
Annex F-5

Chapter 5.2. Rules on access to the Dutch financial markets for market operators and on operating or managing a regulated market

Section 5.2.1. Access to the Dutch financial markets for market operators

Section 5:26

1. No party may operate or manage a regulated market in the Netherlands without a licence granted for that purpose by Our Minister.
2. Subsection (1) shall not apply to operating or managing a regulated market having its registered office in another Member State that has been licensed by the supervisory authority of that other Member State, insofar as the market operator has taken appropriate measures in the Netherlands in order to better enable the long-distance members or participants based in the Netherlands to gain access to and trade on this market.
3. On application, Our Minister may grant a full or partial dispensation from Subsection (1) if the applicant demonstrates that the objectives which this chapter seeks to achieve are achieved in other ways.

Section 5:27

1. On application, Our Minister shall grant a licence as referred to in Section 5:26(1) if the applicant demonstrates that the market operator has its registered office in the Netherlands and that it will comply with the provisions arising from:
 - a. Section 5:29 with regard to the properness of the persons referred to in that section;
 - b. Sections 5:30 and 5:32(1) with regard to the rules of the regulated market;
 - c. Section 5:30, opening words and under (f) with regard to the financial resources to promote the orderly operation of the regulated market;
 - d. Section 5:32a(1)(a) with regard to the rules on the admission of financial instruments to trading on the regulated market; and
 - e. Section 5:32b with regard to the rules on access to the regulated market.
2. The licence application shall contain the data to be specified by or pursuant to a Decree.
3. The market operator shall ensure that the rules referred to in Subsection (1), their application and the monitoring of compliance with those rules will meet the standards necessary with a view to the interests which this Act seeks to protect.
4. The market operator shall notify the Authority for the Financial Markets of every intended change to the rules referred to in Subsection (1) or to the monitoring of compliance with those rules, and of every intended change with regard to subjects on which data must be provided pursuant to the sections referred to in Subsection (1).
5. Provisions may be laid down by or pursuant to a Decree as regards the data to be provided on the occasion of the changes referred to in Subsection (4), the manner in which the notification is made and, where applicable, the conditions on which the changes may be implemented.
6. Our Minister shall publish a notification of an order to grant a licence as referred to in Subsection (1) and the revocation of such an order in the Government Gazette.

Part 5.2.2. Operating or managing a regulated market

Section 5:28

For the purposes of the provisions arising from this section, the term «market operator» shall be understood to mean: a market operator licensed in accordance with Section 5:26(1).

Section 5:29

1. The day-to-day policy of a market operator shall be determined by persons expert in conducting the business of the regulated market.
2. The policy of the market operator shall be determined or co-determined by persons whose properness is beyond doubt. If a body within the market operator is responsible for supervising the policy and the general affairs of the regulated market, the properness of the persons exercising this supervision shall be beyond doubt.
3. The expertise or properness of a person as referred to in Subsections (1) and (2) respectively shall be beyond doubt once this has been established for the purposes of this Act by a supervisor, as long as a change in the relevant facts or circumstances has not given reasonable cause for a reassessment.

4. The market operator shall inform the Authority for the Financial Markets of the names and addresses of the persons referred to in Subsections (1) or (2), and of any changes with regard to these details insofar as they relate to the persons referred to in Subsections (1) or (2).

5. The market operator shall submit an intended change in the persons referred to in Subsection (2) to the Authority for the Financial Markets for approval.

6. The Authority for the Financial Markets shall consent to an intended change with regard to the persons referred to in Subsection (2), unless this change could be a specific threat to the healthy and prudent management or operation of the regulated market.

Section 5:30

A market operator shall ensure that the regulated market:

- a. has rules and procedures for identifying and controlling potential negative consequences for the operation or proper functioning of the regulated market or for its participants of conflicts between the interests of the regulated market, the owners or the market operator;
- b. is adequately equipped to control the risks to which it is exposed, in any case by having rules and regulations for identifying all significant risks to the operation and for taking effective measures to limit those risks;
- c. has rules and procedures for a healthy management of the technical operation of the system and effective precautionary measures to eliminate risks relating to system breakdowns;
- d. has transparent, non-discretionary rules and procedures that guarantee fair and orderly trading, as well as objective criteria for the efficient execution of orders;
- e. has effective rules and procedures for settling transactions carried out through its system efficiently and in time; and
- f. has 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.

Section 5:31

1. If a market operator licensed in accordance with Section 5:26(1) delegates activities to a third party, the market operator shall ensure that such third party complies with the rules applicable under this part with regard to those activities.

2. By or pursuant to a Decree:

- a. rules may be laid down, for the purpose of supervision of compliance with the provisions arising from this part, with regard to the delegation of activities by market operators;
- b. rules may be laid down with regard to the control of risks entailed by the delegation of activities by market operators; and
- c. rules shall be laid down with regard to the contracts to be concluded between market operators and third parties relating to the delegation of activities.

3. A market operator shall not be affiliated to persons in a formal or actual control structure which is so lacking in transparency that it constitutes or may constitute an impediment to the adequate exercise of supervision of compliance with this Act by the market operator.

4. A market operator shall not be affiliated to persons in a formal or actual control structure if the law of a non-Member State, applicable to those persons, constitutes or may constitute an impediment to the adequate exercise of supervision of compliance with this Act by the market operator.

Section 5:32

1. A market operator shall adopt effective rules and procedures in order to regularly check ongoing compliance with these rules by the members of or participants in the regulated market, and shall apply these rules.

2. The market operator shall monitor the transactions conducted by its members or participants via the regulated market, so as to be able to identify violations of the rules and procedures referred to in the preceding subsection, as well as trading conditions disrupting the orderly operation of the market or actions indicative of market abuse.

3. The market operator shall report serious violations as referred to in Subsection (2) to the Authority for the Financial Markets.

4. The market operator shall, without delay, supply the applicable information to the Authority for the Financial Markets, the Public Prosecution Service or investigating officers competent under the Economic Offences Act, and shall fully cooperate with the Authority for the Financial Markets, the Public Prosecution Service or these investigating officers in their investigation or prosecution of actions indicative of market abuse that have occurred in or via its systems.

Section 5:32a

1. A market operator shall adopt clear and transparent rules:
 - a. on the admission of financial instruments to trading on the regulated market;
 - b. in order to verify that issuers which issued financial instruments admitted to trading on the regulated market fulfil their obligations regarding the initial, ongoing or incidental provision of information;
 - c. which make it easier for the members of or participants in the regulated market to access information in the public domain; and
 - d. in order to regularly check whether the financial instruments admitted to trading on the regulated market satisfy the conditions of admission.
2. The market operator shall ensure the effective enforcement of the rules referred to in Subsection (1).
3. The market operator may admit to trading on the regulated market securities that have already been admitted to trading on another regulated market without the issuer's consent, if the provisions of Chapter 5.1 are complied with in respect of those securities. The market operator shall notify the issuer of the admission.
4. An issuer shall not be obliged to supply the information referred to in Subsection (1)(b) to a market operator that admitted its securities to trading without its consent.

Section 5:32b

1. A market operator shall adopt transparent and non-discriminatory rules, based on objective criteria, with regard to access to trading on or membership of the regulated market, and shall ensure the effective enforcement of those rules.
2. The rules referred to in Subsection (1) shall contain obligations for the members of or participants in the regulated market ensuing from:
 - a. the establishment and management of the regulated market;
 - b. the rules regarding transactions on the regulated market;
 - c. the professional standards applicable to the staff members of the investment firms operating on the regulated market;
 - d. the conditions laid down by the regulated market for members or participants other than investment firms;
 - e. the rules and procedures for the clearing and settlement of transactions conducted on the regulated market.
3. The rules referred to in Subsection (1) shall provide for the possibility of direct participation or long-distance participation by investment firms.
4. Rules may be laid down by or pursuant to a Decree as regards the rules referred to in Subsection (1).
5. The market operator shall not include any obligations in the rules referred to in Subsection (1) that are contrary to the interests which this Act seeks to protect.

Section 5:32c

Only the following parties may be admitted as members of or participants in a regulated market that has been licensed in accordance with Section 5:26(1):

- a. investment firms;
- b. credit institutions;
- c. persons who: 1°. are expert and proper;
- 2°. possess adequate competences and powers in respect of trading;
- 3°. where applicable, have taken adequate organisational measures;
- 4°. have sufficient resources for the activities which they perform as a member or participant, taking account of the various financial regulations which the market operator may have adopted to guarantee the adequate settlement of transactions.

Section 5:32d

1. No party may, except after obtaining a declaration of no objection, own, acquire or increase a qualifying holding or exercise any control relating to a qualifying holding in a market operator licensed in accordance with Section 5:26(1).
2. On application, Our Minister shall issue a declaration of no objection in respect of an act as referred to in Subsection (1), unless:
 - a. the act might or would have the effect that the market operator concerned becomes affiliated to persons in a formal or actual control structure that is so lacking in transparency that it would constitute

- an impediment to the adequate exercise of supervision of compliance with the rules applicable to the regulated market;
- b. the act might or would lead to an influence on the market operator concerned that is contrary to the interests which this Act seeks to protect; and
 - c. the act might jeopardise the healthy and prudent management of the regulated market.
3. A notification of the issuance of a declaration of no objection as referred to in Subsection (1) shall be published in the Government Gazette, unless the publication would or might lead to a disproportionate advantage or disadvantage for interested parties.
4. Our Minister may attach limitations and conditions to the declaration of no objection, based on the considerations referred to in Subsection (2).
5. If any party owns, acquires or increases a qualifying holding as referred to in Subsection (1) without having obtained a declaration of no objection in respect of that act, or without observing the limitations attached to the declaration of no objection, that party shall reverse that act within a period to be specified by Our Minister, or shall still observe the limitations within a period to be specified by Our Minister. This obligation shall lapse at the moment when and insofar as a declaration of no objection is subsequently issued in respect of the act concerned, or the non-observed limitations are revoked.
6. If any party exercises control relating to a qualifying holding in a market operator without having obtained a declaration of no objection in respect of owning the qualifying holding or exercising that control, or without observing the limitations attached to the declaration of no objection, a decision adopted owing in part to the control exercised shall be capable of annulment. The decision may be declared null and void on the demand of Our Minister or of the market operator over which the control was exercised. In that event, the decision shall be declared null and void by the court within whose jurisdiction the market operator is based if, but for the exercise of the control concerned, the decision would have been different or would not have been adopted, unless a declaration of no objection is issued or the non-observed limitations are revoked before the date of the judgment. Where necessary, the court shall provide for the consequences of the annulment.
7. Where conditions or limitations have been attached to a declaration of no objection as referred to in Subsection (1), the holder of the declaration of no objection shall observe those conditions or limitations.

Section 5:32e

A market operator shall provide investment firms having their registered office in another Member State that have been licensed by the supervisory authority of that Member State to provide investment services as referred to under (b) of the definition of providing an investment service in Section 1:1 or to perform investment activities as referred to under (a) of the definition of performing an investment activity in Section 1:1, and that satisfy the other conditions for membership or participation, with the opportunity to take part in trading on a regulated market that has been licensed in accordance with Section 5:26(1):

- a. from a branch office in the Netherlands; or
- b. otherwise than from a branch office in the Netherlands, if the trading procedures and systems of the regulated market do not require a physical presence to conduct transactions on that market.

Section 5:32f

1. A market operator that intends to take appropriate measures in another Member State that will better enable its members or participants based in that Member State to access and trade on that market, shall inform the Authority for the Financial Markets of such intention.
2. Within one month of receiving the notification referred to in Subsection (1), the Authority for the Financial Markets shall inform the Member State concerned of the intention.

Section 5:32g

1. A market operator may not suspend trading in a financial instrument on the regulated market or exclude a financial instrument from trading where that instrument no longer complies with the rules of the regulated market, if such a measure might seriously harm the interests of investors or the orderly operation of the regulated market.
2. A market operator that suspends trading in a financial instrument or excludes a financial instrument from trading shall disclose this decision and notify the Authority for the Financial Markets. The Authority for the Financial Markets shall notify the supervisory authorities of the other Member States.

Section 5:32h

1. The Authority for the Financial Markets may oblige a market operator, by issuing an instruction, to suspend, interrupt or cancel trading in a particular financial instrument within a reasonable term to be specified by the Authority for the Financial Markets, if this is required with a view to protecting the interests of the investors in the financial instrument or the orderly trade in the financial instrument.
2. Having issued an instruction as referred to in Subsection (1), the Authority for the Financial Markets may request the Court of Rotterdam to exclude the financial instrument concerned from trading on the regulated market, if this is required with a view to protecting the interests of the investors in the financial instrument or the orderly trade in the financial instrument.

Section 5:32i

1. The Authority for the Financial Markets shall disclose its decision to suspend, interrupt or cancel trading in the financial instrument, or the judgment of the Court of Rotterdam to exclude the financial instrument from trading, immediately after its announcement and shall notify the supervisory authorities of the other Member States.
2. Where the Authority for the Financial Markets is notified by the supervisory authorities of another Member State of a decision to suspend, interrupt or cancel trading in a financial instrument or of the exclusion of a financial instrument from trading on a regulated market in that Member State, and the financial instrument is admitted to trading on a regulated market that has been licensed in accordance with Section 5:26(1), the Authority for the Financial Markets shall issue an instruction to the market operator concerned to suspend, interrupt or cancel trading in the financial instrument concerned, or shall request the Court of Rotterdam to exclude the financial instrument concerned from trading on the regulated market, unless this might seriously harm the interests of the investors in the financial instrument or the orderly operation of the trade in the financial instrument. Where the financial instrument is traded by an investment firm that conducts the business of an investment firm operating as a systematic internaliser or that operates a multilateral trading facility, the preceding sentence shall apply mutatis mutandis with regard to that investment firm.

Section 5:32j

1. A market operator shall disclose the bid and offer prices issued via the regulated market and the size of the market at these prices in respect of shares admitted to trading.
2. The market operator shall ensure that the information referred to in Subsection (1) is continuously available to the public on reasonable commercial terms and conditions and during the normal trading hours of that regulated market.
3. A market operator which provides investment firms that have to disclose their share prices pursuant to Section 4:91g with access to the facilities which it uses to disclose the information referred to in Subsection (1), shall do so on reasonable commercial terms and conditions and on a non-discriminatory basis.
4. On application, the Authority for the Financial Markets may grant a dispensation from Subsection (1) if the market operator complies with Articles 18 to 20 of the Regulation implementing the Markets in Financial Instruments Directive.
5. Provisions may be laid down by Decree to the effect that Subsections (1) to (4) will apply mutatis mutandis with regard to financial instruments other than shares.
6. Subsection (1) shall not apply to units in a collective investment scheme that are repurchased or repaid either directly or indirectly out of the assets at the unit holder's request.

Section 5:32k

1. A market operator shall disclose the price, scope and time of the transactions conducted via the regulated market in shares admitted to trading.
2. The market operator shall disclose the information referred to in Subsection (1) on reasonable commercial terms and conditions and within a timeframe as close as possible to real time.
3. On application, the Authority for the Financial Markets may permit the market operator to delay the disclosure referred to in Subsection (1) on the basis of the type or scope of the transaction, if:
 - a. it has agreed to the proposed provisions for the delayed disclosure; and
 - b. the market operator supplies clear information on those provisions to the market participants and the investor public.
4. A market operator which provides investment firms that have to disclose the price, scope and time of the transactions conducted pursuant to Section 4:91n with access to the facilities which it uses to disclose the information referred to in Subsection (1), shall do so on reasonable commercial terms and conditions and on a non-discriminatory basis.

5. Provisions may be laid down by Decree to the effect that Subsections (1) to (4) will apply mutatis mutandis with regard to financial instruments other than shares.

6. Subsection (1) shall not apply to units in a collective investment scheme that are repurchased or repaid either directly or indirectly out of the assets at the unit holder's request.

Section 5:32l

1. A market operator:

a. shall supply the Authority for the Financial Markets with information on its ownership structure and that of the regulated market it operates or manages, in particular on the identity of and size of the interests held by parties that are in a position to exert a significant influence on the management of the regulated market;

b. shall report to the Authority for the Financial Markets each transfer of ownership that causes a change in the circle of persons exerting a significant influence on the operation of the regulated market; and

c. shall disclose the information referred to under (b).

2. The market operator shall periodically provide the Authority for the Financial Markets with a list of the members of and participants in the regulated market.

3. The market operator shall submit an intended change as referred to in Subsection (1)(b) to the Authority for the Financial Markets for approval.

4. The Authority for the Financial Markets shall consent to an intended change as referred to in Subsection (1)(b), unless this change could be an objective and demonstrable threat to the healthy and prudent management of the regulated market.

Section 5:32m

A market operator shall not prohibit the use of systems for settling transactions in financial instruments conducted on the regulated markets concerned, unless:

a. the links and interfaces between the system chosen by the members or participants concerned and other systems or facilities, and the efficient and economic settlement of the transactions concerned, cannot be guaranteed; or

b. the Authority for the Financial Markets is of the opinion that the technical conditions for settling the transactions conducted on that market via the designated system preclude a proper and orderly operation of the financial markets.