



Act on Financial Supervision

**Information brochure for issuing institutions, directors
and supervisory directors**



The Netherlands Authority for the Financial Markets

The AFM promotes fairness and transparency within financial markets. We are the independent supervisory authority for the savings, lending, investment and insurance markets. The AFM promotes the conscientious provision of financial services to consumers and supervises the honest and efficient operation of the capital markets. Our aim is to improve consumers' and the business sector's confidence in the financial markets, both in the Netherlands and abroad. In performing this task the AFM contributes to the prosperity and economic reputation of the Netherlands.

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Foreword

The Act on Financial Supervision (Wft) entered into force on 1 January 2007. Chapter 5.3 of the Wft contains the rules for notifying voting rights, share capital, control and share capital interest in issuers. The Decree on the Disclosure of Major Holdings and Capital Interests in Issuing Institutions (the Decree), which was based on the abovementioned Act, also entered into force on 1 January 2007.

Chapter 5.3 of the Wft implements the Transparency Directive (Directive 2004/109/EC). The Transparency Directive sets requirements with respect to the information on issuers whose shares are admitted to trading on a regulated market.

As of 1 January 2009, Chapter 5.3 of the Wft and the Decree on the Disclosure of Major Holdings and Capital Interests in Issuing Institutions have been adjusted as a result of the implementation of Directive 2007/14/EC intended to establish specific implementation regulations with respect to a number of provisions of the Transparency Directive.

Reference will be made hereinafter, for the sake of clarity, to the Wft where the rules for notifying voting rights, share capital, control and share capital interest in issuers within the meaning of Chapter 5.3 of the Wft are concerned. With respect to the Decree on the Disclosure of Major Holdings and Capital Interests in Issuing Institutions, reference will be made hereinafter, for the sake of brevity, to the "Decree". The other Sections of the Act on Financial Supervision will be referred to as "Section ... of the Act on Financial Supervision".

This brochure was drawn up to provide a general idea of the rules that apply with respect to the Wft. This brochure also refers to relevant (legal) documents and other sources of information. The purpose of this brochure is to provide information. No rights can be derived from this brochure. Therefore do not use this brochure as your sole source of information when making decisions. If the text of the brochure deviates from the text and explanation of the Act and the Decree, the Act and the Decree will prevail.

This brochure is intended for issuers, directors and supervisory directors.

This brochure does not pertain to the obligations imposed on shareholders pursuant to the Wft unless stated otherwise hereinafter. Reference is made, with respect to the latter group, to the separate Information Brochure for Shareholders.

Reference is made to the Information Brochure for Shareholders for an explanation of the duties, powers and enforcement options of the AFM.

Introduction and explanation of terms

The objective of the Wft is to increase the transparency of the control and share capital interests in issuers and to simplify the notification process for those subject to the notification obligation. The Annex contains a table with the subjects that are discussed in this brochure, with a reference to the relevant sections of law of the Wft and, where applicable, reference to the Decree.

Terms

This brochure deals in greater detail with the manner in which the issuer, its directors and supervisory directors, and the AFM have to comply with the provisions of the Wft. This brochure makes use of several legal terms that are briefly explained below. These terms have been included in the definitions of Section 1:1 of the Act on Financial Supervision and, where applicable, in derogation thereof, in Section 5:33 of the Wft.

Share:

- 1) a transferable share as meant in Section 79 (1) of Book 2 of the Dutch Civil Code;
- 2) a depositary receipt of a share or another transferable security equivalent to a depositary receipt of a share;
- 3) any other transferable security other than an option as meant under 4, to acquire a share meant under 1 or a security meant under 2;
- 4) an option to acquire a share meant under 1 or a security meant under 2.

Issuer:

A public limited company incorporated under Dutch law whose shares are admitted to trading on a regulated market or a legal person incorporated under the law of a non-Member State whose shares are admitted to trading on a regulated market in the Netherlands.

In derogation of the definition of an issuer included above, with respect to notifications by directors and supervisory directors of shares or related voting rights in the own issuer or issuers affiliated to it, an issuer will be taken to mean: a public limited company incorporated under Dutch law whose shares are admitted to trading on a regulated market.

An affiliated issuer

This concerns every other issuer:

- 1) with which the issuer, within the meaning of the abovementioned notifications by directors and supervisory directors, is affiliated within a group or in which the issuer has a holding and whose most recently established turnover amounts to at least ten per cent of the consolidated turnover of the issuer.
- 2) which, directly or indirectly, provides more than 25 per cent of the share capital of the issuer.

Voting/voting rights:

voting rights which may be exercised in respect of shares, including rights under a contract to acquire voting rights.

Regulated market:

multilateral system which brings together or facilitates the bringing together of multiple buying and selling interests in financial instruments – within the system and in accordance with its non-discretionary rules – in a way that results in a contract with regard to financial instruments that have been admitted to trading in accordance with the rules and system of that market, and which operates on a regular basis and in accordance with the applicable rules on licensing and ongoing supervision;

For the sake of clarity, a regulated market is taken to mean: a regulated market in an EU Member State.

Regulated market in the Netherlands:

a regulated market in which the market holder is recognised within the meaning of Section 5:26(1) of the Act on Financial Supervision.

Share capital:

the issued share capital of an issuer.

Share capital interest:

the interest in the issued share capital of an issuer.

Substantial holding:

at least five per cent of the share capital or the right to exercise at least five per cent of the voting rights, whereby the voting rights to which a person is entitled or is considered to be entitled, pursuant to Section 5:45 of the Wft, is included in the number of votes a person may cast.

Controlled undertaking:

a subsidiary as meant in Section 2:24(a) of Book 2 of the Dutch Civil Code or an undertaking over which a person has the power to exercise dominant control.

Threshold:

a percentage of the share capital or the voting rights which, when a person holding or acquiring shares or who may exercise or acquire voting rights reaches, exceeds or falls below such a threshold, may lead to a notification obligation pursuant to the Wft. The thresholds are 5, 10, 15, 20, 25, 30, 40, 50, 60, 75 and 95 per cent.

Party obliged to notify

A person that is obliged to make a notification pursuant to the Wft.

At the time this brochure was printed, the states that were considered equal to Member States of the European Union (not being a Member State of the European Union, but which are party to the Agreement on the European Economic Area) comprised the following:

- Iceland,
- Liechtenstein and
- Norway.

To what companies does the Wft apply?

The notification obligation relates to:

- public limited companies,
- incorporated under Dutch law, and
- whose shares are admitted to trading on a regulated market.

or to

- legal persons
- incorporated under the law of a non-Member State, and
- whose shares are admitted to trading on a regulated market in the Netherlands.

With respect to notifications by directors and supervisory directors of an own issuer, an issuer will be taken to mean:

- a public limited company,
- incorporated under Dutch law, and
- whose shares are admitted to trading on a regulated market.

It is responsibility of the party subject to the notification obligation to investigate whether 'admitted to trading on a regulated market' applies (which is to say, listed on a regulated market). We would note, for the sake completeness, that trading in shares on the so-called unlisted securities market does not fall under these statutory provisions, because, in such cases, a company has not concluded a Listing Agreement with the market holder of a regulated market.

When does the Wft apply to which company?

The following schedule provides an overview of which companies fall under the full regime of the Wft or to which companies Section 5:47 of the Wft applies.

Incorporated under which law?	Listed where?	Full Wft regime applies?	Does Section 5:47 of the Wft apply?
Public limited company under Dutch law	The Netherlands	Yes	No
Public limited company under Dutch law	Other EU Member State	Yes	No
Public limited company under Dutch law	The Netherlands and in another EU Member State	Yes	No
Public limited company under Dutch law	Not in a EU Member State	No	No
Legal person under non-EU law	The Netherlands	Yes	No
Legal person under non-EU law	Other EU Member State	No	No
Legal person under non-EU law	The Netherlands and in another EU Member State	Yes/No	Yes/No
Legal person under non-EU law	Not in a EU Member State	No	No
Legal person under EU law, not being Dutch law	The Netherlands	No	No
Legal person under EU law, not being Dutch law	Other EU Member State	No	No
Legal person under EU law, not being Dutch law	Not in a EU Member State	No	No

It follows from Section 5:47 of the Wft that a number of notification provisions do not apply and that other thresholds apply. Section 5:47 of the Wft makes reference to Section 2(1)(n) of the Transparency Directive. It has to be established which EU country must be considered Member State of origin or receipt in the event a legal person is incorporated under non-EU law.

If shares in a company incorporated under non-EU law are only admitted to trading on a regulated market in the Netherlands, all provisions of the Wft will apply. The Netherlands will, in such cases, serve as the Member State of origin according to the Transparency Directive. If shares in a company incorporated under non-EU law are admitted to trading on a regulated market in both the Netherlands and in another EU Member State, a distinction has to be made on the basis of the place where the shares were first admitted to trading on a regulated market. If this is the Netherlands, for example, all provisions of the Wft will apply. However, if, for example, the shares were first admitted to trading on a regulated market in France and only later in the Netherlands, Article 5:47 of the Wft will apply and, as a result, exemption from several notification obligations will apply as will different thresholds. In such cases, the Netherlands will be considered Member State of receipt pursuant to Section 2(1)(n) of the Transparency Directive.

If the shares are admitted simultaneously to trading on a regulated market in, for example, France and the

Netherlands, the company that will become an issuer (see page 11) may choose under which national legislation of the relevant EU Member States it wishes to fall.

An additional example for clarification purposes: an American legal person (legal person incorporated under non-EU law) whose shares are admitted to trading on a regulated market in both America and in the Netherlands will be subject to the full regime of the Wft. Section 5:47 of the Wft does not apply to this legal person as the Netherlands is the only Member State in which the shares are admitted to trading on a regulated market.

Investment company

It is important to note that the Wft does not apply to an investment company whose rights of participation are bought or redeemed, directly or indirectly, upon the request of the participants, at the expense of the assets of the relevant investment company.

Who are subject to the notification obligation?

To answer the question as to who is subject to the notification obligation, a distinction must be made between the issuer who has an independent notification obligation and the directors and supervisory directors of the issuer. It is noted, for the sake of clarity, that the notification obligation imposed on insiders pursuant to Section 5:60 of the Act on Financial Supervision is discussed separately on page [15] of this brochure.

The notification obligation, with respect to notifications pursuant to the Wft, arises the moment an issuer or director or supervisory director knows or should know that a change occurs in its capital or in its shares or voting rights respectively.

Notification obligations

Issuers

Shareholders require the denominator data (i.e. the issued capital, the shares into which this capital is divided and the voting rights that can be exercised on them) of the issuer in order to make correct notifications.

Changes of 1% or more

The issuer shall, without delay, inform the Authority for the Financial Markets (AFM) of any change to its capital if its capital has changed by more than 1% as compared with the previous notification.

Periodic notification

If the changes jointly amount to less than 1% of its capital in one quarter, a periodic total notification per

calendar quarter will suffice. A periodic total notification only needs to include the total of all changes and not every individual change. Other changes, which have already been notified in the interim, are excluded from this periodic total notification. It is further noted, for the sake of completeness, that if the changes, which are individually smaller than 1%, jointly amount to more than 1% of the capital during a calendar quarter, the issuer will at that time be required to notify the total of the changes. This means, in this case, not after expiry of the calendar quarter.

A periodic (quarterly) notification of an issuer must state the total of the changes as at the end of the month(s) in the relevant calendar quarter. If an issuer, for example, has made changes to its denominator in the first and third month of a calendar quarter, it will be required to make a periodic notification within eight days of expiry of that calendar quarter. In this notification, it will be required to not only report the denominator data as at the end of that calendar quarter, but also the denominator data as they were at the end of the first month of that calendar quarter (in which changes also occurred). It is stated, for the sake of completeness, that if no changes in the capital occurred in a calendar quarter, this need not be reported to the AFM.

Other changes

Other changes, such as distribution of stock dividends and the exercise of option or conversion rights, must also be notified periodically. It applies here as well that if the changes, which are individually smaller than 1%, jointly amount to more than 1% of the capital during a calendar quarter, the issuer will at that time be required to notify the total of the changes. This means, in this case, not after expiry of the calendar quarter.

Changes in voting rights

An issuer is also obliged to notify changes in voting rights attached to shares issued by it. This includes matters such as the implementation, amendment or cancellation of voting right restrictions under the Articles of Association. Any change to the voting rights of the issuer must be notified immediately, to the extent this has not already been done simultaneously with the related capital change of more than 1%. If the latter is the case, this must, after all, (also) be notified immediately. An issuer may notify the AFM of changes to the voting rights, which result from changes to the capital totalling less than 1% of the capital, at the same time as the relevant changes to the capital. These changes must, in principle, be notified per periodic notification (calendar quarter), but may also be notified in the interim, i.e. prior to the moment of the periodic notification, if so desired.

Potential denominator changes

It is stated, for the sake of completeness, that potential denominator changes do not fall under the notification obligation. This could include matters such as the issue of warrants or convertibles.

Depositary receipts for shares

If changes occur, which amount to 1% or more of the capital, in the depositary receipts for shares issued with the issuer's cooperation, this must be reported immediately by the issuer as well. The issuer has a periodic notification obligation in the event of capital changes of less than 1% relating to depositary receipts for shares issued with the issuer's cooperation.

New issuer

If a public limited company, incorporated under Dutch law, or a legal person incorporated under the law of a non-EU Member State, becomes an issuer, it will be required to immediately inform the AFM of its capital and voting rights and of the depositary receipts for shares issued with its cooperation.

Directors and supervisory directors leaving the issuer

The issuer will be obliged to immediately inform the AFM that a director or supervisory director no longer works for the issuer. The departure of persons from the employment of an issuer can be reported to the AFM by sending an email to: melden.en.registreren@afm.nl. The notification obligation imposed on the directors and supervisory directors included in the AFM public database will lapse when the competent company body of the issuer has terminated the appointment. It is AFM policy to have notifications available for inspection in the public database for three months following the date of termination of employment of the relevant person.

Incidental obligations of issuers

On the basis of Sections 5:25(b) and 5:25(h), first and second subsections, of the Act on Financial Supervision, an issuer, whose securities are admitted to trading on a regulated market and in respect of whom the Netherlands acts as Member State of origin, is required to make information concerning changes to the rights attached to shares of a certain class issued by it and concerning changes to the rights to acquire shares issued by the issuer generally available without delay. This may include matters such as changes to rights under the articles of association, changes resulting from a share exchange or conversion and changes to the administration conditions.

Issuers, whose securities, other than the abovementioned shares, are admitted to trading on a regulated market, must also make information concerning changes to the rights of the holders of those securities generally available without delay. Changes to the rights of the holders also include changes to the conditions attached to those securities, if those changes could be of influence on those rights. This may include matters such as changes to the loan conditions or interest rates.

The manner in which information should be made generally available is set out in greater detail in Section 5:25(m) of the Act on Financial Supervision and Section 5 et seq. of the Decree Implementing the Directive on Transparency for Issuers under the Wft. If it intends to amend its articles of association, an issuer will be required, on the basis of Section 5:25(n) of the Act on Financial Supervision, to inform the AFM and the market holder of the regulated market on which its securities are admitted to trading with regard to the structure of this amendment. This notification will take place at the latest at the moment of convening a general meeting at which the amendment will be put to the vote or at which occasion the shareholders are informed of the amendment. The information pursuant to these incidental obligations may be sent to the AFM by sending an email with the information to be submitted to melden.en.registreren@afm.nl

Entries in the public database

Regular notifications made by issuers are entered in the 'Notifications Issued Capital'. Holders of substantial holdings require these data for submitting notifications.

Directors and supervisory directors of issuers

Directors and supervisory directors of issuers are also subject to a notification obligation. It is noted, for the sake of clarity, that if a director or a supervisory director does not hold shares, he is not required to report this to the AFM.

As mentioned above on page 7, with respect to notifications by directors and supervisory directors of an own issuer, an issuer will be taken to mean:

- a public limited company,
- incorporated under Dutch law, and
- whose shares are admitted to trading on a regulated market.

A notification made by a director or a supervisory director may also relate to an affiliated issuer. The definition of an affiliated issuer reads:

Any other issuer:

- 1 with which the issuer is affiliated within a group or in which the issuer has a holding and whose most recently established turnover amounts to at least ten per cent of the consolidated turnover of the issuer;
- 2 which, directly or indirectly, provides more than 25 per cent of the share capital of the issuer.

Designation or appointment of directors and supervisory directors

Directors and supervisory directors are required to inform the AFM of the shares and voting rights held by them in the issuer and the affiliated issuer(s) within two weeks of their appointment. If the director or supervisory director does not hold shares, he will not be required to report this to the AFM.

Designation applies if a supervisory director has been designated in the deed of incorporation. Appointment applies if the competent company body of the issuer has made the appointment. If the appointment was made subject to the suspensive condition of time or approval, the date on which the competent body made the appointment will apply as the date as of which the term of two weeks will commence. This also applies to situations in which a director or a supervisory director enters the employment of an issuer at a later moment than the moment of appointment.

A director or supervisory director of a public limited company that becomes an issuer will report the shares and voting rights held by them in the (affiliated) issuer to the AFM without delay. This obligation will have been complied with if, with respect to the same fact, a notification was made pursuant to Section 5:43 of the Wft.

Changes in shares and voting rights

Furthermore, every change in the shares and voting rights in the issuer and affiliated issuer held by the director or supervisory director must be notified without delay. This notification obligation relates to

changes in both the number and the type of shares that are held. This includes matters such as the award of stock dividend and the exercise of personnel options which means that the director acquires shares and sells these. The director or supervisory director will also be obliged to inform the AFM if he/she decides not to sell the shares acquired by him/her, because this constitutes a change in the type of shareholding. Personnel options that expire without value must also be reported to the AFM without delay. In the event of the award of shares subject to conditions (such as final award after three years of service), the maximum number of shares that can be acquired must be reported.

It is important in this respect that a director or supervisory director, by acquiring or losing shares, may gain control over a percentage of the share capital or voting rights that reaches, exceeds or falls below a threshold, which means that he will become subject to the notification obligation as a holder of a substantial holding. A director or supervisory director may also become subject to the notification obligation in addition to being subject to the notification obligation pursuant to his position as director or supervisory director, if he gains or loses control over one or more shares with a special right under the articles of association regarding control in an issuer.

If a director or supervisory director has submitted a notification pursuant to Section 5:38, first and second subsection, or Section 5:40, first sentence, of the Wft, another report in respect of the same fact pursuant to Section 5:48, sixth and seventh subsection, of the Wft, need not be made. For further information, reference is made to the Information Brochure for Shareholders, in which the above is explained in more detail.

If a director of an issuer is a legal person, the notification provisions will apply accordingly to the natural persons that determine the day-to-day policy of this legal person, as well as to the natural persons that supervise the policy of the management and general course of events at this legal person.

The moment and terms of the notification obligation

Several notification moments apply, such as the moment at which changes occur in the share capital and voting rights of the issuer and the moment when a company becomes an issuer. Another notification moment occurs when a director or supervisory director is appointed. Changes to the share capital and voting rights held by a director or supervisory director also constitute a notification moment. This notification obligation arises the moment an issuer or a director or supervisory director knows or should know that a change in the share capital or voting rights occurs. If the acquisition or loss of the disposal of shares or voting rights is based on an agreement, usually a sale or purchase agreement, the notification obligation arises at the moment the agreement becomes effective.

The moment at which the shares are acquired or transferred (i.e. the time of transfer) from a property law perspective is not relevant, because this moment is usually later than the so-called moment pursuant to the law of obligations. The term within which the actual notification must be made, is determined by the moment at which an issuer or a director or supervisory director knows or should know that the notification obligation has arisen. A director or supervisory director will be required to know that the notification obligation has arisen at most two trading days after he has acquired or lost the disposal of shares or voting rights; notification must be made from that moment without delay. 'Without delay' means that the time between the moment the issuer, director or supervisory director becomes aware or should be aware of a

change in the share capital or voting rights, and the moment the AFM receives the notification, must be as short as possible given the circumstances. The party subject to the notification obligation knows at what time he acquired or lost the disposal of the shares or voting rights, or when he acquired or lost these, for example by actively requesting a transfer confirmation from a bank or broker.

The AFM will strictly verify whether the notification was made without delay. This also in view of the possible consequences of the notification for the share price, whereby carelessness creates the (risk of) abuse of inside information.

The manner in which notifications must be made

The Decree provides that the mandatory notifications must be made in writing. Parties subject to the notification obligation submit their notifications to the AFM, in principle, electronically, by means of an Internet portal. The AFM has a designated website for this purpose entitled Loket AFM. An access code is required to log in at the Loket AFM. Further information is provided at <https://www.loket.afm.nl> concerning the application for access codes. Users logging in for the first time will have to agree in writing with a number of rules concerning the use of the Loket AFM. They will sign a statement of use for this purpose and send it to the AFM. In the unlikely event a notification cannot be submitted electronically to the AFM, use can be made of the notification forms, which can be downloaded from the AFM website and that have to be sent to the AFM by fax or by regular mail. The AFM maintains several public databases, pursuant to the Wft, containing notification data. The public databases can be consulted free of charge via the AFM website.

One-stop notification system

Practice could, in principle, give rise in some cases to a double notification obligation for the issuer, i.e. if, with respect to a transaction, a notification obligation arises not just on the basis of the Wft but also on the basis of other regulations that give rise to a notification obligation. To prevent this concurrence, it has been arranged that the Wft notification of a change in capital will also qualify as a notification to NYSE Euronext Amsterdam N.V.; the AFM will forward the notification to NYSE Euronext Amsterdam immediately after expiry of the calendar quarter with due observance of the term of eight days following the expiry of the calendar quarter for making a periodic notification (see periodic notification).

The AFM will also forward the Wft notifications of capital changes received by it to the Netherlands Chamber of Commerce, which will subsequently process these changes in the Trade Register, at the end of each calendar quarter with due observance of the term of eight days for making a periodic notification (see periodic notification). The AFM will supervise compliance with the obligation imposed on issuers to notify their capital changes in time. It is emphasised that the issuer itself will be responsible to investigate whether, when and to which agencies notifications of capital changes have to be made on the basis of other legislation and regulations.

Other information

Concurrence of Sections 5:48 and 5:60 Act on Financial Supervision

The regulations laid down in Section 5:60 of the Act on Financial Supervision contain, briefly put, the obligation imposed on persons working at issuers (and on persons closely affiliated with them) to report transactions in their 'own companies'. They are required to inform the AFM of transactions for their own account in shares in the company, or in financial instruments whose value is determined in part by the value of these shares. It was already stated on page 9 that the Wft does not apply to the investment companies listed there. Directors and supervisory directors of these investment companies fall under the scope of Section 5:60 of the Act on Financial Supervision. Notifications pursuant to Section 5:60 of the Act on Financial Supervision are recorded in the so-called insider transactions public databases that can be consulted on the AFM's website at <http://www.afm.nl/registers>. Reference is made to the Insider Information Brochure, which can be consulted on the AFM's website for further information and to the regulations laid down in Section 5:60 of the Act on Financial Supervision.

Annex

This annex includes the references to the relevant sections of law of the Wft and the Decree whereby the subject serves as starting point.

Paragraph structure	Wft Section/ other sections of law	Decree Section
Introduction	1:1, 5:33	
To what companies does the Wft apply?	5:33	
When does the Wft apply to which company?	5:47	
Investment company	5:33(2)	
Notification obligations	5:34, 5:35, 5:36, 5:48, 5:25(h), 5:25(o), 5:25(m)	2,3,4,7,9
Entries in the public database	1:107	
Moment and term of notification obligation	Analogous application of Section 5:38	5a
Concurrence of Sections 5:48 and 5:60 of the Wft	5:48, 5:60	

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