

Publication of Investment Recommendations



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.

The AFM operates in two areas:

Financial services

The AFM promotes due care in the provision of financial services to consumers. Businesses and persons who provide financial services must be experts in their field, reliable and ethical. The information provided by financial undertakings and pension providers shall be accurate, clear and not misleading. Companies must act in the interests of their clients; a duty of care rests on them.

Capital markets

The AFM promotes the fair and efficient operation of the capital markets, on which investors can rely. We enforce the rules for participants in the markets for equities and other securities. Market abuse – use of inside information, market manipulation or misrepresentation – is forbidden. Listed companies must publish inside information correctly and in a timely manner. We enforce the rules for the issuance of securities and public takeover bids, for financial reporting and for auditors responsible for auditing this reporting.

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Introduction

Investment recommendations can be published in many forms and varieties, including analysts' reports, columns, articles in magazines, on the radio or television, in newspapers, on the Internet, etc. Investors tend to base their investment decisions (partly) on investment recommendations. To prevent a situation in which investors are misled by investment recommendations, these investment recommendations must meet a number of transparency requirements.

The information that has to be provided on the basis of these requirements allows investors to assess the status or credibility of a recommendation or the interests the producers and publisher of the recommendations hold and ensures that investors have a sound basis for their investment decisions. An investor can then decide for himself how much value he wants to attach to the investment recommendation.

Briefly put, the regulations regarding investment recommendations state that the publisher must be transparent regarding certain subjects:

- I) the identity of producer and publisher of the recommendation;
- II) safeguarding that the recommendation gives a fair representation of the state of affairs;
- III) information that reasonably could be assumed to bring the objectivity of the investment recommendation into question.

Depending of the capacity of the publisher of the recommendation and its content, certain transparency rules must be met, ranging from a light regime (only the identity of the producer and the publisher has to be disclosed) to a strict regime requiring full transparency regarding positions held and conflicts of interest. This brochure explains which regime has to be followed by whom in the various circumstances. The general rule is that recommendations published by natural or legal persons whose main business is in the securities industry (such as independent analysts, investment firms, etc.) must meet the full transparency requirements. These groups of professionals have already been complying, for some time now, with all or some of the transparency requirements, on the basis of an industry code of conduct or as initiated by British or American usage and regulation.

Everyone is free to write whatever they wish. The regulations applying to the publication of investment recommendations do not limit the freedom to express an opinion, but are solely intended to increase transparency towards investors.

With this brochure the AFM provides a further explanation of the rules applying to the publication of investment recommendations. This regulation arises directly from the European Market Abuse Directive¹ and is incorporated in the Netherlands in Section 5:64 of the Financial Supervision Act [*Wet op het financieel toezicht*, hereinafter the Wft] and in Sections 15 to 19 of the Market Abuse Decree [*Besluit marktmisbruik Wft*, hereinafter the Market Abuse Decree].

The brochure can also be used as a manual for those publishing investment recommendations who wish to check which requirements have to be met in specific situations.

In addition to informing those who may be publishing investment recommendations, this brochure is also useful for the recipients of investment recommendations, as it informs them of the requirements with which the investment recommendations have to comply. These requirements might provide the reader with a benchmark in their assessment of whether to use an investment recommendation or not when making their investment decision.

This brochure is designed to provide a general impression of the obligations applying to the publication of investment recommendations. The brochure also refers to relevant (legal) documents and other sources of information. It is intended to provide information. No rights may be derived from it. You should not only base your action solely on the basis of this brochure. If the text of the brochure differs from that of the Acts or Decrees referred to, the latter shall prevail.

The original texts of the European Market Abuse Directive, the Commission Regulation², the Wft and the Market Abuse Decree can be found at the AFM's website (www.afm.nl).

1 Who should read this brochure?

Mainly the professional publishers of recommendations, such as independent analysts, investment firms (and their employees) and other persons whose main business is the publication of investment recommendations, are expected to set an example. Due to their size and specific roles in the market, they play an important part in the creation of a transparent and fair market. Recommendations from these parties create trust on the part of the investors.

This brochure is intended for anyone who disseminates or publishes investment recommendations. Investment recommendations can be published in various ways and may appear in many forms. Furthermore, it is possible to disseminate a recommendation that has been published previously by a third party under one's own responsibility. This may be in unaltered, altered or summarised form.

As soon as an investment recommendation is published, it must satisfy a number of requirements. Since these requirements can vary depending the identity of the publisher, this brochure is intended for all those who publish investment recommendations either professionally (in the context of their profession or business) or occasionally. This therefore includes analysts and financial journalists, but also private citizens.

1.1 Producer or publisher?

The obligation to publish the information about the recommendation in (or with) an investment recommendation applies to the publisher of that recommendation, i.e. the legal or natural

person responsible for its publication. The publisher of the investment recommendation is in most cases also responsible for its content. The AFM assumes that if the publisher pays a fee to the producer (the person directly involved in compiling the recommendation), the publisher is responsible for the publication of the investment recommendation concerned. This fee may be paid on either a regular or an occasional basis. Examples are fees paid to columnists for their columns, analysts employed by a bank and (freelance) journalists writing for a magazine or newspaper.

In cases where a medium (newspaper, Internet platform, magazine) acts as a facilitator (for instance in the case of letters submitted or postings on Internet forums) and no fee is paid to the producer of the investment recommendation, the AFM assumes that the producer is responsible for the publication of the investment recommendation and is therefore the party that must meet the obligations. In these cases the producer itself is responsible for the publication of the information in (or with) the investment recommendation, and not the medium, since the medium is only facilitating the publication of the recommendation.

With regard to certain elements of information, the producers are obliged to provide the required data to the publisher of the recommendation. The producer of the recommendation thus enables the publisher of the recommendation to meet their obligations.

1.2 Publisher or disseminator?

This brochure is primarily concerned with the initial publication of an investment recommendation.

Legally, the publisher of an investment recommendation is defined as: a person publishing an investment recommendation in the context of his profession or business. This also includes the person disseminating the investment recommendation. The law makes no distinction between the publisher and the disseminator. In practice however it might occur that a person disseminates an investment recommendation produced and published by third parties under his own responsibility.

A publisher of an investment recommendation that disseminates a recommendation published by a third party under his own responsibility, must clearly and prominently state the changes he made to the investment recommendation, or that the recommendation is disseminated in unaltered form.

If the publisher disseminates a summary of a recommendation published by a third party, this summary must be clear, not misleading, immediately and easily accessible. The publisher must also state the location where the information presented in the summary can be accessed by investors.

1.3 Scope

The regulations can apply if an investment recommendation is published in or from the Netherlands, another member state or a non-member state.

The investment recommendation must relate to a financial instrument (or its issuer) that is admitted to trading on a regulated market in the Netherlands or in another member state, or is admitted to trading on a multilateral trading facility in the Netherlands.

The publisher of the recommendation must meet a number of transparency requirements. For example, an investment recommendation concerning shares traded on a regulated market in Spain published in the Netherlands by an analyst located in a third country must still meet the Dutch requirements.

1.4 Exemptions

The purpose of an investment recommendation is to offer advice to investors that may be useful in the formation of an investment decision. Reports by journalists in the press that are a description of events rather than an investment recommendation ('the AEX rose 3 percent yesterday') are not subject to the regulations.

Also in cases where a medium reports on recommendations published by third parties such as an investment firm ('Fortis Bank has issued a 'buy' recommendation for DSM'), this is not considered to be dissemination of a recommendation. This is considered to be journalistic reporting, and does not fall under the scope of the regulations.

Credit rating agencies do not fall under the scope of these regulations because they do not make specific investment recommendations. They issue opinions on the creditworthiness of a particular issuer, or the quality of a certain financial instrument on a given date. If a rating agency does however publish an investment recommendation, this would fall under the scope of these regulations.

Investment recommendations like 'one-on-one' consultations provided to clients do not fall under the regulations, unless they are repeated and thus provided to more than one client.

The regulations moreover do not apply if the recommendation does not concern a particular financial instrument or issuer, but for example a sector (for instance the automotive industry), a commodity (such as gold) or a region or country.

2 Why is supervision necessary?

Investment recommendations can be misleading, in various ways.

The producer and the publisher of the recommendation may have other interests which, if known to the reader, could place the recommendation in a different light. The reader can also be misled because facts and estimates are not clearly distinguished. The more the producer and publisher are perceived to be professional, the greater the likelihood the reader can be misled. Investors are more likely to attach value to professional recommendations. This is why the requirements for persons employed in the securities industry are more stringent than those applying to other persons.

To prevent investors from being misled, rules have been formulated that must be observed in investment recommendations.

These rules are mainly intended to provide transparency regarding the identity of the producer and the publisher, to provide standards for fair presentation of recommendations, and to ensure that any information that could affect the objectivity of the investment recommendation is published. This will enable the reader to form a better opinion regarding the investment recommendation.

3 What is an investment recommendation?

An 'explicit recommendation' means the same as making a direct investment recommendation or giving direct advice, and includes the use of the terms 'buy', 'hold' or 'sell'. If the terms 'buy', 'hold' or 'sell' are literally used, this is of course an explicit recommendation, but a recommendation containing a similar formulation is also considered to be explicit. This refers to situations in which the average investor would interpret the recommendation as an advice to buy, hold or sell.

An 'implicit recommendation' means the same as making an indirect investment recommendation or giving indirect advice, and comprises for instance a reference to a price target.

'Information intended for the general public' means information that is made available to the public. This includes information made available to a group of persons. It is not a requirement that the information is universally accessible or available. A recommendation does not necessarily have to be published in written form. Recommendations disseminated by television, radio or during a presentation also fall under the scope of the regulations.

The Wft defines an investment recommendation as: "information intended for the general public that is produced or published by:

- a) the persons referred to in Section 5:64(2)(a), in which an investment strategy is recommended or proposed either explicitly or implicitly, with regard to:
 - 1) financial instruments admitted to trading on a regulated market in the Netherlands or on a multilateral trading facility in the Netherlands, or for which admission to trading has been requested;
 - 2) financial instruments admitted to trading on a regulated market in another member state; or
 - 3) an issuer that has issued financial instruments as referred to under 1) or 2);
- b) the persons referred to in Section 5:64(2)(b), in which an investment strategy is explicitly recommended with regard to:
 - 1) financial instruments admitted to trading on a regulated market in the Netherlands or on a multilateral trading facility in the Netherlands, or for which admission to trading has been requested;

- 2) financial instruments admitted to trading on a regulated market in another member state;
- c) any person which, other than in the course of a profession or business (see Section 5:64(2)(c) Wft):
 - 1) publishes investment recommendations in or from the Netherlands or a non-member state, in which an investment decision is explicitly recommended with regard to financial instruments admitted to trading on a regulated market in the Netherlands or on a multilateral trading facility in the Netherlands, or for which admission to trading has been requested; or publishes investment recommendations in or from another member state in which an investment decision is explicitly recommended with regard to financial instruments admitted to trading on a multilateral trading facility in the Netherlands;
 - 2) publishes investment recommendations in or from the Netherlands in which an investment decision is explicitly recommended with regard to financial instruments admitted to trading on a regulated market in another member state.

4 What requirements must be met, and when?

When an investment recommendation is made, it is relevant to determine which elements of the regulations apply to the publisher of the recommendation. As already stated in the introduction, the quantity of information to be made public depends on the capacity of the publisher of the recommendation and the content of the recommendation, ranging from a mild regime (under which only the identity of the producer and the publisher has to be disclosed) to a strict regime (requiring full transparency regarding positions held and conflicts of interest).

In general, the information to be disclosed concerns I) the identity of the producer and the publisher of the recommendation, and II) any information which reasonably could be assumed to bring the objectivity of the recommendation into question.

The legislation distinguishes three main categories:

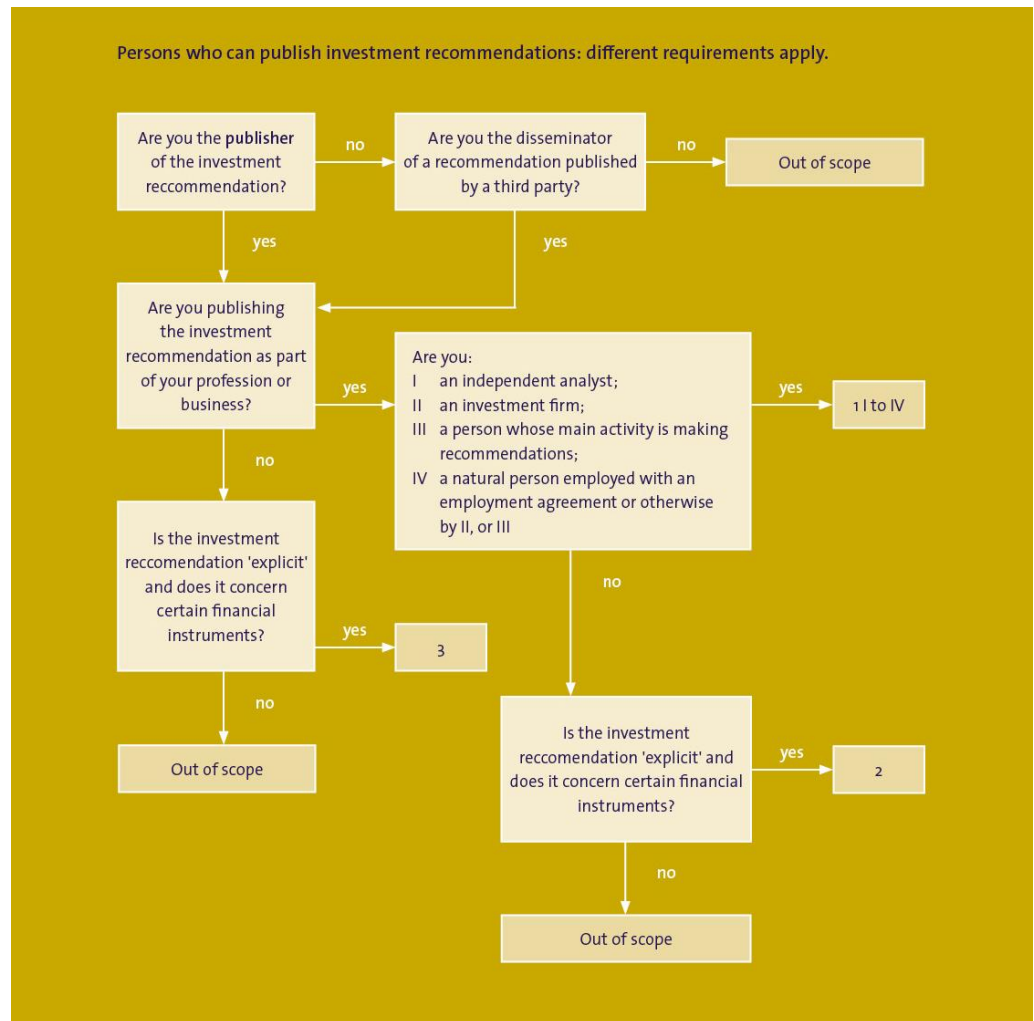
- 1) natural or legal persons who in the course of their profession or business publish investment recommendations :
 - I) independent analysts;
 - II) investment firms;
 - III) other persons whose main business consists of making recommendations;
 - IV) natural persons employed on the basis of an employment agreement or otherwise by II) or III);
- 2) Persons other than those described in 1) who publish investment recommendations as part of their profession or business;
- 3) Any person who publishes an investment recommendation, but not as part of their profession or business.

Different requirements apply to the three categories of persons who can publish investment recommendations.

Flow chart

The flow chart on the following page can be used as a tool to determine in which category your investment recommendation falls. The table on the page after that shows – for each category –

the specific requirements that the investment recommendation must meet. The section following the table provides a further explanation of the requirements.



Categories of investment requirements and associated requirements

The table alongside shows the provisions from the Wft and the Market Abuse Decree that must be met for each category. Category 1 concerns the persons whose main business is to publish investment recommendations. Category 2 includes persons other than those described in 1) whose main business is to publish investment recommendations. This includes journalists, columnists, etc. Category 3 includes any person who publishes investment recommendations but not as their main profession or business. This could be in Internet chat rooms, or otherwise. Provisions marked with an 'X' apply. Anyone publishing an investment recommendation must state the identity (name and position) of the producer and the name of the person responsible for publishing the information. This is the only requirement for Category 3. The quantity of information that has to be disclosed increases in proportion to the extent that the publisher concentrates on the professional publication of investment recommendations as its core business (and therefore the extent that investors accordingly attach value to its recommendations).

Identity		Guarantee accuracy of information			Objectivity of the recommendation					Statement of competent regulator			Extra requirements for investment firms
	Re- quire- ments	15 Decree	16 (1) Decree	16 1ld (2) Decree	17 (1) Decree	17 (2) Decree	17 (3) Decree	17 (5) Decree	18 (1) and (2) Decree	5:64 (3) Wft	18 (4) Decree	5:64 (4) Wft, 17 (6) and 18 (3) Decree	
1	I	X	X	X	X	X (if legal person)	X		X (if legal person)				
	II	X	X	X	X	X (if legal person)	X		X (if legal person)	X		X	
	III	X	X	X	X	X (if legal person)	X		X (if legal person)				
	IV	X	X	X	X	X (if legal person)	X		X (if legal person)		X		
2		X	X	X (if legal person, affiliated to an investment firm)	X	X (if legal person)	X (if legal person, affiliated to an investment firm)		X (if legal person)				
3		X											

5 Further explanation of requirements?

5.1 Identity (Section 15 of the Decree)

Anyone publishing an investment recommendation must state the name and job title of the natural person who is the producer and the name of the person responsible for publishing the information. This is important because this information can be useful to investors when considering their investment decisions.

5.2 Guarantee of accuracy of information (Section 16(1) of the Decree)

Persons who publish recommendations as main business must ensure that a fair representation of the situation is given. This includes the reliability of sources. A source may be reliable because the expertise of the person concerned is beyond doubt (first-hand information) or because it has proved to be reliable in the past. A reliable source is always attributed by name and surname. Anonymous sources are considered unreliable. Verification of the information coming from a second source is then necessary before it can be assumed that the information from this source is reliable.

In an investment recommendation, facts must be clearly distinguished from interpretations, estimates, opinions, other types of non-factual information and advices.

5.3 Guarantee of accuracy of information (Section 16(2) of the Decree)

Section 16(2) applies to those subject to the standards in categories 1 and 2 (if it concerns a legal person affiliated with an investment firm, see the table). This provision concerns amongst others the obligation to take reasonable measures to ensure that the publisher states all the 'material substantive sources'. These 'material substantive sources' may for instance relate to information provided by the issuer concerned. It must also be stated whether the information has been provided to the issuer concerned, and whether the information has been changed as a result of its being provided to the issuer prior to dissemination. If this is the case, the substance of the changes must be stated.

The information must also adequately state the meaning of the investment recommendation (for example, the reasons for giving a buy or sell recommendation must be given. Assumptions used in this respect must be clearly distinguished from facts). The time horizon of the investment to which the investment recommendation relates must also be stated.

It is moreover a requirement that the principles or methods for the evaluation of a financial instrument or issuer, or for the establishment of a target price, are adequately stated in summary form. The intention here is to enable the reader to assess the quality of the assumptions used so that he can form an opinion as to whether the recommendation is reasonable.

The scheduled frequency of any updates to the investment recommendation should be stated, as well as all significant changes to the previously announced publication policy. It is not required to change previously published investment recommendations if facts and circumstances have altered over time and if they warrant a different investment recommendation. Furthermore, this requirement does not mean that a [new] timeframe has to

be made, but rather that the scheduled frequency of any updates to the investment recommendation must be published, as well as any important changes to the previously announced publication policy, if such a schedule exists.

The date of publication must be stated. It must also be clearly stated whether the recommendation differs from the most recent recommendation made by its producer/publisher of the investment recommendation in the 12-month period prior to publication.

5.4 Disclosure of conflicts of interest (Section 17(1 and 2) of the Decree)

Section 17(1) of the Decree states that the publisher of an investment recommendation must disclose any interests or conflicts of interest that could reasonably be assumed to potentially affect the objectivity and the reliability of the recommendation.

Section 17(2) applies if the publisher is a legal person, and deals with the interests or conflicts of interest of each natural or legal person working for the publisher – under a contract of employment or otherwise – that was involved in the preparation of the investment recommendation. Information that could affect the objectivity concerns mainly situations in which publishers have a significant financial interest in one or more of the financial instruments to which the recommendation relates, or where the persons concerned have a significant conflict of interest with regard to the issuer to which the recommendation relates.

The personal interests of a person or a conflict of interest could affect the substance of an investment recommendation. This is not only a risk for investors, and especially for private investors, but can also create a lack of confidence in the financial market concerned.

5.5 Details of conflicts of interest (Section 17(3) of the Decree)

The law states that the objectivity of a recommendation can be affected when:

- a) there is a significant shareholding. This is the case if:
 - I) the publisher of the recommendation owns more than 5 percent of the total issued share capital of the issuer concerned, or
 - II) the issuer concerned owns more than 5 percent of the total issued share capital of the publisher of the recommendation;
- b) there is another material financial interest in the issuer, such as an outstanding loan. The assessment of whether this is the case is made from the perspective of the publisher of the recommendation;
- c) the publisher acts as a market-maker or liquidity provider in relation to the financial instruments issued by the issuer;
- d) the publisher is a party to an agreement with the issuer with regard to the publication of the investment recommendation;
- e) the publisher is a party to any other agreement with the issuer;
- f) the publisher has acquired or placed financial instruments issued by the issuer in a professional or commercial capacity during the preceding 12 months when these financial instruments were issued.

This can refer to parties acting as lead manager or co-lead manager.

5.6 Details of conflicts of interest (Section 17(5) of the Decree)

Subsection 5 applies to the publisher of an investment recommendation if the publisher is a legal entity. The provision obliges the publisher to state its interests or conflicts of interests or the interests or conflicts of interests with the legal entity affiliated with it that are relevant in relation to the investment recommendation.

5.7 Details of conflicts of interest (Section 17(6) of the Decree)

Subsection 6 applies to investment firms and states that an investment firm must issue a statement every three months regarding the proportion of the recommendations made during that period that contained advice to 'buy', 'hold', or 'sell' or comparable words or phrases. In other words, this concerns a summary of the percentages of the recommendations to 'buy', 'hold', or 'sell'.

A statement must also be published of the percentage of issuers corresponding to these three categories, for which the investment firm has provided material investment banking services during the preceding 12 months. The term 'investment banking services' is defined in the Explanatory Memorandum to the Market Abuse Decree.

The requirement to disclose interests and conflicts of interest does not, however, require persons publishing investment recommendations to ignore information barriers put in place in order to prevent and avoid conflicts of interest (Chinese walls).

5.8 Remuneration structure (Section 18(1), (2) and (3) of the Decree)

This provision concerns providing transparency with regard to the interests of the producers of the recommendation (employed by the legal entity that publishes the recommendation).

The producer of the investment recommendation is obliged to enable the publisher of the recommendation to meet its obligation by providing the information referred to in Section 18(1) and (2) to the publisher, unless this information has already been provided. This includes amongst others a statement of whether the producer's remuneration is linked to investment banking services provided by the investment firm. All information that could affect the objectivity of the recommendation must be disclosed by the publisher at the same place.

5.9 Disproportionate long explanation (Section 19 of the Decree)

If the information relating to the investment recommendation is disproportionately long in comparison to the length of the recommendation itself, or if the information is not disclosed in writing and it is disproportionately long in comparison to the length of the recommendation, Section 19 states that reference may be made in the investment recommendation to a location directly and easily accessible to the public (for instance the publisher's Internet site) with respect to this information.

The name and position of the natural person responsible for the production of the investment recommendation and the name of the person responsible for its publication must always be stated in the recommendation itself. This information will in any case not be 'disproportionate'.

The question of whether the information that has to be disclosed is disproportionately long in comparison to the length of the recommendation should be assessed on a case by case basis. If the information is included directly after the recommendation, this makes it more readily available to investors than if the information is provided on an Internet site, for example. It is thus not the intention that publishers should readily assume that inclusion of the information with the recommendation would be disproportionate.

6 Who is responsible for supervision?

The AFM is the supervisory body with regard to the obligations relating to the publication of investment recommendations. The law does however provide room for forms of self-regulation, for instance by an industry organisation. For producers who are individually registered with the Dutch Securities Institute (DSI) or for investment recommendations originating from employees working for a company affiliated to the DSI (such as banks and brokers), it has been agreed that the DSI will act as the 'primary' regulator. The AFM however remains responsible for the statutory regulation, and in any case has the power to impose legal sanctions (either as a result of referral by the DSI or not).

Interested parties can verify whether a producer or company is affiliated to the DSI by consulting the DSI website. A self-regulating institution for other professional publicists has not yet been incorporated.

7 Enforcement

The AFM can for example impose an order to cease committing an offence subject to a penalty for non-compliance, or it can impose a penalty. Severe cases will be referred to the Public Prosecutor.

Misleading investment recommendations may also be made with the intention of manipulating prices. Market manipulation is a serious offence. Not only can other investors suffer direct financial damage as a result of market manipulation, ultimately all citizens can be affected through their indirect investments in insurances or pension funds. The law therefore contains a universal prohibition of market manipulation, and in extreme cases offenders can be prosecuted by the Public Prosecutor.

8 How to report a suspected abuse?

If you receive an investment recommendation and you are in doubt as to whether it complies with the transparency requirements, send an e-mail to marketsupervision@afm.nl. You can also call the Financial Markets Hotline on 0900 - 5400 540 (€0.35 per call, in the Netherlands only).

If the investment recommendation you have doubts about has been provided by an institution that is affiliated to the DSI, or by an employee of an institution that is affiliated to the DSI, you should contact the DSI (telephone +31(0)20-6201274 or www.dsi.nl).

9 Further questions?

The Securities Markets and Financial Infrastructure Department of the AFM is the contact point for questions relating to the rules relating to the publication of investment recommendations.

Further information can be found at www.afm.nl under 'Professionals' > 'Market abuse' > . For questions or advice, you can send an e-mail to marketsupervision@afm.nl or call +31(0)20-797 3777. Please note that telephone conversations may be recorded for supervisory purposes.

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Amsterdam, December 2009