REGULATION ON SUPERVISION PURSUANT TO THE SANCTIONS ACT 1977

Regulation of the Netherlands Authority for the Financial Markets (Autoriteit Financiële Markten) *and De Nederlandsche Bank NV of 28 September 2005 providing for rules for the compliance by financial institutions with the rules regarding financial transactions imposed by or under the Sanctions Act 1977 (Regulation on Supervision pursuant to the Sanctions Act 1977)* (Regeling toezicht Sanctiewet 1977)

The Netherlands Authority for the Financial Markets and De Nederlandsche Bank NV:

Having regard to section 10(2), section 10b and section 10f of the Sanctions Act 1977 (*Sanctiewet 1977*);
Having regard to the Sanctions Act 1977 Transfer Order (*Overdrachtsbesluit Sanctiewet 1977*) (Staatsblad* 2002, 403);
Having regard to the Sanctions Act 1977 Legal Entities Designation Order (*Aanwijzingsregeling rechtspersonen Sanctiewet 1977*) (Staatscourant** 2002, 106, last amended by Ministerial Order of 27 August 2002, Staatscourant** 2002, 165);

Having consulted the Minister of Finance;

HAVE DECIDED AS FOLLOWS:

Section 1
For the purposes of this Regulation, the following terms shall have the meanings hereby respectively assigned to them:
a. *institution*: an institution as referred to in section 10(2), under a up to and including h, of the Sanctions Act 1977;
b. *relation*: anyone involved in a financial service or a financial transaction;
c. *Sanctions Regulations*: the Sanctions Act 1977 and the regulations, orders and decisions regarding financial transactions issued under the Sanctions Act 1977;
d. *supervisory authority*: the Netherlands Authority for the Financial Markets or De Nederlandsche Bank NV, to the extent that these legal entities have been charged with the supervision of compliance by institutions with the provisions regarding financial transactions imposed by or under the fifth division of the Sanctions Act 1977.

Section 2
1. The institution shall ensure that, in the areas of administrative organisation and internal control, it has taken measures to comply with the Sanctions Regulations.
2. The measures as referred to in subsection (1) shall at least provide for an adequate check of the records kept by the institution in order to establish any correspondence between the identity of a relation and that of a natural or legal person or entity referred to in the Sanctions Regulations, in order to permit that relation's assets to be frozen or to prevent financial resources from being made available, or services from being rendered, to that relation.

* Bulletin of Acts, Orders and Decrees.
** Government Gazette.

Section 3
If the institution ascertains that the identity of a relation corresponds to that of a natural or legal person or entity as referred to in the Sanctions Regulations, it shall notify this to the supervisory authority forthwith. When making the notification, the institution shall also submit the data on the identity of the relation to the supervisory authority.

Section 4
The institution shall keep the notifications referred to in section 3 as well as the data on accounts of and transactions with the relations involved in the notifications for a period of five years after the Sanctions Regulations in which the relevant natural or legal person or entity was mentioned, have ceased to have effect or have been made inoperative.

Section 5
If so requested, the institution shall submit to the supervisory authority data about the implementation of the present regulation.

Section 6
Chapter 6A of the Regulation on Conduct of Business and Administrative Organisation under the Act on Money Transfer Offices (*Regeling bedrijfsvoering en administratieve organisatie Wet inzake de geldtransactiekantoren*) (Staatscourant* 2002, 136) shall cease to have effect.

Section 7
1. This regulation shall enter into force on 1 October 2005.
2. This regulation may be cited as the Regulation on Supervision pursuant to the Sanctions Act 1977.

This regulation and the explanatory memorandum thereto shall be published in the Staatscourant*.

Amsterdam, 28 September 2005

De Nederlandsche Bank NV,
/s/ D.E. Witteveen

Netherlands Authority for the Financial Markets,
/s/ A.W.H. Docters van Leeuwen
/s/ P.M. Koster

* Government Gazette.

EXPLANATORY MEMORANDUM

I GENERAL EXPLANATORY NOTES

1 Introduction

1.1 General

The present regulation serves to formally define the task assigned to the supervisory authority by virtue of Division 5 of the Sanctions Act 1977 (*Sanctiewet 1977*)[1]. It supersedes the Notification Instruction (*Meldinstructie*)[2]. In a material sense, the instructions contained in the present regulation largely correspond to those contained in the Notification Instruction. After the entry into force of the present regulation, the Notification Instruction may be regarded as having ceased to have effect. In those cases where the present regulation refers to the supervisory authority, the reference is to the Netherlands Authority for the Financial Markets (*Autoriteit Financiële Markten* - hereinafter referred to as AFM) or De Nederlandsche Bank NV (hereinafter referred to as DNB).

The explanatory memorandum to the present regulation serves to provide further clarification in some respects with regard to the regulations as they were contained in the Notification Instruction. Furthermore, this explanatory memorandum serves to provide an indication of the minimum level of effort which the supervisory authority expects an institution to undertake in order to comply with the provisions ensuing from the Sanctions Act 1977. In this respect, the focus is on a principle-based implementation of the present regulation.

The present regulation explicitly makes allowance for the drive to reduce the costs of compliance. This aspect is discussed in further detail under 7 below.

1.2 Scope

The present regulation applies to any institution in respect of which AFM or DNB has been charged with the supervision of compliance with the Sanctions Act 1977. These institutions are credit institutions (in respect of which DNB has been appointed supervisory authority), life, non-life and funeral services insurance companies (DNB), money transfer offices ((DNB), pension funds (DNB), securities institutions (AFM) and (management companies) of collective investment schemes (AFM)[3]. In due course, trust offices will also be brought within the scope of the present regulation; currently, however, the legal basis offered by the Sanctions Act 1977 is insufficient to permit this. In cases where reference is made in this explanatory memorandum to an institution, the reference is to one of the institutions listed above. For the exact definitions and scope, the reader is referred to section 10 of the Sanctions Act 1977, and more in particular to subsection (2), under a up to and including h, of said section.

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[1] Act of 15 February 1980 providing for sanctions against certain states or regions, Staatsblad 1980, 93, last amended by Act of 17 December 2003, Staatsblad 2004, 9.

[2] At the time, the Notification Instruction was drafted jointly by AFM, DNB and the Pensions and Insurance Supervisory Authority of the Netherlands (*Pensioen- en Verzekeringskamer*). The first version dates from July 2002 and has been published since on the websites of AFM and DNB.

[3] In this context, reference is made to section 10(2), under a up to and including h, of the Sanctions Act 1977, sections 2 and 3 of the Sanctions Act 1977 Transfer Order (*Overdrachtsbesluit Sanctiewet 1977*) (Staatsblad 2002, 403) and the Sanctions Act 1977 Designation Order (*Aanwijzingsregeling Sanctiewet 1977*) of the Minister of Finance of 5 June 2002, Staatscourant 2002, 106, last amended by Ministerial Order of 27 August 2002, Staatscourant 2002, 165.

Given the diversity of institutions covered by the present regulation, the manner of complying with the provisions of the regulation will differ from one institution to the next. An institution should itself decide what measures are called for within its organisation to ensure adequate compliance with the present regulation and with the Sanctions Regulations in general. The supervisory authority assesses the choices made by the institution and the measures taken by it and does so using a principle-based approach, to the extent that this is permitted by the provisions of the present regulation (see under 4.3 below).

1.3 Structure

This explanatory memorandum consists of general explanatory notes and explanatory notes to the individual sections of the regulation. Under 2 and 3 in the general explanatory notes, an explanation is provided of the legal framework of the Sanctions Act 1977 and of the supervision exercised within that framework. Under 4, an outline is presented of the supervisory authority's expectations as to the measures to be taken by an institution to ensure an adequate check of its records. Under 5, the notifications to the supervisory authority are discussed in more detail. The importance of cooperation between the public and the private sector is highlighted under 6. Finally, under 7, the administrative burden and the costs of compliance are discussed. In the explanatory notes to the individual sections, a more detailed discussion is provided of some specific instructions contained in the present regulation, to the extent that these have not yet been dealt with in the general explanatory notes.

2 Sanctions Act 1977

In 2002, the legislature decided to invest the financial supervisory authorities AFM, DNB and the then Pensions and Insurance Supervisory Authority of the Netherlands (*Pensioen- en Verzekeringskamer*) with powers to impose rules regarding the administrative organisation and internal control (hereinafter referred to as AO/IC) of institutions and regarding the provision of data by institutions in compliance with the Sanctions Regulations[4]. For an explanation of the concept of Sanctions Regulations, the reader is referred to the explanatory notes to section 1. The statutory amendment required to permit the supervision to be introduced entered into force in 2002.

The present regulation is based on sections 10, 10b and 10f of the Sanctions Act 1977. The supervision under the Sanctions Act 1977 solely concerns so-termed financial sanction regulations, or, in other words, sanction regulations regarding financial transactions, as distinct from other sanction regulations, such as those regarding a trade boycott, a flight ban, an arms embargo or visa restrictions.

3 Background

Since the introduction of supervision under the Sanctions Act 1977, the focus has been mainly on streamlining the exchange of information about the implementation of the Sanctions Regulations. On the one hand, this concerned the streamlining of the supply of information by the authorities to the institutions by the development of an electronic "freeze list"[5], accessible

[4] For more detailed information, the reader is referred to Parliamentary Documents II 28251, 2002.

[5] At present, this is the "electronic-Combined Targeted Financial Sanctions List" (e-CTFSL) on the European Commission's website. Previously, the list was kept on the websites of AFM and DNB.

on the internet, and by sending circular letters describing the latest developments in the area of the Sanctions Regulations. On the other hand, it concerned the streamlining of the supply of information by the institutions to the authorities, which led to the introduction of the Notification Instruction and the Notification format (*Meldformat*). The information in question mainly regarded frozen financial assets and (possible) correspondence between relations and natural or legal persons or entities mentioned in the Sanctions Regulations (that is, mentioned in the "freeze list").

The present regulation describes in more detail the minimum level of effort which the supervisory authority expects an institution to undertake in regard of AO/IC measures. These measures should ensure that the institution is able to act adequately in conformity with the objectives of the Sanctions Regulations and, subsequently, to inform the supervisory authority adequately about the actions taken (for instance, about the frozen financial assets). In respect of the measures to be taken, an institution may rely in part on AO/IC measures already taken in compliance with other regulations that have a bearing on the present regulation. A case in point is constituted by measures which some institutions must take to control integrity risks, such as customer due diligence measures.

4. Adequate check of records

4.1 Introduction

The AO/IC measures to be taken must at least provide for an adequate check of the institution's records in order to identify relations corresponding to natural or legal persons or entities referred to in the Sanctions Regulations, in order to permit such relations' assets to be frozen or to prevent financial resources from being made available, or services from being rendered, to such relations (see section 2). In the design of the AO/IC measures, special attention should be paid to the following aspects:

- the objective of the Sanctions Regulations;
- a principle-based approach;
- the relation, and
- timely action.

These aspects are discussed below. It should be noted that, if an institution opts to outsource the check of its records to a third party, the outsourcing institution remains invariably responsible for compliance with the present regulation.

4.2 Objective of the Sanctions Regulations

For institutions, the basic point of departure must be that they act in line with the objectives of the Sanctions Regulations. That is the principle-based notion underlying the present regulation. The AO/IC measures to be taken by an institution must thus be in conformity with these objectives. In a general sense, the objectives of the Sanctions Regulations are the maintenance or restoration of international peace, security or the furtherance of the international legal order or the fight against terrorism[6]. More specifically, the Sanctions Regulations in the area of financial transactions (that is, the financial sanctions) seek to ensure that no financial resources are, or are made, available, whether directly or otherwise, to

[6] See section 2 of the Sanctions Act 1977.

natural or legal persons or entities mentioned in the Sanctions Regulations. This means, among other things, that financial assets which such natural or legal persons or entities hold with a financial institution must be frozen.

The national Sanctions Regulations have often been adopted in order to penalise departures from a norm laid down in a European Regulation. Hence, the specific norms (and objectives) of these European Regulations should be kept in mind. The fact is that the norms may differ from one European Regulation to the next. The following basic difference may serve as a guideline when seeking compliance with the norms (and objectives) of the European Regulations.

Most of the Sanctions Regulations that are currently in force provide for an obligation to freeze financial assets of natural or legal persons or entities mentioned in the Sanctions Regulations and for the prevention of financial resources being made available to these natural or legal persons or entities. All names of these natural and legal persons and entities have been pooled in the so-termed "electronic-Combined Targeted Financial Sanctions List" (e-CTFSL), which is available on the website of the European Commission[7]. In order to ensure compliance with the various sanction measures with the afore-mentioned objectives, the same AO/IC measures may be taken[8].

In addition, there are Sanctions Regulations that concern other norms than those described in the preceding paragraph, such as the sanctions against the Democratic Republic of Congo[9]. Instead of providing for the freezing of financial assets, these sanctions introduce a prohibition against the provision of financial resources or financial assistance for such purposes as the sale of arms. Consequently, an institution must take measures to prevent it from becoming involved in transactions serving the aforementioned purpose. It appears probable that, in order to ensure compliance with the various sanctions with this objective, different AO/IC measures must be taken. A case in point could be additional due diligence in respect of transactions with the country at which the sanctions are aimed.

Hence, compliance with the Sanctions Regulations may call for different procedures for checking the institution's records and therefore also for the AO/IC measures to be taken. In this respect, a broad distinction may be made between two categories of objectives (prevention of undesired trade and combating terrorism). It might be noted that this may be liable to change in the future.

It should also be noted that the Sanctions Regulations not only ensue from European Regulations, but may also be imposed in implementation of other international decisions (for instance, resolutions of the UN Security Council). Moreover, in some cases national Sanctions Regulations are adopted, which are also published on the websites of AFM and DNB.

Generally, the Sanctions Regulations do not specify in detail which acts are and which acts are not permitted. Thus, in each individual case the objectives of the Sanctions Regulations must be kept in mind as a guideline for the action to be taken within the organisation. Clues in

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[7] See http://europa.eu.int/comm/external_relations/cfsp/sanctions/list/consol-list.htm

[8] At present, these are, for instance, the sanctions against the Al-Qaida network and others (Regulation 881/2002, OJ L 139), the sanctions against certain persons and entities with a view to combating terrorism (Regulation 2580/2001, OJ L 344) and the sanctions against Iraq (Regulation 1210/2003, OJ L 169).

[9] See Regulation 1727/2003, OJ L 249. Other Regulations providing for comparable measures are the sanctions against Sudan (Regulation 131/2004, OJ L 21) and Somalia (Regulation 147/2003, OJ L 24).

that respect are provided by the definitions of terms such as freezing[10], financial assets and financial services as contained in the Sanctions Regulations.

4.3 Principle and risk-based

The AO/IC measures to be taken should lead to a situation where an institution is capable of checking its records in such a way that, briefly, it can detect and freeze financial assets of the natural and legal persons and entities mentioned in the Sanctions Regulations and can inform the supervisory authority accordingly forthwith. Considering the deliberate choice for "principle-based" standards, the institution must itself decide how it will conduct the check and what it needs for that purpose. The institution may implement its procedures in a risk-oriented manner. The institution is expected to make an independent risk assessment to serve as a basis for the measures to ensure compliance with the present regulation. In each individual case, the institution must ascertain that the risk that a financial service or transaction will lead to funds being made available to one of the natural or legal persons or entities mentioned in the Sanctions Regulations is minimised. This calls for an adequate risk analysis of the entire organisation.

The following may serve as an illustration. One example of a risk-based approach is a situation where the focus is on monitoring international transactions through banks from non-EU countries rather than on monitoring those conducted through EU banks. The fact is that the latter are all subject to the same European Sanctions Regulations as the Dutch-based banks. Furthermore, a securities institution may consider that the risk of financing terrorism posed by clients who hold funds or securities with, and hence already have dealings with, a credit institution, is lower and thus calls for less attention than that posed by clients who have no such dealings.

An institution must be aware at all times that it risks committing an economic offence if it fails to comply with the Sanctions Regulations. The tax authorities/FIOD (Fiscal Investigation and Detection Service)-ECD (Economic Surveillance Department) are the competent enforcement authorities. The supervisory authority will merely assess the AO/IC measures taken in implementation of the present regulation and will do so using a principle-based approach. In the event that the supervisory authority considers the measures taken inadequate, it will enforce the provisions of the present regulation using the instruments of enforcement assigned to it (such as a direction, a fine or a cease and desist order under penalty).

4.4 The term "relation"

An adequate check of the institution's records includes checking whether the identity of the institution's new and existing relations matches that of natural or legal persons or entities mentioned in the Sanctions Regulations. In the Notification Instruction, the term "relation" (*relatie*) was used. In order to avoid terminological confusion, it has been decided to use the term "relation" in the present regulation as well. This is distinct from the term "client" (*cliënt*) as used in, for instance, the Identification (Provision of Services) Act (*Wet identificatie bij dienstverlening*). The Sanctions Regulations are broader in scope than the Identification (Provision of Services) Act and do not contain a definition of the term "client". Since in most

[10] For instance, in article 1 of Council Regulation (EC) No 2580/2001 (OJ L 344), the concept of "freezing of funds, other financial assets and economic resources" is defined as "the prevention of any move, transfer, alteration, use of or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the funds to be used, including portfolio management".

cases the Sanctions Regulations ensue from international obligations and norms, it is not possible here to limit or broaden their scope.

The term "relation" refers to among others, an institution's clients, the beneficiaries of a transaction or product (for instance, life insurance payments), the ultimate beneficiary of financial assets, correspondent banks and the other party to a financial transaction or product (for instance, in the case of an indemnity insurance payment). The institution should make due allowance for the fact that authorised agents, too, may have access to accounts and/or financial assets. In the present regulation, it has been decided to define the term "relation" as anyone involved in a financial service or a financial transaction. In this respect, too, the AO/IC measures should match the objectives of the Sanctions Regulations. As noted under 4.2 above, most Sanctions Regulations in the area of financial transactions seek to ensure that no financial resources are, or are made, available to certain persons and entities.

4.5 Timely action

It stands to reason that the efficacy of the Sanctions Regulations heavily depends on whether an institution takes timely action as soon as a change has been effected in the Sanctions Regulations. After all, anyone who notices that his name is mentioned in the Sanctions Regulations will attempt to safeguard his financial assets before they can be frozen. Hence, an institution is expected, when taking AO/IC measures, to ensure a timely check of its records. An adequate check is thus also taken to mean a timely check. The e-CTFSL of the European Commission, as referred to under 4.2, may help an institution to obtain timely information about changes in the Sanctions Regulations[11]. On the basis of its risk analysis, the institution may itself decide what exactly constitutes timely action, given the services and products it offers and given the category of clients with which it has dealings.

5 Notifications

5.1 Notifications to the supervisory authority

The Notification Instruction provided that so-called hits with the "freeze-list" had to be notified to the supervisory authority. In a material sense, this obligation continues to exist by virtue of section 3 of the present regulation. In this respect, the Notification Instruction distinguished between the notification of an "exact or a highly probable hit" and the notification of a "possible" hit.

Practice has shown that institutions also notify "possibly" matching identities in cases where it is already evident that a match between the two identities is (highly) improbable. Notifications of "possibly" matching identities in such cases imposes an unnecessary burden on the scarce resources available to the supervisory authority and the intelligence service (the domestic and/or foreign intelligence service). Moreover, such notifications involve an unnecessary administrative burden for the institution itself. In order to mitigate the negative effects of unnecessary notifications, an institution should only make a notification to the supervisory authority in cases where the identities match.

In the present regulation, the distinction made in the Notification Instruction between the two types of notifications is modified. The present regulation provides that the notification must

[11] See also footnote 7

be made as soon as it is ascertained that the identity of a relation corresponds to that of a natural or legal person or entity mentioned in the Sanctions Regulations. In this context, the term "identity" refers to the names and any other identifying data, such as birthdates and places of residence or establishment, of the natural or legal persons or entities.

In its decision whether or not to make a notification, the institution may also consider the profile and/or behaviour of the relation concerned. The institution may use information obtained from its customer due diligence efforts when assessing the degree of correspondence of identities. The supervisory authorities have worked out a Notification Procedure (*Meldprocedure*), which may also be relied on when deciding whether or not to make a notification. The Notification Procedure is available on the websites of AFM and DNB.

The process, as described above, whereby an institution decides whether to not to make a notification to the supervisory authority is, of course, attended by a similar process in order to decide whether or not the institution should take follow-up action (such as refusing to effectuate a transaction or freezing financial assets) under the Sanctions Regulations.

5.2 Null notifications

The Notification Instruction provided that each institution also had to inform the supervisory authority in the event that the check of its records had produced no hits. Given the administrative burden involved in these notifications and the value of the relevant information for the supervisory authority, it has been decided to cancel this provision. Consequently, this provision no longer features in the present regulation.

5.3 Notifications to the Disclosures Office

The Notification Instruction also dealt with notifications to the Disclosures Office (*Meldpunt Ongebruikelijke Transacties*) under the Notification Duty Order (*Meldplichtbesluit*)[12] issued under the Sanctions Act 1977. The Notification Instruction provided that, when making a notification to the Disclosures Office, an institution had to send a copy to the supervisory authority. Here, the same reasoning is applicable as described under 5.2 above, so that it has been decided not to include this provision in the present regulation.

5.4 Notifications consequent on the "watch list"

The so-called "watch list", which contained the names of persons who and entities which were suspected by the intelligence services of being involved in terrorism, does not at present contain any names. Hence, the present regulation does not refer to this "watch list".

6 Joint action

The objective of the Sanctions Act 1977, as already referred to under 4.2 above, implies that all parties should act in the best interests of society, nationally as well as internationally. That also implies cooperation among all parties that may be instrumental in achieving that objective. Here, cooperation between institutions and the authorities is indispensable. That is the very notion underlying the present regulation. By issuing the present regulation and the

[12] Order of 11 October 2002 pursuant to the Sanctions Act 1977, on the notification of transactions which could suggest the financing of terrorism (Staatsblad 2002, 553).

appurtenant explanatory memorandum, the supervisory authority seeks to provide an insight into its expectations as to the efforts to be undertaken by institutions and thus to provide them with clues for their compliance with the Sanctions Regulations.

7 Burden of compliance

As already noted in the introduction, the present regulation explicitly makes allowance for the drive to reduce the burden of compliance. It is estimated that, on balance, the present regulation eases the burden of compliance. Below, an overview is provided of the changes in the burden of compliance resulting from the present regulation.

Decrease in the burden:

- the principle-based effectuation of AO/IC measures for checking the institution's records and the risk-oriented implementation of the Sanctions Regulations (see under 4.3 above);
- the abolition of the obligation to make null notifications to the supervisory authority (see under 5.2 above);
- the abolition of the obligation to provide the supervisory authority with a copy of each notification to the Disclosures Office (see under 5.3 above).

Increase in the burden:

- the obligation, as provided for in section 4, to keep the data of the notification as well as of accounts and transactions of the relation concerned leads to an increase in the burden of compliance. In practice, this additional burden will generally be very small considering the limited number of notifications in which the identity of a relation matches that of a natural or legal person or entity mentioned in the Sanctions Regulations. In specific cases, this may lead to an increase in the burden of compliance for an individual institution.

During the consultations that were held with the sector about the present regulation, some associations of financial institutions noted that, on balance, the decrease in the administrative burden would at most be marginal and that the regulation might even increase the burden. In the feedback provided to the sector, it was explained once more why a decrease in the burden is expected.

II EXPLANATORY NOTES TO THE INDIVIDUAL SECTIONS

Section 1 Definitions

<u>Definition of "Sanctions Regulations"</u>
Since the Sanctions Act 1977 is an enabling Act, the provisions that must be complied with are laid down in orders and regulations issued under the Sanctions Act 1977. Hence, it has been decided to use the collective term "Sanctions Regulations". The term covers the Sanctions Act 1977 as well as the orders and regulations issued under that Act. These orders and regulations are often adopted to implement international regulations (notably EU Regulations and UN Security Council Resolutions). In a few isolated cases, regulations are adopted at the national level only, for instance in anticipation of the adoption of an EU Regulation. Under the Sanctions Act 1977, regulations, orders and decisions are issued which concern various categories of sanctions, such as financial sanctions, economic sanctions, flight bans and visa restrictions. The present regulation only concerns sanctions in respect of financial transactions (that is, financial sanctions).

Definition of "institution"
The definition of "institution" refers to the institutions mentioned in section 10(2), under a up to and including h, in the Division on supervision in the Sanctions Act 1977 and to the institutions in respect of which AFM or DNB has been designated as supervisory authority.

Definition of "relation"
The reader is referred to 4.4 above in the general explanatory notes.

Section 2 Obligations of the institution regarding the conduct of its business
For an explanation, the reader is referred to 4 above in the general explanatory notes.

Section 3 Obligation to notify the supervisory authority
The provision of data includes at least the submission of data about the identity of the relation which have been recorded in pursuance of the Identification (Provision of Services) Act (*Wet identificatie bij dienstverlening*), a statement of the amount of the balance frozen, a statement of the number of the money, securities or investment account as well as, where applicable, a brief description of the exact nature of the relation (including, for instance, nostro/loro), and a statement of the name, address and telephone/fax number of the contact within the institution. In addition, an indication should be provided of the sanction provisions underlying the action taken. The requested data are equal to those that were required under the Notification Instruction. The data should be provided using the Notification Format. The Notification Format is available on the websites of AFM and DNB.

Section 4 Obligation to keep records
In order to ensure that relevant information about the notified relation remains available within an institution, section 4 provides that, in addition to the data contained in the notification, the account and transaction data regarding the relation must also be kept. The obligation to keep these records implies that information must also be kept about any changes in the data (for instance, a change in the balance of the accounts) if an exemption under the Sanctions Regulations is applicable. Such an exemption may consist of a dispensation or an authorisation permitting a change to be effected in the account concerned. This provision only concerns account and transaction data of relations whose identity matches that of a natural or legal person or entity mentioned in the Sanctions Regulations. In practice, only a few cases have been in evidence yet. Consequently, the impact of this provision will be limited.

It should be noted that, as soon as an institution has frozen financial assets, it should scrutinise the underlying sanctions regulation (and, if necessary, the European Regulation) for possible exemptions. In general, the financial assets should remain frozen until the relevant sanctions regulation (or European Regulation) is changed and the obligation to freeze the assets is lifted.

Section 5 Power of the supervisory authority to seek information
Section 5 provides that the supervisory authority may request information from an institution about compliance with the present regulation. This power to seek information ensues from section 10b(2) of the Sanctions Act 1977 and does not detract from the powers assigned pursuant to Division 5:2 of the General Administrative Law Act (*Algemene wet bestuursrecht*). This means, for instance, that the supervisory authority may at all times seek information from an institution about frozen assets and about transactions that have been effected. Such requests for information may be made during the period of validity of the relevant Sanctions Regulations but also later. The fact is that, when a certain sanctions

regulation is repealed or lifted, stock will often have to be taken, for instance, of the amount of frozen financial assets internationally. For that to be done, an institution must be capable of providing information about frozen financial assets, including transaction data, to the supervisory authority for a period of five years after a sanctions regulation has been repealed or lifted.

Section 6 Provisions no longer in force
In the Regulation on Conduct of Business and Administrative Organisation under the Act on Money Transfer Offices (*Regeling bedrijfsvoering en administratieve organisatie Wet inzake de geldtransactiekantoren*) (Staatscourant* 2002, 136), Chapter 6A has been reserved for rules regarding compliance by money transfer offices with the provisions on financial transactions of or under Division 5 of the Sanctions Act 1977. This Chapter 6A is no longer necessary, since the present regulation – which is also applicable to money transfer offices – provides for such rules.

Sections 7 and 8 Entry into force and short title
These sections are self-evident and require no explanation.

Amsterdam, 28 September 2005

De Nederlandsche Bank NV,
/s/ D.E. Witteveen

Netherlands Authority for the Financial Markets,
/s/ A.W.H. Docters van Leeuwen
/s/ P.M. Koster

* Government Gazette.