

AFM and DNB (Wfm BES and Wwft BES Further Rules) Regulation 2012

Regulation of the Netherlands Authority for the Financial Markets and De Nederlandsche Bank N.V. of 21 August 2012 adopting further rules on conduct-of-business supervision and prudential supervision and further integrity rules for financial enterprises that carry on their business in or from the public bodies of Bonaire, St Eustatius and Saba pursuant to the Financial Markets (BES Islands) Act and the secondary legislation based on this Act, as well as implementing the Wwft BES (AFM and DNB (Wfm BES and Wwft BES Further Rules) Regulation 2012) [Regeling AFM en DNB nadere voorschriften Wfm BES en Wwft BES 2012]

THE NETHERLANDS AUTHORITY FOR THE FINANCIAL MARKETS AND DE
NEDERLANDSCHE BANK N.V.

Having regard to the Financial Markets (BES Islands) Act (Bulletin of Acts and Decrees 2011, 612), in particular chapter 3, sections 2, 3, 5 and 7;

Having regard to the Financial Markets (BES Islands) Decree (Bulletin of Acts and Decrees 2012, 238), in particular chapter 3, articles 2 and 3, chapter 4, articles 2-9, and chapter 5, article 2;

Having regard to section 3.13 and chapter 5 of the Wwft BES (Bulletin of Acts and Decrees 2011, 613), in conjunction with Part 7 of the Sanctions Act 1977;

DECIDE:

Chapter 1. General provisions

Article 1 (definitions)

In this regulation the following terms have the following meanings:

- a) *DNB*: De Nederlandsche Bank N.V.;
- b) *AFM*: the foundation (*stichting*) known as the Netherlands Authority for the Financial Markets;
- c) *CBCS*: the Central Bank of Curaçao & St Maarten as well as its predecessor in title – the Bank of the Netherlands Antilles;
- d) *the public bodies* or *the Caribbean Netherlands*: the public bodies of Bonaire, St Eustatius and Saba;
- e) *Wfm BES*: the Financial Markets (BES Islands) Act (*Wet financiële markten BES*) (Bulletin of Acts and Decrees 2011, 612);
- f) *Bfm BES*: the Financial Markets (BES Islands) Decree (*Besluit financiële markten BES*) (Bulletin of Acts and Decrees 2012, 238);
- g) *Wwft BES*: the Money Laundering and Terrorist Financing (Prevention) (BES Islands) Act (*Wet ter voorkoming van witwassen en financieren van terrorisme BES*) (Bulletin of Acts and Decrees 2011, 613);
- h) *USD* or *dollar*: the unit of currency of the United States of America.

Chapter 2. Further AFM rules on conduct-of-business supervision

Article 2 (professional liability insurance)

The professional liability insurance referred to in section 3:24 of the Wfm BES and article 4:47 of the Bfm BES covers the liability of an adviser, an intermediary (other than a securities intermediary), an authorised agent or a sub-authorised agent up to an amount of at least USD 50,000 a year.

Chapter 3. Further AFM and DNB rules on sound and controlled operations

§3.1. Further AFM and DNB rules on sound operations

Article 3 (integrity-sensitive positions)

For the purposes of article 3:16 of the Bfm BES, AFM and DNB in any event classify the following categories of position at a financial enterprise as integrity-sensitive positions (i.e. key positions of special trust):

- a) the positions of management staff reporting to persons who determine or jointly determine policy and are subject to 'fit and proper' testing, as referred to in section 3:4 of the Wfm BES, in the first echelon of the financial enterprise, including directors of business units, corporate staff directors, heads of support services, assistant directors and other members of the management team at second echelon level;
- b) the so-called key positions that involve a power that poses an essential risk to sound business operations by the financial enterprise as referred to in section 3:8 of the Wfm BES; these key positions relate, among other things, to:
 - 1° the control or management of assets or securities of the financial enterprise or third parties or the acceptance of obligations on the part of the enterprise (key person positions);
 - 2° access to personal data or sensitive information about the financial enterprise or about third parties (high-risk positions); and
 - 3° the performance of activities to check or supervise the accounting system and internal audit system of the financial enterprise and compliance with the applicable legislation and regulations and internal rules (other key positions); and also
- c) the positions within the meaning of points a) or b) if these positions are held by people who are working for the financial enterprise not on the basis of a contract of employment but in the capacity as temporary or seconded staff.

§3.2. Further DNB rules on sound and controlled operations

Article 4 (numbered accounts at credit institutions)

1. In this article the following terms have the following meanings:
 - a) *numbered account*: an account on which a balance may be kept in cash, securities, precious metals or other assets and where the identity of the client is not visible when the transaction is processed or is otherwise protected through the mere use of an account number, another number or a code word, although the identity of the client is known to the credit institution;
 - b) *client*: a client as referred to in section 1.1, subsection 1 (b), of the Wwft BES.
2. To implement article 3:10, paragraph 2, of the Bfm BES, the following rules apply to sound business operations relating to numbered accounts kept at a credit institution:
 - a) the credit institution must pursue a restrictive policy with regard to the opening of numbered accounts;
 - b) the credit institution must not open numbered accounts other than for the purpose of protecting the privacy and security of clients or preventing insider trading;

- c) the credit institution must draw up adequate instructions for personnel with regard to the opening and management of numbered accounts;
 - d) without prejudice to the obligations to which the credit institution is subject under the Wwft BES, the credit institution must keep a central register of data on the use of numbered accounts;
 - e) the credit institution must record in the central register at the least the data referred to in section 2.13 and Annex B to the Wwft BES, in so far as applicable;
 - f) the credit institution must ensure that numbered accounts can be accessed in the central register at least by name and number or by code key;
 - g) the credit institution must designate a manager of the central register;
 - h) the credit institution must arrange for sufficient internal checks on the completeness and correctness of the data included in the central register with regard to numbered accounts; and
 - i) without prejudice to the provisions of article 3:8 of the Bfm BES the compliance officer referred to in that provision must have access at all times and without delay to the central register of numbered accounts and to all data connected with this.
3. This article relates to numbered accounts yet to be opened at a credit institution and to numbered accounts that already exist at the moment when this Regulation enters into force.

Article 5 (separation of assets of money transaction offices)

To ensure the controlled operation of its business as referred to in section 3:9, subsection 1, opening words and (a) and (b), of the Wfm BES, a money transaction office which carries out money transactions within the meaning of point (c) of the definition of money transaction in section 1:1 of the Wfm BES in or from the Caribbean Netherlands must take adequate measures to secure the money or securities received and not yet paid or made payable for the performance of such money transactions.

§3.3. Sanctions legislation

Article 6 (duty to notify DNB under the sanctions legislation)

1. Notification by a financial enterprise on the basis of section 3.13, subsection 1, of the Wwft BES that the identity of a client matches that of a natural person, legal person or entity as referred to in the Sanctions Act 1977 (*Sanctiewet 1977*) and the sanctions rules and sanctions decisions adopted on the basis of that Act must be made by means of the notification format adopted by DNB.
2. The notification to DNB must take place as quickly as possible after the financial enterprise has got a 'hit' as referred to in paragraph 1 and must be accompanied by all data specified in the notification format in so far as applicable. In the notification the financial enterprise must also indicate on the basis of what sanctions rule or sanctions decision it is giving notice.

Chapter 4. Further DNB rules on prudential supervision

§4.1. Prudential rules on credit institutions

Article 7 (financial safeguards of credit institutions)

1. A credit institution that has its registered office in a public body must calculate its capital adequacy and liquidity in accordance with the rules on this subject in the charts of accounts referred to in article 8 and must also comply in this connection with the following rules of the CBCS:
 - a) Supervisory Regulations for Credit Institutions I¹ – extension of credit to executive officers, supervisory directors, principal shareholders and their related interests and to employees of a credit institution;
 - b) Supervisory Regulations for Credit Institutions II² – restrictions on transactions with affiliates and loans to affiliates;
 - c) Supervisory Regulations for Credit Institutions III³ – limitations on extensions of credit to any one borrower or group of connected borrowers ('large exposure regulation');
 - d) Supervisory Regulations for Credit Institutions IV⁴ – country risk policy; and
 - e) Supervisory Regulations for Credit Institutions V⁵ – general and specific provisions for loan losses of credit institutions.
2. If the Supervisory Regulations referred to in paragraph 1 are amended by the CBCS, a credit institution that has its registered office in a public body must comply with these amended supervisory regulations from the date on which these amendments take effect, subject to any relevant transitional rules adopted by the CBCS. For this purpose, amendment is deemed to include an addition to the supervisory regulations, whether or not in the form of a new set of rules.
3. For the purposes of paragraph 1, the following expressions in the supervisory regulations should be read as follows:
 - a) for 'the National Ordinance on the Supervision of Banking and Credit Institutions 1994': the provisions laid down by or pursuant to the Financial Markets (BES Islands) Act, in so far as applicable to credit institutions having their registered office in the public bodies;
 - b) for 'the Bank': DNB;
 - c) for 'the Netherlands Antilles': the public bodies of Bonaire, St Eustatius and Saba;
 - d) for the amounts of money in the Supervisory Regulations for Credit Institutions I:
 - 1°. 'NAf. 100,000': USD 56,000;
 - 2°. 'NAf. 50,000': USD 28,000.
4. The grandfathering sections in part I.11 of the Supervisory Regulations for Credit Institutions I, part II.8 of the Supervisory Regulations for Credit Institutions II and part III.10 of the Supervisory Regulations for Credit Institutions III do not apply to credit institutions having their registered office in the public bodies.
5. The provisions of the Supervisory Regulations for Credit Institutions III concerning back-to-back exposures also serve to execute article 3:11 of the Financial Markets Decree on back-to-back loans.

¹ See <http://www.centralbank.an/index.php?eid=1011> and Annex I to the *BES Financial Markets Regulation 2010* (Government Gazette 1 October 2010, 14616, pp. 1-9).

² See <http://www.centralbank.an/index.php?eid=1012> and Annex I to the *BES Financial Markets Regulation 2010* (Government Gazette 1 October 2010, 14616, pp. 9-11).

³ See <http://www.centralbank.an/index.php?eid=1013> and Annex I to the *BES Financial Markets Regulation 2010* (Government Gazette 1 October 2010, 14616, p. 11, and Government Gazette 19 November 2010, 14616 rectification, pp. 1-2).

⁴ See <http://www.centralbank.an/index.php?eid=1014> and Annex I to the *BES Financial Markets Regulation 2010* (Government Gazette 19 November 2010, 14616 rectification, pp. 2-3).

⁵ See <http://www.centralbank.an/index.php?eid=1015> and Annex I to the *BES Financial Markets Regulation 2010* (Government Gazette 19 November 2010, 14616 rectification, pp. 4-8).

6. The provisions of the Supervisory Regulations for Credit Institutions I on the granting of financial services on staff terms to persons who determine the policy of the financial enterprise and group executives also serve to implement article 3:15, paragraph 2, Financial Markets Decree on conflicts of interest.
7. As regards the recognition of credit rating agencies referred to in article 4:13 of the Bfm BES, the provisions of article 88 of the Prudential Rules (Wft) Decree (Bulletin of Acts and Decrees 2006, 519, as subsequently amended) apply *mutatis mutandis*.

Article 8 (charts of accounts for submission by credit institutions)

1. A credit institution having its registered office in the public bodies should submit the following charts of accounts (COA) to DNB:
 - a) CBCS chart of accounts for financial institutions, as contained in Annex 1; or
 - b) CBCS chart of accounts manual for international institutions, as contained in Annex 2.
2. The frequency with which and the periods within which the charts referred to in paragraph 1 must be submitted are specified in the charts of accounts referred to in paragraph 1. Similarly, the currencies and units of account and manner of rounding to be applied are as referred to in the charts of accounts referred to in paragraph 1.
3. If the charts of accounts referred to in paragraph 1 are amended or supplemented by the CBCS or replaced by new charts of accounts, a credit institution having its registered office in the public bodies should submit the amended or replacement charts to DNB with effect from the first reporting period for which the amended or replacement charts of accounts apply.
4. For the purposes of paragraph 1, the following expressions in the charts of accounts referred to in that paragraph should be read as follows:
 - a) for 'the National Ordinance on the Supervision of Banking and Credit Institutions 1994': the provisions laid down by or pursuant to the Financial Markets (BES Islands) Act, in so far as applicable to credit institutions having their registered office in the public bodies;
 - b) for 'the Bank': DNB;
 - c) for 'the Netherlands Antilles': the public bodies;
 - d) for the 'ANG' of 'dollar': USD.
5. Annexes 1 and 2, as referred to in paragraph 1, are available for inspection by anyone free of charge at DNB.

§4.2. Prudential rules on insurers

Article 9 (charts of accounts for submission by insurers)

1. A life insurer or non-life insurer having its registered office in the public bodies should submit the following charts of accounts to DNB:
 - a) for the life business: the charts of accounts listed in Annex 3, and
 - b) for the non-life business: the charts of accounts listed in Annex 4.
2. The charts of accounts to be submitted by an insurer to DNB and the frequency with which and the periods within which these charts of accounts are submitted as well as the currencies and units of account and manner of rounding to be applied are as specified in the charts of accounts referred to paragraph 1.
3. The charts of accounts to be submitted by an insurer having its registered office in a public body should be signed by the persons who determine the day-to-day policy.
4. The charts of accounts to be submitted by an insurer having its registered office in the public bodies and operating a branch abroad should contain the data relating to the business carried on in the public bodies and the data relating to the business carried on through the branch abroad.

5. An insurer which carries on a life insurance business or non-life insurance business from a registered office in the public bodies should disclose the following charts of accounts:
 - a) for the life insurance business: the charts of accounts listed in Annex 3, under File 101, File 102, File 104, File 128, File S01, File S02 and File S04;
 - b) for the non-life insurance business: the charts of accounts listed in Annex 4, under File 201, File 202, File 204 and File 234.
6. Annexes 3 and 4 as referred to in paragraphs 1 and 5 are available for inspection by anyone free of charge at DNB.

§4.3. Prudential rules on financial groups

Article 10 (consolidated supervision of groups of credit institutions)

Pursuant to articles 4:48 and 4:49 of the Bfm BES, a credit institution having its registered office in the public bodies and forming part of a group at consolidated level should comply with the CBCS Provisions for the Disclosure of Consolidated Financial Highlights of Domestic Banking Institutions of January 2009 and January 2010, including the relevant Appendices.

Article 11 (supplementary supervision of groups of insurers)

Pursuant to articles 4:50 and 4:51 of the Bfm BES, an insurer having its registered office in the public bodies and forming part of a group at consolidated level should comply with the CBCS Provisions for the Disclosure of Consolidated Financial Highlights of Insurance Companies, Transacting Business in the Netherlands Antilles of January 2010, including the relevant Appendices 1-3 (Life insurers) or Appendices 4-6 (Indemnity insurers).

Chapter 5. Final provisions

Article 12 (amendments to this Regulation)

This Regulation may be amended by joint decision of the AFM and DNB or by separate decision of the AFM or DNB in so far as the amendment does not affect the remit of the other supervisory authority.

Article 13 (entry into force)

1. With the exception of articles 2, 5 and 6, this Regulation will enter into force on the day after the date of the Government Gazette in which it is published, with retroactive effect to 1 July 2012.
2. Articles 2, 5 and 6 of this Regulation will enter into force with effect from the date after the date of the Government Gazette in which this Regulation is published.

Article 14 (short title)

This Regulation may be cited as: the AFM and DNB (*Wfm BES* and *Wwft BES* Further Rules) Regulation 2012.

This Regulation, together with the Explanatory Memorandum, will be published in the Government Gazette.

Amsterdam, 21 August 2012

De Nederlandsche Bank N.V.,

A.J. Kellermann, director

J. Sijbrand, director

Netherlands Authority for the Financial Markets

R. Gerritse, chairman

Th.F. Kockelkoren, director

Explanatory Memorandum

General

The Financial Markets (BES Islands) Act (*Wet financiële markten BES / Wfm BES*), published in the Bulletin of Orders and Decrees 2011, no. 612, regulates supervision of the financial markets in the public bodies of Bonaire, St Eustatius and Saba from 1 July 2012.⁶ In the Wfm BES the Netherlands Authority for the Financial Markets (AFM) and De Nederlandsche Bank N.V. (DNB) are designated as the supervisory authorities for financial enterprises that operate in these islands (also referred to below as the Caribbean Netherlands), in keeping with the financial supervision legislation introduced for the Caribbean Netherlands with effect from the date that the transitional provisions entered into force, namely 10 October 2010. The function of the AFM under this legislation is to exercise *conduct-of-business supervision* over the financial markets with a view to ensuring orderly and transparent financial market processes, proper relations between market participants and the exercise of due care by financial enterprises in dealing with consumers or clients (section 1:6 of the Wfm BES). DNB is given responsibility for *prudential supervision* aimed at ensuring the soundness of financial enterprises and contributing to the stability of the financial sector (section 1:5 of the Wfm BES). An important element of both conduct-of-business supervision and prudential supervision is integrity supervision, which takes the form in the Wfm BES, for example, of supervising business operations by financial enterprises to ensure that they are carried on in a sound manner and testing to ensure that persons who determine or jointly determine the policy of a supervised financial enterprise operating in the Caribbean Netherlands are fit and proper persons.

Some of the provisions of the Wfm BES have been elaborated by order in council, namely in the Financial Markets (BES Islands) Decree (*Besluit financiële markten BES / Bfm BES*) (Bulletin of Acts and Decrees 2012, 238). The Bfm BES in turn provides that for a number of subjects the AFM and DNB have the power to introduce rules or further rules in the form of supervisors' rules. These regulatory powers of the AFM and DNB are specified in this AFM and DNB (Wfm BES and Wwft BES Further Rules) Regulation 2012.

The rules that govern the prevention of money laundering and terrorist financing in the Caribbean Netherlands have been combined with effect from 1 July 2012 (see Bulletin of Acts and Decrees

⁶ The majority of the provisions in the Wfm BES entered into force on 1 July 2012. This was regulated in the *Decree of 22 May 2012 adopting the date of entry into force of the Financial Markets (BES Islands) Act, the Money Laundering and Terrorist Financing (Prevention) (BES Islands) Act, the Financial Markets (BES Islands) Decree and the Money Laundering and Terrorist Financing (Prevention) (BES Islands) Decree* (Bulletin of Acts and Decrees 2012, 240).

2012, 240) in the Money Laundering and Terrorist Financing (Prevention) (BES Islands) Act (*Wet ter voorkoming van witwassen en financieren van terrorisme BES / Wwft BES*) (see Bulletin of Acts and Decrees 2011, 613) and in the secondary legislation introduced pursuant to this Act. These rules are another important element of integrity supervision. One aspect of the Wwft BES needs to be elaborated at the level of a DNB regulation. This concerns the duty of financial enterprises to notify DNB if a name in their administrative records is found to match a name in a sanctions rule or decision adopted under the Sanctions Act 1977. Such sanctions regulations contain the names of natural and legal persons or entities from countries or jurisdictions or names of organisations against which international sanctions have been imposed by the European Union (EU) in relation to financial transactions. This duty of notification under section 3.13 of the Wwft BES Act has been defined in article 6 of this Regulation.

This AFM and DNB (Wfm BES and Wwft BES Further Rules) Regulation 2012 is structured as follows. Chapter 1 (entitled ‘General Provisions’) defines some common terms used in this Regulation. Chapter 2 contains further rules of the AFM concerning conduct-of-business supervision, which are limited for the time being to rules on the extent of the insured amount under professional liability insurance for certain intermediaries (see article 2). Chapter 3 of the Regulation combines a number of rules governing sound and controlled business operations in a sound and controlled manner; only article 3 contains rules of both the AFM and DNB, whereas the other provisions (articles 4, 5 and 6) contain rules that come only from DNB. Chapter 4 contains all further prudential supervision rules of DNB and distinguishes between prudential rules for credit institutions (§4.1.), insurers (§4.2.) and financial groups (§4.3.). Chapter 5 contains a number of final provisions regulating the entry into force of this AFM and DNB Regulation.

As is apparent from section 1:2 of the Wfm BES and section 1.3 of the Wwft BES, both these supervisory laws and the related secondary legislation are applicable only in the public bodies of Bonaire, St Eustatius and Saba. These public bodies are sometimes referred to in this Explanatory Memorandum by the term ‘BES’ or ‘BES Islands’, but usually by the more common term the ‘Caribbean Netherlands’ (abbreviated to CN). The statutory term ‘public bodies’ rather than Caribbean Netherlands is used in the articles of this Regulation. The countries of Curaçao, St Maarten and Aruba, together with the BES Islands, form the Caribbean part of the Kingdom of the Netherlands, which also includes the European part of the Kingdom, namely the country of the Netherlands.

To keep the framework of rules governing conduct-of-business, integrity and prudential supervision as compact and transparent as possible, the AFM and DNB have decided to draw up and publish a single joint AFM and DNB (Wfm BES and Wwft BES Further Rules) Regulation 2012. This Regulation has been introduced in close cooperation between the two supervisory authorities and in consultation with the Ministry of Finance in The Hague, the Netherlands. The Central Bank of Curaçao and St Maarten (CBCS), the Central Bank of Aruba (CBA) and organisations of market participants in the Caribbean part of the Kingdom of the Netherlands were consulted in advance about this Regulation. More generally, the Dutch Ministry of Finance and the supervisory authorities supplied information in April 2011 and February 2012 to market participants and other interested parties about the structure of financial supervision in the Caribbean Netherlands from July 2012 (the so-called end model). The aim has always been to ensure that the contents of this joint regulation take account of the characteristics of the local financial markets and, where possible, align them with the supervision rules drawn up by the CBCS for financial enterprises that operate in or from the countries of Curaçao or St Maarten.

Notes on individual articles

Notes on article 1 (definitions)

The definitions of article 1 supplement the definitions in section 1:1 of the Wfm BES and section 1.1 of the Wwft BES. For the sake of readability, this Regulation uses a number of common abbreviations.

Notes on article 2 (professional liability insurance)

Under section 3:24 of the Wfm BES, professional liability insurance is obligatory for intermediaries, i.e. for advisers, intermediaries (other than securities intermediaries) and authorised or sub-authorised agents. The details of this obligation are set out in article 4:47 of the Bfm BES. Professional liability insurance covers liability for errors, omissions and negligence in the conduct of the intermediary's profession or business. Besides imposing requirements to be met by the insurer providing the professional liability insurance, the Wfm BES also regulates the cover for this insurance. Article 2 of the Regulation stipulates that the cover should be at least USD 50,000 a year, which will generally provide sufficient security.

Article 4:21 of the Bfm BES also refers to professional liability insurance for securities intermediaries who exclusively receive and pass on orders from clients. The AFM further rules set out in article 2 of this Regulation do not apply to these parties, at least as yet. The nature of these parties' activities is so different that different minimum cover is required for this professional liability insurance. If the occasion arises, the AFM will stipulate the minimum cover for this subcategory of intermediaries.

Notes on article 3 (integrity-sensitive positions)

Article 3 of this Regulation implements article 3:16 of the Bfm BES, which relates, among other things, to the designation of categories of position which in any event qualify as integrity-sensitive positions (i.e. key positions of special trust) for the purposes of financial enterprises operating in the Caribbean Netherlands. This too is an important aspect of the rules on sound business operations within the meaning of section 3:8 of the Wfm BES. Article 3 lists positions that in any event qualify as integrity-sensitive positions. The list is therefore not exhaustive.

The existing CBCS Policy Rules on Sound Operations in the case of Incidents and Integrity-Sensitive Positions (*CBCS Beleidsregel integere bedrijfsvoering bij incidenten en integriteitsgevoelige functies*) of January 2011 are of importance to such positions. Reference is made, inter alia, to this CBCS policy rule in article 5 of the separate AFM and DNB Policy Rule on the Application and Implementation of the Wfm BES 2012 and in the notes on article 6 of this policy rule.

Notes on article 4 (numbered accounts at credit institutions)

Under article 3:10, paragraph 2, of the Bfm BES, DNB can introduce rules governing the use of numbered accounts by credit institutions. To implement this provision, article 3 of this Regulation prescribes what rules a credit institution that is active in the Caribbean Netherlands must fulfil if it allows numbered accounts of this kind to be opened. These DNB further rules are important with a view to ensuring sound business operations by credit institutions, as referred to in section 3:8 of the Wfm BES. Numbered bank accounts are a type of bank account where the name of the

account holder is not disclosed, although his or her identity is known elsewhere within the credit institution. Often the object of numbered accounts is to protect the privacy or security of the client concerned. Although such interests are perfectly justified in themselves, it is also important for credit institutions to adopt a restrictive policy on the opening of such accounts. In order to protect the interests of the client and at the same time achieve the desired transparency, DNB lays down concrete rules in article 4 of this Regulation governing the opening and managing of numbered accounts by credit institutions.

The purpose of paragraph 3 of article 4 is to show explicitly that the rules contained in paragraph 2 also apply to numbered accounts that already exist at the moment when this Regulation enters into force (1 July 2012).

Notes on article 5 (separation of assets of money transaction offices)

Section 3:23 of the Wfm BES includes specific requirements for the separation of assets for certain categories of financial enterprises, specifically asset managers or certain securities intermediaries (see section 3:23, subsections 1 and 4), trust service providers that keep money or securities belonging to third parties (subsection 2) and electronic money institutions (subsection 3). In brief, these requirements mean that financial enterprises must take adequate measures to safeguard and protect the rights of their clients. This asset separation and protection is important above all in cases where the financial enterprise becomes bankrupt or obtains a moratorium on the payment of its debts.

Money transaction offices fall outside the scope of section 3:23 of the Wfm BES. However, certain money transaction offices keep money or securities belonging to clients in their possession for periods of varying length. This is particularly true of money transaction offices that carry out money transfers within the meaning of point (c) of the definition of ‘money transaction’ in section 1:1 of the Wfm BES.⁷ As long as a money transfer has not been performed in full and the amount to be transferred has not yet been paid to the beneficiary, there is always the risk that the money may be lost because in the meantime the money transaction office concerned becomes bankrupt or obtains a moratorium on payment of its debts. To avoid a situation in which the client of the money transaction office loses his or her money in such a case or the beneficiary of a money transfer that has not yet been completed receives nothing, money transaction offices carrying out money transfers in or from the Caribbean Netherlands are required to take adequate measures to safeguard the moneys they receive for a money transfer. This requirement applies irrespective of the identity of the person from whom the moneys have been received and as long as these moneys have not yet been paid or made payable to the beneficiary.

DNB considers this protection of the rights of clients to be an integral part of the controlled operation of money transaction offices that carry out money transfers of this kind in or from the Caribbean Netherlands. The requirement included in article 5 of this Regulation can thus be traced back to article 3:19 of the Bfm BES concerning the general aspects of controlled operations of – in this case – money transfer offices. The moneys received can be safeguarded in various ways, for example by means of an unconditional bank guarantee or comparable guarantee

⁷ Section 1:1, subsection 1, opening words and (c) of the Wfm BES reads: ‘This Act and the provisions based on the Act understand, unless specified otherwise, the following as: [...] *money transaction*: [...] (c) taking delivery of funds or monetary values as part of a money transfer, in order to make such funds or monetary values payable or have them made payable in the same form or in another form elsewhere, or paying or making payable funds or monetary values as part of a money transfer after such funds or monetary values have been made available in the same form or in another form elsewhere, such to the extent that the money transfer is an autonomous service; [...]’.

of a third party or by the transfer of the funds to a separate account. It is the task of the money transaction office concerned to devise an adequate method of asset separation.

Notes on article 6 (duty of notification to DNB under the sanctions legislation)

Under the Sanctions Act 1977 (*Sanctiewet 1977*) (Part 7) and the Sanctions (BES Islands) Regulation (*Sanctieregeling BES*) (Government Gazette 2011, 2873), international sanctions apply to financial transactions in the Caribbean Netherlands as well. This concerns – in brief – international financial sanctions against countries or jurisdictions, natural or legal persons, organisations or entities. For example, financial sanctions have been instituted against Iran for failure to comply with the prohibition on the proliferation of nuclear weapons and against organisations involved in national and international terrorism such as Al Qaida and the Taliban. Such a financial sanction often means that all bank accounts and funds of a natural or legal person or organisation must be frozen or that no further financial transactions may be conducted with it or financial services provided to it.

Under section 3.13, subsection 1, of the Wwft BES, any financial enterprise has an obligation to notify DNB if it gets a ‘hit’ in its records, i.e. a match between a client or prospective client (a natural or legal person or entity involved in a financial service or financial transaction) and a natural or legal person or entity that is the subject of a sanction. Under section 3.13, subsection 2, of the Wwft BES, DNB determines how such notification must be given. This has been elaborated in article 6 of this Regulation, which provides that a hit must be notified using the *notification format* adopted by DNB, which is available on DNB’s special website for the Caribbean Netherlands (www.cn.dnb.nl). The financial enterprise that gives the notice completes the notification format as fully as possible and then sends it by e-mail or fax to DNB as soon as possible after establishing a hit. The notification must also indicate the sanctions regulation or decree on the basis of which the financial enterprise gives the notification.

For the record, it should be noted that section 3.13 of the Wwft BES also includes the obligation to keep notifications and the accompanying data for five years after the regulation which formed the basis for the notification ceases to apply (see subsection 3). A financial enterprise is also obliged, on request, to provide DNB with data about the implementation of this duty of notification (see section 3.13, subsection 4, Wwft BES).

Notes on articles 7 and 8 (financial safeguards and charts of accounts of credit institutions)

Articles 7 and 8 of this Regulation contain the prudential regulations and applicable reporting framework for credit institutions having their registered office in the public bodies, i.e. in the Caribbean Netherlands. In the period from 10 October 2010 to 1 July 2012 (i.e. the transitional stage) these prudential regulations and the applicable reporting framework were included in chapter 2 (entitled ‘Credit institutions’) and Annex I (entitled ‘Supervisory regulations for credit institutions’) of the Financial Markets (BES Islands) Regulation 2010 (*Regeling Financiële Markten BES 2010*) (Government Gazette 2010, 14616).⁸ Under the Wfm BES the power to introduce further prudential rules is once again given to DNB itself.

⁸ The full title of this ministerial regulation is: *Regulation of the Minister of Finance of 17 September 2010, containing provisions to implement the Insurance Agency and Broking (BES Islands) Act, the Banking and Credit System (Supervision) (BES Islands) Act 1994, the Investment Firms and Trust service providers (Supervision) (BES Islands) Act, the Disclosure of Control in Listed Companies (BES Islands) Act and the Insurance Industry (Supervision) (BES Islands) Act (Financial Market (BES Islands) Regulation 2010)*. The original version of this regulation was published in the Government Gazette of 1 October 2010, no. 14616, and was supplemented in the Government Gazette of 19 November 2010, also under no. 14616.

In article 7 of this Regulation, DNB also implements the following assignments in the Bfm BES to introduce rules or further rules governing financial safeguards:

- *Rules relating to the minimum amount of own funds and the capital adequacy (qualifying capital) of credit institutions:*

- article 4:9, paragraph 2, Bfm BES (standardised approach to credit risk);
- article 4:10, paragraph 2, Bfm BES (use of credit ratings);
- article 4:14, paragraph 1, Bfm BES (required capital adequacy for market risk);
- article 4:15, paragraph 2, Bfm BES (basic indicator of operating risk);
- article 4:19, paragraph 3, Bfm BES (large exposures); and

- *Rules relating to the liquidity of credit institutions:*

- article 4:29, paragraph 4, Bfm BES (liquidity of credit institutions).

In article 7, paragraph 7, of this Regulation, DNB implements article 4:13 of the Bfm BES concerning the recognition of credit rating agencies and the procedure to be observed in this connection.⁹

For the purposes of articles 7 and 8 of this Regulation the transitional law in connection with the Basel II Capital Accord is relevant in this connection, as provided for in article 11:1 of the Bfm BES.¹⁰ The introduction of Basel II by the CBCS is presently projected to take place at the start of the 2014 financial year and will be accompanied by the introduction of new charts of accounts. It follows from the transitional provisions of article 11:1 that up to the introduction of Basel II the prudential rules of the CBCS that previously applied to the minimum amount of own funds, the capital adequacy (qualifying capital) and the liquidity of credit institutions continue to apply. This also applies to the present reporting framework for credit institutions of the CBCS (the present charts of accounts). This means that until the introduction of Basel II credit institutions can continue to make use of the existing CBCS charts of accounts and demonstrate by timely submission of these charts that they meet the prudential requirements for minimum capital, capital adequacy and liquidity.

⁹ At the moment when this Regulation was drawn up, the Open Book Supervision fact sheet entitled 'Application of the rules on credit risk – recognised credit rating agencies' (see: <http://www.toezicht.dnb.nl/2/50-201810.jsp>) included the following passage: 'DNB, in consultation with the other bank supervisors of the European Union, has recognised the following four eligible ECAs: DBRS (Dominion Bond Rating Services); Fitch Ratings; Moody's Investors Service; Standard & Poor's Ratings Services'.

¹⁰ This transitional article 11:1 of the Bfm BES reads as follows:

'Chapter 11. Final provisions

§ 1. Transitional law

Article 11:1 (transitional law in connection with Basel II)

A credit institution which has its registered office in the public bodies shall, in derogation from the rules laid down by or pursuant to article 4:3 or 4:29, have adequate solvency and liquidity until 1 January 2014 if it complies with articles 2.2 to 2.5 of the Financial Markets (BES Islands) Regulation 2010, which is the name by which this regulation was known immediately before this Decree came into force".

The notes on individual articles read as follows in relation to transitional article 11:1 of the Financial Markets (BES Islands) Decree: 'The rules in chapter 4, section 2, of this Decree which relate to the minimum own funds and the capital adequacy of credit institutions are based on Basel II. The same applies to the liquidity rules for credit institutions laid down in article 4:29. The introduction of Basel II requires the adoption of new charts of accounts and action by the relevant credit institutions to adjust their systems accordingly. Introduction is planned for the start of 2014, i.e. at a later date than the entry into force of the present Regulation. For this reason, article 11:1 contains a transitional provision. Until the introduction of Basel II the rules existing previously, as contained in chapter 2, sections 2 (capital adequacy and liquidity) and 3 (charts of accounts), of the Financial Markets (BES Islands) Regulation 2010 will remain temporarily in force. This means that credit institutions can continue using the old charts of accounts issued by the CBCS and can demonstrate by means of these charts that they have adequate solvency and liquidity. The transitional measure will continue in force until the introduction of the new charts of accounts based on Basel II with effect from 2014.'

For the record, it should also be noted that credit institutions that have their registered office abroad are exempted from the obligation to submit charts of accounts to DNB. This follows from article 1:5, paragraph 1, of the Financial Markets (BES Islands) Regulation 2012 (*Regeling Financiële Markten BES 2012* / Rfm BES 2012; see Government Gazette 2012, 10818) in conjunction with article 5:5 of the Bfm BES. This therefore concerns credit institutions with a registered office outside the BES Islands – i.e. credit institutions that have a registered office in Curaçao or St Maarten¹¹ – and operate in the Caribbean Netherlands through a branch or by providing services.

If a credit institution having its registered office in the Caribbean Netherlands forms part of a group, the rules on consolidated supervision of credit institutions are also relevant. For the sake of brevity, reference is made to article 10 of this Regulation and the relevant explanatory notes.

Notes on article 9 (charts of accounts of insurers)

Article 4:27, paragraph 2, of the Bfm BES provides that DNB may adopt further rules governing the extent to which and conditions on which assets are taken into account in determining the solvency margin of insurers. For the time being, DNB is not exercising this regulatory power. This means that the prudential rules of DNB relating to insurers having their registered office in the Caribbean Netherlands remain limited for the time being to the rules in article 9 on the periodic submission of charts of accounts. In the transitional phase from 10 October 2010 to 1 July 2012, this reporting framework was included in chapter 3 of the Financial Markets (BES Islands) Regulation 2010 (*Regeling Financiële Markten BES 2010*) (Government Gazette 2010, 14616) of the Minister of Finance. Under the Bfm BES this regulatory power is once again vested in DNB itself.

Here too, insurers who have their registered office abroad are exempted from the obligation to submit charts of accounts to DNB. This follows from article 1:5, paragraph 2, of the Rfm BES, in conjunction with article 5:6 of the Bfm BES. This therefore concerns insurers that have their registered office outside the BES Islands – i.e. have an office in Curaçao or St Maarten¹² – and operate in the Caribbean Netherlands through a branch or by providing services.

If an insurer having its registered office in the Caribbean Netherlands forms part of a group, the rules on supplementary group supervision also apply to insurers. For the sake of brevity, reference is made in this connection to article 11 of this provision and the relevant explanatory notes.

Notes on articles 10 and 11 (consolidated supervision of groups of credit institutions and supplementary supervision of groups of insurers)

Sections 3:44 to 3:48 of the Wfm BES contain provisions on group supervision. A distinction is made in this connection between on the one hand consolidated supervision of credit institutions having their registered office in the Caribbean Netherlands and forming part of a group (see in particular section 3:45 of the Wfm BES) and, on the other, supplementary supervision of insurers

¹¹ See section 3:1, subsection 1, of the Wfm BES for the requirement that a financial enterprise must have its registered office in Curaçao or St Maarten. See also the transitional provision of article 10:3 of the Wfm BES for foreign financial enterprises that already operated in the Caribbean Netherlands prior to 1 July 2012.

¹² See footnote 11.

having their registered office in the Caribbean Netherlands and forming part of a group (see in particular section 3:46 of the Wfm BES).

These provisions on group supervision in the Wfm BES are elaborated in sections 4:48 and 4:49 of the Bfm BES and article 10 of this Regulation in respect of consolidated supervision of credit institutions. Basically this Regulation provides that a credit institution having its registered office in the Caribbean Netherlands and forms part of a group at consolidated level (i.e. at the level of the parent company) complies with the Provisions for the Disclosure of Consolidated Financial Highlights of Domestic Banking Institutions and the related appendices of the CBCS of 2009/2010.¹³ Or, to put it another way, where a credit institution having its registered office in the Caribbean Netherlands is a subsidiary of a parent credit institution or a parent holding company having its registered office in the country of Curaçao or in the country of St Maarten, compliance with the consolidated reporting framework of the CBCS must take place at the level of the parent company. The Consolidated Financial Highlights of the parent company, which are submitted periodically to the CBCS, also relate in that case to the independent subsidiary bank in the Caribbean Netherlands.

Articles 4:50 and 4:51 of the Bfm BES and article 11 of this Regulation contain details of the supplementary group supervision of insurers. This means that an insurer having its registered office in the Caribbean Netherlands must comply at consolidated level (i.e. at the level of the parent company) with the Provisions for the Disclosure of Consolidated Financial Highlights of Insurance Companies, Transacting Business in the Netherlands Antilles of the CBCS of January 2010,¹⁴ including the relevant appendices.¹⁵

In articles 10 and 11 of this Regulation DNB also implements the assignment in article 4:48, paragraph 3, of the Bfm BES (concerning the consolidated supervision of credit institutions) and in article 4:50, paragraph 3, of the Bfm BES (concerning the supplementary supervision of insurers in a group) with regard – in brief – to the reporting of intra-group agreements and exposures of bank groups and insurance groups respectively.

Notes on the final provisions (articles 12, 13 and 14)

To avoid a situation in which every future amendment or addition to this Regulation requires a decision of both the AFM and DNB, article 12 of this Regulation provides that this Regulation may also be amended by a separate decision of the AFM or DNB. An important precondition for such a unilateral amendment is that it does not affect the remit of the other supervisory authority. For example, the AFM will in future be able to amend the level of the insured amount for professional liability insurance of intermediaries (see article 2 of this Regulation) without a decision on the part of DNB being required, while DNB will be able to amend unilaterally the rules on sound and controlled operations of section 3.2, the rules on the sanctions legislation of section 3.3 and the prudential rules of chapter 4 of this Regulation without the need for a decision by the AFM on this point. On the other hand, the list of integrity-sensitive positions in article 3 of this Regulation will, in principle, require a joint decision of the two supervisory authorities because this provision affects the remit of both authorities. It seems logical, incidentally, that the AFM and DNB will always coordinate between themselves any amendments or additions to this Regulation and inform each other of proposed amendments.

¹³ See <http://www.centralbank.an/uploads/files/ProvisionsFinancialHighlights.pdf>

¹⁴ See <http://www.centralbank.an/uploads/files/Provisions%20Disclosure%20Financial%20Highlights.pdf>

¹⁵ See <http://www.centralbank.an/index.php?eid=1032>

It should be noted that the date chosen for the entry into force of this AFM and DNB Regulation is the same as that of the Wfm BES and the Wwft BES, namely 1 July 2012 (see Bulletin of Acts and Decrees 2012, 240¹⁶). It is therefore provided in this context that article 13 has retroactive effect to 1 July 2012. This retroactive effect has no material significance for the financial enterprises that are subject to supervision since this Regulation mostly builds on the existing supervision rules for the Caribbean Netherlands that have existed since 10 October 2010. An exception to this retroactive effect is made with regard to those parts which are new in relation to the supervision rules that applied before 1 July 2012. Exceptions are made for the minimum cover of the professional liability insurance for certain intermediaries (article 2), the asset separation in the case of money transaction offices (article 5) and the prescribed notification format for hits on the basis of the sanctions regulations (article 6). These exempted provisions will take effect from the day after publication of this Regulation in the Government Gazette.

The short title included in article 14 clearly reflects the fact that this is a joint regulation of the AFM and DNB. This short title needs no further explanation.

De Nederlandsche Bank N.V.,

A.J. Kellermann, director

J. Sijbrand, director

Netherlands Authority for the Financial Markets

R. Gerritse, chairman

Th.F. Kockelkoren, director

¹⁶ This concerns the *Decree of 22 May 2012 adopting the date of entry into force of the Financial Markets (BES Islands) Act, the Money Laundering and Terrorist Financing (Prevention) (BES Islands) Act, the Financial Markets (BES Islands) Decree and the Money Laundering and Terrorist Financing (Prevention) (BES Islands) Decree* (Bulletin of Acts and Decrees 2012, 240).