

# Assessments

*This information bulletin is important for all directors of financial enterprises and the persons within those enterprises responsible for supervising policy and general affairs. You are requested by the Netherlands Authority for the Financial Markets (AFM) and the Nederlandsche Bank (DNB) to forward this bulletin to all the relevant people within your organisation.*

## 1) Introduction

The AFM and DNB conduct competence and integrity assessments of individuals nominated for appointment to positions in the financial sector. This joint bulletin contains important information about the assessment process for all enterprises subject to supervision by AFM and DNB. It includes information on:

- Developments in the assessment process;
- Information about the Directors Monitor;
- AFM and DNB observations on the assessment process and points for improvement.

## 2) Developments in the assessment process

- From 1 July 2012, in the assessments process the current Dutch term for competency – *deskundigheid* – will be replaced by the term *geschiktheid*. This term is deemed to be better suited. The change will have no effect on the assessment process.
- From 1 July 2012, competency requirements are also applicable to bodies responsible for supervising the policy and general affairs of a financial enterprise. These requirements will apply, for example, to supervisory board members and members of mutual insurers' general boards. Current

members of such bodies will have their competency assessed when they are proposed for reappointment. Their competency will in any event be assessed by 31 December 2015. The above does not apply to pension fund supervisory bodies.

## 3) Directors Monitor

The AFM and DNB have jointly developed a new system – the Directors Monitor – for registering antecedents of directors and persons who are responsible for supervising the policy and general affairs of financial enterprises (from this point = supervisory board members). Therefore, the Directors Monitor will include information relating to directors and supervisory board members. This does not apply to pension fund supervisory bodies. The Monitor is not accessible for third parties.

The purpose of the Directors Monitor is to obtain an overall picture of the antecedents of directors and supervisory board members. This overall picture of these individuals' antecedents is important for assessing their competency and integrity

The antecedents of a director or supervisory board member may give cause for a reassessment of their competency and integrity. Whether reassessment is needed will depend on the specific circumstances (see section 4 for more information on reassessments). Ultimately, it will not be antecedents in the Directors Monitor, but the results of the reassessment that determine whether an individual fulfils the competency and integrity requirements. As such, therefore, registration in the Directors Monitor does not have any legal consequences for the relevant financial enterprise, director or supervisory board member.

The following information will be registered in the Directors Monitor: :

- Supervisory antecedents;
- Criminal antecedents;
- Financial antecedents;
- tax and administrative law antecedents.

You can find details of what these four categories comprise in Appendix C of the Decree on the Conduct of Business Supervision of Financial Undertakings (*Besluit Gedragtoezicht Financiële Ondernemingen*) and Appendix A of the Decree on Prudential Rules under the FSA (*Besluit prudentiele regels Wft*).

The supervisors will register an antecedent in the Directors Monitor as soon as they become aware of it. In the case of supervisory antecedents this will normally be the date of the letter imposing the relevant measure. In the case of criminal, financial and tax or administrative antecedents this will be the date on which the relevant individual or third party, such as the Public Prosecutor's Office or the Tax Authority, reports the information.

Supervisory antecedents are supervisory measures imposed by AFM and/or DNB. Examples of these include: instructions and administrative or other fines. These measures form an important part of the antecedents registered in the Directors Monitor. The supervisors will not only register formal measures (i.e. measures provided for in legislation), but also

informal measures such as instructive interviews/ letters.

A supervisory measure is generally addressed to the financial enterprise. The only exceptions are personal fines imposed on a director or de facto director. A supervisory measure addressed to a financial enterprise will be registered in the Directors Monitor for all the directors and supervisory board members of that enterprise. The registration in the Directors Monitor of a supervisory measure addressed to a financial enterprise will not state whether a specific director/supervisory board member can be held responsible for the measure imposed. All directors/supervisory board members who were directors/supervisory board members of the enterprise at the time of the incident that led to the supervisory measure being imposed will be registered in the Directors Monitor. Responsibility will not be specifically allocated unless and until the supervisor decides that the competency or the integrity of one or more directors or supervisory board members needs to be reassessed.

Both AFM and DNB will have a Directors Monitor of their own, and will periodically exchange data.

Antecedents can be – depending on their type – kept for a maximum of 10 years. Personal data in the Directors Monitor will be processed in compliance with the applicable privacy laws. This means that individuals whose data are registered may submit a request to the AFM (Privacy Department) and/or DNB (Compliance & Integrity Department) to view their personal details.

Registrations in the Directors Monitor are expected to start being entered during the course of this year.

#### 4) AFM and DNB observations on the assessment process and some points for improvement

Before discussing various observations from day-to-day practice, we would first like briefly to reiterate the principles on which competency assessments are based - as stated in the 2011 Policy Rule (*Beleidsregel Deskundigheid 2011*):

- 1) Competency (= knowledge, skills and professional conduct) is a *continual requirement*.
- 2) *The enterprise is responsible* for appointing (and retaining) sufficiently competent policymakers.
- 3) The enterprise must assure itself of the competency of its policymakers and must *convince the supervisors* of this competency.
- 4) Policymakers must be sufficiently competent to deal with the *obligations imposed on the enterprise by law*.
- 5) By law, the supervisor has *a responsibility of its own* to assess the competency of policymakers.

The following observations can be made in respect of these basic principles.

- *Competency is often not substantiated enough*

As indicated in point 3 above, the enterprise must assure itself of the competency of its prospective policymakers and must *convince the supervisors* of this competency. This requires the enterprise to supply written information to the AFM and/or DNB to explain why it considers the proposed candidate to have the required competency. This can be done on the basis of the job profile. In practice, however, the argumentation provided is often brief and insufficiently or not at all related to the job profile. It is then impossible for the AFM/DNB to establish the reasons why the enterprise considers the candidate to have the required competency. In these cases the supervisor will request the missing information from the enterprise. This, however, causes an unnecessary delay in the assessment process. We would once again like to remind all enterprises of the need to provide proper substantiation of candidates' competency.

- *Candidate proposed, but does not yet meet the knowledge requirements (this aspect does not apply to pension funds)*

It regularly happens that candidates reported for assessment do not yet have the required level of knowledge, with the enterprise stating that this knowledge will be obtained during a familiarisation programme. In many cases, however, this knowledge could and should have been obtained - for instance by allowing the individual to complete a course/training or through over-the-shoulder observation - before he/she was reported for assessment. The correct sequence is for a candidate first to obtain the knowledge and only then to be reported for assessment. Only in exceptional cases will the AFM/DNB consent to an appointment deviating from this sequence. In such cases the AFM/DNB will also impose various stipulations by, for example, making its consent conditional upon the candidate completing a course to obtain the specific knowledge within X months. If the candidate fails to comply with these stipulations, the supervisor has the option of issuing a revised - negative - decision.

- *Not all antecedents reported to the supervisor*

Enterprises are required by law to report changes in candidates' antecedents to the AFM/DNB. This applies in respect of supervisory, criminal, financial, tax and administrative law antecedents. This requirement is also stated in the *Prospective Appointment Notification Form* and the *Integrity Test Form*. Directors/supervisory board members also obviously have a duty, deriving from the above requirement, to notify the enterprise of any changes in their personal antecedents. It has been found in practice, however, that changes in antecedents are not always notified to the supervisor. The AFM and DNB would like to emphasise that they regard failure to notify antecedents as a serious matter. Failure to report such a change results in a supervisory antecedent for the relevant enterprise and/or the individual concerned. Such an antecedent does not automatically, however, result in the view that someone's integrity is no longer beyond doubt.

- *Lack of clarity on reasons for a reassessment*

The AFM and DNB are aware that there are questions, both among enterprises and directors/supervisory board members, as to when a reassessment can be initiated. This issue is therefore discussed in more detail below.

Just like integrity, competency is a continual requirement. If any facts or circumstances become known to the AFM/DNB that result in doubts about an individual's competency or integrity, it may be decided to reassess that individual. These doubts can arise both through actions of the person in question or as a result of developments at the enterprise. The AFM/DNB refer to these cases as giving 'reasonable grounds' for a reassessment. Whether there are reasonable grounds will always depend on the specific facts of the case. There is no exhaustive list of what constitutes reasonable grounds for a reassessment, but a few examples are set out below.

- Reasonable grounds for reassessment of competency:  
An unexpected change in results; rapid growth of the enterprise; concerns about whether the business is being managed in a sound and controlled manner; concerns about the prevailing business model or corporate culture; concerns about compliance; a merger or acquisition; expansion abroad; outsourcing of core or other activities; offering of harmful products or the provision of inaccurate, unclear and/or misleading information; structural failure to respond, or respond on time,

to requests from the supervisor for information; inability to continue paying auditors; poor administration; a high staff turnover rate; customer complaints about services being provided carelessly, or violations (repeated or otherwise) of legislation and regulations.

- Reasonable grounds for reassessment of integrity:  
Reports of changes in antecedents in the form of signals from the financial enterprise at which the relevant person holds a policymaking or co-policy-making position or from the person him/herself; signals during supervisory visits; signals from the Public Prosecutor's Office, police or the Fiscal Information and Investigations Service – Economic Investigation Service (FIOD-ECD); signals from other national or international financial supervisors; signals from the Financial Intelligence Unit; signals from other national supervisors; signals from the financial sector, providing these are sufficiently substantiated, and signals from the media, providing these are corroborated by further investigations (public sources).

The relevant person will be informed if it is decided to conduct a reassessment. The reassessment will include a meeting with the person. If the AFM/DNB believe that the specific person no longer has the required competency or his/her integrity is no longer beyond doubt, they may formally instruct the enterprise to relieve the person of his/her duties.

### For more information on the assessment process:

AFM Website: [www.afm.nl](http://www.afm.nl)

DNB Website: [www.dnb.nl](http://www.dnb.nl)