversight. Pursuant to such MoU the AFM takes part in key decisions concerning LCH Clearnet S.A., including e.g., the review of its rule book. This MoU has also allowed for a coordinated approach to on-site inspections.</p>
Assessment	Fully implemented.
Comments	The review of the oversight regime for central clearing counterparties is limited in scope, given that Principle 30 has not been assessed. A more thorough review should be done in connection

	with an assessment of the CPSS-IOSCO Principles.
<b>Principles for Enforcement</b>	
<b>Principle 8.</b> The regulator should have comprehensive inspection, investigation and surveillance powers	
Description	<p><b>Powers Over Regulated Entities</b></p> <p>AFS Section 1:74 deals with supervisory and investigative powers. The section states that the supervisors can request information from any person for the purposes of the supervision of compliance with the AFS or the rules. It also explicitly states that for such purpose Sections 5:13 to 5:20 of the GALA apply. According to GALA a administrative entity can:</p> <ul style="list-style-type: none"> <li>• request information from any person;</li> <li>• inspect business information and documents, and make copies of them; and if not possible take the documents with them for a short period for their inspection; and</li> <li>• enter into business premises without consent; even request the assistance of the police.</li> </ul>
	<p>Given that such powers can even be enforced on any person, there is no question of the AFM’s and DNB’s authority to apply them over regulated entities—which in the case of the AFM includes banks authorized to carry out investment services. As a result the AFM and DNB can conduct on-site inspections on them, both as a result of a particular inquiry or on a routine basis, and without giving prior notice, as well as request information and documents from them. The only limitations to these powers relate to the powers to request information from issuers, given that in such case the powers of the AFM stem from the DCC rather than the AFS. Such limitation will be further explained in the corresponding Principle.</p> <p>GALA does not explicitly refer to the authority to take testimony but it has been interpreted that the term “information” encompasses testimony, not only by the AFM but also by other administrative bodies to which such provisions also apply—for example, the Netherlands Competition Authority. GALA does not authorize to take testimony under oath; but it explicitly states that failure to cooperate with an administrative body constitutes a criminal offense (GALA Section 5:20 in connection with Section 184 of the Criminal Act). It has been interpreted not only by the AFM, but also by other administrative bodies to which these provisions apply, that cooperation includes both attending a request, as well as doing it truthfully.</p> <p><b>Identity of Clients</b></p> <p>Pursuant to AFS Section 1:74 in connection with the provisions of GALA, the AFM and DNB have the authority to request from regulated entities information that would allow them to identify customers.</p> <p><b>Record-keeping Obligations</b></p> <p>The DCC requires any party who conducts a business to keep accounts, and accompanying books and any other information concerning the profession for a period of seven years (Book 2, Title 9). The AFS contains specific record keeping obligations in connection with regulated entities (banks, investment firms, and fund managers), that are further detailed in the corresponding decrees and regulations. Overall regulated entities are required to keep all data concerning their management, including data on transactions in financial instruments for at least five years, in a systematically and survivable manner (Section 35 of the Decree on Conduct of Business Supervision of Financial Enterprises (BgFo)). In particular, they are required to keep records concerning client identity, and records that permit tracing of funds and securities in and out of brokerage and bank accounts related to securities transactions. Based on the powers afforded by GALA, the AFM and DNB have the authority to require regulated entities to provide it with information concerning the identity of clients.</p>

	<p><b>Obligations in Regard to Anti-Money Laundering (AML)</b></p> <p>Regulated entities (banks, investment firms, and fund managers) are required to have in place mechanisms to minimize the potential for AML. Such obligations are incorporated in the Anti-Money Laundering and Anti-Terrorist Financing Act (Wwft). In particular regulated entities are required to conduct customer due diligence, which should enable the institution to: (i) identify the customer and verify the customer's identity; (ii) where applicable, identify the beneficial owner and take risk-based and adequate measures to verify the beneficial owner's identity, and, where a legal entity, a foundation or a trust is concerned, to take risk-based and adequate measures to gain insight into the customer's ownership and control structure; (iii) determine the objective and nature of the business relationship; and (iv) where possible, carry out constant monitoring of the business relationship and the transactions conducted during the existence of this relationship, in order to ensure that these tally with the knowledge which the institution has of the customer and the customer's risk profile, and to check the source of the assets where appropriate. The Wwft reflects a risk-based approach. This means that institutions must perform their own appraisal of the risks posed by individual clients or product, so that they may adapt their compliance efforts to those risks.</p> <p>Pursuant to the Wwft regulated entities are required to notify any unusual transactions to the FIU. Unusual transactions may be identified using the so-called list of indicators.</p>
Assessment	Fully implemented.
Comments	<p>The consistent interpretation of GALA provisions, by different public entities, provides comfort to the assessor in regards to the scope of the powers of the AFM and DNB, as to the authority to take testimony and the legal consequences of making false statements.</p> <p>The coverage of AML issues by Principle 8 of the IOSCO Principles is very limited in scope. An AML evaluation has been conducted separately.</p>
<b>Principle 9.</b>	
Description	<p>The regulator should have comprehensive enforcement powers.</p> <p><b>Investigative Powers Over Third parties (i.e. non-regulated entities)</b></p> <p>As indicated under Principle 8, based on AFS Section 1:72 in connection with GALA, the AFM has the power to request information; examine business and documents, and enter into business premises of any person, thus including non-regulated entities. Failure to cooperate constitutes a criminal offense.</p> <p>AFS Section 1:72 in connection with GALA provides the AFM with the authority to request banking records. The AFM does not have authority to request telephone records nor records from internet service providers, given that they are subject to special laws. Such information can be requested pursuant to a criminal investigation.</p> <p><b>Enforcement Authority</b></p> <p>The AFS provides the AFM and DNB with the authority to impose a wide range of enforcement measures in relation to the violation of its provisions.</p> <p><i>Regulated entities</i></p> <ul style="list-style-type: none"> <li>• Instruct regulated entities to adhere to a particular conduct, if they failed to comply with the Act (Section 1:75). DNB can also issue an instruction if it detects signs of developments that can jeopardize the equity capital, solvency or liquidity of a regulated entity.</li> <li>• Issue a public warning if a regulated entity fails to comply with an instruction (Section 1:94).</li> <li>• Appoint a “conservator” if the regulated entity has failed to comply with an instruction; the violation seriously jeopardizes the adequate operation of the entity, the interest of consumers or clients; or jeopardizes the equity capital, solvency or liquidity of a regulated entity (Section 1:76). When a conservator is appointed all decisions of the</li> </ul>

	<p>entity have to be approved by him/her.</p> <ul style="list-style-type: none"> <li>• Prevent a financial enterprise from conducting its business at a branch office, or the performance of services, or providing financial services in another Member State (Section 1:77).</li> <li>• Modify, withdraw or limit the license (Section 1:104).</li> <li>• Give the holder of a regulated market an instruction to suspend, interrupt or cancel trading in certain financial instruments where an issuer does not comply with the provisions under Section 5:59, which includes the obligation of publication of inside information.</li> <li>• Issue generic conveyance of standards which are intended to communicate the standard to a regulated entity.</li> </ul> <p><i>Both regulated and third parties (non-regulated entities)</i></p> <ul style="list-style-type: none"> <li>• Impose orders for incremental penalty payments in relation to violations of regulations arisen from the sections listed in an Annex to the AFS, and the Prospectus Regulation, or failure to cooperate with the financial supervisors (Section 1:79). The list of provisions whose breach can be sanctioned with an order for incremental penalty is broad and include breaches by regulated entities as well as by third parties.</li> <li>• Impose administrative fines in relation to violations of regulations arising from the same provisions mentioned above, to be accrued in favor of the supervisor. Such fines can be imposed on legal entities but also on individuals (such as directors of legal entities). The framework for the application of fines is imbedded in the Penalty Act. It provides for a system of fixed and variable administrative fines, consisting of three categories of violations: minor, medium, and serious. All violations are specified and categorized. Minor violations are governed by a system of fixed amounts, with a fine of € 10,000. Fines for medium violations such as infringements of regulations governing consumer protection or non-compliance with integrity rules start at € 500,000 with a maximum of € 1 million. Serious violations, such as insider trading and market manipulation, start at € 2 million up to € 4 million. The AFM and DNB can reduce or increase the fixed amounts for medium and serious violations by 50 percent, depending on the gravity and/or duration of the violation and/or the degree of culpability of the offender. Although accumulation is possible, the overall maximum fine is, in principle, limited to € 4 million. In cases of recidivism, the fine can be doubled.</li> </ul> <p>All decisions to impose fines must be made public by the AFM or DNB (Section 1:97). Such duty is irrespective of whether an appeal has been instituted against such decision before the administrative courts. However, publication may be suspended if a preliminary court injunction against publication is obtained (Section 1:97, subsection 3 and 1:98) or in case publication is or might be considered contrary to the objectives of the AFS. While parties have used such rights, the AFM stated that the courts have set the bar high and have only granted such stay in a low percentage of cases (roughly 20 percent).</p> <p>The AFM does not have to disclose pending investigations, except in exceptional cases (for example when there are rumors in the markets).</p> <p><b>Other Enforcement Powers and Measures</b></p> <p>The AFM cannot directly impose emergency relief (such as freeze of assets or closing of a business that is conducting activities outside of the perimeter of regulation), but such type of measures can be sought within a criminal investigation. It does not have either quasi-prosecutorial powers, but it can refer matters to the PPO.</p> <p>The AFM does not have disgorgement nor restitution authority, and it cannot enter into settlements. The authorities do not consider that the lack of these powers have affected their</p>
--	--

	<p>enforcement activities.</p> <p><i>Information Sharing with the PPO</i></p> <p>AFS Section 1:92 authorizes the AFM and DNB to supply confidential data or information obtained in the performance of the duties assigned to it pursuant to this Act to a body entrusted with exercising powers to prosecute or to an expert issued with an instruction by such a body, insofar as the demanded data or information is necessary for the performance of that instruction. As indicated under Principle 1, both the AFM and DNB have MoUs with the PPOs to coordinate enforcement actions.</p> <p><i>Private Right of Action</i></p> <p>Enforcement actions by the financial supervisors or the PPO do not compromise in any way private parties' right of action.</p>
Assessment	Fully implemented.
Comments	<p>The IOSCO Principles do not require that securities regulators have direct powers to access telephone and internet service providers records, nor to be able to directly impose or seek in court certain emergency relief actions (such as freeze of assets or closing a business that is operating illegally). They do not require either that securities regulators have disgorgement or restitution powers, nor the ability to settle enforcement actions. Other securities regulators do have some of these powers and have considered them useful vis-à-vis their enforcement programs. Thus, the MoF jointly with the AFM might wish to review whether assignment of some of these powers to the AFM could further enhance its enforcement capacity; in particular the additional investigative powers.</p> <p>Finally the AFM should review whether to allow for disclosure of enforcement actions, even before a decision has been taken, on a more general basis.</p>
<b>Principle 10.</b>	The regulatory system should ensure an effective and credible use of inspection, investigation, surveillance and enforcement powers and implementation of an effective compliance program.
Description	<p><b>The Authority for Financial Markets (AFM)</b></p> <p><i>Supervision</i></p> <p>The AFM conducts supervision of issuers and regulated entities following a risk based approach. Such approach has been tailored to the type of entity under supervision.</p> <ul style="list-style-type: none"> <li>• Principles 14 and 16 provide a description of the approach used to supervise issuers' compliance with reporting obligations, as well as with financial reporting standards, respectively.</li> <li>• Principle 16 provides a description of the supervisory approach used for external auditors.</li> <li>• Principles 17 and 21 provide a description of the supervisory approach for management companies and investment firms, respectively.</li> <li>• Principles 26 and 28 provide a description of the approach used to supervise secondary markets.</li> </ul> <p><i>Enforcement</i></p> <p>The AFM has a clear strategy toward enforcement that is based on the principle that its goal is, not to impose all the fines that it can, but to influence behavior. To do that it uses different tools at its disposal, from softer measures (such as conveyance of standards and guidance) to harder measures (such as instructions and fines). During 2007, a significant amount of its enforcement efforts were channeled to the licensing process, given that with the implementation of the AFS all participants had to register with the AFM. After such a period the AFM has increased the use of both "softer" measures and "harder" measures, as shown in the table below. There is ample</p>

evidence that the AFM has used those powers in connection with all regulated entities, including banks authorized to perform investment services. While their value as proxies for effective enforcement is limited, such numbers do show that the AFM is actively enforcing the laws. The AFM is required to disclose penalties imposed, which appears to be having a deterrent effect in the market. In this regard, a key conclusion from the conversations with market participants is that the AFM is perceived as a strong supervisor, which is ready to apply strong measures in order to send the right signals to the market.

	2009	2008	2007
<b>THE AFM IN BRIEF</b>			
Expenses (in EUR x million) <sup>1,2</sup>	71.7	78.4	72.6
Government contribution as percentage of total expenses	35%	34%	31%
Staff complement in FTE (annual average)	456	434	434
Percentage direct supervision	52%	52%	52%
Number of institutions subject to supervision <sup>3</sup>	14,100	14,700	15,100
<b>OVERVIEW OF SUPERVISORY MEASURES</b>			
Reports of market abuse and notifications	4	10	7
Reports relating to Whc	2	0	0
Reports of non-licence holders	8	7	5
Other reports	1	5	1
<b>Total number of reports</b>	<b>15</b>	<b>22</b>	<b>13</b>
Fines imposed on providers	13	1	1
Fines imposed on advisers and intermediaries	23	4	0
Fines relating to market abuse and notifications	6	6	2
Fines for non-licence holders	9	7	1
Other fines	1	2	2
<b>Total number of fines</b>	<b>52</b>	<b>20</b>	<b>6</b>
<i>Number of fines published</i>	35	14	2
Orders subject to penalty for non-compliance	59	123	77
Instructions	237	24	10
Instructions in the form of trading measures	5	6	5
Public warnings	9	12	10
Appointment of a Wft receiver	6	3	3
Licences withdrawn <sup>4</sup>	38	11	2
Civil-law measures (Wtfv)	33	29	26
<b>Total number of other formal supervisory measures</b>	<b>387</b>	<b>208</b>	<b>133</b>
<i>Number of penalties for non-compliance published</i>	37	61	31
<b>Total number of formal supervisory measures</b>	<b>454</b>	<b>250</b>	<b>152</b>
Number of generic conveyances of standards/letters regarding standards	1605	560	269

	2009	2008	2007
<b>THE AFM IN BRIEF</b>			
Expenses (in EUR x million) <sup>1,2</sup>	71.7	78.4	72.6
Government contribution as percentage of total expenses	35%	34%	31%
Staff complement in FTE (annual average)	456	434	434
Percentage direct supervision	52%	52%	52%
Number of institutions subject to supervision <sup>3</sup>	14,100	14,700	15,100
<b>OVERVIEW OF SUPERVISORY MEASURES</b>			
Reports of market abuse and notifications	4	10	7
Reports relating to Whc	2	0	0
Reports of non-licence holders	8	7	5
Other reports	1	5	1
<b>Total number of reports</b>	<b>15</b>	<b>22</b>	<b>13</b>
Fines imposed on providers	13	1	1
Fines imposed on advisers and intermediaries	23	4	0
Fines relating to market abuse and notifications	6	6	2
Fines for non-licence holders	9	7	1
Other fines	1	2	2
<b>Total number of fines</b>	<b>52</b>	<b>20</b>	<b>6</b>
<i>Number of fines published</i>	35	14	2
Orders subject to penalty for non-compliance	59	123	77
Instructions	237	24	10
Instructions in the form of trading measures	5	6	5
Public warnings	9	12	10
Appointment of a Wft receiver	6	3	3
Licences withdrawn <sup>4</sup>	38	11	2
Civil-law measures(Wtfv)	363	29	26
<b>Total number of other formal supervisory measures</b>	<b>387</b>	<b>208</b>	<b>133</b>
<i>Number of penalties for non-compliance published</i>	37	61	31
<b>Total number of formal supervisory measures</b>	<b>454</b>	<b>250</b>	<b>152</b>
Number of generic conveyances of standards/letters regarding standards	1605	560	269

### De Nederlandsche Bank

#### Supervision

Overall DNB supervisory approach to management companies and investment firms also follows a risk-based approach, whereby the intensity of supervision has been determined based on the risks of the activities undertaken by such intermediaries.

Under such approach, management companies whose only activity is the management of CIS are mostly supervised off site, via the review of annual and semi-annual reporting, since the law

	<p>does not allow DNB to impose additional reporting requirements. Investment firms are subject to more intensive supervision, including on-site supervision. High-risk firms (which mostly comprise the firms that conduct proprietary trading) are inspected on an annual basis. Low risk firms (which represent the bulk of the intermediaries) are visited on a three year cycle, but such visits do not necessarily amount to inspections. A more detailed description of the supervisor approach of DNB can be found in Principle 17 for management companies and Principle 22 for investment firms.</p> <p><i>Enforcement</i></p> <p>Traditionally, immediate action is taken in response to capital deficits or other problems emerging from the periodic reports (or otherwise). Supervised investment firms are generally required by 'letter of deficit' to indicate within two weeks what measures they will take or have taken to solve any capital deficit (25 times in 2010). In following up on such requests in case of non-compliance, DNB has become substantially tougher since the start of the crisis, end 2008. In principle, DNB will take enforcement action if the problem has not been solved before the next reporting deadline (usually 3 months but it could be earlier). This enforcement action would normally be a formal instruction to follow a particular line of conduct. In 2009 DNB issued five such formal instructions and in 2010 one (with two still in the pipeline). In the case of non-compliance DNB may, in the end, request the AFM to withdraw the license (3 cases over the past two years, all of which led to withdrawal). Also, over the past two years, increasingly attention is paid to a sound business model. In 2010, in at least 3 cases, DNB set concrete deadlines for improving the business model of investment firms that have been showing losses for a considerable period of time. Also, DNB has imposed orders for incremental penalties to enforce timely reporting, which has proven to be effective since currently most of the investment firms comply with reporting obligations.</p> <p><b>Criminal Enforcement</b></p> <p>There appear to be effective mechanisms for coordination between the AFM, the PPO and the FIU, as described in Principle 1. The table included above shows also the existence of cases referred by the AFM to the PPO. Furthermore, the PPO has a separate division that deals with economic crime.</p> <p>However, criminal convictions for securities violations are limited, and not always visible. Some convictions have taken place in regard to investment fraud (activities undertaken outside of the perimeter of regulation), but they were not always visible because the PPO chose to convict the enterprise on more severe offences. Convictions for market abuse have proven to be very difficult, even after using more drastic coercive measures by the FID. Therefore a lot of cases do not have the desired outcome. However, the PPO has come to a transaction/conviction in several cases, but these cases were not always made public by way of a press release. As for market manipulation, the strategy has changed and now the AFM is dealing with them directly (as administrative infractions).</p>
Assessment	Broadly implemented.
	<p>Overall the assessor believes that the supervisors have developed a credible and effective supervisory approach. Two areas, however, appear to deserve additional attention. One relates to the prudential supervision of securities intermediaries by DNB, and the other to criminal enforcement.</p> <p>The assessor acknowledges that the risks undertaken by management companies of CIS are limited (mostly operational risks). While their failure/insolvency might not have systemic implications it could lead to irregularities vis-à-vis the CIS assets, and their failure could damage investors. Thus, while it appears reasonable to have a supervisory approach that relies more on offsite supervision, it is important to maintain the prophylactic effect of on-site inspections. The assessor also notes that the current reporting requirements imbedded in the law are not sufficient from a prudential perspective. The supervisory approach developed by DNB</p>

	<p>for investment firms appears to be reasonable and credible; however DNB should carefully monitor the use of visits versus on-site inspections. While visits can add value to a supervisory program, they are not substitutes for on-site inspections.</p> <p>Criminal enforcement appears not to be effective enough; at least the results are not always visible. While indeed criminal enforcement should be left for the more egregious cases, its lack of visibility could, in the long run, put a dent to the enforcement efforts of the supervisory authorities.</p>
<b>Principles for Cooperation</b>	
<b>Principle 11</b>	The Regulator should have the authority to share both public and non-public information with domestic and foreign counterparts
	<p><b>Domestic Cooperation</b></p> <p>As stated in Principle 1, the AFS contains several provisions aimed at fostering coordination and cooperation among the AFM and DNB. In particular:</p> <ul style="list-style-type: none"> <li>• Collaboration for the purposes of developing regulations to ensure that they are equivalent whenever possible. The law further details areas in which such coordination is expected, including: (Section 1:46.1)</li> <li>• Consultation of one another (and reasonable time to provide an opinion) in connection with licensing of market participants (Section 1:47a)</li> <li>• Consultation in connection with the imposition of certain “enforcement” measures (Section 1:47)</li> </ul> <p><b>International cooperation</b></p> <p>The AFS provides a comprehensive framework for international cooperation. The Act regulates separately cooperation with regulators from other EU members vis-à-vis cooperation with other non member states.</p> <p><i>Member States</i></p> <p>Section 1:51 establishes an obligation for the financial supervisors to cooperate with the supervisory authorities of other member states wherever this is required for the performance of the duties of the financial supervisors (the AFM, DNB) or of the duties of the supervisory authority of the member state. On request they are obliged to supply all the data and information needed by the supervisory authority of the member state to carry out its mandate. In addition to this generic obligation, the AFS contains provisions in regard to the minimum information that the supervisors must provide to supervisory authorities from member states on particular situations.</p> <p><i>Non-Member States</i></p> <p>Pursuant to Section 1:65 of the AFS the supervisors can supply confidential information to supervisory authorities from non member states if the guarantees applicable under the laws of that state with regard to non-disclosure of confidential information are at least equivalent to those established by the AFS (explained below), and the exchange of information is for the purpose of the exercise of supervision by the supervisory authority of such other state.</p> <p><b>Confidentiality</b></p> <p>Section 1:89 prohibits the staff from the supervisors from using or disclosing confidential information and information obtained pursuant to the Act for other uses different from what is required for the performance of their duties. Section 1:90 explicitly allows the supervisors to supply such information to the other supervisors or the supervisory authorities of other member</p>

	<p>states unless:</p> <ul style="list-style-type: none"> <li>• the purpose for which the confidential data or information will be used has not been adequately determined;</li> <li>• the intended use of the confidential data or information does not fit into the context of the supervision of financial markets or of persons operating on those markets;</li> <li>• the provision of the confidential data or information would be not be compatible with Dutch law or public order;</li> <li>• the non-disclosure of the data or information is not sufficiently guaranteed;</li> <li>• the provision of the confidential data or information is or might reasonably be considered contrary to the interests that this Act seeks to protect; or</li> <li>• there is insufficient guarantee that the confidential data or information will not be used for a purpose other than that for which it is supplied.</li> </ul> <p>AFS Section 1:65 also exempts, from the obligation of confidentially, the supply of information to a supervisor from a non-Member State.</p> <p>If a foreign supervisory authority requests the AFM permission to use supplied data or information for a purpose other than the one for which it was supplied, the request may be granted solely (Section 1:90, subsection 3):</p> <ul style="list-style-type: none"> <li>• if the intended use is not in violation of subsection 1 or 2 of Section 1:90; or</li> <li>• if the foreign supervisory authority could also obtain the data or information for that other purpose in a manner other than provided for by the AFS; and</li> <li>• after consulting the Dutch Minister of Justice, if the request refers to a criminal investigation. An agreement of 2007 between the Functional PPO and the AFM establishes procedural arrangements for such consultation. In particular, the consultation will take no more than two weeks (except in extraordinary situations) and concerns two factors: whether the principle against double jeopardy could be breached, and whether it is possible to exchange the information requested pursuant to an international assistance treaty for criminal law. This is an enhancement that could lead to additional information sharing between the PPO and criminal authorities in the jurisdiction of the requesting authority, or between the PPO and the requesting authority, directly. According to the AFM, the PPO cannot impose restrictions beyond those contained in the IOSCO Multilateral MoU, and has no power or obligation to deny a request or to force the AFM to deny a request. There is no obligation for the AFM in the AFS or any other Dutch law to deny a Multilateral MoU request from a foreign supervisory authority on the basis of its consultation with the PPO. It is always at the discretion of the AFM to decide on a Multilateral MoU request, even when the opinion of the PPO is negative.</li> </ul>
Assessment	Fully implemented.
Comments	
<b>Principle 12</b>	Regulators should establish information sharing mechanisms that set out when and how share both public and non-public information with their domestic and foreign counterparts
	<p><b>Domestic Cooperation</b></p> <p>The AFM and DNB have the power in practice to enter into information sharing agreements with each other and have in fact done so. Matters covered by the covenant include:</p> <ul style="list-style-type: none"> <li>• Consultation of regulations;</li> <li>• Consultation of licensing;</li> <li>• Consultation of enforcement measures; and</li> <li>• Information exchange between the two regulators (including details on the information should be exchanged on a regular basis and without prior request, as well as coordination of information requests vis-à-vis market participants).</li> </ul>

	<p><i>Cooperation in practice</i></p> <p>Overall the authorities believe that such a framework has allowed for coordination and cooperation to work well in practice. To a large degree such opinion is confirmed by the recent study commissioned by the MoF. The study concluded that in its daily practice, the cooperation between the supervisors is effective, while operating from their own expertise, culture, objectives, and responsibilities. Financial institutions do not experience major problems.</p> <p><b>International Cooperation</b></p> <p>The AFM has the authority to sign MoUs with foreign supervisors. Once signed, such MoUs must be notified to the MoF. Several written agreements exist. In particular, the AFM is signatory to the IOSCO MMoU; the CESR Multilateral MoU on the exchange of information and Surveillance of Securities Activities; the MoU between EU supervisors, central banks and ministries; the convention on insider trading between the member States of the Council of Europe; as well as a significant number of bilateral MoUs. DNB has also concluded 37 MoUs with relevant EEA and non-EEA supervisors.</p> <p><b>International Cooperation in Practice</b></p> <p>International cooperation in regard to securities markets is mainly centralized in the AFM, although not completely. Should a foreign regulator need prudential information then it would approach DNB directly. These requests take place very ad-hoc. For example information requests have been made in 2009 and 2010 regarding the bankruptcy of an investment company. For all other securities markets issues, the AFM is the competent authority for international cooperation.</p> <p>The AFM received and answered roughly 123 requests for information and cooperation during 2009. From January until September of 2010 it had answered approximately 86 requests for information and cooperation. The AFM keeps statistics on request by foreign regulators, including the number and time spent in dealing with the requests. Overall, the AFM answers requests within two to three weeks if they include banking records; however the time could be more if the request involves a significant number of accounts. In such cases, the AFM has the practice of contacting the requesting authority and explaining the status of the request. Such a timeframe is longer if up-front the requesting authority requests the possibility to use such information for criminal purposes. In such cases, upon receipt of the request, the AFM consults with the PPO. As per the 2007 agreement, the PPO aims to answer in two weeks, although sometimes it has taken longer.</p>
Assessment	Fully implemented.
Comments	
<b>Principle 13.</b>	The regulatory system should allow for assistance to be provided to foreign regulators who need to make inquiries in the discharge of their functions and exercise of their powers.
Description	<p><i>Member States</i></p> <p>AFS Section 1:52 allows the supervisors to demand information from any party in order to fulfill its duties of cooperation with Member States. Section 1:52 explicitly stipulates that for such purpose sections 5:13 to 5:20 of the GALA apply. In practice this means that the supervisors can provide assistance to regulators from Member States and request information on their behalf, using the same powers that they have for their own investigations.</p> <p><i>Non-Member States</i></p> <p>Section 1:68 allows the supervisors to request information from any party for the implementation of treaties on the exchange of information, or agreements on the exchange of information concluded with other supervisory authorities (from non member states). Section 1:68 explicitly states that for such purpose sections 5:13 to 5:20 of the GALA applies. As</p>

	<p>indicated above, this means that the supervisors can provide assistance to regulators from non-Member States and request information on their behalf using the same powers that they have for their own investigations.</p> <p>In both cases the request for assistance can include banking records. The legal framework of the Netherlands does not require any process of notification to the holder of the bank account.</p> <p><b>Assistance in Practice</b></p> <p>A significant number of the requests that the AFM receives are in fact requests for assistance, that is, they refer to information that is not in the files of the AFM. Thus, based on the information provided in Principle 12, it can be concluded that the AFM has in practice provided effective assistance.</p>
Assessment	Implemented.
Comments	
<b>Principles for Issuers</b>	
<b>Principle 14.</b>	There should be full, accurate and timely disclosure of financial results and other information that is material to investors' decisions.
Description	<p><b>Disclosure at the Moment of Offering</b></p> <p>Pursuant to AFS Section 5:2 no party can make a public offering of securities in the Netherlands or have securities admitted to trading on a regulated market situated or operated in the Netherlands, unless a prospectus has been approved by the AFM.</p> <p><i>Content of a Prospectus</i></p> <p>According to AFS Section 5:13 the prospectus shall contain all data which is necessary, in view of the nature of the issuer and of the securities offered to the public or admitted to trading, to enable investors to make an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the issuer and any guarantor, and of the rights and obligations attached to such securities, including the data required by the Prospectus Regulation. Such Regulation contains detailed requirements for the content of a prospectus. A prospectus shall be drafted by using one or a combination of schedules and building blocks provided for in Annex XVIII of the Commission Regulation, which depend on the type of security offered or the type of issuer. The requirements are a minimum standard. Issuers are allowed to add information to the prospectus which is not explicitly required by the Commission Regulation. The AFM is not allowed to demand supplementary information in the prospectus which is not covered by specific items in the schedules and building blocks. However, the AFM may require information to be provided based on these items to be completed. Based on the requirements of the Commission Regulation (schedules and building blocks), 'prominent disclosure of risk factors that are specific to the issuer or its industry' should be provided. For non-equity securities, this requirement is slightly altered: 'prominent disclosure of risk factors that may affect the issuer's ability to fulfil its obligations'. Regarding the transaction itself, 'prominent disclosure of risk factors that are material to the securities being offered and/or admitted to trading in order to assess the market risk associated with these securities' should be provided.</p> <p>The prospectus must be written in Dutch or in a language customary in the international finance (AFS Section 5:19). It should be written in an easy to understand way. Finally the issuer has the obligation to make the prospectus generally available (AFS Section 5:21).</p> <p><i>Update of Prospectus</i></p> <p>An issuer has the obligation to supplement the prospectus if during the offering a material event occurred. Such supplement is subject to approval by the AFM. In such a case the investors have the right to give back the product within a two day period. After the offering has closed, issuers</p>

are required to supplement the prospectus if necessary. Prospectus must be updated on an annual basis, and such prospectus is subject to approval by the AFM.

#### *Responsibility*

The Prospectus Directive requires persons responsible for drafting the prospectus to explicitly take responsibility (responsibility statement) for the content of the prospectus.

In addition, pursuant to the DCC, issuers as well as persons involved in the offering (e.g. lead managers) could be held liable for damages, if the information provided, not only in the prospectus but during the offering (advertisements, and other communications), was misleading and it caused a damage. Under the DCC there is no system of strict liability.

#### *Cross Border Offerings*

If a prospectus is approved by the AFM, it can be used to offer securities throughout the EU, on the condition that the AFM provides the host Member State with a certificate of approval. Conversely, prospectuses that have been approved by another Member State's competent authority will be accepted in the Netherlands. The Member States, where securities are offered via an approved prospectus for which a certificate of approval has been provided, are not allowed to impose any additional requirements on that prospectus.

#### *Prospectus Exemption*

AFS Section 5:2 excludes from the obligation to submit a prospectus the following offers:

- the securities are offered exclusively to qualified investors;
- the securities are offered to fewer than 100 persons other than qualified investors;
- the securities on offer can only be acquired for an equivalent value of at least € 50,000 per investor;
- the denomination per security is at least € 50,000; or
- the total equivalent value of the offer of securities to the public is less than € 10,000, which limit is calculated over a period of 12 months.

#### **Periodic and Continuous Disclosure**

Pursuant to the AFS, issuers whose securities are admitted to trading are subject to periodic reporting obligations, as listed below.

Annually, within four months of the end of the financial year, they must submit:

(i) the audited annual statements;

(ii) the Executive Board Report, which must include among other things:

- a description of the main risks and uncertainties faced by the issuer and policies to manage the risks of financial instruments;
- an in control statement;
- disclosure of all substantial holdings (as per the takeover directive); and
- an assessment of compliance with the Dutch corporate governance code under a comply or explain regime.

(iii) a responsibility statement from the persons designated by the issuer stating that the financial statements provide a fair view of the financial position and the Annual Report provides a true and fair view of the state of affairs of the issuer (AFS Section 5:25c).

On a semi-annual basis, issuers are required to submit: (i) unaudited financial statements, (ii) an

interim management report which must include a description of material events and transactions that have taken place during such period, as well as a general description of the financial position and performance during such period, and (iii) the statement referred to above. Issuers that only have debt securities with a denomination per-unit of € 50,000 are not required to file semi-Annual Reports.

Both the Annual and semi-Annual Report must be made generally available, and submit simultaneously to the AFM. Issuers can file their reports electronically or by mail using hardcopy filings. Issuers must keep such reports for five years.

In addition, issuers whose securities are admitted to trading on a regulated market are required to communicate material events as soon as possible. The AFM does not have a hard “rule” about what “as soon as possible” entails, since in practice the timing can vary depending on the type of event that needs to be communicated. It has, however, issued guidance, hold meetings with chief executive officers of listed companies and contacted issuers to increase understanding of this obligation. The AFM can issue an instruction to the relevant market to halt the trading in relevant financial instruments of the corporation if there is an indication of asymmetrical information in the marketplace.

Public issuers that do not have their securities admitted to trading are not subject to the submission of semi-annual reports, nor material events; but they do have to comply with the annual reporting as established in the DCC.

Dutch issuers that are listed outside Europe are not required to submit their financial reports to the AFM. However, they are subject to financial reporting supervision of the AFM

#### **Powers of the AFM in Connection with Offerings and Periodic Reporting Obligations**

Offering securities to the public without a prospectus constitutes an infraction that can be pursued by the AFM on an administrative proceeding. The types of measures that the AFM can impose in such case are an instruction, an administrative fine or an order of incremental penalty. The same type of measures can be imposed by the AFM on issuers who failed to comply with the periodic and continuous disclosure obligations, since in all these cases the powers of the AFM stem from administrative law.

#### **Practice**

##### *Review of Prospectus*

The review of prospectus at the AFM is done by the Securities Offerings and Take Over Bids Supervision Division. All prospectuses are reviewed by the AFM. This scrutiny entails a test on completeness, consistency, and comprehensibility of the information. The review is done under the four eye principle. Each prospectus is assigned to a reader, and a senior person is responsible for the transaction. The senior staff has a key role on guiding the review, and alerting to key points. In particular in the case of specialized products (e.g., special purpose vehicles, asset-backed securities and private equity firms) the AFM has developed guidance notes that explain main risks and highlights key points for review, thus contributing to bringing consistency to the review of such products.

The AFM also has a Q&A page on the website that provides basic guidance to issuers. In addition, it holds yearly seminars with people involved in the drafting of prospectus (issuers, lead managers) where it provides feedback to participants in the major problems encountered in prospectus. It also has a Capital Markets Newsletter that also helps to disseminate information.

	<p><i>Review of Material Events (inside information)</i></p> <p>The AFM has a monitoring system with alerts that allow it to monitor material events disseminated by issuers. If the AFM considers that a statement is not complete or correct, its practice is to contact the issuer and ask for a clarification. Additionally, if the AFM sees anomalies in the trading of the securities (e.g., shifts in price or volume not attributable to any public information and/or if there are relevant rumours in the market concerning a particular enterprise which could explain the price shift) the AFM will proactively contact the relevant issuers to assess whether there is price-sensitive information which should be disclosed. For this purpose, the AFM has created a database with the relevant information of all contact persons within the publicly listed companies to ensure that contact can be made quickly and effectively. If the issuer indicates that there is price-sensitive information, the AFM can require that the information be made immediately available to the public. The AFM can issue an instruction to the relevant market to halt the trading in relevant financial instruments of the corporation if there is an indication of asymmetrical information in the marketplace.</p> <p><i>Review of Advertisements</i></p> <p>All of the advertisements are monitored on a daily basis using a special software (Adfac). Approximately 15 to 20 communications on investments are assessed every week. Communications considered harmful are prioritized for follow-up and enforcement actions when appropriate.</p> <p><i>Reviews for Purposes of Ensuring Compliance with Filing Financial Reports</i></p> <p>During 2008 virtually all issuers preparing consolidated statements complied with their obligation to file their financial reports with the AFM. Issuers that prepare company only financial statements—mostly debt issuers—did show an important level of non compliance. The strategy of the AFM toward non-compliance was to issue instructions rather than orders for incremental penalties, due to the fact that the implementation of filing obligations is relatively new. In its 2009 report the AFM announced that during 2010 it would pay attention to timely and full compliance with reporting obligations and would take the appropriate enforcement measures where necessary.</p> <p><i>Transparency of the AFM Supervision and Enforcement Activities</i></p> <p>At the end of each year, the AFM publishes an activity report to inform the public of its financial reporting supervision activities and findings. Each year, at the beginning of November, the AFM also publishes an interim report.</p>
Assessment	Fully implemented.
Comments	<p>In the opinion of the assessor, a system of differentiated disclosure based on the type of securities offered or investors to which the securities will be offered is reasonable. Arguably the absence of periodic requirements (other than the annual reporting) for unlisted issuers could be questioned. In practice, only about 15 percent of the equity issuers are not listed, and involve projects that are not an “on-going concern,” while the percentage of debt issuers that are not listed is even lower. Thus, this issue does not pose a major concern.</p> <p>Out of the current exemptions, the threshold of € 50,000 to exempt from the requirement of a prospectus raises some concerns in the context of the Dutch market. The authorities informed that EU members have agreed to increase the amount to € 100,000.</p>
<b>Principle 15.</b>	Holders of securities in a company should be treated in a fair and equitable manner.
Description	<p><b>Shareholders Rights</b></p> <p>Book 2 of the DCC provides for the general regulations on the rights of shareholders. By law, a corporation is required to have regard to these rights and can further define and elaborate on these rights in the articles of association. The rights afforded to shareholders in the DCC are in</p>

	<p>line with the IOSCO Principles.</p> <p>Under Dutch company law, shareholders generally have the right to approve major changes in the corporate structure, including:</p> <ul style="list-style-type: none"> <li>• amendments to the articles of association;</li> <li>• declaration of dividends;</li> <li>• appointment of the independent auditor;</li> <li>• approval of annual accounts;</li> <li>• statutory mergers;</li> <li>• statutory divisions;</li> <li>• dissolution (winding up) of the company; and</li> <li>• conversion of the company into another legal structure.</li> </ul> <p>The articles of association may transfer some of these decisions to the Supervisory Board. Company law provides for the registration of ownership of shares and their transfer. Bearer shares are also permitted.</p> <p>Companies whose registered office is in the Netherlands and whose shares or depositary receipts for shares are officially listed are required to present an annual report on their compliance with the corporate governance code. The principles have been elaborated in the form of specific best practice provisions. Companies have to explain in their Annual Report whether and if so why and to what extent, they do not apply the best practice provisions of the Code (the 'comply or explain' principle).</p> <p>The AFM only indirectly supervises compliance with Book 2 of the DCC or with the corporate governance code, where compliance relates to—or overlaps with—public takeover bids. Rules on takeovers are based on public and civil law. For example, rules regarding the mandatory offer, 'squeeze out', enforcement of a mandatory offer, and the determination of a fair price in case of a mandatory offer are part of civil law. The enforcement of all relevant takeover rules based on civil law corresponds to the Enterprise Chamber of the Amsterdam Court of Appeal, based on private right of action. On the other hand, the AFM is the competent authority for the supervision of rules based on public law; which basically relates to the enforcement of the procedures for a mandatory tender offer.</p> <p><b>Control Transactions</b></p> <p>The DCC requires a mandatory tender offer from a legal person, whether alone or acting in concert, who can exercise at least 30 percent of the voting rights in the general meeting of shareholders of the target company. The mandatory tender offer should be done to obtain all remaining shares, and should be done at a fair price. The 'fair price' is regarded to be the highest price paid for the same shares by the offeror in the year prior to the announcement of the mandatory offer. In deviation there from, the Enterprise Chamber may, on request, determine the 'fair price'. The judgement on whether a mandatory offer is required or whether the price offered is fair must be made by the Enterprise Chamber, based on a suit that can be brought only by the company or the shareholders. The AFM is not authorized to file a case with the Courts in either case.</p> <p>As soon as a mandatory offer is announced, the offer is subject to the supervision of the AFM, in regards to compliance with the procedures set up in the AFS. Such procedures comprise all the different stages of the tender offer, and the obligations that the offeror must meet at its stage. A key component of the procedures is the obligation of the offeror to submit an offering memorandum for the approval of the AFM, which aimed at providing shareholders with sufficient information on the offeror and the terms of the offer to allow them to make an informed decision. As part of the process the target company is obliged to have a general</p>
--	--

	<p>meeting of shareholders to inform its shareholders about the offer. At least four days prior to the general meeting of shareholders, the target company has to publicly announce—with reasons—whether or not it supports the offer ('determination of the position'). In the event of a friendly offer, this position statement will generally be published at the same time as the offer memorandum. Prior to its publication, the determination of the position is, contrary to the offer memorandum, not subject to approval by the AFM.</p> <p><b>Practice</b></p> <p>The AFM sees between 5-20 files on tender offers depending on the year. Out of that number roughly 10-20 percent involves a mandatory tender offer. There has been only one case useful to test the effectiveness of the current system—that divides responsibilities between the AFM and the Enterprise Chamber (the latter only based on a suit brought by the company or a shareholder). The case involved a dispute over fair price and the decision of the Court took roughly a year. On the other hand, the AFM has received numerous questions requesting guidance as to when a mandatory tender offer has been triggered, but such aspects are under the responsibility of the Enterprise Chamber.</p> <p><b>Substantial Holdings</b></p> <p>AFS Section 5:38 imposes notification obligations from any person who obtains or loses the disposal of shares or voting rights which will make its percentage of shares fall or exceed certain thresholds (5, 10, 15, 20, 25, 30, 40, 50, 60, 75, and 95). Such notification must be made without delay.</p> <p><b>Insider Holdings</b></p> <p>Pursuant to Section 5:48 a Director or Supervisory Board Member of an issuer is required to notify to the AFM the shares and voting rights that it has in the issuer and its affiliates. Such notification must be made within two weeks of their appointment. In addition, they are required to notify without delay of any change in the shares or voting rights at their disposal.</p> <p>Pursuant to AFS Section 5:49 is required to inform the issuer of notifications received. If an issuer suspects that an incorrect notification has been made it must inform the AFM without delay.</p> <p>Pursuant to Section 5:52 if a notification has not been made, the court may take certain measures including ordering the party to make the notification, suspending its voting rights, suspending a decision of the general meeting; annulment of decisions, an prohibiting the party obliged to nitrify from acquiring more shares. The following parties may file an application: holders of a substantial holding; holders of one or more shares with special controlling rights or the issuer.</p> <p>All the notifications made by substantial holders and insiders are kept in a public register by the AFM.</p>
Assessment	Broadly implemented.
Comments	<p>The Principles require equitable treatment of shareholders under change of control transactions, but do not specify the type of mechanisms that should be available to enforce compliance with such obligation. The existence of a private right of action for the company and shareholders to enforce the obligation to launch a tender offer or to offer a fair price constitutes a basic mechanism to seek compliance with such obligations. However, in particular if the offer has been accepted by the company, such system places an important burden on shareholders. Furthermore, the assessor understands that shareholder activism in the Netherlands is low. In such context, the assessor considers important that some form of “public” enforcement mechanism be added to the system, such as for example providing the AFM with direct authority to enforce such obligations. Alternatively the AFM could be provided with the</p>

	authority to file suits before the Enterprise Chamber—in such case it would be important to work with the Enterprise Chamber to ensure that decisions are taken in a timely manner.
<b>Principle 16.</b>	<b>Accounting and auditing standards should be of a high and internationally acceptable quality.</b>
Description	<p><b>Accounting Standards</b></p> <p>Listed issuers are required to prepare their annual consolidated financial statements in accordance with IFRS as adopted by the EU for each financial year starting on or after January 1, 2005. Currently, there are two differences between IFRS and IFRS as endorsed by the EU. This relates to the carve-out for macro-hedging (IAS 39) and IFRS 9. IFRS 9 is the new standard for financial instruments that has not yet been endorsed by the EU. Non-EU issuers are permitted to comply with the obligation to publish financial statements by using consolidated financial statements drawn up in accordance with equivalent third-country standards (US GAAP, Canadian GAAP, and Japanese GAAP).</p> <p>For issuers that do not need to consolidate, the applicable accounting standards are set forth in Part 9 of Book 2 of the DCC (Section 362(8)). Such issuers must submit their statements according to local accounting standards. Overall local standards are less strict than IFRS and provide issuers with more choices. In practice however almost all equity issuers are required to prepare consolidated statements, and so are the majority (roughly 80 percent) of the bond issuers.</p> <p><i>Mechanisms to Enforce Compliance with Financial Reporting Standards</i></p> <p>The powers of the AFM to enforce compliance of financial reporting standards stem from civil law and are more limited. As per civil law the AFMs review of financial reports should be based on public facts and circumstances. This means that any request for additional information can only be made if based on public information the AFM has doubts about the correct application of the financial reporting standards. In addition issuers are not required to submit specific information when asked by the AFM. If an issuer fails to comply with a request for additional information the AFM can request the Enterprise Section of the Amsterdam Court of Appeal to enforce such obligation, within six months of the presentation of the financial statements.</p> <p>If based on the review the AFM considers that the issuer did not correctly apply the standards it can issue a notification or a recommendation:</p> <ul style="list-style-type: none"> <li>• By means of a notification, companies are requested to take the remarks of the AFM into account in preparing their future financial reports. The AFM uses notifications in cases that the problems do not require that investors be informed immediately, since notifications are not public. The AFM will review compliance with its notifications in the next financial year. Any failure by the company to implement the AFM's notification will be taken into account in the AFM's risk analysis and will therefore impact the selection of financial statements for review.</li> </ul> <p>Recommendations are used in cases where non-compliance with financial reporting standards affects a primary statement (i.e., balance sheet, income statement, cash flow statement, or statement of changes in equity), possibly resulting in material misstatements in the financial statements, or where a primary statement is omitted altogether. Omission of essential disclosures may also result in the AFM issuing recommendations. There are two types of recommendations: one requires that the issuer makes a public statement explaining how the requirements will be applied in the future and setting out the consequences thereof for the financial statements, while the other requires the issuer to make a public statement explaining in what respects the financial statements do not comply with the financial reporting requirements and sets out the consequences thereof for the financial statements. The statements issued by the companies are filed with the AFM, in its public financial reporting register, enabling users of financial reports to read financial reports already filed in conjunction with such statements. The</p>

press releases issued by companies are available in the public register on the AFM's website ([www.afm.nl](http://www.afm.nl), under public database/financial reporting). In case of non-compliance with a recommendation, the AFM can initiate proceedings with the Enterprise Chamber of the Amsterdam Court of Appeal; but it has to request a review of the whole financial report. The law provides the AFM with the authority to start proceedings with the Enterprise Chamber of the Amsterdam Court of Appeal directly to enforce compliance with a request for information or to seek a restatement of the financial statements, within six months of the receipt of the financial statements.

The AFM is not allowed to initiate a proceeding with the Court in respect of half-yearly reports.

The legislation governing financial reporting includes "Chinese walls" that prevent the exchange of information from supervision activities between supervision departments. As a result the department that supervises financial reporting is not allowed to use information obtained by the AFM in the course of other supervisory activities, including its supervision of prospectus, public offerings and audit firms. This may lead to situations where the AFM may have the information relevant to its supervision of compliance with financial reporting standards but cannot use it. Such department cannot share the information that it obtains with other departments.

*Review of periodic reports for purpose of ensuring compliance with financial reporting standards*

The Financial Reporting Supervision Division is in charge of supervision of compliance with financial reporting standards and filing obligations. The AFM does not review all Annual Financial Reports; rather it follows a risk based approach which is based on a set of criteria that seek to determine (i) the impact of specific company-related factors on the risk of non-compliance with financial reporting standards, and (ii) the potential impact of any non-compliance on investors and an adequate functioning of the capital market. In addition, other annual reports will be selected based on rotation (i.e., all issuers should be subject to review on a five year cycle). Finally the Annual Reports of all issuers that received notifications in the previous year will also be selected for review to follow-up regarding the notifications in that year. The AFM reviews approximately 60-70 reports annually.

The AFM conducts a more limited review of semi-annual statements. This decision stems from a mix of factors, including the fact that they are not audited, shareholders have not approved them, and its enforcement powers are even more limited than in the case of Annual Reports, since it cannot initiate proceedings with the court. Semi-Annual Financial Reports are selected for review if the AFM has indications of potential financial reporting issues in this financial report and if the preceding Annual Financial Report was selected for review.

Based on such reviews, the AFM has issued both notifications and recommendations, although the bulk has been notifications. In 2009 for example, in connection with Annual Reports, it issued one notification with a recommendation and 35 notifications. As of 2010, it has issued 14 recommendations, and in all cases issuers have complied with the publication of the corresponding statement. The AFM has used its power to go directly to Court to ask for the restatement of financial statements once, and recently. The Court dismissed the case stating that the AFM should first ask the company to issue a public statement.

In addition to risk-based reviews, thematic reviews are conducted. Such thematic reviews deal with specific IFRS or other relevant topics. The AFM performs three thematic inspections a year. For example, this year one of the reviews dealt with valuation of financial instruments. Under thematic reviews the AFM covers 40-60 reports.

### **Auditing Standards**

Standard setting regarding auditing standards in the Netherlands is conducted by the professional bodies, under the supervision of the MoF. The Dutch auditing profession applies a slightly modified version of the International Standards on Auditing (ISAs) of the International Federation of Accountants (IFAC). Adherence to these standards is mandatory. The difference between the ISAs and the local auditing standards does not appear to be significant since they are limited to making references to other legislative requirements. Overall requirements concerning the audit firm's structure, governance, quality control standards, independence, data protection and the individual auditor's independence, professional competence, objectivity, and integrity are included in laws and bylaws drawn up by the Dutch government.

Standard setting in the Netherlands involves a consultation process with the MoF and the AFM. This process appears to be effective. In fact, recently the AFM objected to the new Code of Ethics developed by the professional bodies because it considered it to be weak, the MoF took the recommendation and the Code is now being redrafted.

It is anticipated that the European Commission (EC), on the basis of Article 26 of the Statutory Audit Directive, will endorse international auditing standards. If the EC does so, the professional bodies will no longer be responsible for setting auditing standards for statutory audits; however, they will continue to have a responsibility in setting auditing standards for other audits.

### **Auditor Independence**

The Audit Firms Supervision Act (AFSA) contains a general provision that requires auditors and audit firms to assess (and document) their independence. If situations exist that may cast doubt on their independence, additional safeguards should be implemented, or, if that is not sufficient to take away the doubt on the independence, the auditor and/or the audit firm should withdraw from the engagement.

The AFSA contains specific cases where an audit firm cannot perform a statutory audit of a public interest entity:

- It has compiled the financial accounts on which the statutory audit is based at any time during the previous two years; or
- It provided or actually set up, or shall provide or actually set up respectively, a substantial part of the accounting records during the period to which the financial accounts refer; or during the performance of the statutory audit.

There are also specific rotation requirements for the individual auditor that audit public interest entities (seven years), as well as cool off period (two years).

Each year, the audit firm performing statutory audits for a "Public Interest Entity" (PIE) shall confirm its independence from the audit client to the audit committee, notify it of all services it provided to the audit client other than the performance of statutory audits and discuss with it the threats to its independence and the measures taken to mitigate these threats.

In addition on an annual basis, audit firms are required to prepare and publish on their website a "transparency report," which among other things includes a statement concerning the audit firm's independence practices which also confirms that an internal review of independence compliance has been conducted.

### **Auditors Oversight**

All audit firms that want to perform statutory audits in the Netherlands must obtain a license

from the AFM. Individual auditors who want to conduct statutory audits must be employed by or affiliated to an audit firm with a license from the AFM. The audit firms are required to register the individual auditors performing statutory audits with the AFM. Statutory audits include, amongst others, audits of listed companies, banks and insurance companies.

#### *Licensing of Firms*

The law distinguishes between a licence for PIE-audits, which is necessary to perform all statutory audits including audits of listed companies, banks and insurance companies, and a licence not for PIE-audits, which covers only statutory audits of all other (non-PIE) statutory audits. Licensing requirements include, amongst others, integrity tests on co-policymakers and demonstration that the quality assurance systems are robust.

#### *Registration of Individual Auditors*

Auditors need to be registered accountants with the Dutch Profession Accounting Organization (NBA), constituted out of the merger of the Netherlands Institute of Chartered Accountants (NIVRA) and the Netherlands Order of Accountants (NOvaA) (the required legislation for this merger is expected to come into force on 1st July 2012).. The requirements basically consist of a theoretical examination and practical experience. Furthermore, auditors in the Netherlands are required to pursue continuous education (on average, at least 120 hours per 3 years).

#### *Enforcement Powers*

The AFM may take punitive actions against audit firms, provided that there has been due process, based on administrative law. Audit firms that disagree with any enforcement action may appeal to this sanction; first to the Management Board of the AFM, second to the Court in Rotterdam, and finally, to the Administrative High Court for Trade and Industry. Taking disciplinary action against individual auditors in the Netherlands is a responsibility of the Disciplinary Court for auditors. The AFM may file a case at that Court, in which case the Court must decide on whether to impose a sanction to the auditor.

#### **Practice**

The AFM has a separate department in charge of supervision of audit firms. It has 21 full-time and 2 part-time professionals, all non-practitioners. The initial licensing of existing audit firms was performed by this department as well. The subsequent licensing of new audit firms is performed by the AFM's Market Entry Division.

The licensing function was given to the AFM in October 2006. The AFM received approximately 700 applications for licensing. It applied a risk-based approach to their review: all audit firms with a substantive number of statutory audits were subject to on-site inspections, while the audit firms with null or very few statutory audits were subject to desktop review. Currently there are 15 firms licensed to conduct PIE audits, and approx. 460 to conduct non PIE audits. The Big 4 firms cover roughly 60 percent of all audits and charge roughly 80 percent of all audit fees.

The AFM carries out the inspections of all PIE audit firms, and some inspections are carried out at non PIE-audit firms. The bulk of the inspections at non PIE-audit firms that are member of a professional association of small-sized audit firms are carried out by the Association of Chartered Accountants (SRA) on the basis of a MoU. Such inspections are performed by non-practitioners with the methodology of the AFM and with a plan approved by the AFM. The AFM remains fully responsible for all oversight, and therefore also for the inspections conducted by SRA, and carries out enforcement activities.

During 2009 the AFM conducted on-site inspections on the Big 4 firms. A report that

	<p>summarizes the main findings from such inspections can be found in the website. According to that report, auditors failed to exercise sufficient and appropriate professional skepticism; and failed to apply accounting standards. In particular, insufficient testing; and quality control monitoring fell short. Furthermore the AFM called for a fundamental change of tone at the top. The firms were required to present plans to address the specific weakness indentified in each of them. The AFM also encourage the audit committees of listed issuers to make a contribution to improving audit quality by requesting the AFM inspection findings to the audit firm and engaging in active discussion of the issues raised in such reports. Confidentiality provisions prevent the AFM from disclosing such results directly to them. The AFM will focus its onsite inspection of the second half of 2010 and 2011 on financial incentives and their impact on quality of audits. Finally the AFM initiated enforcement proceedings against one or more of them, which are currently pending.</p>
Assessment	Partly implemented.
Comments	<p>The Principles require the existence of adequate mechanisms to enforce compliance with accounting standards. The legal framework provides the AFM with the authority to issue recommendations and notifications. However the conditions under which such powers can be exercised (with limited ability to request information) significantly hinder AFM ability to enforce compliance with accounting standards and thus, to carry out its investor protection mandate. Furthermore the deadline to pursue an action before the court is too short. Such limitations are compounded by the Chinese walls prescribed by the law in connection with information collected by other departments of the AFM. Such limitations altogether are the reasons for the downgrade.</p> <p>The assessor recommends that a legal reform be pursued to strengthen the AFM’s authority to enforce compliance with the financial reporting standards. Such reform should properly address the limitations stated above, in particular: (i) the limitations in the authority of the AFM to request information from issuers; (ii) the tight schedule under which the AFM has to file the suits before the Enterprise Chamber of the Court of Appeals; (iii) the limitations to share information among departments, and (iv) the need to request the review of the whole financial report when filing a suit to enforce compliance with the publication of a recommendation.</p> <p>The IOSCO Principles have not adopted IFRS as the only set of “high quality standards. Thus the fact that not all issuers have to file in accordance with IFRS cannot be considered a gap per se. The opinion of experts is that Dutch GAAPs are “high quality standards,” although they do have important differences with IFRS; in particular they provide more choices. Therefore this difference in standards is not affecting the grade. Furthermore only a limited number of issuers file according to local GAAP. Nevertheless the application of IFRS to all issuers might be desirable, since it foster comparability of information.</p>
<b>Principles for Collective Investment Schemes</b>	
<b>Principle 17.</b>	The regulatory system should set standards for the eligibility and the regulation of those who wish to market or operate a collective investment scheme.
Description	<p><b>Activities Subject to License</b></p> <p>Pursuant to Section 2:65, the management of a CIS is subject to licensing by the AFM. If an investment company chooses not to have a separate management company then the investment company itself is subject to licensing. Requirements for the licensing of a management company are set out in Section 2:67, while Section 2:68 outlines the requirements for an investment company that does not have a separate manager. The provision of investment services in relation to CIS also requires a license, since CIS are financial instruments (Section 1.1).</p> <p>The provision of all such activities without a license constitutes an offense that the AFM can pursue administratively. The AFM can make a public warning; impose and order for incremental penalty; an administrative fine, and report the offense to the PPO.</p> <p>The AFS allows for exemptions to the licensing requirements. In the case of management companies the most important exemption is the offering of units of € 50,000 or more per unit</p>

(Section 4 (1), Exemption Regulation of the Financial Markets Supervision Act).

### Licensing Requirements

The AFS establishes a set of common requirements that management companies and investment companies must comply with. Those requirements include:

- Propriety of persons holding a qualifying holding, which is set at 10 percent of the capital. However, qualifying holdings are subject to declaration of no objection only in the case of UCITS. With non-UCITS the propriety of persons holding a qualified holding of 50 percent or more of the capital is assessed.
- Fitness and propriety of the persons in charge of day-to-day policy.
- Expertise of the staff who directly engage in providing services to consumers. The current framework does not require registration of staff individuals, nor specific professional requirements (such as examinations, or courses). However, on a voluntary basis, the DSI has fulfilled the role of registering individuals who performed specific functions, and set up the standards (for example examinations) necessary to obtain the registration.
- Policies aimed at ensuring controlled and sound business operations (to address conflict of interest, breaches to laws, etc).
- An organizational structure aimed at ensuring controlled and sound business operations.
- Proper handling of customers' complaints, which entails having an internal complaints procedure.
- In addition a management company must comply with a minimum capital requirement (Section 3:53 AFS; art. 48, 50, 51 BPR), as detailed below.

Financial undertaking	Own funds (Sections 48 and 63 BPR)	Components of own funds ( <a href="#">Sections 50</a> and <a href="#">51 BPR</a> )	Solvency / minimum amount of actual own funds ( <a href="#">Section 63 BPR</a> )
Non-UCITS management company with assets of ≥ EUR 250 million	€ 225.000	The core capital referred to in Section 91 BPR and the supplementary capital referred to in Section 92 BPR	-
Non-UCITS management company with assets of < EUR 250 million	€ 125.000	The components referred to in parts a. to g. of the second paragraph of Section 91 BPR	-
UCITS management company	€ 125.000	The components referred to in parts a. to g. of the second paragraph of Section 91 BPR	EUR 125,000 + 0.02 % of the amount by which the assets under management exceed EUR 250 million, to a maximum of EUR 10 million
Investment company without separate management company	€ 300.000	The components referred to in parts a. to g. of the second paragraph of Section 91 BPR	-
Depository	€ 112.500	The core capital referred to in Section 91 BPR and the supplementary capital referred to in Section 92 BPR	

	<p>Management companies of UCITS-institutions are subject to supplementary requirements, including the fixed cost requirement, pursuant to Section 63(4) in conjunction with Section 60(3) to (5), BPR.</p> <p><b>Passport</b></p> <p>If a Dutch management company wishes to offer a fund within the EU, it can avoid a new license procedure if it is a UCITS pursuant to the EU directive (European passport). In those circumstances the AFM notifies the foreign regulator. The UCITS directive also regulates the responsibilities of the supervisors (at market entry and subsequent supervision). A non-UCITS cannot offer units outside the Netherlands on the basis of a license from the AFM, except in Switzerland, as Switzerland has declared AFM supervision to be adequate. In that case the AFM approves the prospectus on an ongoing basis.</p> <p><b>Change to Management and other Significant Changes</b></p> <p>Pursuant to Section 4:26, a management company is required to notify changes in management, as well as in qualifying holdings, so that the AFM can assess their fitness and properness in the first case, or their properness only in the second case. If the AFM considers that the requirements are met, then it approves the changes. A management company is also required to report incidents related to controlled and sound operations (Section 4:11). Directors are required to disclose their own interests in the investments of the CIS.</p> <p><b>Ongoing prudential supervision</b></p> <p>The AFS requires management companies to be solvent. However, only management companies of UCITS have to adjust their capital according to the amount of assets under management (see table above). DNB is also in charge to supervise compliance of CIS with liquidity requirements. Management companies are required to submit annual and semiannual statements as described below; however DNB does not have the legal authority to require additional reporting for prudential purposes.</p> <p>DNB can use regulatory measures to deal with a situation whereby a management company is not complying with its capital requirements. Such measures are:</p> <ul style="list-style-type: none"> <li>• the imposition of extra reporting obligations;</li> <li>• the possibility to notify the entity that it should meet minimum capital requirements within a period set off time;</li> <li>• giving an instruction, imposing a letter of deficit, issuing a warning, appoint a conservator; and</li> <li>• withdrawal of the exemption, withdrawal of the certificate of no objection, or ultimately (the request for) withdrawal of the license.</li> </ul> <p><b>Periodic Reporting Requirements</b></p> <p>A management company and an investment company are subject to periodic reporting obligations, as detailed below.</p> <ul style="list-style-type: none"> <li>• An Annual Report, which includes the annual audited financial statements, within four months of the end of the year; and a semiannual report, which includes semi-annual financial statements, within nine weeks of the end of the first half of the financial year. Financial statements must be prepared according to IFRS in the case of CIS that fall under the Prospectus Directive (CIS that are listed), and based on Dutch GAAP for CIS that do not fall under such Directive (most open-end CIS). Most CIS in the Netherlands do not fall under the Prospectus Directive, and thus file according to the Dutch GAAP.</li> </ul>
--	---

	<p>Quarterly reports are not required, but in practice the large CIS have chosen to voluntarily produce them.</p> <ul style="list-style-type: none"> <li>• The AFM also requests the Management Letter from the management company. In the CIS’s annual financial statements, the management company is required to issue an “in control statement.” In this statement the management company declares that it has a description of the organization of business operations and that the business operations of the CIS operate effectively and in accordance with the description (Section 121 of the Bgfo).</li> <li>• On a monthly basis the management company is required to disclose on its website certain relevant information related to the CIS it administers: the total value of the investments, an overview of the composition of the investments (in a pie chart), the total number of outstanding units and the net asset value (Section 50 Bgfo).</li> </ul> <p><b>Record keeping Requirements</b></p> <p>The DCC requires any party who conducts a business to keep accounts, and accompanying books and any other information concerning the profession for a period of seven years (Book 2, Title 9). The Code list the information that has to be kept for seven years, which includes financial statements, Annual Reports and other information related to the business. The AFS contains specific record keeping obligations in connection with regulated entities. See also principle 8.</p> <p><b>Conflicts of Interest</b></p> <p>The AFS requires that management companies and investment companies develop adequate measures to prevent conflicts of interest (AFS Sections 4:11; Section 18 of the Bgfo). In the event that there are, or may be, affiliated transactions between the CIS and any affiliated parties, this conflict has to be reported in detail and clarified in the prospectus and the financial statements (see Section 124 Bgfo). If transactions are performed with parties affiliated to the management company, the investment company or the depository, the prospectus should contain:</p> <ul style="list-style-type: none"> <li>• a description of the types of transactions concerned; and</li> <li>• a statement as to whether the transactions with the affiliated parties take place under market terms and conditions, and if not, the reason for this (5.6 Annex E of the Bgfo).</li> </ul> <p>In addition, activities undertaken with affiliated parties and the transaction volume should be stated in the financial statements, accompanied by an explicit statement to the effect that these transactions took place at market rates. The directors also have to disclose their own interests in the investments of the CIS.</p> <p><b>Acting in the Interest of Unit Holders</b></p> <p>The AFS requires that management companies and, investment companies act in the interest of the unit holders of the CIS (Section 83 of the Bgfo). They are also required to treat unit holders equally (Section 83, subsection 2 of the Bgfo). Specific cases in which such principle materializes are:</p> <ul style="list-style-type: none"> <li>• A CIS may 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 CIS or parties affiliated to the management company, the investment company or the depository (‘churning’) (Section 83, subsection 3 of the Bgfo).</li> <li>• The management company must apply the principle of ‘best execution’ when choosing between various brokers or agents for financial instruments and the decision as to who</li> </ul>
--	---

should perform which transaction.

- The terms and conditions for the management company's fees, including any performance fee, may not be detrimental to the interests of the unit holders, e.g., because the fee conflicts with the investment policy, or results in causing excessive transactions.
- The management company does not allow disproportionately high costs to be charged to the unit holders for items which are shown as variable costs or costs that have not been specifically quantified in the prospectus. 'Disproportionate' is also taken to mean charging costs with respect to which it cannot reasonably be assumed that the service provided was supplied under fair and competitive conditions, or where the benefit cannot be demonstrated to the unit holders.

### **Outsourcing**

Pursuant to AFS Sections 4:16 and 38 of the Bgfo, a management company is permitted to outsource some of its functions. However, the outsourcing of the investment policy (a key duty) is not permitted. Furthermore the AFM does not accept the outsourcing of all duties, leaving an empty shell. If work is outsourced to a third party, the agreements should be in writing. From a legal perspective the management company remains at all times accountable for the work performed by third parties, and liable to customers in case of damage by the third party to which the service was outsourced.

The third party to whom the assignment is outsourced should demonstrably be in a position to perform the assignment properly, in view of the nature of the assignment, but the framework does not require that such party be licensed. The management company has to be periodically and adequately updated on the duties which have been outsourced. In practice, when selecting outsourcing, the management company should ascertain, by means of a due diligence study, whether continuity will be safeguarded.

Pursuant to Section 1.3 Annex E of the Bgfo, the prospectus has to provide, at least, a description of the work which is or will be outsourced, along with the name of the third party (or parties). The costs of the outsourcing must be shown in the financial statements (Section 123 of the Bgfo).

Outsourcing has not been a theme project at the AFM; however compliance with outsourcing has been reviewed in some management companies that have been subject to on-site inspection. Overall administration is frequently outsourced to companies that specialize in providing such type of service. Such companies are usually not licensed. Overall the AFM has not found major issues of concern for the whole industry; but it has found a few cases where the deposit of the assets of the CIS was entrusted to the same company to which administration was outsourced. The AFM is currently reviewing the use of outsourcing and deciding whether guidance in this area is appropriate.

### **Practice**

#### *Licensing*

The AFM is in charge of reviewing licensing applications for management companies, and investment companies. During the review the AFM pays special attention to the fitness and properness of directors, as well as whether the applicant has policies to ensure a sound business. It also requests a declaration of no objection from DNB concerning compliance with prudential requirements. The AFM cannot deviate from the opinion of DNB (Section 1:103). To provide such declaration DNB requires a recent independent auditor report certifying whether the management company possesses the required minimum initial capital required. Furthermore DNB checks the business plan which contains the income and expenses budgeted for the first 3 years, to assess if the solvency requirements will be met in the coming years. DNB assesses the sufficiency of the internal controls, risk management and supervisory systems related to the

ongoing compliance with and monitoring of the prudential requirements. The AFM does not conduct an on-site inspection during the application period; rather it has chosen to conduct “nursery visits” during the first 3-6 months of operation of a management company, which allows it to assess whether systems work in practice.

*Ongoing Supervision by DNB*

Compliance with prudential requirements is supervised by DNB mostly off-site, via the review of the annual and semi-annual financial statements. DNB conducts a quick review of all the statements. DNB only conducts on-site inspections of fund managers if issues of concern are detected, if a management company is in the same group of an investment firm or if it has a license as management company and investment company (approximately 20 companies).

*Ongoing Supervision by the AFM*

The AFM supervises regulated entities (banks, investment firms, and management companies) following its problem-solving risk-based approach. Its supervisory program has two components: a thematic and an institution-based component. The AFM has an integrated supervisory program; rather than programs by sectors; that is, themes are applied across the financial sector and the definition of high impact firms covers all types of regulated entities. Thus the approach to supervision is the same for fund managers as well as for banks and investment firms.

On a half-yearly basis the Department of Risk Analysis seeks to identify and prioritize key risks vis-à-vis the duty of care based on a bottom up approach. The outcome of this process determines the thematic supervisory efforts. On an ongoing basis signals from different sources (investors, lobby organizations, regulated entities, etc) are gathered and analyzed (contrasting them also with trend analysis done internally). The signals/alerts are categorized in high, medium and low risk based on an impact and probability analysis. Alerts that are specific about a regulated entity are then sent to the supervisory teams responsible for the corresponding entity, and the teams decide the best way to act on them (whether immediately or not). The alerts also lead to project work (thematic inspections). Firms are selected for thematic inspection based on a risk approach (because there were specific alerts in regard to the company in the topic of the thematic inspection), as well as on a random basis.

In tandem, regulated entities (banks, investment firms, management companies, and insurance companies) are also classified based on a qualitative process whereby the department analyzes a wide range of information including the information in the annual and semi-Annual Report and the specific signals received in connection with them. Entities classified as high risk are subject to “enhanced supervision” which means that they have professional staff designated to be their point of contact (account manager), who follows their developments regularly. In addition for each of these entities an annual plan of supervision is developed. Such plan specifies the desired supervisory outcomes and the actions required to achieve these. These actions typically include regular meetings with management and the compliance officer of the entity, as well as on-site inspections. Areas of on-site inspection are based on the specific risk profile of the entity, but are also influenced by the thematic work. Firms that do not fall in such classification do not have a staff designated point of contact; nor are included on a regular schedule for on-site inspection. However there is a supervisory team in charge of their supervision; such team decides on ad-hoc supervisory actions needed—e.g., if a signal/alert on one of them was sent by the department of analysis; and they can also be subject to thematic on-site inspections as described above.

Currently roughly 50-60 regulated entities are classified as high risk. Out of them 40 entities are stable in the list and are included in it because of their size. Such list is composed of the biggest banks, insurance companies and mortgage chains. Roughly 10-12 entities are of smaller size but are included in the list because they have been classified as high risks based on the signals/alerts

	<p>and analysis performed. Some of those 10-12 entities are investment firms and management companies.</p> <p>Overall 70 percent of the supervisory resources are allocated to thematic work (including on-site inspections), while 30 percent is allocated on an institution-basis.</p> <p>Regulated entities are also required to submit self-assessments on a yearly basis. The Supervision Department checks a number of them on a yearly basis (roughly 15) which also serves to enrich the classification process. Quick desktop reviews are conducted of all the annual reports submitted by management companies. On a risk basis some are selected for a more thorough review. Desktop reviews are conducted on prospectus, websites and advertisements, the latter two by the Department of Supervision of Transparency. Supervision of transparency is also performed on a risk-based approach using a set of criteria including signals from the market (complaints, etc.), and trend analysis. All of the advertisements are monitored on a daily basis using Adfac. Approximately 15-20 communications on investments are assessed every week, of which approximately 5 relate to CIS. Communications considered harmful are prioritized for action.</p>
Assessment	Broadly implemented.
Comments	<p>The differences in capital requirements for UCITS management companies' vis-à-vis non-UCITS management companies and investment companies, as well as in the review of qualifying holdings are not justified. The assessor recommends that such differences be removed. In addition, current reporting obligations are not sufficient from a prudential perspective. Thus the law should provide DNB with the power to require periodic reporting for purposes of prudential supervision, including if applicable on a consolidated basis. The assessor acknowledges that the risks undertaken by management companies are limited (mostly operational risks). While their failure/insolvency might not have systemic implications it could lead to irregularities vis-à-vis the CIS assets, and their failure could damage investors. Thus, while it appears reasonable to have a supervisory approach for prudential supervision that relies more on off-site supervision, it is important to maintain the prophylactic effect of on-site inspections. All the reasons stated above support the downgrade.</p> <p>Other issues that the authorities might wish to consider are mentioned below.</p> <p>As indicated in Principle 14, the threshold of € 50,000 does not appear to be a good proxy for sophistication of investors, and thus the assessor recommends that the threshold be increased. The authorities have informed that such licensing exemption will cease to have effect for the regulated CIS after the amendment of the law in 2012 to a new threshold of € 100.000 and for all Dutch CISs after the implementation of the new Alternative Investment Fund Managers (AIFM) Directive in 2013.</p> <p>The IOSCO Principles do not impose IFRS as the only "high quality accounting standards." Thus, the fact that the majority of CIS authorized in the Netherlands do not file according to IFRS, but to local GAAP cannot per se be considered a gap. The opinion of experts is that Dutch GAAPs meet such "high quality" standard, although they do have important differences with IFRS; in particular they provide more choices. CIS in the Netherlands are mostly non UCITs (and therefore not subject to the passport regime), which makes the difference in standards less critical. Still the assessor recommends that the MoF jointly with the AFM consider the adoption of IFRS.</p> <p>Finally the assessor notes that unlike many jurisdictions the AFM has opted to conduct ex-post nursery visits rather than on-site inspections during the licensing process. However such visits are conducted within a short period of time from the moment that the license was granted, thus, this difference in approach does not raise substantive concerns.</p> <p>In addition the assessor notes that unlike many jurisdictions, the AFM has shifted the bulk of its supervisory resources to its thematic reviews, and uses institution based inspections only for the</p>

	<p>high impact firms (by size or high risk). Initially this leaves the bulk of the intermediaries of the securities market out of the “regular” on-site inspection program. The authorities have provided evidence, however, that through their thematic inspections they are covering a much more significant number of intermediaries in a targeted way. Furthermore the fact that the selection of firms relies both on risk (the signals/alerts received) as well as on random selection, helps to ensure that the prophylactic effect of on-site inspections is maintained. Thus the evidence suggests that such an approach is credible and effective. There appears to be also a strong governance framework supporting both the definition of themes, as well as the selection of high-impact firms. It is important, however, that this balance be periodically assessed.</p>
<b>Principle 18.</b>	<p>The regulatory system should provide for rules governing the legal form and structure of collective investment schemes and the segregation and protection of client assets.</p>
Description	<p><b>Legal Form and Structure of CISs</b></p> <p>Pursuant to Section 1:1 of the AFS, a CIS can be constituted as an investment company or as a unit trust.</p> <p>An investment company is a CIS in the form of a legal entity. Under the DCC, an investment company is already an entity which cannot be identified with the management company. The assets of the investment company therefore do not form part of the assets of the management company. As the director of the investment company, the management company is authorized to control the assets. The rights of unit holders in an investment company are laid down in the DCC and in the articles of association of the investment company.</p> <p>The unit trust is not a legal entity. It is a collective of assets which are managed by a management company for the unit holders. Pursuant to the AFS the assets of a unit trust should be held by an independent depository. The rights of unit holders of a trust are laid down in the ‘trust conditions’ and in the contracts between the management company and the depository (AFS Sections 4:42 to 4:45).</p> <p>The legal structure and the risks involved in the chosen structure should be described in the prospectus (Annex E of the Bgfo).</p> <p>Both the AFM and DNB are responsible for the supervision of CISs. In order to protect the interests of the unit-holders, both supervisors monitor the legal structures of CISs at market entry and in subsequent supervision. Also, the AFM can take action if the formal or actual control structure is impenetrable to such an extent that it constitutes or may constitute an impediment to the adequate exercise of supervision of the management company, investment company, investment firm or depository (Section 4:13).</p> <p><b>Segregation of Assets</b></p> <p>Only CIS constituted as unit trust are required to have a depository (AFS Section 4:42). Pursuant to Section 4:44, the depository must be a separate legal entity, who’s only activity is to hold the assets of a CIS. The BPR requires the depository to have a minimum capital of € 112,500. The AFS requires the depository to be independent. While it can be an entity from the same financial group of the depository, it should not have the same personnel or directors and appropriate Chinese walls must be established. The depository is required to hold securities and money in a bank account and all the transactions must be cleared through such accounts. The depository is required to act in the interest of the unit holders (Section 83 and 116 of the Bgfo) and is also liable for damage sustained by the unit holders, if the damage is attributable to it (Section 116 of the Bgfo).</p> <p>CIS constituted as an investment company are not required to have a depository. The authorities explained that in practice management companies set up additional mechanisms to further protect the interests of unit holders, including two tiered boards, whereby the supervisory board has an oversight role over the management board (of which the management company is a</p>

	<p>Director); imposing a compliance structure or even voluntarily holding the assets in a depository; and that as part of their supervision they review that structures are adequate.</p> <p><b>Changes Affecting Unit Holders' Rights</b></p> <p>Changes to unit holders' rights do not have to be approved by investors, nor by the AFM but they do have to be adequately informed to investors and notify to the AFM prior to taking effect. The AFS requires that the management company informs of the proposal to amend the terms and conditions applicable between a CIS under its management and the unit holders in an advertisement in a national Dutch newspaper or via an announcement to each unit holder individually, as well as on its website. The proposal must be accompanied by an explanatory note. Such proposal has to be simultaneously notified to the AFM. If the change is detrimental to unit holders' interests or if the investment policy is amended, the amendments to the terms and conditions may not take effect until three months after the publication of the proposal on the website (Section 4:47). This period of three months will be decreased to one month in 2012, when new legislation will come into effect.</p> <p><b>Bankruptcy</b></p> <p>The prospectus must include information on the manner in which, and the conditions under which, a CIS will be liquidated and wound up, specifically with regard to the rights of the unit holders in the CIS.</p> <p>Section 4:54 of the AFS states that the AFM may submit a request to the District Court for the winding-up of the CIS. The AFM may do this in the following cases:</p> <ul style="list-style-type: none"> <li>• the license of the management company or CIS is withdrawn;</li> <li>• the CIS or the management company no longer undertakes any activities;</li> <li>• the CIS or the management company fails to comply with the AFS; or</li> <li>• the CIS or the management company has failed to carry out, or insufficiently carried out, an instruction from the AFM or DNB.</li> </ul> <p>If the court accepts the request, the court will appoint one or more liquidators to wind up the CIS within a specified term.</p>
Assessment	Broadly implemented.
Comments	<p>The IOSCO Principles require that assets be entrusted to an independent third party or that legal or regulatory safeguards be in place where custodial functions are assigned to the same entity responsible for investment decisions.</p> <p>As stated above, in the case of the Netherlands CIS structured as investment companies are not required to have a depository. The assessor acknowledges that the legal structure operates as a basic safeguard, and that in practice management companies appear to be establishing additional safeguards. It is important however that such safeguards be imbedded in the law or regulations. Furthermore the assessor recommends that the legal framework be strengthened and that a depository be required in all cases. The authorities have informed that the Alternative Investment Funds Directive will require all management companies to have such a depository. In adopting a common approach for all CIS the authorities should consider strengthening the requirement to have a "depository" by imposing that it be a licensed entity, such as a credit institution.</p>
<b>Principle 19.</b>	Regulation should require disclosure, as set forth under the principles for issuers, which is necessary to evaluate the suitability of a collective investment scheme for a particular investor and the value of the investor's interest in the scheme.
Description	<p><b>Prospectus and Disclosure Requirements</b></p> <p>Pursuant to Dutch regulation there are two separate regimes for prospectuses of CIS. Negotiable</p>

	<p>units in a closed-end CIS are securities according to the AFS (see AFS Section 1:1). As a result prospectus for most closed-end funds fall under the European prospectus directive; which means that the requirements of their prospectuses are the same than for an issuer. All other CISs have to issue a prospectus in compliance with AFS Section 4:49.</p> <p>Pursuant to AFS Section 4:49, the prospectus should contain all the information necessary for investors to properly assess whether or not to invest in the CIS. The management company is also required to prepare a Financial Information Leaflet which should summarize the essential characteristics of the CIS. The management company is required to update the prospectus if there is reason to do so (AFS Section 4:49). This obligation also applies to the Financial Information Leaflet (Section 66 of the Bgfo).</p> <p>Overall the investment policy, costs, risks, structure, and rights of unit holders must be described both in the prospectus and in the Financial Information Leaflet (Sections 4:49 and 4:22 of the AFS; for closed-end CISs see AFS Section 5:9, 18 Prospectus Regulation, Annex XV items 1 and 3). Each CIS is also obliged to include a risk-indicator in the Financial Information Leaflet (Section 66 of Bgfo), which shows how great the risk is that the client will lose its money.</p> <p>Other important specific content includes:</p> <ul style="list-style-type: none"> <li>• The Management Registration Document. In particular it must show that the articles of association, the financial statements and annual accounts of the management company and each depositary and the half-year 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 (Annex D, Paragraph 5.4 of the Bgfo).</li> <li>• Information on the CIS: The name of the CIS, the registered office, and location of the head office of the CIS, the date of incorporation, the length of time for which the CIS has been incorporated if this is not an indefinite period, and, where applicable, the CIS's registration number in the Commercial Register kept by the Chamber of Commerce and Industry and the place of registration (Annex E, 1.2 Bgfo; Annex XV introduction with reference to Annex I, item 5.1).</li> <li>• Rights of unit holders: The main elements with regard to the rights of the unit holders are given in Annex E, paragraph 7.1, 7.2, 11.1, and 11.2 Bgfo. For a closed-end CIS, this is stated in Annex XV (introduction), with reference to Annex I, item 21, and Annex III, item 4.</li> <li>• Information on the persons who determine or co-determine the day-to-day policy of the investment company or who belong to a supervisory body of the investment company: The names of such persons and a list of non-investment company activities of these persons insofar as these activities are related to the investment company's operations (Pursuant to Annex E Paragraph 2 of Bgfo).</li> <li>• Information required for investors to form an opinion about the CIS and the risks attached to it. The CIS must outline the risks in a separate paragraph. Details are in Annex E, Paragraph 8 of Bfo. For a closed-end CIS this obligation can be found in Annex XV introduction in connection with Annex I, item 4).</li> <li>• Method of valuation of the assets. (Pursuant to Annex E, Paragraph 12 of Bgfo. For a closed-end CIS, this obligation can be found in Annex XV item 6 and Annex XV introduction with reference to Annex I, item 20).</li> <li>• Information about the depositary (pursuant to Annex E, Paragraphs 1.6, 1.7, and 1.8 of Bgfo. For a closed-end CIS, this obligation can be found in Annex XV item 5).</li> <li>• Certain audited financial information (Pursuant to Annex E, Paragraphs 4.2, 5.9, 5.11, 5.12, 7.6, and 9.2. of Bfo. For a close-end fund this information can be found in Annex XV in connection with Annex I, Item 20).</li> <li>• Information on costs: The prospectus must outline the costs and the manner in which they are charged to the result of the CIS (Section 118 of Bgfo) in a separate paragraph.</li> </ul>
--	--

Annex E, Paragraph 6 of Bgfo provides further detail as to the various costs which must be included in the prospectus. For a closed-end CIS, obligations of this sort can be found in AFS Section 5:13 and Annex XV item 3. In the explanatory notes to the balance sheet and the profit and loss accounts of the CIS, all of the costs shown in the prospectus should also be presented as such in detail in a paragraph on costs (Section 123 of Bgfo). The costs must also be shown in the Financial Information Leaflet (Section 66 of Bgfo).

### **Update of the Prospectus**

Prospectus of CIS that fall under the Prospectus Directive must be updated on an annual basis. In the case of other CIS, the AFS requires that the prospectus be updated when there is the need to do. The AFM issued a recommendation whereby such CISs must also review and update their prospectus on an annual basis.

### **Advertisement**

An advertisement may not contain information which is inaccurate or misleading, and must be in accordance with the information included in the prospectus.

### **Reporting**

As indicated in Principle 17, the management company is required to submit an Annual Report, along with audited financial statements and a semi-Annual Report, with non-audited financial statements. Such reports are available on the website of the management company. Investors also have the right to receive a copy upon request, and the prospectus is required to state such right.

As indicated in Principle 17, other relevant information must be kept on the website, including the total value of the investments, an overview of the composition of the investments, the total number of outstanding units and the net asset value (Section 50 of the Bgfo).

### **Practice**

#### *Review of Prospectus*

Prospectus of CIS subject to the Prospectus Directive are subject to prior approval of the AFM. The AFM reviews all such prospectuses. Prior approval is also required for UCITS. The overall objective of such review is to assess whether all information necessary for an investor to make an investment decision has been included, and whether the information is also clear. The average consumer or client is used as a basis to test the clarity of the prospectus.

The AFS does not require prior approval of prospectus for non-UCITS. Most of the UCITS registered on the Netherlands are non-UCITS which means that they are not subject to approval by the AFM. However the AFS requires a report by an external auditor, who has to verify whether the prospectus contains all the information required by the legal and regulatory framework. Such reports have to be included in the prospectus. In addition, the AFS requires that the fund be registered with the AFM and the fund manager cannot sell a non-UCIT as long as the non-UCIT is not in the registry of the AFM (AFS Sections 4:50 and 1:107). As part of the registration process the AFM reviews a basic set of issues including: (i) whether the report by an external auditor exists and is complete; (ii) whether a report from the fund manager on compliance of the prospectus with the disclosure requirements exists; (iii) the nature open-end or close-end of the fund and whether the AFM agrees with such qualification; (iv) if the fund is closed-end, whether the non-UCIT is negotiable or not and whether the AFM agrees with such qualification and finally (v) whether the prospectus allows for side-pockets in which case the AFM requires that such condition be deleted from the prospectus. The AFS requires that registration takes place within two weeks (1:107). During such period the AFM can hold

	<p>discussions with the fund managers if it believes that a prospectus does not comply with disclosure requirements. The AFM also has at its disposal the imposition of sanctions as a way to deter behavior and ensure compliance with disclosure requirements.</p> <p><i>Advertisement and Others</i></p> <p>All of the advertisements are monitored on a daily basis using Adfac. Approximately 15 to 20 communications on investments are assessed every week. Communications considered harmful are prioritized for follow-up and enforcement actions when appropriate.</p>
Assessment	Broadly implemented.
Comments	<p>The IOSCO principles accept other mechanisms different from vetting by the supervisor to ensure the completeness and accuracy of a prospectus. Thus, the fact that the prospectuses of non-UCITs are not vetted by the AFM does not constitute a priori a gap vis-à-vis the IOSCO Principles. However, the Principles do require that a regulator has the authority to “intervene” or “hold-back” an offering. As described above, the AFS provides the AFM with much more limited authority to intervene in a non-UCITS offering (through the registration process). Nevertheless, the authorities explained that in practice the process is more flexible and allows for conversations with the fund managers to take place within the registration process in order to address questions posed by the AFM. In addition, as stated above the AFM has at its disposal the imposition of sanctions. Thus, while there is a gap, in practice it does not appear to be critical. Thus, the grade of broadly implemented given to this principle.</p> <p>In line with these comments the assessor recommends that a legal reform be pursued to provide the AFM with more clear authority to “intervene” or “hold-back” an offering as required by the Principles. In connection with such reform, the assessor also encourages the MoF jointly with the AFM to review whether the system of “certification” by external auditors has provided a comparable level of “oversight” as the vetting process of the AFM.</p>
<b>Principle 20.</b>	Regulation should ensure that there is a proper and disclosed basis for asset valuation and the pricing and the redemption of units in a collective investment scheme.
Description	<p><b>Valuation Rules</b></p> <p>There are specific requirements for the valuation of the assets of a CIS that stem from the DCC. These obligations are incorporated in Title 9 Book 2 of the DCC and recommendations from the Dutch Accounting Standards Board. Also Appendix E of Bgfo requires that the valuation of assets be done in accordance to generally accepted standards. Section 34 of Bgfo stipulates that the CIS’s business operations must be organized in a manner which ensures the determination of a reliable, correct and consistent net asset value for the CIS.</p> <p>In addition, there are disclosure obligations pertaining asset valuation. The prospectus must include a description of how the net asset value is determined, in what currency it is determined, and how often. In addition the prospectus must indicate information regarding the manner and conditions in which units are sold, repurchased or redeemed, and where applicable the manner in which the price for sell, repurchase or redemption is determined; the manner and frequency of calculation of these prices; and how, where and how often these prices are make public. Finally, each time a CIS offers, sells repurchases or redeems units, the net asset value must be available on the website of the management company, with an indication of the moment in which it was determined (Section 4:46). In the case of open-end listed funds, the regulations require them to conduct their transactions via Euronext Fund Services, which is a trading segment for this type of products. Prices are issued only once per day, and they must also be published.</p> <p><b>Valuation of Illiquid Assets</b></p> <p>There are no specific regulations governing the valuation of illiquid assets. The AFM expects the CIS to have a procedure to determine the value of the assets if no market prices are available. The AFM has provided guidance for cases whereby no current prices are available—e.g., as a result of the data source being unavailable or as a result of the illiquid character of</p>

investments. It remains the responsibility of the management company, however, to issue a NAV reflecting the 'fair value' of the CIS.

In addition, for illiquid assets the AFS requires that an independent expert performs a valuation of the assets of a CIS at least once a year (Section 4:52a). Pursuant to Annex E, Paragraphs 7.4, 7.5, 7.7, 7.12, and 7.13 of Bgfo, valuation of assets by the independent expert must be included in the prospectus. For a closed-end CIS, this obligation can be found in Annex XV item 6. During the annual audit of the financial statements external auditors usually hire outside experts to perform such review.

#### **Compensation of Investors**

Pursuant to Appendix E, Paragraph 12.3 of Bgfo, a CIS must state in the prospectus the circumstances and the manner to compensate investors if the net asset value was incorrectly calculated, and in particular the maximum percentage of divergence for which compensation applies. The AFM expects that the account of the administrative organization and internal controls will incorporate an extensive procedure to compensate investors for errors in the calculation of the NAV, pursuant to AFS Sections 4:14 and 34 of the Bgfo.

While the percentage for compensation is left to the prospectus, in practice there is consistency in the thresholds used by CIS across the industry due to competition. Such thresholds are (i) 25 percent of a point for money market funds; (ii) fifty percent of a point for mixed funds, and (iii) one percent of a point for stock funds.

#### **Redemption/Suspension of Units**

Pursuant to Appendix E, paragraph 7.12 of the Bgfo, the prospectus must describe the cases in which the repurchase of units may be temporarily suspended.

The AFM only accepts the suspension of pricing and redemption in open-end funds in exceptional circumstances. The AFM has issued guidance on what constitutes exceptional circumstances. The AFM qualifies them as circumstances beyond the control of the CIS, which make a correct valuation or repurchase impossible.

Pursuant to AFS Section 4:55 the CIS must announce the suspension on its website and notify the AFM of the suspension. The management company remains itself responsible for the actual suspension of repurchase/issue, and for the issue of whether the suspension continues to be in the interests of the investor. The AFS does not have explicit rules on whether the AFM could demand, delay or stop a suspension. However the AFM does have the power to demand that a fund manager acts in accordance with the rules on redemptions and suspensions stipulated in the prospectus. On that basis, pursuant to Section 1:75 of the AFS, the AFM could, for example, give an order to a temporarily closed-end fund to resume redemptions (although a careful review would be needed regarding whether the conditions that prompted the suspension have in fact changed) In addition, the AFM could take enforcement action based on the violation of the obligations of due care of the management company.

#### *Practice*

The AFM performs investigation into the NAV at 3 to 4 CISs each year. In addition NAV was the subject of a thematic inspection in 2009. The AFM did not find major deviations; although as a result of such review it decided to provide guidance in a few areas, including valuation of illiquid assets. The AFM has also provided guidance in connection with the conditions that a CIS must meet to be able to structure itself as an open-end fund.

In the last few years, AFM has imposed one administrative fine and issued one instruction, in relation to incorrect valuation and pricing. The AFM has also performed generic conveyance of

	<p>standards (explaining the standards) at various CISs on this matter.</p> <p>The AFM issued an instruction to a CIS with regard to setting up a side pocket. In 2010, the AFM formulated its position on the transfer of illiquid assets to a “side pocket” (particularly at hedge funds). The AFM banned side pockets, except where a separate sub-fund is created for the purpose of liquidating the assets. The reason for the ban is that a side pocket is closed-end and an open-end fund cannot also be allowed to have a closed-end part.</p>
Assessment	Fully implemented
Comments	<p>During the crisis funds that investment in real estate securities but had been structured as open-end funds, had to suspend redemptions due to illiquidity. The assessor understands that the AFM has provided guidance in this area; however the MoF jointly with the AFM might wish to explore whether actual rules on the conditions for open-end funds should be developed. The MoF jointly with the AFM should also explore whether additional rules are also needed in connection with suspensions of redemptions.</p>
<b>Principles for Market Intermediaries</b>	
<b>Principle 21.</b>	Regulation should provide for minimum entry standards for market intermediaries.
Description	<p><b>Investment Services and Activities Subject to License</b></p> <p>No party may offer investment services or perform investment activities without a license granted by the AFM. Section 1:1 of the AFS defines an investment firm as the party that offers an investment service or performs an investment activity.</p> <p>Pursuant to AFS Section 2:97, an AFM license is not required for financial enterprises which have a bank license provided by DNB and other financial enterprises which are subject to prudential supervision of DNB and which are allowed to provide investment services or perform investment activities. In such case however, as part of the license process, the AFS requires that the AFM provides a declaration of no objection in regard to the investment services or activities for which a license is being requested. For such a purpose, the AFM reviews whether the applicant complies with the same requirements stated for an investment firm (as described below). The opinion of the AFM is binding for DNB.</p> <p><b>Licensing Requirements</b></p> <p>Licensing requirements for investment firms that wish to provide investment services or perform investment activities in the Netherlands are imbedded in the AFS, the Bgfo, and the Decree on Market Access for Financial Undertakings (Bmfo). The AFS in fact provides a general framework of licensing requirements that is applicable to both investment firms and management companies, and which is described in Principle 17. Such a framework includes the following requirements:</p> <ul style="list-style-type: none"> <li>• Properness of shareholders who hold more than 10 percent of the shares of the investment firm (qualifying holdings); and fit and properness of shareholders who hold 50 percent or more of the shares.</li> <li>• Fit and properness of persons in charge of day to day policy,</li> <li>• Minimum of two persons determining the day-to-day policy, which should be located in the Netherlands;</li> <li>• Policy on the sound conduct of business;</li> <li>• Control structure;</li> <li>• Operational Structure;</li> <li>• Segregation of assets;</li> <li>• Policy to prevent conflicts of interests; and</li> <li>• Minimum equity capital.</li> </ul> <p>In addition, there are specific requirements in the AFS depending on the activity for which a license is required (in particular for firms that want to act as systemic internalizers or operate a</p>

	<p>MTF, etc).</p> <p>A license may be granted for various activities. It can also have limitations and conditions. The capital requirements an investment firm has to satisfy differ depending on the activities the investment firm intends to perform.</p> <p><b>Process to Grant a License</b></p> <p>The AFM is in charge of reviewing the application. During such review it requests a declaration of no objection from DNB regarding the minimum equity capital. The AFM cannot deviate from the opinion of DNB (AFS Section 1:103). To provide such a declaration, DNB requires a recent independent auditor report certifying whether the investment firm possesses the required minimum initial capital. In addition, DNB checks the business plan which contains the income and expenses budgeted for the first 3 years, to assess if the solvency requirements will be met in the coming years. DNB assesses the sufficiency of the internal controls, risk management and supervisory systems related to the ongoing compliance with and monitoring of the prudential requirements. The AFM does not conduct on-site inspections as part of the license process; rather it conducts “nursery visits” within 3-6 months of operation of a management company to ensure that it is working properly.</p> <p><b>Notification of Changes</b></p> <p>Changes in directors or shareholders that hold a qualifying holding must be notified to the AFM. If the AFM assesses that the applicant fulfills the requirements it approves the changes. The AFS also requires the investment firm to notify changes to licensing requirements.</p> <p><b>Information Available to the Public</b></p> <p>The AFM holds the Register of Investment Firms. Certain information of the register is available to the public online: the date of granting the license, the activities covered by the license, as well as any limitations imposed on the license, and the country where the firm has its registered office. In addition, administrative fines can also be found on line. Each firm is also required to register with the Chamber of Commerce. Such registration includes information on the directors of the firms.</p> <p><b>Powers in Connection with the License</b></p> <p>The AFM is authorized to modify, withdraw or limit, either fully or in part, or attach further conditions to the license of certain circumstances occur (Section 1:104). Such circumstances include, e.g., the failure to meet licensing requirements; providing incorrect or incomplete information at the time of application; suppression of information which would have caused a rejection of the license applications; discontinuing of the business for a period of more than six months, or a declaration of insolvency. When withdrawing a license, the AFM may also stipulate that the financial enterprise should wind up its business, either fully or in part, within a period to be specified. During the winding-up period, the financial enterprise or the bankruptcy liquidator of the financial enterprise shall be classified as a licensed enterprise.</p> <p>The AFM is also authorized to impose a ban on a firm not licensed to carry certain investment services or activities, when the provisions covered by Section 4 are not observed.</p> <p><b>Ongoing Supervision by the AFM</b></p> <p>The AFM supervises investment firms (including banks authorized to carry out investment services) following its problem-solving risk-based approach described in Principles 10 and 17. In practice this means that investment firms that are classified as high risk are part of the institution-based plan for on-site inspections, and inspections on them are conducted on an</p>
--	---

	<p>annual basis. Currently, between 50–60 regulated entities fall under this category, out of which roughly 40 are banks or their affiliates or insurance companies. Roughly 10–12 are stand alone investment firms or management companies. The bulk of the investment firms thus, do not fall under that category. However, they would be subject to on-site inspection on a thematic basis, when they are part of the sample for the specific thematic review that is being prepared. While most of the supervisory efforts are allocated to thematic inspections, through them the AFM covers an important number of investment firms that do not fall under the institution based on-site inspection program.</p> <p>As part of such thematic reviews, in recent years the AFM has reported on the following topics: structured products (5 entities in 2008); best execution pilot (5 entities in 2008); inducement pilot (5 entities in 2008); inventory of margining Monitoring (8 institutions) and asset segregation (38 entities between 2006 and 2007).</p> <p>In addition to on-site inspections, the AFM conducts desktop reviews of all annual reports provided by the investment firms. The review aims to determine major irregularities. On a risk basis it conducts a more thorough review of a number of them.</p>
Assessment	Fully implemented.
Comments	<p>See comments on nursery visits and the supervisory approach of the AFM in Principle 17.</p> <p>The assessor welcomes the legislative initiative to establish a suitability requirement for directors, which would strengthen the current fit and proper requirements by allowing the supervisors to carry out a more comprehensive assessment that includes specific competences.</p>
<b>Principle 22.</b>	There should be initial and ongoing capital and other prudential requirements for market intermediaries that reflect the risks that the intermediaries undertake.
Description	<p>An investment firm that provides investment services in the Netherlands is required to have an (initial) minimum amount in equity capital and satisfy the (ongoing) minimum solvency requirements. The regulations with respect to the initial minimum capital requirements are laid down in Section 2:99 (1) subsection (i) in conjunction with Section 3:53 (1) and are further elaborated in Section 48 (1), subsection (h) of BPR. The regulations pertaining to ongoing minimum solvency are laid down in Section 3:57 (1) and are further elaborated in Sections 59, 60, 62a and 89 of BPR. These requirements are based on the EU Capital Adequacy Directive.</p> <p>The requirement of specific minimum equity capital is a licence requirement. The amount of the minimum equity capital depends on the investment services that are performed by the investment firm. An investment firm can, entirely or in part and for a definite term or otherwise, request exemption from the minimum equity capital requirement. The AFM decides on such requests within the context of the licence applications. All other prudential requirements, including the minimum solvency requirements, are ongoing in nature and fall entirely under the supervision of DNB.</p> <p><b>Minimum Capital</b></p> <p>Investment firms in possession of a license to offer investment service a, b, c, d, and/or f, which also trade on their own account (with no duty to obtain a license) must maintain own funds of € 730,000.</p> <p>(i) Where an investment firm has a license pursuant to AFS Section 2:96 (investment service (a) or (d) and no additional services are provided under part a, it is sufficient to hold:</p> <ul style="list-style-type: none"> <li>• professional indemnity insurance providing at least € 1,120,200 per occurrence and at least € 1,680,300 per annum for all occurrences together, or</li> <li>• a combination of professional indemnity insurance or a comparable facility equivalent to either at least € 50,000 or as under (a).</li> </ul>

<b>Investment service</b>	<b>Short description</b>	<b>Own funds requirement</b>
A	Remisier	EUR 35,000 *  EUR 50,000 if the service is also provided abroad
B	Commissioning agent/broker	EUR 50,000
C	Asset management	EUR 50,000
D	Investment advice	EUR 50,000 *
E	Arranging or underwriting share issues with placement guarantee	EUR 730,000
F	Arranging or underwriting share issues without placement guarantee	EUR 50,000
<b>Investment activity</b>	<b>Short description</b>	<b>Own funds requirement</b>
A	Proprietary trading including acting as a market maker	EUR 730,000
B	Operating or exploiting a Multilateral Trading Facility (MTF)	EUR 730,000

(ii) Where the investment firm also has a license pursuant to AFS Section 2:80 (brokers) or Section 2:86 (reinsurance agents) the following requirements must also be satisfied:

- an own funds requirement of € 25,000, or
- professional indemnity insurance or a comparable facility covering its liability for mistakes, omissions and negligence, to a sum of at least € 500,000 per occurrence and at least € 750,000 per annum for all occurrences together, or
- a combination of professional indemnity insurance or a comparable facility equivalent to either at least € 25,000 or as under (b).

#### **Solvency Requirements**

The following minimum ongoing capital is required: Solvency must be at least equal to the minimum size of the assessment capital. The minimum amount of the assessment capital will be at least equal to the minimum equity capital requirements. The minimum initial en ongoing capital requirements takes into account the position risk, settlement risk, delivery and counterparty risk, large exposures and foreign exchange risk. Pursuant to Part 3 of the AFS, other prudential requirements aimed at the solidity of the investment firm apply in addition to the above mentioned minimum equity capital requirements and the minimum solvency requirements. These requirements are aimed at controlling the financial risks (e.g., market, credit, and liquidity risk) and non-financial risks (e.g., operational, legal, and reputational risk). The assessment capital is established depending on the extent of the risk for the investment firm by risk-type credit risk, market risk and operational risk. Depending on the internal process for risk management, for the calculation of the internal capital requirements, the economic capital,

and the manner in which DNB assesses these internal processes, DNB establishes how much capital an investment firm is obliged to maintain or how much the capital has to be increased as a result of an increased risk. In such cases, the minimal solvency requirement will be sensitive to an increase in the risk of the enterprise.

Investment firms, which do not hold client moneys and do not deal for their own account, have a fixed overhead requirement instead of operational risk capital charge. This fixed overhead requirement requires the investment firms to hold a minimum own funds of at least 25 percent of the fixed overhead of the preceding year. This requirement requires the investment firm to hold sufficient capital to finance the wind down of its business in a relatively short period of time. If the capital charge is not sufficient to allow the investment firm to wind down a Pillar 2 add-on capital charge will raise the minimum capital required to the needed level for this purpose. The risk and capital charge not covered in Pillar 1 of Basel II are addressed in Pillar 2 of Basel II the Internal Capital Adequacy Assessment Process (ICAAP) and the supervisory review evaluation process.

### **Reporting Requirements**

Investment firms are subject to periodic reporting vis-à-vis DNB. According to Section 130 of BPR, investment firms must provide the following reports:

- Balance sheet and result-related data as well as additional financial details for the purpose of supervision of compliance of the Prudential Supervision of Financial Enterprises part of the AFS.
- Other details for the purpose of supervision of compliance with the rules pertaining to: solvency, maintaining balance sheet items and items of the balance sheet; and liquidity.

Reports are standardized and must be submitted electronically. Periodicity varies depending on the type of activities authorized. Assets managers must submit such reports on a quarterly basis, while firms that invest on their own account are required to submit also summary report of the whole reporting package on a monthly basis.

In addition once a year, an investment firm must submit its annual report, accompanied by audited financial statements, stating that the books have been approved and that the firm meets all capital requirements.

The AFM receives the annual reports. The quarterly reports are sent only to DNB since they are strictly prudential. However, the AFM and DNB have regular contact and if necessary DNB forwards the input from such reports to the AFM.

### **Measures that DNB Can Take in Connection with Prudential Requirements**

DNB can use regulatory measures to deal with a situation whereby an investment firm fails to comply with its capital requirements. Such measures are:

- the imposition of extra reporting obligations;
- the possibility to notify an enterprise that it should meet minimum capital requirements within a period set off time;
- giving an instruction, or a “letter of deficit” issuing a warning, appointing a undisclosed conservator; and
- withdrawal of the exemption, withdrawal of the certificate of no objection, or ultimately (the request for) withdrawal of the license.

### **Ongoing Supervision by DNB**

	<p>DNB uses a mix of off-site and on-site supervision to supervise compliance of investment firms with prudential requirements.</p> <p>First, it conducts a desktop review of all reports to detect major irregularities. On a risk-based basis it conducts a more thorough review of a number of them.</p> <p>For purposes of determining the intensity of on-site supervision, DNB classifies investment firms in high and low impact. Roughly 25 percent of the investment firms are classified as high impact. This group includes large investment firms, investment firms with complex structure and proprietary trading. Such firms are inspected once or twice a year. DNB performs testing of their risk management as well as their technology.</p> <p>A bulk of the firms is classified as low impact. They are asset managers. Such firms are subject to visits on a three year cycle. DNB usually sends a questionnaire before the visit takes place; and depending on the answers the supervisory team might ask additional information during the visit.</p> <p>In 2009 DNB issued five of such formal instructions and in 2010 one (with two still in the pipeline). In case of non-compliance DNB may, in the end, request the AFM to withdraw the license (3 cases over the past two years all of which led to withdrawal). Also, over the past two years increasingly attention is paid to a sound business model. In 2010, in at least 3 cases DNB set concrete deadlines for improving the business model of investment firms that have been showing losses for a considerable period of time. Finally, DNB has imposed orders for incremental penalties to enforce timely reporting, which has proven to be effective since currently most of the investment firms comply with reporting obligations.</p>
Assessment	Fully implemented.
Comments	The assessor considers that the supervisory program developed by DNB is reasonable and credible. It is important however that, in the case of low risk firms, it periodically monitors the balance between visits and on-site inspections.
<b>Principle 23.</b>	Market intermediaries should be required to comply with standards for internal organization and operational conduct that aim to protect the interests of clients, ensure proper management of risk, and under which management of the intermediary accepts primary responsibility for these matters.
Description	<p><b>Appropriate Management and Organizational Structure</b></p> <p>Pursuant to Section 31 of the Bgfo, an investment firm should have a clear and adequate organizational structure which should be documented. The principle for compliance with the general organizational requirements for business operations is that the nature, scope, risks and complexity of the business and the activities of the investment firm should be taken into account. The investment firm is itself responsible for ensuring there is/are:</p> <ul style="list-style-type: none"> <li>• clear decision-making processes;</li> <li>• a clear and adequate organizational structure;</li> <li>• an adequate division and distribution of duties, powers and responsibilities;</li> <li>• unequivocal reporting lines; and</li> <li>• an adequate system of information provision and communication.</li> </ul> <p>Section 31 of the Bgfo prescribes that an investment firm should have adequate internal control procedures in order to ensure that decisions and procedures are observed at all levels. The day-to-day policy of an investment firm should be determined by at least two persons (Directors). Directors are responsible for any actions taken within and by the investment firm. Pursuant to Section 4:14 directors are responsible for controlling business processes and business risks as well as the conduct-related aspects of management.</p> <p>The Bgfo contains a number of sections (Section 31, 31(a), and 31(c) of the Bgfo) relating to</p>

the assessment of the effectiveness of the organizational structure and to the duty to remedy shortcomings which are identified. An investment firm should have: (i) an internal control function, (ii) a risk management function, and (iii) a compliance function.

The effectiveness of the organizational structure must be assessed at least once a year by a department with an internal control function. The Bgfo requires that such departments be independent from management. The department must report on an annual basis to the directors of the entity on the results of such evaluation. The investment firm has to ensure that shortcomings which are identified are remedied.

Section 31 (c) of Bgfo prescribes that the investment firm should also have an organizational department that performs a compliance function in an independent and effective manner. The duties of this organizational department include assessing the effectiveness of the procedures drawn up and the measures taken in order to remedy shortcomings which are identified regarding compliance with statutory and internal rules. It is required to report at least once a year to the Directors of the investment firm and to the body, if there is one, responsible for supervising the policy and general affairs of the investment firm with regard to matters concerning compliance with statutory and internal rules.

#### **Investor Complaints**

An investment firm should ensure that complaints from clients are dealt with properly (Section 4:17). The AFS requires investment firms to have an internal complaints procedure. As part of such procedures, the investment firm should keep information on all complaints received. In addition, investment firms are required to be affiliated to a body recognized by the AFM to solve disputes. Such role is performed by KIFID. Currently the AFM and KIFID have bimonthly discussions on trends on complaints. In addition the AFM receives information on final decisions.

#### **Separation of Clients' Assets**

The protection of assets of the clients in the event of the bankruptcy of the investment firm is regulated in Section 6:14 to 6:20 of the Regulation on Market Conduct Supervision of Financial Undertakings (NRgfo) (in conjunction with Section 165 subsection 1 of the Bgfo). Compliance with these asset segregation regulations is intended to prevent financial instruments belonging to a client from becoming part of the assets of the investment firm in the event of its bankruptcy. One of the main provisions is that the investment firm must open a bank account in the name of the client. In practice 3 or 4 banks provide this service for the bulk of the investment firms (tripartite agreements are signed between the bank, the investment firm and the client). In turn, the bank is required to (i) keep the financial instruments in Euroclear Netherlands, and/or (ii) for instruments that cannot be deposited in Euroclear the bank is required to hold the assets in a depository. Such a depository has a unique connotation in the Dutch system since it is a separate legal entity with no capital created by the bank to segregate the assets of the customer in order to protect them from the event of its insolvency. Thus in practice it operates as a trust account.

With the implementation of MIFID, external auditors are required to provide on an annual basis, an assurance report in relation to compliance with segregation rules. Prior to the implementation of such requirement the AFM contacted auditing firms to provide feedback on what was expected from them in relation to this report. The AFM also conducted a thematic review in this area during 2006-2007, after the insolvency of an investment firm. It did not find major issues of concern across the industry, although it did follow up with a few specific entities.

#### **Client Profile**

One of the key elements of an investment firm's duty of care toward its clients is the "know your client" Principle. This means that when providing a service, investment firms should have information about the client, the "client profile." Such obligations vary depending on the services provided, whether it is (i) for the performance of individual asset management or the provision of investment advice, or (ii) other forms of investment services, including execution-only services.

In the first case, the investment firm is required to develop a profile of the client. Article 80(a) Bgfo provides further detail, and specifies the elements which should be taken into consideration when assessing the suitability of a transaction, i.e., investors' objectives; investors' ability to bear the risks of the transaction and investor's understanding of the transaction and the risks attached to it. For such purpose Section 4:23 requires the firm to obtain information about the client's financial position, knowledge, experience, objectives and risk tolerance, insofar as this is relevant for the service. Ultimately the investment firm should ensure that its services fit the client's profile. Without this information, the financial enterprise cannot perform the asset management or provide investment advice.

In the second case, the firm is required to obtain information about the knowledge and experience of the client with regard to the financial service or financial product concerned, in order to be able to assess whether that service or product is suitable for the client. If the client fails to supply the required information, the investment firm should warn the client that it cannot assess the suitability of the service. If the investment service is provided at a client's initiative, as in the case of an execution-only service (e.g., equities, bonds, and units in a collective investment scheme), the investment firm is not obliged to obtain information from the client for simple financial instruments. The investment firm should also notify the client that his suitability has not been assessed.

The AFM has issued guidance both in relation to suitability and risk profiles. These areas that will receive significant attention in 2011, since they have been included for thematic work.

#### **Agreement between Client and Investment Firm**

Investment firms are required to have contracts with clients for the provision of investment services and any ancillary services, on paper or another durable medium (Section 4:89). The client contract should ensure that investment firms' clients and the investment firms themselves clearly specify the rights and obligations of parties, the investment services, and the manner in which they will be provided. Section 168 of the Bgfo stipulates which provisions the client contracts should contain.

#### **Provision of Information to the Client**

##### *Before the Service is Provided*

Prior to providing a service to the client, an investment firm is required to supply information to the client that is reasonably relevant for an adequate assessment of the service or product (Section 4:20). Such information can be supplied in a standardized form. The matters concerning which information should be provided to non-professional investors prior to providing an investment service are listed in sections 58a to 58e of the Bgfo and Section 59 of the Bgfo, and includes issues such as the language and methods of communications, the nature, frequency and timetable of the reports on the performance of the service provided, 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; a description, of the policy on conflicts of interest pursued by the investment firm, in accordance with section 35a of the Bgfo; 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. If the client makes a request to this

	<p>end, further particulars of the policy on conflicts of interest.</p> <p><i>During the Term of the Contract</i></p> <p>During the term of the contract the firm is required to provide the client information about (4:20, subsection 3) the execution of any order with regard to a financial instrument (the transaction notification) and the development of the managed assets (the regular investment statement). With regard to individual asset management, the investment firm should provide the client with a regular statement of the portfolio management activities performed on behalf of the client, unless the statement has already been provided by a third party. The requirements for the regular statement are listed in Section 70 of the Bgfo.</p> <p>In managing a portfolio based on the client's investment objectives and the types of financial instrument in the client's portfolio, an investment firm should establish a suitable method of evaluation and comparison, to allow the client to assess the firm's performance.</p> <p>Pursuant to Section 58e of the Bgfo, the investment firm should provide information about the total costs of the financial instrument, the investment service or ancillary service, including all associated costs. The investment firm should also provide information about the commissions charged. Commissions received from a third party should also be notified to the client, with regard to the existence, nature and amount of the commissions.</p> <p><b>Record-Keeping</b></p> <p>Investment firms are required to maintain records of all investment and ancillary services provided and investment activities performed by them. The investment firm is required to save such data for a period of at least five years. In addition, the investment firm will be required to save the data concerning the rights and obligations of the investment firm and the client, within the context of the client agreement, and the other conditions subject to which the firm performs services for the client, for at least the term of the contract. The obligation to save information applies to information on both professional and non-professional investors. This obligation does not apply if the investment firm is no longer licensed. The AFM has developed and put on its website the list of data that investment firms should save.</p> <p>An investment firm is required to save the data on a durable medium, in a form that provides the AFM with easy access to it.</p> <p><b>Conflict of Interest</b></p> <p>An investment firm should take measures within its operations to prevent conflicts of interest. The circumstances which should be treated as circumstances which might raise a conflict of interest concern cases where a conflict arises between the interests of the company or certain persons connected with the firm, or the group of which the firm forms a part, on the one hand, and on the other hand the firm's obligation toward the client, or between the interests of two or more of the firm's clients toward whom the firm has an obligation. Under AFS Section 4:88, an investment firm should implement an adequate policy with regard to preventing and managing conflicts of interest between itself and its clients and among its clients.</p> <p>More detailed regulations are established in the Bgfo with regard to the policy on conflicts of interest (see Sections 167, 167(a), and 167(b) of the Bgfo). This policy concerns:</p> <ul style="list-style-type: none"> <li>• recognizing conflicts of interest;</li> <li>• implementing and maintaining measures; and</li> <li>• disclosing conflicts of interest.</li> </ul> <p>Section 35a, subsection 1 of the Bgfo specifies that an investment firm shall have procedures</p>
--	--

	and measures in place for preventing and dealing with conflicts of interest between the investment firm and its clients or between the clients themselves.
Assessment	Fully implemented.
Comments	The more fragmented the markets become, the more the AFM would need to pay additional attention to compliance with best execution by investment firms.
<b>Principle 24.</b>	There should be a procedure for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk.
Description	<p><b>Early Warning Mechanisms</b></p> <p>As stated in Principle 23, investment firms are subject to a series of reporting obligations which allow DNB to form a view as to the solvency of the firm. More generally, changes in licensing requirements have to be notified to the AFM, and certain changes (qualifying holdings) required an explicit declaration of no objection. Such reporting and notification obligations are complemented by ongoing supervision (off site and on site) by the two authorities. The AFM and DNB also have the authority to request information on an ad-hoc basis and may request access to business information and records which they deem relevant for the performance of their duties, and may perform onsite inspections (Sections 1:72-1:74).</p> <p>As a whole, such a framework should provide the financial supervisors with critical information to assess whether a firm is in financial difficulties or is rendering its services in such a way as to be a danger to investors.</p> <p><b>Measures to Address Problems</b></p> <p>The AFM and DNB have several instruments at their disposal to guide and intervene in supervised financial enterprises.</p> <ul style="list-style-type: none"> <li>• The AFM and DNB can issue an instruction to adhere to a certain line of conduct (Section 1:75). The AFM and DNB may issue an instruction of this kind in the event that: (i) the investment firm does not comply with the provisions of the AFS or the legislation based on it; or (ii) DNB detects signs of a development that may jeopardize the equity capital, solvency or liquidity of the investment firm.</li> <li>• The AFM and DNB may appoint a conservatorship if provisions of the AFS are violated. This means the investment firm may only exercise their powers subject to the liquidator's approval (AFS Section 1:76).</li> <li>• The AFM and DNB may impose an order for incremental penalty payments (Section 1:79) or an administrative fine (Section 1:80) in relation to a violation of certain regulations of the AFS.</li> <li>• The AFM and DNB also have various possibilities to decide to publish a public warning and the publication of a decision to impose an administrative fine or an order for incremental penalty payments (Section 1:94, 1:97 and 1:99).</li> <li>• The DNB has the authority to impose a higher capital charge, to pursue a specific provisioning policy or to limit the risk profile of the institution (Section 3:111).</li> </ul> <p>In using these instruments, the AFM and DNB base their choice and method of action on the gravity of the situation.</p> <p><b>Investor compensation scheme</b></p> <p>The Investor Compensation Scheme (ICS) guarantees a minimum level of protection if the bank or investment firm is unable to fulfil its obligations resulting from the provision of investment services. The ICS guarantees an amount not exceeding € 20,000 per client per investment firm. The ICS protects private individuals and 'small' businesses (i.e., businesses which may publish an abridged balance sheet) that have entrusted money or financial instruments (such as securities or options) to a licensed bank or investment firm. Claims (in money or securities)</p>

	<p>which are connected with the performance of certain investment services are eligible for compensation. This involves money or securities of an investor which are held in connection with the investment services and cannot be returned to the investor because the bank or investment firm concerned is unable to perform its obligations to its investor clients. Losses suffered in connection with financial instruments are not in itself damages that can be compensated by the ICS.</p> <p>The scheme is administered by a separate entity, whose board members include board members of DNB, the AFM and representatives of the industry. Regulated entities that provide investment services are required to pay an annual fee which is part fixed and part based on the amount/number of non professional clients. In the event that the scheme is not sufficient to cover claims the regulated entities are required to contribute additional moneys (ex-post).</p> <p><b>Procedures on the Eventuality of a Firm's Failure</b></p> <p>The AFM has developed a working plan to deal with the eventuality of the failure of an entity that provides investment services. The role of the AFM varies depending on whether the investment firm holds a bank license. If the latter, DNB takes primary responsibility for the process. If the investment firm is licensed by the AFM, the AFM has responsibility over the process. The AFM fulfils three roles:</p> <ul style="list-style-type: none"> <li>• Monitoring to ensure that (financial) damage remains as limited as possible for the clients of the investment firm and that the investment firm continues to act in the interests of its clients.</li> <li>• Monitoring to ensure that clients of the investment firm are accurately, promptly and fully informed.</li> <li>• Providing guidance to ensure the best possible solution for the clients of the investment firm.</li> </ul> <p>Measures will be taken on an ad hoc basis after consultation with DNB. The AFS stipulates that a supervisor shall allow the other supervisor reasonable time to submit its view in accordance with the procedure regulated in section 1:47 of the AFS, before taking a number of specific measures, including the appointment of a conservatorship, the application for the bankruptcy of a financial enterprise or for emergency regulations.</p> <p><b>Resolution Regime</b></p> <p>There is no special resolution regime for investment firms; rather the bankruptcy procedures of the DCC are applicable to them. Not many firms have gone into insolvency. However in the few cases that they have been insolvent this regime has worked well. It took 2-3 days to transfer the portfolio of assets to another bank. Given that the majority of the investment firms are plain vanilla asset managers, the Netherlands does not appear to need of a special regime for the resolution of investment firms. What remains key is that segregation of assets is properly implemented by investment firms.</p>
Assessment	Fully implemented.
Comments	<p>The assessor welcomes the initiative of the AFM to seek mechanisms to receive timely information from KIFID in relation to complaints received against individuals and firms, since this is critical input for a risk-based supervisory approach.</p> <p>The assessor recommends that the AFM and DNB conduct scenario analysis and crisis simulations exercises, which could assist them to determine whether improvements are needed to the plan developed by the AFM, or to their covenant.</p>

<b>Principles for the Secondary Market</b>	
<b>Principle 25.</b>	The establishment of trading systems including securities exchanges should be subject to regulatory authorization and oversight.
Description	<p><b>Licensing of Regulated Markets</b></p> <p>Pursuant to AFS Section 5:26 the power to grant a license to operate a Regulated Market (RM) corresponds to the MoF. It is prohibited to operate a RM without a license unless an exemption has been granted. Pursuant to Sections 5:27, 5:29, 5:30, and 5:32 of the AFS, a license shall be granted provided that the operator of the RM demonstrates that the market operator has its registered office in the Netherlands and that it complies with requirements related to:</p> <ul style="list-style-type: none"> <li>• the fitness and properness of the persons who determine and co-determine the day-to-day policy of the operator;</li> <li>• sufficient financial resources to promote the orderly operation of the market, in view of the nature and size of the transactions carried out on the market and the scope and level of the risks to which it is exposed. In principle this requirement involves having enough funds and working capital for six months;</li> <li>• rules and procedures for identifying and controlling potential conflicts between the interests of the regulated market, the owners or the market;</li> <li>• the rules on the admission of financial instruments to trading on the regulated market;</li> <li>• transparency and non discriminatory rules, based on objective criteria, with regard to access to trading or membership in the regulated market;</li> <li>• transparent, non-discretionary rules and procedures that guarantee fair and orderly trading, as well as objective criteria for the efficient execution of orders;</li> <li>• rules and regulations for identifying all significant risks to the operation and for taking effective measures to limit those risks;</li> <li>• rules and procedures for a proper management of the technical operation of the system and effective precautionary measures to eliminate risks relating to system breakdowns;</li> <li>• effective rules and procedures for settling transactions carried out through its system efficiently and in time; and</li> <li>• effective rules and procedures in order to regularly check ongoing compliance by the members of or participants in the regulated market.</li> </ul> <p>The AFM developed a “Handbook for Regulated Markets,” which further details the criteria for the recognition of Regulated Markets in the Netherlands as well as for the ongoing evaluation of their performance. The handbook is not publicly available but is given to potential licensees.</p> <p>Pursuant to the AFS the AFM must provide the MoF with a recommendation as to whether the applicant meets the criteria laid down in the AFS. The license may be subject to conditions and limitations (AFS Section 1:102).</p> <p><b>Licensing of MTFs</b></p> <p>Operating an MTF is an “investment activity” that can only be carried out by an investment firm, a credit institution or an operator of a RM. As a result, operating an MTF requires obtaining a license a license of investment firm, credit institution or RM operator, and thus to comply with the requirements applicable to them. In addition AFS Section 4:91 establishes specific requirements that a firm must meet to operate a MTF. It is prohibited to operate an MTF without a license except when granted dispensation.</p> <p>To be authorized to operate a MTF the firm must demonstrate that it meets the requirements set forth in AFS Section 4:91:</p> <ul style="list-style-type: none"> <li>• Adopting transparent, no discretionary rules and procedures that guarantee fair an orderly trading;</li> </ul>

	<ul style="list-style-type: none"> <li>• Rules for a healthy management and technical operation of the system and effective precautionary measures to eliminate risks related to breakdowns;</li> <li>• Transparent rules regarding instruments that can be traded in the system;</li> <li>• Sufficient price transparency (discussed in Principle 28);</li> <li>• Transparent rules for access to the MTF facilities in the same conditions apply to a RM;</li> <li>• Measures to promote efficient settlement, and clear information to users on their settlement responsibilities; and</li> <li>• Effective procedures to check compliance by users of the rules of the MTF.</li> </ul> <p>In addition, in its condition of investment firm, the firm must also satisfy general conditions, including:</p> <ul style="list-style-type: none"> <li>• Section 4:10 with regard to the properness of the persons referred to in that Section;</li> <li>• Sections 4:11(1) and (3) with regard to the policy on the sound conduct of business;</li> <li>• Section 4:83(1) with regard to the minimum number of persons determining the day-to-day policy and Section 4:84 with regard to the place from which they perform their activities;</li> <li>• Sections 4:13(1) and (2) with regard to the control structure;</li> <li>• Sections 4:14(1) and (2) with regard to the operational structure;</li> <li>• Section 4:87 with regard to taking adequate measures to protect clients' rights;</li> <li>• Section 4:88 with regard to pursuing an adequate policy in order to preclude the conflicts of interests referred to in that Section;</li> <li>• Sections 3:53(1) and (3) with regard to the minimum equity capital; and</li> <li>• Sections 3:57(1) and (2) with regard to solvency.</li> </ul> <p>As in the case of an RM, the license to operate a MTF may be subject to conditions and limitations with (AFS Section 1:102).</p> <p><b>Monitoring Compliance by the RM or the MTF</b></p> <p>Pursuant to Sections 5:32 and 4:91(b) of the AFS both the RM's and MTFs operators are required to adopt effective rules and procedures in order to identify violations of the rules and procedures, as well as trading conditions disrupting the orderly operation of the market or actions indicative of market abuse. Serious violations are to be informed to the AFM. They are also obliged to supply the applicable information to the AFM, the Public Prosecution Office or investigating officers competent under the Economic Offenses Act, and to fully cooperate with the AFM, the Public Prosecution Office or these investigating officers in their investigation or prosecution of actions indicative of market abuse that have occurred in or via its systems.</p> <p><b>Practice</b></p> <p>There are no recent experiences in connection with the license of RMs. As indicated in the background information the AFM has recently licensed MTFs. As part of the licensing process the AFM looks at all processes that are relevant for the adequate operation of the market and the position of investors in such market. As part of the analysis it has required a report by an external auditor on the robustness of the IT systems—this requirement would also be applicable to RM as per the guidance developed by the AFM.</p>
Assessment	Fully implemented.
Comments	<p>From an operational perspective the licensing requirements impose on a RM versus a MTF are substantially the same. In practice differences will arise depending on the type of instruments traded on it, the importance of the market (size), and type of participants, which the assessor finds reasonable.</p> <p>There are concerns in the market about the existence in other jurisdictions of trading platforms</p>

	<p>operated by regulated entities (such as broker crossing networks) that might be exploiting gaps of MiFID and therefore are not subject to the same operational requirements, including the same level of pre and post trade transparency. These types of platforms do not appear to be rooted in the Dutch market. Furthermore the authorities provided evidence that they have taken a proactive stance in ensuring a level playing field in their territory, as well as in contacting foreign authorities to discuss cases of concern in their jurisdictions. The assessor notes the existence of work by CESR in this area and welcomes a prompt decision as to amendments to MiFID.</p> <p>Once it is finalized, the AFM should include the guidance on licensing of regulated markets on its website.</p>
<b>Principle 26.</b>	<p>There should be ongoing regulatory supervision of exchanges and trading systems, which should aim to ensure that the integrity of trading is maintained through fair and equitable rules that strike an appropriate balance between the demands of different market participants.</p>
Description	<p>Overall the “degree” of supervision of the AFM over RMs and MTFs would largely depend on the scale of operations, the type of securities and participants involved. For example a MTF for equity that allows retail participation would be subject to closer scrutiny than a RM in energy whose members are all professionals. As of today, a significant amount of supervisory resources in this area are dedicated to Euronext given the scale of operations and the type of securities involved.</p> <p><i>Euronext Amsterdam</i></p> <p>The AFM has a dedicated Monitoring Unit consisting of 8 persons who are tasked with the real time monitoring of both Euronext Amsterdam cash and derivatives markets in order to identify any unusual activity in financial instruments admitted to trading. This is performed with the assistance of real-time order and transaction data feeds. Additionally, the AFM performs computerized surveillance with the assistance of sophisticated software applications. This software generates a significant number of alerts on a “T+1” basis which are then reviewed by the Monitoring Unit. Some of these alerts are then passed on to the Investigations Unit which performs an evaluation of the alert to determine if it is sufficient to warrant an official investigation. More details are provided in Principle 28.</p> <p>Many of the issues that can arise in connection with the oversight of Euronext Amsterdam are common to all the supervisors where Euronext operates markets. Thus, for the most part, these issues are discussed within the framework of cooperation developed by the five supervisors. However, when necessary the AFM does conduct independent analysis and review when an issue is unique to the Amsterdam market; for example, the establishment of a facility to trade exchange traded funds (ETFs) for the Amsterdam market. Next year, the AFM will conduct a review on members’ procedures. For this purpose, there are regular local meetings between NYSE Euronext and the AFM.</p> <p><i>Euronext N.V.</i></p> <p>The five competent authorities in the jurisdictions where Euronext has markets (Netherlands, Belgium, France, Portugal and the UK) have recently signed a revised MoU in order to jointly address the oversight of Euronext. As per the MOU the authorities have committed to consult each other in certain decisions, that include: (i) changes to the market structure (mergers, acquisitions, closing of a market, etc); (ii) changes in ownership and organizational structure; (iii) appointments to the board, management; (iv) changes in rules within the harmonized rule book; (v) changes to systems and controls; and (vi) significant changes to financial/human/technological resources.</p> <p>The MoU provides a framework and procedures to deal with such issues. The framework provides for meetings at three levels: Working Party level, Steering Committee, and Chairmen Committee. The college works by consensus. The list of items of mutual interest requires the</p>

non-objection of the Chairmen's Committee. The ground work is done by the working party that provides a recommendation to the Steering Committee. Euronext is required to send in advance, the information to the Steering Committee which should respond on a reasonable amount of time. For issues that do not have a major impact a streamlined procedure has been established.

This framework appears to be working well. Working party meetings take place on a regular basis, usually once a month. There is usually a "regulators only" session followed by a meeting with representatives of Euronext to follow up on issues. Recent critical topics vis-à-vis fair access and orderly trading such as co-location and direct access have been discussed at the college level, and so have the conditions that Euronext had to meet for their approval. Other recent topics such as high frequency trading, and the possibility of a "flash crash" have also been discussed by the college. In particular in regard to high frequency trading (HFT) the discussions have led to the need to ensure the robustness of the trading platforms, as well as the importance for a unique client ID number.

In addition, the college has been keen in ensuring that Euronext performs its supervisory functions concerning market surveillance and monitoring behavior of market participants performing adequately. Euronext is required to submit Annual Report of the Market Integrity Department (which deals with such regulatory functions).

The college of supervisors is also providing for a coordinated approach to on-site inspections. While there is not a "regular" on-site inspection schedule for Euronext, on-site inspections have been carried out on issues where meetings are not sufficient; for example technology, risk and audit services and business continuity issues. In such cases, the college of supervisors decides whether one or more of the countries participate in the inspection. For example, an on-site inspection was conducted when IT data services were relocated to London. It was agreed that two supervisors would take the lead (the AFS and the AFM), and thus the on-site inspection was conducted by staff from both institutions.

With the merger of the NYSE and Euronext the college of supervisors also signed a MoU with the United States Securities and Exchange Commission (US SEC) to collaborate in supervisory issues. Given that for the time being the markets continue to work separately, there has only been one issue where the college and the SEC were required to give both approval to a development made by NYSE Euronext, which was the development of a universal trading platform. In the opinion of the AFM so far the relationship with the US SEC has been positive.

#### *ENDEX*

Day-to-day supervision by the AFM on the RM consists of the following:

- Meetings between the AFM and ENDEX's Compliance and Risk Manager every six weeks;
- Incident reports and trading statistics are sent by ENDEX on a monthly basis;
- Meeting with the management of ENDEX on strategic issues three times a year; and
- on an ad-hoc basis e-mail contact with ENDEX's Compliance Manager concerning rule changes, etc.

#### *Alternext Amsterdam and Arca Europe*

Both Alternext Amsterdam and NYSE Arca Europe make use of NYSE Euronext's management and operating structure. As a consequence, the composition of management, applied technology and risk management systems are the same. In practice, Alternext Amsterdam and NYSE Arca Europe are considered as trading segments of NYSE Euronext. In effect, only the applicable trading rules for each trading venue vary:

	<ul style="list-style-type: none"> <li>• Day-to-day supervision by the AFM on the MTF's operated by Euronext Amsterdam N.V. consists of the following: A meeting between the AFM and Euronext Amsterdam local management every six weeks;</li> <li>• Trading statistics are sent on a daily basis in an electronic format; and</li> <li>• on an ad-hoc basis e-mail contact with Euronext's Legal Department concerning rule changes, etc.</li> </ul> <p><i>The Order Machine (TOM) Cash</i></p> <p>Day-to-day supervision by the AFM consists of the following:</p> <ul style="list-style-type: none"> <li>• A meeting between the AFM and TOM management; every six weeks</li> <li>• Trading statistics are sent on a daily basis in an electronic format; and</li> <li>• on an ad-hoc basis e-mail contact with TOM's Legal Department concerning rule changes, etc.</li> </ul> <p><b>Changes to Rules</b></p> <p>The rules for access to the RM or the MTF are reviewed by the AFM and the MoF at the moment of granting a license. In addition, the operator of a licensed RM and/or MTF must submit any potential change in its rules or in the compliance procedures in respect to such rules to the AFM. The AFM has to formally approve new rules or amended rules (Section 4 of the Decree on Regulated Markets as regards RM and section 41 sub 1 under (p) of the Decree on Market Access of Financial Enterprises pursuant to the AFS in combination with section 2:99 sub 3 of the AFS and section 4:26 of the AFS as regards MTF).</p> <p>In addition changes to the persons that determine the day to day policy of the RM or MTF must be submitted to the AFM for approval. The AFM must approve unless the change could be a threat to the healthy and prudent management or operation of the RM.</p> <p>The acquisition of a qualify holding or exercise of control related to a qualifying holding in a market operator requires declaration of no objection (Section 5:32(d)).</p> <p><b>Consequences for Violations</b></p> <p>In case the AFM is not satisfied that NYSE Euronext is adequately operating its market according to the rules and regulation, the AFM can issue an instruction. The AFM can, in extremis, advise the MoF to withdraw the license. Other sanctions include the power to issue an order for incremental penalty payments and the issuance of a reprimand. The same type of sanctions is available for MTF except that in this case the withdrawal of license corresponds to the AFM.</p>
Assessment	Fully implemented.
Comments	<p>The assessor believes it is reasonable to have a differentiated approach to supervision depending on the scale of operations, securities traded and participants in a market or MTF. Thus the level of supervision of ENDEX appears reasonable in relation to the professional nature of such market. TOM has just started operations, thus the current level of supervision is also reasonable. In addition, the authorities informed that the same software used by TOM to monitor the market has been installed at the AFM, and thus the authorities will have access to real time information on such market, which will allow them to increase the supervision of TOM if trading volumes become significant. If this market grows in activity, then the AFM should consider adding on-site inspections.</p> <p>As the AFM acknowledges the supervision of the exchange is becoming increasingly complex, as the operations of the EU entities of NYSE Euronext are fully harmonized and are operated basically out of two locations, London and Paris, while subject to five supervisors, with a</p>

	<p>mandate over its respective segment. The conversations with the authorities as well as market participants have satisfied the assessor that the AFM is both conducting active supervision of the Amsterdam segment as well as participating actively in the college of regulators established under the MoU. Furthermore the college appears to be working well, as indicated both by the topics that have been discussed and agreed as a group (conditions for collocation, and direct access for example), as well as by the coordinated approach to on-site inspections taken by the group.</p>
<b>Principle 27.</b>	<b>Regulation should promote transparency of trading.</b>
Description	<p>The AFS subject regulated markets and MTFs to the same obligations in regard to pre and post-trade transparency (Section 5:32 for regulated markets and 4:91 for MTFs). The obligations set forth in such sections are limited to shares. The AFS allow for the imposition of pre and post-trade obligations in other types of financial instruments via decree.</p> <p><b>Pre-Trade Transparency on RM and MTF</b></p> <p>RMs and MTFs are required to disclose the bid and offer prices and the size of the market at these prices in respect of shares admitted to trading. Such information has to be available to the public on a continuous basis on reasonable commercial terms and conditions and during the normal trading hours.</p> <p>Operators of a RM or MTF are permitted, after approval by the AFM, to derogate from the obligation to provide pre trade transparency in the cases described in Articles 18 to 20 of the MiFID Implementing Regulation. CESR has set up a protocol to deal with these requests at an EU level.</p> <p><b>Post-Trade Transparency on RM and MTF</b></p> <p>RM and MTFs are required to disclose the price, scope, and time of the transactions conducted via the regulated market in shares admitted to trading. Such information must be disclosed on reasonable commercial terms and conditions and within a timeframe as close as possible to real time.</p> <p>The AFS authorizes the AFM to allow the operator to defer the publication of transaction details provided that certain criteria are satisfied. The criteria are laid down in Article 28 of MiFID Implementation Regulation, and mainly allow delay reporting for large transactions.</p> <p><b>OTC Markets</b></p> <p>Currently only OTC for shares are subject to post-trade transparency reporting. The obligation to report such transactions lies on the investment firm.</p> <p><b>Equity Option Market</b></p> <p>While not required by law the equity options market in the Netherlands has complied with the same level of pre-and post-trade transparency of the equity market.</p> <p><b>Obligations on Internalizers</b></p> <p>Section 4:91 of the AFS imposes post trade obligations on investment firms that operate systemic internalizers systems.</p>
Assessment	Broadly implemented.
Comments	Participants have expressed concern about the waivers on transparency connected to large trade blocks. As a result of the fragmentation of the market, the average size of trade has diminished, and therefore it has become easier to meet the threshold to delay transparency. This issue should be reviewed.

	<p>Further strengthening of post-trade transparency requirements in the equity markets via a consolidated tape is warranted.</p> <p>The assessor notes the existence of work by CESR in this area, as well as on “dark pools” and crossing networks and welcomes a prompt decision as to amendments to MiFID.</p> <p>A legal reform to impose post-trade transparency in OTC derivatives markets should be pursued. The markets for government debt and corporate debt—which in the Netherlands are for professionals—appear to enjoy a good level of transparency via Bloomberg or other data vendors. Nevertheless the assessor encourages the MoF jointly with the AFM to review whether additional transparency is needed in these markets.</p>
<b>Principle 28.</b>	Regulation should be designed to detect and deter manipulation and other unfair trading practices.
Description	<p><b>Misconduct</b></p> <p>The AFS contains specific provisions prohibiting insider trading, and market manipulation (Chapter 5). In addition to these prohibitions, which apply to all persons and legal entities, the AFS also requires specific persons and entities to make notifications concerning major shareholdings and insider transactions. Additionally, persons professionally arranging transactions in financial instruments have an obligation to notify the AFM of suspicious transactions.</p> <p>Pursuant to the AFS, insider trading covers front-running in addition to the traditional definition of the misconduct (trading on the basis of knowledge about orders). The definition of market manipulation addresses four categories of misconducts: (i) transactions or orders which provide false and misleading signals to the market; (ii) use of misleading or deceptive tactics; (iii) bring the price to an artificial level by means of transactions or orders; and (iv) dissemination of false or misleading information regarding a financial instrument. The AFM has provided further guidance concerning market manipulation and the types of transactions or orders which the AFM might interpret as violations of the relevant provisions. Both types of misconduct can be committed in the context of financial products, including derivatives on commodities.</p> <p><b>Sanctions</b></p> <p>Each of the violations included in Chapter 5 of the AFS can be pursued by the AFM as an administrative offense. The AFM has at its disposal the sanctions detailed in Principle 9. In addition, pursuant to Section 5:54 of the AFS insider-trading and market manipulation also constitute a criminal offense.</p> <p>Parallel proceedings (administrative and criminal) are not allowed in the Netherlands. As a result the AFM, the PPO and Financial Intelligence and Investigations Unit have established coordination mechanisms that have been formalized in a written covenant. Pursuant to such a covenant they meet once per month in order to decide which cases will be criminally prosecuted. According to the AFS the AFM refers insider-trading cases to the PPO. However, the AFM is unable to establish a link between the information and the persons who have traded suspiciously. The inability to establish this link rests mostly in the limitations of the investigatory powers of the AFM as pertains to the access to telephone logs which detail incoming and outgoing calls from, and to certain telephone numbers identified in the investigation. It is the experience of the AFM that this information is often crucial in proving insider-trading cases. Cases of market manipulation more often are pursued on the administrative venue.</p> <p><b>Systems and Arrangements for the Continuous Monitoring of Trading</b></p> <p>The AFM performs real-time monitoring of the markets mainly on issues related to price</p>

	<p>sensitive information. The AFM has a dedicated Monitoring Unit consisting of 8 persons who are tasked with the daily monitoring of both Euronext Amsterdam cash and derivatives markets in order to identify any unusual activity in financial instruments admitted to trading. This is performed with the assistance of real-time order and transaction data feeds.</p> <p>Additionally, the AFM performs computerized surveillance with the assistance of sophisticated software applications. This software generates a significant number of alerts on a “T+1” basis which are then reviewed by the Monitoring Unit. Some of these alerts are then passed on to the Investigations Unit which performs an evaluation of the alert to determine if it is sufficient to warrant an official investigation.</p> <p>With the implementation of the MiFID the AFM, via the Transaction Reporting database, has access to all relevant transaction information which is of importance to the market abuse investigations. According to the authorities the quality and timeliness of such reporting has improved overtime. In addition, the AFM can request information from investment firms regarding specific transactions in order to determine which client (or clients) is (are) responsible for the potentially suspect trading. In the absence of a unique client-identifying number, the AFM has to first request a specific investment firm or firms for the names of <i>all</i> parties who traded in a certain timeframe. The submission of a unique client-ID is not required to be reported in the Netherlands.</p> <p>In cases where the Monitoring Unit detects transactions or orders which give rise to a suspicion of market manipulation, particularly where professional traders are involved, the AFM will often contact the investment firm directly to speak with the persons responsible for the trading in order to obtain an explanation regarding the suspicious trading.</p> <p>The AFM conducts roughly 75 investigations on market abuse on a yearly basis.</p> <p><b>Cross-Border</b></p> <p>The AFM has signed MoU’s with nearly every major regulatory body, both domestic and foreign, as concerns regulation of the financial markets. At the European level, contact for purposes of enforcement cases takes place under the umbrella of CESR-Pol, the subcommittee on enforcement of CESR. This committee holds bimonthly meetings and in such meetings supervisors share enforcement cases, ask for advice or opinion. Recently the AFM has been active in CESR-Pol particularly with regard to a major cross-border insider-trading ring investigated by the AFM in which the AFM requested the creation of an Urgent Issues Group consisting of several regulators to help facilitate cross-border cooperation.</p> <p>The AFM has also implemented a line of communication with other regulators in accordance with CESR guidelines in order to notify them of the AFM’s intention to request a trading halt so that the foreign regulator(s) can halt related securities on their own exchanges or MTF’s in a timely manner.</p>
Assessment	Fully implemented.
Comments	<p>At the local level the AFM appears to be working effectively in detecting and combating unfair trading practices. In the meantime, the implementation of the client-ID in the Netherlands would significantly help the AFM to reduce the duration of its investigations therefore contributing to the overall effectiveness of its market surveillance. The AFM encourages voluntary reporting of the client-ID and aims to prepare investment firms to a possible future requirement to report the client-ID. The specific form of this requirement is expected to be published mid 2011 when the European Commission is expected to propose amendments to MiFID.</p> <p>The MoF jointly with the AFM should consider whether additional investigative powers to access telephone and internet service provider records are desirable. Issues related to criminal enforcement are dealt with in Principle 10.</p>

	In regard to cross-border issues, CESR-Pol is providing a venue for discussing enforcement cases. However in the long run further centralization of supervision might be necessary.
<b>Principle 29.</b>	Regulation should aim to ensure the proper management of large exposures, default risk and market disruption.
Description	<p>DNB and the AFM indirectly supervise securities clearing and settlement and central clearing counterparties. Their mandate derives from the AFS, in particular the provisions on RMs and MTFs related to efficient settlement described in Principle 25. However the AFS does not contain a comprehensive framework for clearing and settlement. The AFS now includes “clearing” members as a specific category of regulated entity under the supervision of DNB (prior to that law clearing members were supervised indirectly because of their condition of banks).</p> <p>The AFM and/or DNB do not monitor or supervise ‘large exposures’. However, under the Capital Adequacy Directive (CAD) DNB supervises the financial positions of investment firms and banks. This supervision also includes insight in “large exposures”— including limits on own positions—since these positions are relevant for the capital adequacy of the firm. Banks and investment firms must submit financial reports to DNB.</p> <p>Euronext has mechanisms to address situations of extreme volatility and market disruption. In addition to dynamic thresholds to apply circuit-breakers, after the “flash crash” in the US markets Euronext reinstated its static thresholds.</p> <p>As for large exposures LCH.Clearnet S.A. does monitor large exposures of its clearing members on a daily basis. Furthermore, it can require its clearing members to report the clients’ open positions daily. LCH.Clearnet S.A. can refuse to clear additional transactions if position limits are exceeded, and can also impose additional margins, including intraday margins, on an individual basis (CRB Article 1.5.3.6). LCH.Clearnet S.A. also has a general right to require that positions be reduced (CRB 1.5.3.7). It can also revoke trading privileges or require additional capital from a clearing member.</p> <p>There is a MoU on the oversight of LCH Clearnet S.A. between the relevant Dutch, French, Belgian and Portuguese authorities. LCH. Clearnet S.A. shares its information on large positions at monthly meetings with all the signatory authorities of the MoU. In addition the French supervisor (ACP) as the direct supervisor of LCH Clearnet S.A. does see and monitor positions on a daily basis. The authorities informed that there have not been the need to take any measures in regard to large exposures because LCH Clearnet S.A. has sufficient powers (mainly via intraday margining) to address any large build up of exposures.</p> <p>LCH.Clearnet S.A. has a default procedure which is made available to its Clearing Members. A more detailed default procedure is also made available to the supervisors. If a Clearing member defaults, all its collaterals, margins and/or payments to the default fund belong to LCH.Clearnet S.A. LCH.Clearnet S.A. can exercise these rights without having to wait for bankruptcy proceedings. Under Dutch law there is segregation between clients’ funds and the investment firm so there is sufficient investors’ protection in case of bankruptcy. This only applies for securities and not for investments in derivatives; these are not protected and would fall within the liquidation assets of the investment firm.</p> <p><i>The Order Machine (TOM)</i></p> <p>Since 2007 a new Dutch central clearing counterparty, EMCF, was set up. The oversight of EMCF is conducted on the same basis as the oversight on LCH. Clearnet S.A. The legal basis for the oversight differs however (LCH.Clearnet S.A. is subject to Oversight on the basis of the Exchange License of NYSE.Euronext for which it clears, and EMCF is subject to Oversight on the basis of a voluntary Oversight Agreement and recently also on the basis of the MTF License granted to TOM, for which EMCF clears).</p>

	MoUs with the relevant authorities have been agreed. EMCF also provides monthly reports, which among others, cover (large) exposures. Exposures are covered by initial and variation margin calls and—when needed by additional (intraday) margin calls.
Assessment	Fully implemented.
Comments	The assessment of this Principle is limited in its scope since an assessment of the central clearing counterparties was not conducted.  The assessor recommends that a comprehensive legal framework for clearing and settlement be developed.
<b>Principle 30.</b>	Systems for clearing and settlement of securities transactions should be subject to regulatory oversight, and designed to ensure that they are fair, effective and efficient and that they reduce systemic risk.
Description	
Assessment	Not assessed.
Comments	

## ANNEX I: STATUS OF IMPLEMENTATION OF THE NEW IOSCO PRINCIPLES

	<p><i>The Regulator should have or contribute to a process to monitor, mitigate and manage systemic risk, appropriate to its mandate.</i></p>
Description	<p>The AFM has developed a process to identify and prioritize risks—including risk to systemic stability—and decide on actions to manage them.</p> <p><b>Identification of Risks</b></p> <p>On an annual basis, the Strategy Department gathers and analyzes information (signals) from different sources with a view of identifying the main risks of the market. Such risks can stem both from regulated entities or activities as well as from entities or activities outside the perimeter of regulation.</p> <p>Given its interest in identifying emerging risks, the process provides room for gathering of information through informal networks. An initial list is drawn up and shared with experts from the different supervision areas at different levels within the AFM, as well as with external experts. The result of this process is discussed in sessions with the Heads of Departments and the Executive Board. The outcome of this risk analysis is a selection of ‘themes’ for the next year. In 2010, for example, the analysis resulted in eight themes, and for 2011 this resulted in ten themes. Each theme is managed by a member of the Executive Board (‘theme owner’) and a Head of Department (‘theme coordinator’). The theme is supported by a mid-term to long-term plan which is updated every year according to new risk analysis.</p> <p>It its Annual Report the AFM includes a risk statement that deals with risks associated with the financial services market and the capital markets, as well as the areas of organization and business conduct. The risk statement relates to market risks against which the AFM takes action, but also risks against which the AFM cannot (yet) take action, but which are relevant to the proper functioning of the financial markets. The risk statement is a way to express the AFMs’ view on the (possible) need for the amendment of—or new—legislation.</p> <p><b>Mitigation of Risk</b></p> <p>The theme plans are essentially strategic plans. As a result of the prioritization, the AFM develops activities and projects which involve assessment, analysis and mitigation of risks. The Department of Supervision of Financial Services for example, holds a priority session twice a year. These priority sessions lead to projects and activities that contribute to the achievement of AFM’s strategic goals and the mitigation of risks in the financial services market. In the Department of Supervision of Capital Markets there is a continuous process of risk analysis for the different market segments. Twice a year a capital market session is held on the developments per market segment and during this discussion the overall risks are assessed. In addition to these sessions, the Department of Supervision of Capital Markets is currently developing an institutional risk management framework.</p> <p><b>Control Process of the Annual Plan</b></p> <p>Twice a year the Executive Board discusses progress in the implementation of the Annual Plan. Such discussions are held in three sessions: financial services, capital markets, and organization.</p>

	<p>The sessions are based on reports prepared by Heads of Departments and theme coordinators. In addition to monitoring the progress of mitigating risks, these sessions provide a platform for discussion on market developments, potential risks, and collaboration between departments. In the first two sessions (on supervision) the themes play a very important role. These reports and the outcome of the sessions are the foundation for the Annual Report on the activities of the AFM.</p> <p><b>Incorporation of Risks to DNB's Plan</b></p> <p>The AFM shares its themes for the year and view of risks of the market with DNB on an annual basis, during DNB's process to identify its own strategic priorities. In addition, on a periodic basis the Chairmen of the Executive Boards of both institutions meet to discuss market developments and risks.</p> <p><b>Further extension of the AFM's involvement with financial stability issues</b></p> <p>The AFM is committed to further extending its involvement with regard to the monitoring, mitigation and management of systemic risk, in close cooperation with DNB and with its international counterparts both in Europe and globally. Together with DNB, the AFM participates in the European Systemic Risk Board (ESRB). The AFM also participates in the financial stability related workstreams of ESMA and IOSCO. In addition, the AFM is currently evaluating its internal processes with a view to further strengthening its risk based approach and to further extending its cooperation with DNB.</p>
Assessment	N/A.
Comments	
	<b><i>The Regulator should have or contribute to a process to review the perimeter of regulation regularly.</i></b>
Description	<p>For the AFM, the review of the perimeter of regulation is imbedded in its process of identification of risk described in Principle 6.</p> <p>In addition, per request of the MoF, the AFM and DNB annually submit a letter of legislation, which summarizes limitations in the legal framework that are preventing them from performing their duties in an effective manner. The MoF sends these legislation reports (letters) to Parliament, together with his response and his future plans for regulation on financial supervision. These letters seek to improve transparency on the development of regulation and to allow Parliament to take notice of these responses. The first letters of legislation were sent to Parliament in 2010.</p>
Assessment	N/A.
Comments	
	<b><i>The Regulator should seek to ensure that conflicts of interest and misalignment of incentives are avoided, eliminated, disclosed, or otherwise managed.</i></b>
Description	<p>Overall the process of identification of risks developed by the AFM, as the basis to identify its themes for the year, serves it also to identify sources of conflict of interest that have not been properly addressed by market participants, including those arisen from new products or activities.</p> <p>In addition, as part of its strategy to identify risks and problems with products at an early stage, the AFM is placing emphasis on the supervision of the process of product development of regulated entities. In this regard the AFM is currently seeking authority to be able to review the product development process of intermediaries to verify whether such processes allow intermediaries to</p>

	develop products in a way that risks and conflict of interest are properly identified and addressed. In the meantime the AFM has provided guidance to the market as to the key elements of a robust product development process.
Assessment	N/A
Comments	
	<b><i>Auditors should be subject to adequate levels of oversight</i></b>
Description	<p><b>Auditors Oversight</b></p> <p>All audit firms that want to perform statutory audits in the Netherlands must obtain a license from the AFM. Individual auditors who want to conduct statutory audits must be employed by or affiliated to an audit firm with a license from the AFM. The audit firms are required to register the individual auditors performing statutory audits with the AFM. Statutory audits include, amongst others, audits of listed companies, banks and insurance companies.</p> <p><i>Licensing of Firms</i></p> <p>The law distinguishes between a licence for Public Interest Entity (PIE)-audits, which is necessary to perform all statutory audits including audits of listed companies, banks and insurance companies, and a licence not for PIE-audits, which covers only statutory audits of all other (non-PIE) statutory audits. Licensing requirements include, amongst others, integrity tests on (co-)policymakers and demonstration that the quality assurance systems are robust.</p> <p><i>Registration of Individual Auditors</i></p> <p>Auditors need to be registered accountants with the professional accounting body (NBA) constituted out of the merger<sup>4</sup> of NIVRA and NOvAA. The requirements basically consist of a theoretical examination and practical experience. Furthermore, auditors in the Netherlands are required to pursue continuous education (on average, at least 120 hours per 3 years).</p> <p><i>Enforcement Powers</i></p> <p>The AFM may punitive actions against audit firms, provided that there has been due process, based on administrative law. Audit firms that disagree with any enforcement action may appeal to this sanction; first to the Management Board of the AFM, second to the Court in Rotterdam, and finally, to the Administrative High Court for Trade and Industry. Taking disciplinary actions against individual auditors in the Netherlands is a responsibility of the Disciplinary Court for auditors. The AFM may file a case at that Court, in which case the Court must decide on whether to impose a sanction to the auditor.</p> <p><b>Practice</b></p> <p>The AFM has a separate department in charge of supervision of audit firms. It has 21 full-time and 2 part-time professionals, all non-practitioners. The initial licensing of existing audit firms was performed by this department as well. The subsequent licensing of new audit firms is</p>

<sup>4</sup> The required legislation for this merger is expected to come into force on 1<sup>st</sup> July 2012.

	<p>performed by the AFM's Market Entry Division.</p> <p>The licensing function was given to AFM in October 2006. The AFM received approximately 700 applications for licensing. It applied a risk-based approach to their review: all audit firms with a substantive number of statutory audits were subject to on-site inspections, while the audit firms with null or very few statutory audits were subject to desktop review. Currently there are 15 firms licensed to conduct PIE-audits, and approx. 460 to conduct non PIE-audits. The Big 4 firms cover approximately 60 percent of all audits and charge approximately 80 percent of all audit fees.</p> <p>The AFM carries out the inspections of all PIE audit firms, and some inspections are carried out at non-PIE audit firms. The bulk of the inspections at non PIE-audit firms that are member of a professional association of small sized audit firms are carried out by the SRA on the basis of a Memorandum of Understanding (MoU). Such inspections are performed by non-practitioners with the methodology of the AFM and with a plan approved by the AFM. The AFM remains fully responsible for all oversight, and therefore also for the inspections conducted by the SRA, and carries out enforcement activities.</p> <p>During 2009 the AFM conducted on-site inspections on the Big 4 firms. A report that summarizes the main findings from such inspections can be found on the website. According to that report auditors failed to exercise sufficient and appropriate professional skepticism; and failed to apply accounting standards. In particular, insufficient testing; and quality control monitoring fell short. Furthermore the AFM called for a fundamental change of tone at the top. The firms were required to present plans to address the specific weakness indentified in each of them. The AFM also encourage the audit committees of listed issuers to make a contribution to improving audit quality by requesting the AFM inspection findings to the audit firm and engaging in active discussion of the issues raised in such reports. Confidentiality provisions prevent the AFM from disclosing such results directly to them. The AFM will focus its onsite inspection of the second half of 2010 and 2011 on financial incentives and their impact on quality of audits. Finally the AFM initiated enforcement proceedings against one or more of them, which are currently pending.</p>
Assessment	N/A.
Comments	
<b><i>Auditors should be independent of the issuing entity that they audit.</i></b>	
Description	<p><b>Auditor Independence</b></p> <p>The Audit Firms Supervision Act (AAFS) contains a general provision that requires auditors and audit firms to assess (and document) their independence. If situations exist that may cast doubt on their independence, additional safeguards should be implemented, or, if that is not sufficient to take away the doubt on the independence, the auditor and/or the audit firm should withdraw from the engagement.</p> <p>The AAFS contains specific cases where an audit firm cannot perform a statutory audit of a public interest entity:</p> <ul style="list-style-type: none"> <li>• It has compiled the financial accounts on which the statutory audit is based at any time during the previous two years; or</li> <li>• It provided or actually set up, or shall provide or actually set up respectively, a substantial part of the accounting records during the period to which the financial accounts refer or</li> </ul>

	<p>during the performance of the statutory audit.</p> <p>There are also specific rotation requirements for the individual auditor that audit public interest entities (seven years), as well as cool off period (two years).</p> <p>Each year, the audit firm performing statutory audits for a PIE shall confirm its independence from the audit client to the audit committee, notify it of all services it provided to the audit client other than the performance of statutory audits, and discuss with it the threats to its independence and the measures taken to mitigate these threats.</p> <p>In addition on an annual basis, audit firms are required to prepare and publish on their website a “transparency report,” which among other things includes a statement concerning the audit firm's independence practices which also confirms that an internal review of independence compliance has been conducted.</p>
Assessment	N/A
Comments	
	<b><i>Audit standards should be of a high and internationally acceptable quality.</i></b>
Description	<p><b>Auditing Standards</b></p> <p>Standard setting in the Netherlands is conducted by the professional bodies, under the supervision of the MoF. The Dutch profession applies a slightly modified version of the International Standards on Auditing of the IFAC. Adherence to these standards is mandatory. The difference between the ISAs and the local auditing standards does not appear to be significant since they are limited to making references to other legislative requirements.</p> <p>Standard setting in the Netherlands involves a consultation process with the MoF and the AFM. This process appears to be effective. In fact, recently the AFM objected the new Code of Ethics developed by IFAC because it considered it to be weak. The MoF took the recommendation and the Code will be redrafted before entering into force in the Netherlands.</p> <p>It is anticipated that the EC, on the basis of Article 26 of the Statutory Audit Directive, will endorse international auditing standards. If the EC does so, the professional bodies will no longer be responsible for setting auditing standards for statutory audits; however, they will continue to have a responsibility in setting auditing standards for other audits.</p>
Assessment	N/A.
Comments	
	<b><i>Credit rating agencies should be subject to adequate levels of oversight. The regulatory system should ensure that credit rating agencies whose ratings are used for regulatory purposes are subject to registration and ongoing supervision.</i></b>
Description	<p>CRA's are subjected to registration and oversight pursuant to the Regulation on CRA's (Regulation (EC) No 1060/2009, further ‘Regulation’). Such Regulation is directly applicable to the national European member states. The Regulation stipulates that the oversight of CRA's and supervision of compliance of the Regulation is performed by the competent authorities of the concerning Member States (Article 22:1 of the Regulation). The MoF has designated the AFM as the competent authority for the Netherlands (Wte Article 1 sub (e)). It is expected that as of July 1, 2011, supervision of CRA's will be carried over to CESR's successor, the European Securities Markets Authority (ESMA). ESMA will then be responsible for:</p> <ul style="list-style-type: none"> <li>• Registration of CRA's: CRA's will have to apply for registration with ESMA, which will</li> </ul>

	<p>then decide on each of them.</p> <ul style="list-style-type: none"> <li>• Day-to-day supervision: ESMA will monitor that the CRAs comply, on an ongoing basis, with the rules of the CRA Regulation. In order to be in a position to do so, ESMA will be endowed with a set of supervisory powers, such as requesting relevant information, hearing of persons, examining records and conducting on-site inspections.</li> <li>• Taking appropriate supervisory measures if it has discovered a breach of the CRA Regulation, ranging from the issuance of a public notice to the withdrawal of the registration, depending on the seriousness of the breach.</li> </ul> <p>However, national supervisors can, in certain cases, be appointed as temporary delegates of ESMA, and therefore will have to maintain the capacity to fulfil the delegated tasks upon request by ESMA.</p> <p>The Regulation deals with and addresses the key issues required by the IOSCO Code of Conduct in the following areas:</p> <p style="padding-left: 40px;">Independence and minimized possibility on conflicts of interests; Quality and integrity of rating process; Timely information and transparency about procedures and methodologies; and Protection of non-public information from premature disclosure.</p> <p><i>Registration Process</i></p> <p>If a CRA applies for registration, a college of competent authorities of Member States will be formed to examine the application (Recital (46) of the Regulation). If the CRA is compliant an advice will be given by the College to CESR and the competent authorities to the home Member States to grant the registration (Article 18 of the Regulation).</p> <p>The first stage is the review of whether the information is complete. The Facilitator of the College coordinates all feedback and comments given by the College members on the documentation and will merge them into one table. Any differences in findings are discussed and clarified by means of conference calls and (when deemed necessary) meetings. It is possible that College members have additional requests for information/documents because of local legislation. For example, the AFM performs a fit and proper test for the Board Members (extensive background checks) to examine if their behaviour has been of an undisputed nature. To do so, the AFM needs a signed authorization by the Board Member to request information of that board member from governmental authorities. Also résumés of Board Members are requested to assess if there are any possible conflicts of interest.</p> <p>If the information is complete, the college will start the compliance check. This check will entail an assessment of the existing policies and procedures and whether they comply with the obligations set out in the Regulation. At this moment, neither of the two CRAs, for which the AFM participates in the supervisory college, is in this stage of the registration process.</p>
Assessment	N/A.
Comments	
	<p><b><i>Other entities that offer investors analytical or evaluative services should be subject to oversight and regulation appropriate to the impact their activities have on the market or the degree to which the regulatory system relies on them.</i></b></p>

Description	<p>Within the Dutch legal framework entities, independent analysts, and other persons who offer investors analytical or evaluative services are subject to a whole set of rules on investment recommendations, as set forth in the AFS.</p> <p>The main disclosure requirements are directed at persons disseminating information, recommending or suggesting an investment strategy intended for distribution channels or for the public. The disclosure requirements particularly aim at fair, clear, and accurate presentation of information and disclosure of interests and conflicts of interest. They include:</p> <ul style="list-style-type: none"> <li>• Publication of the identity of the person or entity that issues an investment recommendation;</li> <li>• Ensuring that the recommendation presents the facts in the right way; and</li> <li>• Publication of information that can reasonably be assumed to be information that could compromise the objectivity of the investment recommendation.</li> </ul> <p>In addition to these obligations, trading ahead of an investment recommendation might, under certain circumstances, be considered insider trading. Spreading misleading or false information can be a form of market manipulation.</p> <p><b>Practice</b></p> <p>The AFM's supervision in this area initially focused on 'preventive' measures. Starting in 2005, it held meetings with investment firms and analysts in order to raise their awareness of the regulatory framework and its main obligations. It also selected the main investment firms that issue reports, and conducted a review of such reports to determine whether there were problems with compliance. The bulk of them already complied with the disclosure requirements but where necessary the AFM followed-up with a specific firm. The AFM also developed and placed on its website a brochure on frequently asked questions. It is currently working on new guidelines about the relationship between investment recommendations and insider trading.</p> <p>From a market monitoring perspective, the AFM supervision on investment recommendations largely centers on identifying possible instances of insider trading by broker/dealers, whereby they trade on the recommendation of one of their analysts ahead of the dissemination of such an analyst report. The AFM has also investigated cases where 'well-known' analysts of certain investment entities issue investment recommendations through various media channels and gain exposure to the shares on which the recommendation is made, beforehand. It does so by looking at signals from different sources (market, television, etc.,) that it monitors on a daily basis.</p>
Assessment	N/A.
Comments	
	<b><i>Regulation should ensure that hedge funds and/or hedge fund managers/advisers are subject to appropriate oversight.</i></b>
Description	<p>Within the legal framework of the Netherlands there are currently hedge funds that offer their units to retail investors. In such condition, they are subject to the same requirements described in Principles 17-20. As a result, a management company of a hedge fund offered to retail investors has to apply for a licence and has to comply with the same ongoing supervision requirements as other management companies and the CISs.</p> <p>Management companies that only offered to professional parties are currently exempted from the licence obligation (offering &gt; € 50,000 per unit). This exemption threshold will be increased to</p>

	<p>€ 100.000 by way of amendment in the FSA. This exemption will cease to have effect (for all Dutch CISs) after the implementation of the Alternative Investment Fund Managers (AIFM) Directive, expected for 2013. As a result of which all hedge funds that are offered to professional parties will fall under the supervision of the AFM.</p> <p>According to the AIFM Directive, management companies with less than 100 million worth of assets will be exempted from a license requirement, however, they do need to register and be transparent toward the supervisor.</p> <p>Banks and brokers which provide funding for hedge funds fall under the prudential regulations supervised by DNB.</p>
Assessment	N/A.
Comments	