

Policy rule of De Nederlandsche Bank N.V. (DNB) and the Netherlands Authority for the Financial Markets (Autoriteit Financiële Markten / AFM) concerning the expertise of policy-makers as referred to in the Financial Supervision Act, the Pension Act, the Obligatory Occupational Pension Schemes Act and the Supervision of Trust Offices Act (Expertise Policy Rule 2011).

De Nederlandsche Bank N.V. and the Netherlands Authority for the Financial Markets;

After consultation with the representative organisations and after conferred with the Ministry of Finance and the Ministry of Social Affairs and Employment;

Having regard to sections 3:8, 3:271, 4:9, subsection 1, and 5:29, subsection 1, of the Financial Supervision Act (*Wet op het financieel toezicht / Wft*), section 105, subsection 3, of the Pension Act (*Pensioenwet / Pw*), section 110, subsection 3, of the Obligatory Occupational Pension Schemes Act (*Wet verplichte beroepspensioenregeling / Wvb*), article 14, paragraph 3, and articles 29 and 30 of the Decree implementing the Pension Act and the Obligatory Occupational Pension Schemes Act (*Besluit uitvoering Pw en Wvb*), and sections 4, opening words and (b), and 11, subsection 2, of the Supervision of Trust Offices Act (*Wet toezicht trustkantoren / Wtt*);

Having regard to section 3:100, subsection 1 (b), of the Financial Supervision Act, as this part of the subsection will read from the date on which the Act implementing the Directive on Holdings in the Financial Sector (*Wet implementatie richtlijn deelnemingen in de financiële sector*) (Parliamentary Papers II, 2009-2010, 32 292, no. 2) enters into force;

Having regard to section 3:8 of the Financial Supervision Act, as this section will read from the date on which the Act on the Introduction of Premium Pension Institutions (*Wet introductie premiepensioeninstellingen*) (Parliamentary Papers I, 2009-2010, 31 891, no. A) enters into force;

Having regard to section 4:9, subsection 1, of the Financial Supervision Act, as this subsection will read from the date on which the Act amending Book 2 of the Netherlands Civil Code and the Financial Supervision Act in connection with the power to adjust and recover bonuses and profit shares of directors and day-to-day policymakers and to assess the expertise of supervisory board members (Parliamentary Papers II, 2009-2010, 32 512, no. 2) enters into force;

DECIDE

To introduce a joint policy rule on expertise:

Reader's guide

Aim

The aim of this policy rule is to clarify what requirements are made by DNB and the AFM in respect of the expertise of policymakers of undertakings under their supervision and what aspects they take into account in assessing this expertise. In addition, this policy rule provides insight into the cooperation between the supervisory authorities in assessing expertise.

Scope

The policy on expertise as explained in this policy rule applies to all policymakers of undertakings that are under the supervision of DNB and/or the AFM pursuant to the Financial Supervision Act, the Pension Act, the Obligatory Occupational Pension Schemes Act or the Supervision of Trust Offices Act.

Structure

The policy rule consists of three chapters, an annex and explanatory notes.

Contents

Chapter 1 sets out the requirements for the expertise of policymakers and the information used by the supervisory authority in making the assessment. These requirements apply to all undertakings and all policymakers both before they take office and during their term of office. The basic principle of this policy rule is that policymakers should continuously fulfil the expertise requirements and should show this in their actions.

To ensure that the expertise requirements can be applied proportionately, the supervisory authorities have divided the undertakings subject to supervision into three groups: A, B and C. This reflects the different activities, risks, size and complexity of the undertakings. The basic premise is that all policymakers should comply with the first chapter of the policy rule, regardless of which group they belong to.

Chapter 2 contains provisions for assessing the expertise of a policy maker of undertakings belonging to group B or group C before he or she takes office and elaborates part 1.2.1.

Group A consists of investment product providers; banks; clearing institutions; risk acceptance entities; financial institutions; financial holding companies; mixed financial holding companies or mixed-activity insurance holding companies having their seat in the Netherlands; reinsurers; life insurers; market operators; pension funds; occupational pension funds; premium pension institutions; non-life insurers (authorised).

➤ Only chapter 1 applies to group A.

Group B consists of credit providers; investment firms; managers of collective investment schemes; investment companies; depositaries.

➤ Chapter 1 and chapter 2, parts 2.1 - 2.6, apply to group B.

Group C consists of financial service providers with the exception of financial service providers in groups A and B; payment institutions, electronic money institutions; funeral expenses and benefits-in-kind insurers; mutual insurance societies (certified); trust offices.

➤ Chapter 1 and chapter 2, parts 2.1 - 2.3, 2.7 and 2.8 apply to group C.

Chapter 3 contains provisions on the evaluation of the policy rule, repeal of the AFM's current expertise policy rule, the entry into force of this policy rule and the official title.

An annex listing and defining competencies is included after chapter 3. This is followed by general explanatory notes and notes to chapters 1, 2 and 3.

CHAPTER 1 – GENERAL PROVISIONS ON ASSESSING THE EXPERTISE OF POLICYMAKERS

1.1 Definitions and terms

The terms in this policy rule have the same meanings as in the Financial Supervision Act, the Pension Act, the Obligatory Occupational Pension Schemes Act and the Supervision of Trust Offices Act and related secondary legislation, unless these terms are expressly defined otherwise in this policy rule.

The following terms have the following meanings in this policy rule:

- a) policymaker: a person whose expertise must be assessed under the Financial Supervision Act, the Pension Act, the Obligatory Occupational Pension Schemes Act and the Supervision of Trust Offices Act and related secondary legislation;
- b) collective: two or more policymakers who together determine (or help to determine) the (day-to-day) policy of the undertaking;
- c) undertaking: a financial undertaking, mixed financial holding company, financial holding company or insurance holding company having its seat in the Netherlands, pension fund, occupational pension fund or trust office;
- d) supervisor: DNB, the AFM or DNB and the AFM together;
- e) customers: consumers, clients, members, former members, pension beneficiaries and other beneficiaries and investors;
- f) undertakings in group A: investment product providers, banks, clearing institutions, risk acceptance entities, financial institutions, financial holding companies, mixed financial holding companies or mixed-activity insurance holding companies having their seat in the Netherlands, reinsurers, life insurers, market operators, pension funds, occupational pension funds, premium pension institutions and non-life insurers (with authorisation);
- g) undertakings in group B: credit providers, investment firms, managers of collective investment schemes, investment companies and depositaries;
- h) undertakings in group C: financial service providers with the exception of financial service providers in groups A and B, payment institutions, electronic money institutions, funeral expenses and benefits-in-kind insurers, mutual insurance societies (certified) and trust offices.

1.2 Expertise

1. Expertise consists of knowledge, skills and professional conduct. The expertise of a policymaker is in any event evident from the education, work experience and competencies of the policymaker and their continuous application. The annex to this policy rule lists relevant competencies needed in order to demonstrate expertise.

Policymakers must have expertise in the following areas:

- A. **Management, organisation and communication**, including the management of processes, job areas and employees and the observance and enforcement of generally accepted social, ethical and professional standards, including the provision of timely, correct and clear information to customers and the supervisor.
 - B. **Products, services and markets in which the undertaking is active**, including relevant primary and secondary legislation and financial (and actuarial) aspects.
 - C. **Controlled and sound operations**, including the administrative organisation and internal control, the safeguarding of expertise and professional competence within an undertaking, the proper treatment of customers, risk management, compliance and outsourcing; and
 - D. **Balanced and consistent decision-making** that accords a central role to such factors as the interests of customers and other stakeholders.
2. Notwithstanding subjects A to D of part 1.2.1, the following areas of expertise – (a)-(f) – as referred to in article 30, paragraph 3, of the Decree implementing the Pension Act and the Obligatory Occupational Pension Schemes Act and the expertise requirement concerning outsourcing (g) referred to in article 14, paragraph 3 of the Decree implementing the Pension Act and the Obligatory Occupational Pension Schemes Act are applicable to policymakers at pension funds and occupational pension funds, namely:
 - a) the management of an organisation;
 - b) relevant primary and secondary legislation;
 - c) pension schemes and types of pension;
 - d) technical financial and actuarial aspects, including financing, investments, actuarial principles and reinsurance;
 - e) administrative organisation and internal control+
 - f) communication; and
 - g) outsourcing.

3. For the purposes of the pre-appointment assessment of a policymaker of an undertaking as referred to in chapter 2, the expertise requirements described in part 1.2.1 are elaborated in chapter 2.

1.3 Assessment variables

The assessment of a policymaker's expertise should take account of:

- a) the position of the policymaker; and
- b) the type, size, complexity and risk profile of the undertaking.

1.4 Collective

If there is a collective, the assessment of expertise should take account of the composition and functioning of the collective.

1.5 Assessment moments

The supervisor assesses the expertise of a policymaker:

- a) before a policymaker takes office at the time of application for authorisation or registration or the proposed appointment of a new policymaker to an undertaking that already has an authorisation or is registered; and
- b) after a policymaker has taken office if there are facts and/or circumstances that constitute reasonable grounds.

1.6 Information and antecedents

1. When assessing the expertise of a policy maker, the supervisor takes account of information and antecedents that have a bearing on such expertise.
2. Information and antecedents as referred to in part 1.6.1 will in any event mean:
 - a) the fully completed and signed 'Proposed Appointment Notification Form';
 - b) supervision information and antecedents, such as formal and informal supervisory measures;
 - c) the policy pursued by an undertaking and the outcomes thereof for the purposes of recruitment and selection and for periodic appraisal of policymakers; this includes:
 - i) the policy documented by the undertaking, which takes account of parts 1.2.1, 1.3 and 1.4 and, in the case of pension funds and occupational pension funds, parts 1.2.1 opening words, 1.2.2, 1.3 and 1.4;
 - ii) the job profile drawn up by the undertaking for the position for which a policymaker is to be assessed and the decision-making process (recorded

- in writing) on the selection of a policymaker, which should also show the considerations that have led to this outcome; and
- iii) insofar as applicable, the periodic assessment (recorded in writing) of a policymaker by reference to the job profile and the job carried out, including the considerations that have led to this outcome;
- d) other information to be supplied by the undertaking insofar as this may be relevant to assessment of the expertise of a policymaker;
- e) other information, including the involvement of a policymaker in a suspension of payments or bankruptcy; and
- f) information in the public domain.

1.7 Evaluation of information and antecedents

When evaluating the information and antecedents referred to in part 1.6, the supervisor will take account of the following factors:

- a) the connection between the act or acts underlying the information or antecedent and the other circumstances of the case;
- b) the interests that the law is intended to protect;
- c) the other interests of an undertaking and the policymaker concerned;
- d) the value to be attached to the information or antecedent;
- e) the age of the information or antecedent;
- f) the attitude of the policymaker to the information or antecedent and/or his or her reasoning in this connection;
- g) the combination of available information and antecedents.

1.8 Cooperation between the AFM and DNB

1. Notwithstanding sections 1:49 and 1:90 of the Financial Supervision Act, section 205 of the Pension Act, section 199 of the Obligatory Occupational Pension Schemes Act , article 38 of the Decree implementing the Pension Act and the Obligatory Occupational Pension Schemes Act and sections 13 and 15 of the Supervision of Trust Offices Act, the AFM and DNB (the supervisors) make agreements in specific cases about their cooperation in assessing expertise and exchanging information and antecedents in cases where the undertaking concerned is subject to the supervision of both supervisors.
2. A joint panel will be established for the purpose of ensuring the consistent application by the supervisors of this policy rule. This joint panel will periodically evaluate

assessments made on the basis of this policy rule. The findings of the joint panel will be used in the periodic evaluation of the policy rule as referred to in part 3.1.

CHAPTER 2 – FURTHER PROVISIONS GOVERNING ASSESSMENT OF POLICYMAKERS OF UNDERTAKINGS IN GROUPS B AND C PRIOR TO THEIR TAKING OFFICE

1. General

2.1 Period when experience gained

In the case of all companies in groups B and C, policymakers must have acquired general and specific professional knowledge no more than five years before the moment of assessment. The expertise in respect of business operations and the managerial and leadership skills must have been acquired no more than ten years before the moment of assessment.

2.2. Size of undertaking

If a credit provider, investment firm, manager of a collective investment scheme, investment company, depositary or financial service provider (with the exception of an investment product broker or adviser) consisting of not more than six persons, including the policymakers, expands and becomes an undertaking consisting of more than six persons, the policymakers of this undertaking will be reassessed by reference to the criteria in chapter 2 relevant to them.

2.3 Application of chapter 1

Where policymakers of undertakings in groups B and C are assessed before taking office, the following parts of chapter 1 will in any event be taken into account:

- a) assessment variables (part 1.3);
- b) collective (1.4);
- c) information and antecedents (part 1.6); and
- d) evaluation of information and antecedents (part 1.7).

2. Credit provider, investment firm, manager of a collective investment scheme, investment company and depositary (group B)

2.4 Credit provider, investment firm (with the exception of a tied agent), manager of a collective investment scheme, investment company and depositary

1. Policymakers of a credit provider, investment firm (with the exception of a tied agent), manager of a collective investment scheme, investment company and depositary will be deemed to have the expertise referred to in part 1.2.1 upon taking office if they show that they at least have:
 - a) the managerial skills necessary for day-to-day policy;
 - b) the leadership skills required in a hierarchical relationship;
 - c) general and specific professional knowledge gained in a relevant work setting;
and
 - d) expertise with regard to the business operations.

These skills, knowledge and expertise must have been gained over a period of at least two years' work experience, at least one year of which was a continuous period.

2. If not more than six persons, including policymakers, work for an undertaking referred to in part 2.4.1, the minimum requirements as referred to at a), c) and d) of part 2.4.1 may have been fulfilled during a period of one year's continuous work experience. In such a case the requirement at (b) of part 2.4.1 will not be assessed.
3. If an undertaking as referred to in part 2.4.1 has two or more policymakers, it is sufficient:
 - a) for the assessment of the leadership skills (2.4.1.b) that at least two of the policymakers have such skills;
 - b) for the assessment of the specific professional knowledge (2.4.1.c) and expertise with regard to the business operations (2.4.1.d) that the members of the collective together have such skills, provided always that each policymaker should in any event have either the specific professional knowledge or the expertise with regard to the business operations.

2.5 Tied agent

A policymaker of a tied agent will be deemed to have the expertise referred to in part 1.2.1 at the time of taking office if it is shown that he or she has at least general and specific professional knowledge gained during at least one year's work experience.

2.6 Minimum requirements

Further to the minimum requirements of parts 2.4 and 2.5 the supervisor may, if there is reasonable cause, decide to assess the expertise of a policymaker of an undertaking referred to in those parts by reference to the requirements of part 1.2.1.

3. Financial service provider (with the exception of a financial service provider in groups A or B), payment institution, electronic money institution, funeral expenses and benefits-in-kind insurer, mutual insurance society (certified) and trust office (group C)

2.7 Financial service provider (with the exception of a financial service provider in groups A or B), payment institution, electronic money institution and trust office

1. A policymaker of a financial service provider (with the exception of a financial service provider in groups A or B), payment institution, electronic money institution or trust office will be deemed to have the expertise referred to in part 1.2.1 at the time of taking office if it is shown that he or she has:
 - a) the managerial skills necessary for (day-to-day) policy;
 - b) the leadership skills required in a hierarchical relationship; and
 - c) solely in the case of policymakers of investment product brokers and advisers, payment institutions, electronic money institutions and trust offices: general and specific professional knowledge.

These skills and knowledge should have been gained in a relevant work setting over a period of at least two years, at least one year of which was a continuous period.

2. If an undertaking as referred to in part 2.7.1 has two or more policymakers, it is sufficient for the assessment of the leadership skills in a hierarchical relationship that one of these policymakers shows that he or she possesses the skills.

2.8 Small financial service provider (with the exception of an investment product broker or adviser), funeral expenses and benefits-in-kind insurer and mutual insurance society (certified)

Policymakers of a financial service provider (with the exception of an investment product broker or adviser consisting of not more than six persons, including the policymakers), a funeral expenses and benefits-in-kind insurer or a mutual insurance society (certified) will be deemed to have the expertise referred to in part 1.2.1 at the time of their taking office if they show that they have:

- (i) managerial experience gained over a period of at least one year in a work setting relevant to the undertaking; or
- (ii) a higher professional education (HBO) certificate of a course of study relevant to the undertaking;

- (iii) a higher professional education (HBO) certificate and at least two years' work experience in a work setting relevant to the undertaking; or
- (iv) ten years' work experience in a work setting relevant to the undertaking, of which at least five years formed a continuous period.

CHAPTER 3 – FINAL PROVISIONS

3.1 Evaluation

This policy rule will be periodically evaluated, for the first time one year after its entry into force.

3.2 Repeal

The Expertise of Day-to-day Policymakers (sections 4:9 and 5:29 of the Financial Supervision Act) Policy Rule of the Netherlands Authority for the Financial Markets of 24 March 2008 (Government Gazette 2008, no. 69, p. 21) and the Expertise of Day-to-day Policymakers (section 4:9 of the Financial Supervision Act) Policy Rule of the Netherlands Authority for the Financial Markets of 12 December 2006 (Government Gazette 2006, 251, p. 44) are repealed with effect from the entry into force of this policy rule.

3.3 Entry into force

This policy rule will enter into force on 1 January 2011. If the Government Gazette in which this policy rule appears is published after 31 December 2010, this policy rule will enter into force with effect from the second day after the day of publication of the Government Gazette in which it appears and will have retroactive effect to 1 January 2011. Policymakers who take office after the entry into force of this policy rule will be assessed on the basis of this policy rule in the context of an authorisation application or registration or a proposed appointment. Policymakers whose expertise has already been established before the entry into force of this policy rule will not be reassessed unless there are reasonable grounds for doing this, as referred to in part 1.5 (b).

3.4 Short title

This policy rule will be cited as the Expertise Policy Rule 2011.

This rule, together the explanatory notes, will appear in the Government Gazette.

Amsterdam, 15 December 2010

Signed in duplicate,

De Nederlandsche Bank N.V.
Markets

H.J. Brouwer, director

Netherlands Authority for the Financial

Th.F. Kockelkoren, board member

Annex – Competencies of policymakers in alphabetical order (belonging with part 1.2.1)

- a) **Authenticity:** is consistent in word and deed and behaves in accordance with own stated values and beliefs. Openly communicates his or her intentions, ideas and feelings, encourages an environment of openness and honesty, and correctly informs the supervisor about the actual situation, at the same time acknowledging risks and problems.
- b) **Decisiveness:** takes timely and well-informed decisions by acting promptly or by committing to a particular course of action, for example by expressing his or her views and not procrastinating.
- c) **Communication skills:** is capable of conveying a message in an understandable and acceptable manner and an appropriate form. Focuses on providing and obtaining clarity, transparency and active feedback.
- d) **Helicopter view and judgement:** is capable of weighing up data and different courses of action and coming to a logical conclusion. Examines, recognises and understands the essential elements and issues. Has the breadth of vision to look beyond his or her own area of responsibility, especially when dealing with problems that may jeopardise the continuity of the undertaking.
- e) **Customer and quality-oriented:** focuses on providing quality and, wherever possible, finding ways of improving this. Specifically, this means withholding consent to the development and marketing of products and services and to capital expenditure on, say, products, office buildings or holdings in circumstances where he or she is unable to gauge the risks properly owing to a lack of understanding of the architecture, principles or basic assumptions. Identifies and studies the wishes and needs of customers, ensures that customers run no unnecessary risks and arranges for the provision of correct, complete and balanced information to customers. A transparent sales process and the provision of careful service and appropriate advice play a central role in this connection.
- f) **Leadership:** provides direction and guidance to a group, develops and maintains teamwork, motivates and encourages the available human resources and ensures that staff have the professional competence to achieve a particular goal. Is receptive to criticism and provides scope for critical debate.

- g) **Loyalty:** identifies with the undertaking and has a sense of involvement. Shows that he or she can devote sufficient time to the job and can discharge his or her duties properly (despite any other positions that he or she may have).
- h) **External awareness:** monitors developments, power bases and attitudes within the undertaking. Is well-informed about relevant financial, economic, social and other developments at national and international level that may affect the undertaking and also about the interests of stakeholders and is able to put this information to effective use.
- i) **Independence:** acts independently, dares to back his or her own views against those of others and to defend them in the interests of the undertaking. Operates objectively and critically. Recognises and anticipates potential conflicts of personal and business interest.
- j) **Negotiating skill:** identifies and reveals common interests in a manner designed to build consensus.
- k) **Persuasive power:** is capable of influencing the views of others by exercising persuasive powers and using natural authority and tact. Is a strong personality and capable of standing firm.
- l) **Capacity for teamwork:** is aware of the group interest and makes a contribution to the common result. Able to function as part of a team and does not advocate individual interests.
- m) **Strategic acumen:** is capable of developing a realistic vision of future developments and translating this into long-term objectives, for example by applying scenario analysis. In doing so, takes proper account of risks that the undertaking is exposed to and takes appropriate measures to control them.
- n) **Stress resistance:** is resilient and able to perform consistently even when under great pressure and in times of uncertainty.
- o) **Sense of responsibility:** understands internal and external interests, evaluates them carefully and renders account for them. Has the capacity to learn and realises that his or her actions affect the interests of stakeholders.
- p) **Chairing meetings:** is capable of chairing meetings efficiently and effectively and creating an open atmosphere that encourages everyone to participate on an equal footing; is aware of other people's duties and responsibilities.

1 This list of competencies – (a) to (p) – is not intended to be either cumulative or exhaustive.

EXPLANATORY NOTES**a) GENERAL***1. Aim*

The aim of the policy rule is to clarify what the supervisor understands by expertise and what aspects are taken into account in assessing the expertise of a policymaker. The policy rule also provides clarity about when policymakers could or should be assessed and what information and antecedents should be taken into account by the supervisor in this connection.

2. Intended effect

By introducing this policy rule the supervisor wishes to ensure that policymakers in the financial services sector are aware (or more aware) of their duties and social responsibility and that this is reflected in their functioning.

Under the policy rule, obligations imposed by law on undertakings are not to be imputed to individual policymakers; instead, the aim is to make these individual policymakers aware they have a duty to ensure that the undertaking performs its obligations.

If the supervisor considers that a policymaker does not have the required expertise, it may decide not to grant the authorisation in response to an application. Where an assessment concerns a new policymaker to be appointed to an undertaking that already has an authorisation or is already registered, and the supervisor considers that the intended policymaker does not have the required expertise, this decision will mean that the policymaker is not appointed to the intended position.

Situations may occur in which the supervisor starts to doubt whether a policymaker has the required expertise in the light of his or her actual performance in practice. This may lead to interviews with the policymaker and the undertaking in order to assess what action can and should be taken to improve this. The supervisor may compile a file on the functioning of the policymaker concerned and may issue an instruction on this basis. For example, an instruction may entail a request to the undertaking to follow a particular course of action within a period specified by the supervisor, such as the appointment of a new policymaker

within a given period. The supervisor may also issue an instruction for the dismissal of a policymaker.

3. *Background*

Unrest in the financial markets worldwide has undermined confidence in the financial sector. Takeover problems, insolvencies, government interventions in the banking and insurance industry and sharply reduced funding ratios of pensions funds and occupational pension funds have revealed the weak parts of the financial market. Undertakings in the financial sector do not always fully understand how the products they buy and sell actually work and what risks they entail. Nor do they always appear able to correctly inform customers about these risks and products. In addition, short-term considerations are given too much importance in some cases. Many national and international studies and bodies have identified a lack of expertise on the part of executive directors and supervisory board members as one of the causes of these problems. To put into practice the lessons learned from these events and to provide greater clarity about the existing statutory requirements concerning expertise, DNB and the AFM have decided to carry out a joint evaluation of the current policy on the assessment of expertise and to incorporate the findings in a joint policy rule for policymakers in undertakings.

The main findings of the evaluation of the current policy on expertise assessment are as follows:

- expertise is more than just knowledge; skills and professional conduct form an essential part of a person's expertise;
- a joint framework is necessary for the assessment of expertise; this framework must be consistently applied by DNB and the AFM in accordance with their supervisory duties (prudential supervision and conduct of business supervision respectively);
- expertise must receive the continued attention of both the undertaking and the supervisor; the supervisor will reassess a policymaker where specific facts and circumstances necessitate this and may, when the occasion arises, issue an instruction for the dismissal of the policymaker.

For the development of the joint policy on the expertise of policymakers of supervised undertakings, use has been made not only of the lessons learned in practice, as referred to

above, and the experience of the supervisor but also of national and international principles, practical experience and basic criteria on expertise.¹

4. *Basic criteria for expertise assessment*

The basic criteria applied in this policy rule are:

- 1) expertise is a continuous requirement;
- 2) the undertaking is responsible for appointing (and retaining) expert policymakers;
- 3) the undertaking should verify the expertise of its policymakers and convince the supervisor of this; this policy rule provides the undertaking with various bases for achieving this;
- 4) policymakers should have expert knowledge of the obligations imposed by law on the undertakings.
- 5) by law the supervisor has its own responsibility for assessing the expertise of policymakers; in forming its judgement, the supervisor bases itself on the requirements and basic criteria set out in this policy rule.

5. *Future changes to the law*

Assessment of the expertise of supervisory board members

A bill is currently pending before the Lower House of the Dutch Parliament to amend Book 2 of the Netherlands Civil Code and the Financial Supervision Act in connection with the power to adjust and recover bonuses and profit shares of directors and makers of day-to-day policy and to assess the expertise of supervisory board members (Parliamentary Papers II, 2009-2010, 32 512, no. 2). This bill is scheduled to enter into force on 1 July 2011.

¹ International

- 'Principles for enhancing corporate governance' of the Basel Committee on Banking Supervision (October 2010);
- Issues paper on corporate governance (July 2009), International Association of Insurance Supervisors & Organisation for Economic Co-operation and Development;
- Corporate governance and the financial crisis: Key findings and main messages (June 2009), Organisation for Economic Co-operation and Development.

National

- *Pensioen "Onzekere zekerheid": Een analyse van het beleggingsbeleid en het risicobeheer van Nederlandse pensioenfondsen* (An analysis of investment policy and the risk management of Dutch pension funds) (January 2010), Investment Policy and Risk Management Committee;
- *Naar herstel van vertrouwen* (Restoring Trust) (April 2009), Advisory Committee on the Future of Banks (*Adviescommissie Toekomst Banken*);
- The Dutch Corporate Governance Code: Principles of good corporate governance and best practice provisions (December 2008), Corporate Governance Code Monitoring Committee.

When it enters into force, this policy rule will also apply to supervisory board members. From that date onwards they will come within the definition of ‘policymaker’ as laid down in this policy rule (i.e. ‘a person whose expertise must be assessed under the Financial Supervision Act, the Pension Act, the Obligatory Occupational Pension Schemes Act and the Supervision of Trust Offices Act and related secondary legislation).

Implementation of the directive on declarations of no objection

The Holdings in the Financial Sector Directive (2007/44/EC) introduces an expertise assessment for the holders of a declaration of no objection (DNO), in addition to the existing integrity test. Under the Bill to implement the Holdings in the Financial Sector Directive (Parliamentary Papers *II*, 2009-2010, 32 292, no. 2) this requirement concerning the expertise of the DNO holders is implemented in section 3:100, subsection 1, of the Financial Supervision Act. As the Directive should already have been transposed into Dutch legislation on 21 March 2009, the supervisor will interpret and apply the provisions of the Financial Supervision Act that still apply to DNOs as much as possible in conformity with the Directive until the moment when the Bill enters into force.

From 21 March 2009, the statutory rules in the Netherlands for DNO applications under sections 3:95, 3:96 subsection 1 (b) 3:108 of the Financial Supervision Act will differ from the rules that should apply under the Directive. The Directive provides that applications made before the Directive has been transposed into national legislation will be dealt with under the ‘old’ national rules. However, this transitional rule will cease to apply from the date on which the directive should have been transposed at the latest (21 March 2009). DNO applications that are received from 21 March 2009 onwards should therefore be assessed by reference to an interpretation and application of the current DNO-related provisions in the Financial Supervision Act that is in conformity with the Directive as far as possible. Specifically this means that the new procedure (with the stricter time limits) should be applied and that the present assessment criteria for DNO applications should be interpreted as far as possible in the spirit of the new criteria, including those concerning integrity and expertise. The latter assessment criterion is relevant, for example, to this policy rule.

Introduction of premium pension scheme

On the basis of the Pensions Directive (Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision) a new type of pension

administrator is expected to be introduced on 1 January 2011, namely the premium pension institution (PPI). Under the Introduction of Premium Pension Institutions Bill (Parliamentary Papers I, 2009-2010, 31 891, no. A) policymakers of PPIs are covered by the expertise requirement in section 3:8 of the Financial Supervision Act and, if the PPI acts as an adviser, intermediary, authorised agent or sub-agent in insurance, also in section 4:9 of the Financial Supervision Act.

6. *Scope*

This policy rule applies to the policymakers of all undertakings covered by the Financial Supervision Act, the Pension Act, the Obligatory Occupational Pension Schemes Act or the Supervision of Trust Offices Act. This concerns undertakings that are either under the supervision of DNB or the AFM, or are under their joint supervision.

The legislator has provided that each policymaker in the financial sector must have the required expertise. For the purposes of this policy rule the term policymaker means all persons whose expertise must be assessed under the Financial Supervision Act, the Pension Act, the Obligatory Occupational Pension Schemes Act or the Supervision of Trust Offices Act (see also the notes to part 1.1). In the future this will also include supervisory board members. The policy rule also applies to all these policymakers.

The assessment takes account of:

- the position of the policymaker;
- the type, size, complexity and risk profile of the undertaking for which the policymaker works;
- the composition and functioning of the collective.

This does justice to the differences between the various types of policymakers and undertakings active in the financial sector. From the perspective of the supervisor there are no decisive reasons for allowing further variation in the interpretation of the requirements, with the exception of specific primary and secondary legislation relating to pension funds and occupational pension funds.

The expertise requirement has been laid down in the following sections of the various Acts:

Supervisor	Act	Sections	Rule
DNB	Financial Supervision Act (Wft)	3:8, 3:271	The day-to-day policy is determined by persons who are expert in carrying on the business of the (financial) undertaking
AFM	Financial Supervision Act (Wft)	4:9 (1) 5:29 (1)	The day-to-day policy is determined by persons who are expert in carrying on the business of the (financial) undertaking
DNB	Pension Act (Pw), Obligatory Occupational Pensions Schemes Act (Wvb)	105 (3) (Pw), 110 (3) (Wvb)	Persons who are expert in carrying on the business of the pension fund or occupational pension fund determine or co-determine the day-to-day policy
DNB	Supervision of Trust Offices Act (Wtt)	4, opening words and (b), and 11 (2)	The expertise of executive directors and supervisory board members of a trust office, persons who determine or co-determine the policy of the trust office and persons who have a qualified holding in the trust office is not in doubt.

7. *Proportionate application of the expertise requirements*

The supervisory authorities have divided undertakings into three groups – A, B and C – on the basis of criteria such as the size of the supervision population, the nature, scope, complexity and risk profile of an undertaking, the type of products and/or services offered by an undertaking and the type of supervision (prudential and/or conduct of business supervision) relevant to an undertaking. The groups are as follows:

- **Group A:**
investment product providers, banks, clearing institutions, risk acceptance entities, financial institutions, financial holding companies, mixed financial holding companies or mixed-activity insurance holding companies having their seat in the Netherlands, reinsurers, life insurers, market operators, pension funds, occupational pension funds, premium pension institutions and non-life insurers (authorised).
- **Group B:**
credit providers, investment firms, managers of collective investment schemes, investment companies and depositaries.

- **Group C:**

financial service providers with the exception of financial service providers in groups A and B (this means that advisers, intermediaries, reinsurance brokers and authorised agents and sub-agents belong to the Group C); in addition to financial service providers, others belonging to Group C are payment institutions, electronic money institutions, funeral expenses and benefits-in-kind insurers, mutual insurance societies (certified) and trust offices.

The division of undertakings into groups in the manner described above means that the expertise requirements as included in chapter 1, part 1.2, are applied proportionately and at the same time there is an assurance that policymakers at different types of undertaking will be assessed in a consistent manner.

8. *Structure and contents of the policy rule*

Chapter 1

Chapter 1 contains the general framework for the expertise of policymakers. It sets out the principle-based² criteria for the definition of the term expertise (part 1.2), the assessment variables (part 1.3), the composition and functioning of the collective (part 1.4), the assessment moments (part 1.5), the use and assessment of information and antecedents (parts 1.6 and 1.7) and the cooperation concerning the expertise assessment by the supervisor (part 1.8).

Policymakers of all undertakings – irrespective of the group of which they form part – must comply with the principle-based criteria in chapter 1, part 1.2.

Chapter 2

In the case of policymakers of the undertakings in groups B and C the assessment is performed on the basis of rule-based criteria³ before they take office. For these policymakers chapter 2 implements part 1.2.1. The other parts of chapter 1 remain fully in force.

Policymakers of undertakings in group B are, in principle, assessed before they take office on the basis of chapter 2 pursuant to part 1.2.1, unless the supervisor sees reason (e.g.

² Principle-based criteria are criteria that specify an objective rather than set out detailed requirements and how they must be complied with.

³ Rule-based criteria set out detailed requirements and how they must be complied with.

because of the size, risk profile or type of activities of the undertaking) to make a more extensive assessment, i.e. by reference to part 1.2.1 (see also the example given in the notes to part 2.6).

Polymakers of undertakings in group C are assessed before they take office exclusively on the basis of chapter 2 pursuant to part 1.2.1.

Chapter 3

Chapter 3 contains final provisions on the evaluation of the policy rule, the repeal of the AFM's present expertise policy rule, the entry into force of this policy rule and the short title.

9. What requirements apply to what policymaker at what moment?

The following table shows the relevant provisions applicable *before* a policymaker takes office (part 1.5.a) and *after* a policymaker takes office (part 1.5.b) for the three groups of undertakings.

<i>Assessment moments →</i>	<i>Before policymaker takes office</i>	<i>After policymaker takes office, if there are reasonable grounds for this</i>
↓ Undertakings		
Group A <i>investment product providers, banks, clearing institutions, risk acceptance entities, financial institutions, financial holding companies, mixed financial holding companies or mixed-activity insurance holding companies having their seat in the Netherlands, reinsurers, life insurers, market operators, pension funds, occupational pension funds, premium pension institutions and non-life insurers (authorised)</i>	<i>Chapter 1</i>	<i>Chapter 1</i>
Group B <i>credit providers, investment firms, managers of collective investment schemes, investment companies and depositaries</i>	<i>Minimum requirements as referred to in chapter 2, sections 1 and 2 pursuant to part 1.2.1.</i> <i>If the supervisor considers that there are reasonable grounds, the assessment may also be by reference to part 1.2.1.</i> <i>The other parts of chapter 1 remain fully in force.</i>	<i>Chapter 1</i>

<p>Group C <i>financial service providers with the exception of financial service providers in groups A and B, payment institutions, electronic money institutions, funeral expenses and benefits-in-kind insurers, mutual insurance societies (certified) and trust offices</i></p>	<p><i>Requirements as referred to in chapter 2, sections 1 and 3, pursuant to part 1.2.1.</i></p> <p><i>The other parts of chapter 1 remain fully in force.</i></p>	<p><i>Chapter 1</i></p>
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b) NOTES PER CHAPTER

CHAPTER 1 – GENERAL PROVISIONS

ASSESSMENT OF EXPERTISE OF POLICYMAKERS

1.1 Definitions and terms

Policymaker

The policy rule deliberately makes no distinction between the different types of policymaker. The expertise requirements apply to all persons who are required to be expert pursuant to a supervision statute on which this policy rule is based: i.e. the Financial Supervision Act, the Pension Act, the Obligatory Occupational Pension Schemes Act and the Supervision of Trust Offices Act. The term policymaker includes, for example, people who co-determine policy and day-to-day policymakers. The expertise policy rule does not change the category of people to be assessed. The requirements are applied proportionately, taking account of the position of the policymaker (see also the notes to part 1.3).

Collective

The policy rule introduces the term ‘collective’. This is broader than the term ‘collegiate management’ – which is used in Dutch company law – since the group of persons to be assessed is determined not only by reference to legal structures but also by reference to the persons who actually influence policy-making.

1.2 Expertise

The notion that not only knowledge but also skills and professional conduct are essential qualities for a policymaker in the financial sector is not new. Even in the past policymakers were assessed in terms of their knowledge and experience and how they applied this in practice.

By defining expertise in this way the supervisor aims to state even more explicitly than in the past that each of the three elements – knowledge, skills and professional conduct – is essential in assessing the expertise of a policymaker. Policymakers must continuously demonstrate in practice – through their functioning – that they adequately and carefully apply their knowledge and skills and conduct themselves in a professional manner. The functioning of a policymaker in (day-to-day) practice is the litmus test for expertise. A policymaker is primarily responsible within an undertaking for the application by the undertaking of the business conduct and prudential standards. In this way a policymaker sets an example for an undertaking.

Knowledge, skills and professional conduct

Knowledge is about what someone knows and what substantive insight he or she has gained (the ‘what’). Skills indicate what someone can do and what he or she can accomplish in specific situations, for example in negotiating processes, during (‘bad news’) interviews and in the course of decision-making (the ‘how’). Skills and knowledge can, in principle, be learned, for example during training sessions or on the job. Conduct comes from inside a person and is influenced by external factors. It is determined by character and by the standards and values both of the person concerned and of those around him or her. Insofar as this relates to the duties and responsibilities of a policymaker of an undertaking, this also applies to professional conduct. These are the personal qualities and actions that reflect the attitude or style both in the workplace and in the boardroom and in relation to customers, the supervisor and other stakeholders. To some extent professional conduct too can be learned.

It is not easy to draw a clear line between the three elements of expertise. Nor is this necessary. What is important is that the individual elements – knowledge, skills and professional conduct – are mutually complementary: a person who has much knowledge of the operation of financial products but is not able to convey or generate this knowledge within an undertaking and/or in relation to customers is not an expert policymaker. The same is true of a person who has the right knowledge and skills, but is disinclined to make every effort to act in the interests of the undertaking, for example due to nonchalance, negligence or carelessness. Such a policymaker possibly gives the impression of finding other things more important, does not seem loyal and is apparently insufficiently committed to the undertaking. He or she has the knowledge and capacity but not the will.

Demonstrating expertise

Expertise can be demonstrated, for example, by means of qualifications, relevant work experience and competencies. Certificates must in any event be submitted as proof of educational qualifications. Given the pace of change in the financial markets, training and experience should not be too old. Relevant work experience means experience gained in a work environment that is largely similar to or has points in common with the type of undertaking and/or the type of position in which a policymaker wishes to work. Competencies may also have been gained elsewhere.

Competencies that are regarded as relevant are listed in the annex. This list is neither cumulative nor exhaustive. This means that competencies other than those mentioned in the annex may be used by the undertaking to demonstrate expertise. It is up to the undertaking to show, together with the policymaker, what competencies he or she possesses and how he or she applies them. The supervisor does not assess the competencies separately.

The supervisor expects a policymaker to have certain competencies and also to demonstrate them in the performance his or her duties. A policymaker need not possess all competencies simultaneously or to an equal extent. In order to demonstrate competencies an undertaking may, for example, carry out an assessment of the policymaker.

What competencies are important depends in part on the policymaker's position. Hence it may be difficult for some of the competencies (at least as described in the annex) to be combined in the person of one policymaker. In view of the assessment variables and the composition and functioning of the collective, it is acceptable that the competencies needed by a policymaker differ from job to job and from undertaking to undertaking. See also the notes to parts 1.3 and 1.4.

If the supervisor decides that an interview with a policymaker is necessary in order to establish the expertise, it will assess whether the picture that the undertaking has given of this expertise is consistent with the picture that emerges from the interview, possibly in combination with any supervision information and antecedents that are available in relation to the undertaking or policymaker concerned.

Subjects of expertise

A policymaker must have knowledge and skills and demonstrate professional conduct in various fields. Accordingly, a policymaker must have expertise in the following subjects:

A. Management, organisation and communication, including the management of processes, job areas and employees and the observance and enforcement of generally accepted social, ethical and professional standards, including the provision of timely, correct and clear information to customers and the supervisor.

A policymaker is expected to determine (or co-determine) the policy of the undertaking. For this purpose a policymaker must not only possess knowledge of management, organisation and communication but must also have the required skills. These skills can be demonstrated, for example, by the competencies referred to in the annex. Professionalism in relation to management, organisation and communication is focused mainly on the observance and enforcement of social, ethical and professional standards as contained in corporate governance codes and codes of conduct and the observance and enforcement of internal rules and applicable primary and secondary legislation.

If customers are to have confidence in the financial markets, it is essential for them to receive timely, clear and correct information. The supervisor, too, must receive timely, clear, correct and complete information. This is an essential precondition for the exercise of supervision. Without information it is not possible for the supervisor to form a complete picture of the risks to which an undertaking may be exposed.

The expertise of a policymaker is called into question if he or she provides incorrect information to customers and/or the supervisor whether intentionally (by misrepresentation) or unintentionally (by misjudgement). Similarly, a failure to provide information (or timely information) to customers and/or the supervisor may adversely affect the level of expertise.

Example

Policymakers of an undertaking failed to inform the supervisor in good time of recent incidents, such as non-compliance with the liquidity requirements, financing problems in relation to a property and, more generally, events posing a threat to the continuity of the undertaking. In view of adverse market developments the supervisor had asked the undertaking on several occasions whether it faced continuity risks. On each occasion this question had been answered in the negative by all the policymakers. Recently, the undertaking also provided the supervisor with incorrect information on several occasions. It is therefore beyond doubt that the supervisor is not being kept informed by the

undertaking in a correct and reliable manner. Such events form part of the supervision record of the undertaking. The supervisor takes this into account when assessing the expertise of the policymakers of the undertaking.

A policymaker must be capable of assessing proposals, actions and advice of employees and external consultants. Policymakers must also be capable of assessing proposals, working methods and actions of their fellow policymakers.

B. Products, services and markets in which the undertaking is active, including relevant primary and secondary legislation and financial (and actuarial) aspects.

A policymaker is responsible for ensuring that there is sufficient expertise at all levels of the undertaking in relation to its products, services and markets, so that the undertaking complies with both the prudential requirements and the business conduct requirements. A policymaker is expected to assume responsibility and render account for both these aspects. This means, first of all, that policymakers must themselves possess this expertise. For example, a knowledge of the technical aspects of insurance is essential for an insurer. A policymaker is therefore expected to have sufficient knowledge of all aspects of insurance such as new business development, pricing, investment, reinsurance and IT. Second, policymakers must ensure that this expertise is available within the organisation (see also the notes to C below), for example through lifelong learning for staff. To discharge their duty of care to customers, undertakings that are subject to conduct of business supervision are expected not only to know their products, services and markets but also what products are suitable for each customer target group, while they must also ensure this knowledge is used in the development and distribution of products.

C. Controlled and sound operations, including the administrative organisation and internal control, the safeguarding of expertise and professional competence⁴ within an undertaking, the proper treatment of customers,⁵ risk management, compliance and outsourcing.

⁴ Under section 4:9, subsection 2 of the Financial Supervision Act, the provisions of this policy rule on professional competence apply only to financial service providers.

⁵ Under section 4:14, subsection 2 (b) (3) of the Financial Supervision Act, the provisions of this policy rule on the careful treatment of customers apply only to managers of collective investment schemes, investment firms and depositaries.

Controlled and sound operations with a long-term focus are a precondition for financial stability. Responsibility for this lies primarily with the policymakers of the undertaking concerned.

To guarantee that it has the required expertise an undertaking should have a recruitment and selection policy and a policy for the periodic appraisal of all its personnel (including the policymakers) as part of its controlled and sound operations. It should also be capable of identifying at an early stage a possible lack of expertise and taking adequate measures to remedy the situation or compensate for it. Part of this policy is the use of job profiles in the recruitment and selection process and in periodic appraisals (see also the notes to part 1.6.2.c).

A policymaker must have the expertise to ensure controlled and sound operations. He or she must therefore possess (and constantly apply) expertise in relation to matters such as the segregation of duties, clear division of responsibilities, frameworks and guidelines, administrative organisation and internal control, proper records of the decision-making process, compliance with laws and with internal and external rules, maintaining the requisite insurance (particularly professional liability insurance), measures to ensure that the organisation is ‘in control’ of outsourcing, adequate risk management, expertise safeguards and, in so far as financial service providers are concerned, professional competence within the undertaking.

An expert policymaker is therefore capable of providing a reasoned answer to the following types of question (the list is not exhaustive): ‘How do you ensure that the administrative organisation remains adequately geared to the growth of the business? How have you arranged for your grip on the internal control process to be focused on acquiring a reasonable degree of certainty about the achievement of the organisation’s objectives? How has the risk management been organised? Is the independence of the risk management function guaranteed? Are the correct risks identified and, if so, is there a proper spread of risk over time and throughout the business? Are scenario analyses used in this connection? Are proper measures in place at all levels of the organisation to assure expertise and, in the case of financial service providers, professional competence? How is the ‘four-eyes principle’ applied? Does the decision-making process allow for sufficient consideration of alternatives? How does the undertaking avoid conflicts of interest when taking decisions? How does the production and distribution process ensure that the products are suitable for

specific customer groups and that these customers receive proper information and treatment?

An undertaking must ensure adequate and structural risk management. Policymakers should be expert in risk management measures and the embedding of the risk management function in the organisation, so that they are able to identify and recognise risks in good time and then manage or mitigate them. An essential part of risk management is the application of stress tests, together with scenario analyses.⁶

Example

An undertaking that aspires to operate in a controlled manner in financially difficult times should in any event avoid entering into new risks solely for the purpose of hedging existing risks, whether temporarily or otherwise. Instead, it should arrange for a permanent solution. Investing private assets in order to make up temporarily for a financial shortfall is an example of a solution that does not qualify as permanent in any circumstances. If certain undesirable events have occurred – for example, the temporary resolution of continuity problems by the transfer of assets from associated businesses – an undertaking must take steps to improve the structure and operation of its risk management system in order to avoid a repetition of these events in the future.

Sensitivity to external factors, a helicopter view and good judgement are competencies that are important in risk management.

Example

A policymaker of an undertaking was found to be insufficiently capable of identifying and eliminating potential risks at an early stage. For example, in his dealings with customers and the supervisor he was repeatedly too optimistic about the result of negotiations. He also failed to keep a proper record of oral agreements (made both internally and with banks about the financing) and relied too much on his personal charm. By failing to act with the necessary expertise, the policymaker exposed the undertaking and its customers to unnecessary risk. Even after the supervisor had stressed the importance of taking urgent measures, he ultimately failed to identify and manage the principal risks. It was also found that the policymaker still did not always record and confirm agreements in writing.

Besides the matters referred to above, a policymaker must also have the expertise to ensure that the undertaking properly manages integrity risks such as conflicts of interest, criminal offences and other breaches of the law, customer due diligence and socially irresponsible practices.

⁶ See also *Leidraad Risicomanagement bij Beleggingsinstellingen* (Guide to Risk Management for Collective Investment Schemes), AFM, August 2010

D. Balanced and consistent decision-making that accords a central role to such factors as the interests of customers and other stakeholders.⁷

In their day-to-day operations undertakings have to deal with customers and many different stakeholders such as shareholders, the supervisor and society as a whole, each of whom has divergent interests. To safeguard the interests of the customers and stakeholders and comply with the obligations of due care, a policyholder must be capable of carefully weighing the different interests and making a considered decision. To ensure balanced and consistent decision-making within the undertaking, a policymaker is expected to have expertise in the following areas (the list is not exhaustive):

- giving due consideration to all interests involved;
- keeping a written record of the outcome of decision-making;
- stating clearly on what grounds a decision has been taken;
- carrying out a risk analysis with input from the various stakeholders;
- informing customers and stakeholders about the matters of most relevance to them that have affected the decision-making process;
- making clear choices and setting reasoned objectives and showing that due consideration has been given to alternatives;
- acting consistently in keeping with stated objectives and choices;
- taking a reasoned decision to depart from an existing decision in changed circumstances.

The four areas of policymaker expertise (A-D) referred to above are cumulative. However, the list of subjects is not exhaustive. This means that subjects other than those referred to above may be taken into account in assessing the expertise of a policymaker.

Specification of expertise required by policymakers of (occupational) pension funds

The areas of expertise applicable to policymakers of pension funds, particularly occupational pension funds, are listed in article 30, paragraph 3 and article 14, paragraph 3 of the Decree implementing the Pension Act and the Obligatory Occupational Pension Schemes Act. These areas are dealt with in three categories below.

⁷ See also ‘*De 7 elementen van een integere cultuur: beleidsvisie en aanpak gedrag en cultuur* bij financiële ondernemingen 2010-2014*’ (The seven elements of an ethical culture: policy vision and approach in relation to conduct and culture at financial undertakings), DNB, November 2009.

- **Expertise area a): management of an organisation, and expertise area f): communication**

This includes managing processes, job areas and employees and observing and enforcing generally accepted social, ethical and professional standards and internal rules, determining positions independently and impartially and taking account of all interests involved in the pension fund.

Many pension fund members regard the subject of pensions as complicated. Awareness of the importance of clear communication about pensions and the pension fund to the members is therefore essential. It is also important for the supervisor to be informed correctly and in time.

Expertise with regard to areas a) and f) involves general skills such as managing a pension fund or occupational pension fund in a professional and independent manner and the special skill of presenting information about the fund in a clear and transparent manner. These skills can be demonstrated, for example, by competencies such as those described in the annex to this policy rule. An example can be found on pages 27/28.

- **Expertise area b): relevant primary and secondary legislation, expertise area c): pension schemes and types of pension, and expertise area d): technical financial and actuarial aspects, including funding, investments, actuarial principles and reinsurance**

Pension schemes are part of the terms and conditions of employment. The primary and secondary legislation on this subject are more extensive than those concerning products of financial undertakings. Policymakers of pension funds and occupational pension funds may be expected to have a knowledge of the employment law aspects of pensions.

In addition, pensions are a financial product. This is why the policymaker must have sufficient knowledge of asset management, pricing and insurance/reinsurance as well as primary and secondary legislation in these fields.

Policymakers must be able to understand their own pension scheme and its financial aspects and be sufficiently familiar with the relevant primary and secondary legislation. At

the same time they must ensure that the rest of the organisation and, where applicable, the outsourcee organisation have (and continue to have) sufficient knowledge of the pension scheme and pension law.

Ways in which knowledge can be demonstrated include experience and relevant qualifications.

- **Expertise area e): administrative organisation and internal control, and expertise area g), outsourcing**

A policymaker must have sufficient expertise to guarantee controlled and sound operations. The policymaker must therefore have expertise in relation to such matters as the division of duties and powers, internal control, codes of conduct, compliance, conflicts of interest, recording of decisions and decision-making processes, crisis measures and contingency plans, the administrative organisation and customer satisfaction. He or she should not only be familiar with these issues but may also be able to recognise whether they receive sufficient attention within the organisation.

Policymakers must also have a knowledge of outsourcing. Many pension funds outsource activities such as asset management and accounting to third parties. It is important for the policymakers to be in control of what these external parties do. This requires them to have a knowledge of, say, the products of these third parties so that they are able to assess independently (without being influenced by the third parties) whether the products are in the interests of the pension fund and the members. Examples are given on page 30.

Expertise areas a) to g) (inclusive) do not differ significantly from subjects A-D, as these apply to policymakers in other undertakings. In assessing the expertise of pension fund policymakers, the supervisor may therefore take into account not only expertise requirements a) to g) (inclusive) as referred to in part 1.2.2 but also the descriptions of subjects A-D.

1.3 Assessment variables

The assessment variables mean that a proportionate degree of expertise as referred to in part 1.2.1 (or in the case of pension funds part 1.2.1, opening words and part 1.2.2) is required. Given these variables, the supervisor makes a decision based specifically on the situation

and context. For example, a one-man business that provides financial services is assessed differently from the CFO of a large bank or insurance company or the director of a pension fund or occupational pension fund. It also follows that a person who is judged expert by the supervisor for a given position need not automatically be judged expert for another position, whether or not in the same undertaking.

Different variables are taken into account in assessing the expertise of a policymaker. These concern (a) the position which a policymaker will hold, and (b) the nature, size, complexity and risk profile of the undertaking.

Position of a policymaker

The position of a policymaker is an important variable in assessing the required expertise. When considering the type of position, the supervisor distinguishes first of all between policymakers who are involved in carrying on the day-to-day operations such as an executive director and policymakers who are more remote from them in a non-executive role, such as a supervisory board member. Next it examines what the position entails and the description of the duties and powers of the policymaker. For example, a Chief Risk Officer (CRO) is expected to have an in-depth knowledge of risk management. The same is true of a CFO in respect of financial matters relevant to the undertaking. In the case of a one-man business the owner must generally have expertise in all these fields. Moreover, the activities performed by a policymaker play a role in assessing the required expertise. For example, the expertise required by a financial service provider mainly engaged in providing consultancy services differs from that of a policymaker who has no direct contact with customers. Likewise, the expertise needed by the director of a pension fund or occupational pension fund depends on the complexity of its investment portfolio. Similarly, an elected director of a mutual insurance company may be expected to have a different expertise from that of a professional director at the same company.

For certain positions such as the chair of a collective or the policymaker responsible for risk management, more emphasis will be placed on competences of particular importance to the performance of the duties concerned. For example, in the case of a chairman the capacity to chair meetings and provide strategic guidance and in the case of a risk manager independence and persuasive powers.

Considerations relating to the nature, size, complexity and risk profile of an undertaking

The precise nature of the expertise requirements may vary between undertakings and also between sectors. This means that the required expertise may differ from policymaker to policymaker. At each moment of assessment policymakers of undertakings in group A and, subject to prior authorisation, policymakers of undertakings in groups B and C must fulfil the expertise requirements of the four expertise subjects A to D (inclusive) as referred to in part 1.2.1. Similarly, policymakers of pension funds and occupational pension funds must meet the expertise requirements of the areas referred to in part 1.2.2. However, the manner of compliance with these expertise requirements depends on the nature, size, complexity and risk profile of an undertaking.

The nature of an undertaking determines above all the substantive expertise needed in respect of products, services and markets. For example, policymakers of a pension fund or occupational pension fund and pension insurer need a knowledge of pensions and the financial aspects connected with the management of pension plan assets and insurance, whereas an adviser on pension products needs, above all, a knowledge of pensions.

The size of an undertaking in relation to the risk profile has an important bearing on the level of expertise as referred to in part 1.2.1, subjects A to D (inclusive) and, in the case of pension funds and occupational pension funds, part 1.2.2. This size influences the level of expertise that a policymaker is required to have in various ways. Size can relate to the following varying aspects (the list is not exhaustive):

- the number of staff: the larger the number of staff the more exacting are the requirements in relation to subject A (management, organisation and communication);
- the assets managed by an undertaking: the larger the assets the more exacting are the requirements in relation to subjects B (products, services and markets in which the undertaking is active) and C (controlled and sound operations) and in the case of pension funds and occupational pension funds the expertise areas d) (technical financial and actuarial aspects, including financing, investment, actuarial principles and reinsurance), e) (administrative organisation and internal control) and g) (outsourcing);
- the social aspect (the greater the number of customers, the more important are subjects D (balanced and consistent decision-making) and A (management, organisation and communication), and in the case of pension funds and

occupational pension funds the expertise areas a) (management of an organisation), b) (relevant primary and secondary legislation), c) (pension scheme and types of pension) and f) (communication).

At the same time, the more prominent and complex the risk profile, the greater is the required level of expertise. For example, a complex corporate structure (such as a company with various subsidiaries) requires a high level of expertise in relation to all subjects or expertise areas. A policymaker of a financial holding company needs expertise in relation to both the holding company and its subsidiaries, whereas a policymaker of the subsidiary requires expertise only in relation to the subsidiary.

In addition, a policymaker in a small undertaking without a collective (where no division of duties is possible) must be able to manage the entire operating process independently. This will be taken into account in an assessment of expertise.

As the supervisor, when assessing a policymaker, must take account of the assessment variables and the composition and functioning of the collective (this is explained in part 1.4), a single expertise assessment will not always be sufficient, for example in the case of a person who holds supervisory board memberships with various entities of a company or cooperative.

1.4 Collective

The supervisor assesses the expertise of individual policymakers, not the expertise of the board or any other collective consisting of all the policymakers. Where two or more policymakers decide policy together, the composition and functioning of this collective are taken into account in the assessment of the expertise of individual policymakers. In order to be able to bear the joint responsibility, each policymaker should be individually expert, which is not to say that they should all have the same expertise. Policymakers must complement one another. When policymakers who function (or will function) as part of a collective are assessed, importance is also attached to competencies that have a bearing on their ability to function in a collective, such as authenticity, loyalty, powers of persuasion, communication skills, independence and capacity for teamwork. To obtain more information, a Board Review Process (self-assessment) can be a useful instrument.

A more varied spread of specific knowledge and skills is possible within a collective. For example, since a Chief Executive Officer (CEO) must be able to make a critical assessment of the functioning of the CFO he must have some expertise in this field. Naturally, however, the CFO must have more specific (financial) expertise.

‘Collegiate’ management, joint responsibility and the consequent liability are basic principles of Dutch company law. However, the assessment of an individual policymaker’s expertise is about something different. The supervision legislation under public law is based on the expertise of the individual policymaker that enables him or her to bear individual and collective responsibility.

The composition of the collective is also important in situations in which one or more policymakers retire. The retirement of a policymaker does not automatically mean that the other policymakers cease to be experts. However, a new policymaker must possess the right complementary expertise given the new composition of the collective. If that is not the case, the supervisor may request the undertaking to indicate how it proposes to make up for the gap in expertise. In the absence of a satisfactory answer the supervisor may call the undertaking to account. Where necessary, this may mean that the proposed appointment of a new policymaker cannot proceed. It may also mean that one or more of the policymakers already in office are judged to have insufficient expertise given the new composition of the collective and the division of duties among its members.

1.5 Assessment moments

The supervisor carries out assessments at various moments: (a) before a policymaker takes office at the time of application for authorisation or registration or the appointment of a new policymaker to an existing undertaking, and (b) after a policymaker has taken office as part of the ongoing supervision. Given the nature of these different moments, the type of assessment may also differ.

Where expertise is assessed at the time of granting an authorisation, the assessment is essentially a snapshot. However, the requirement of expertise as laid down by law is a continuing requirement. The longer a policymaker has held office, the more information becomes available to assess whether or not he or she carries out the duties expertly. Where an assessment is made before a policymaker takes office, the supervisor often has little

relevant information, if any, about the candidate and his or her functioning in the undertaking to which he or she is to be appointed.

Before a policymaker takes office

The main feature of this assessment of expertise is that an undertaking applying for an authorisation or registration or intending to appoint a new policymaker is required to submit data showing the expertise of the person concerned. It is possible that a policymaker may already be known to the supervisor, in which case use can also be made of information and antecedents in the possession of the supervisor (part 1.6).

If the policymaker switches to a different policymaking position within the same undertaking, this is a moment of assessment as referred to in part 1.5.a. In such a case the supervisor expects the undertaking to notify it in good time of changes in the division of duties between the policymakers and to complete a notification form concerning the proposed appointment.

Example

The CRO of an undertaking succeeds the CFO upon his retirement. As a result, the position and duties of this policymaker undergo a considerable change, as do the expertise requirements. The supervisor is notified by the undertaking of this change and receives a signed notification form of the proposed appointment of the new CFO. The supervisor assesses among other things whether the policymaker possesses the required expertise given the changed assessment variable 'position of the policymaker' (part 1.3.a) and the changed composition of the collective (part 1.4). This assessment will focus on the aspects of expertise that are of greater relevance to a CFO (for this undertaking, given the composition and functioning of the collective) than to a CRO. Examples would be knowledge of relevant primary and secondary legislation, the financial aspects, and the outsourcing of work. To show that the CRO also has the expertise required of a CFO, the undertaking may, for example, use the list of competencies included in the annex to the policy rule.

After a policymaker has taken office

The Financial Supervision Act, the Pension Act and the Obligatory Occupational Pension Schemes Act provide that policy must be determined by persons who are expert, whereas the Supervision of Trust Offices Act provides that the expertise of policymakers must be beyond doubt. Nonetheless, ongoing supervision does not involve the standard or periodical assessment of policymakers' expertise. Instead this expertise is reassessed only if facts and circumstances provide reasonable cause. Reasonable cause is a matter for the judgement of the supervisor and may exist, for example, where there is a change in the composition of a

collective or a failure to appoint a successor to a departing policymaker or if the supervisor has doubts about the functioning of one or more policymakers (the list is not exhaustive).

In practice, the supervisor will rely on signals indicating a need to assess whether the expertise of a policymaker is sufficient. Such signals may be very varied. For example, there may be an unforeseen decline in profits, fast growth of the company, concerns about controlled and sound operations, concerns about the business model or the corporate culture, concerns about compliance, a merger or acquisition, international expansion of the business activities, outsourcing of (key) tasks, the marketing of harmful products or the provision of incorrect, unclear and/or misleading information, consistent failures to reply (or reply in time) to the supervisor's requests for information, inability to pay the auditor, poor accounting records, high staff turnover, complaints from customers about careless service or repeated infringements of primary and secondary legislation. Any of these signals may prompt a reassessment of the expertise of a policymaker or of one or more policymakers in the collective as part of the ongoing supervision.

It is impossible to say in advance whether a reassessment will be confined to one policymaker or be extended to include several members of the collective. This will depend on the situation and specifically on the event prompting the reassessment. If, for example, there are concerns about the corporate culture, it is likely that several members of the collective will be reassessed. However, if there are worries about specific activities of an undertaking (e.g. a specific product, service or market) for which one member of the collective is responsible, the reassessment will probably be confined to the policymaker concerned.

If the supervisor initiates a reassessment, the focus will be on the actual functioning of the policymaker concerned in practice. For example, how has the policymaker applied his or her knowledge and skills and do the decision-making and the structure of the business operations testify to a professional approach? In carrying out the reassessment, the supervisor uses factual evidence collected over a particular period (pattern of action). This means that the reassessment is less in the nature of a snapshot.

The supervisor may notify an undertaking and policymaker about the reassessment and share the findings of the reassessment with them. Based on the findings the supervisor decides whether a measure is necessary and, if so, what measure would be most effective.

In some cases the supervisor may specify a period within which the shortcomings must be remedied, and require that during this period compensatory measures are taken, for example attendance at a training course or the appointment of an extra (interim) policymaker. Conceivably, a shortcoming may also be offset by obtaining external assistance. An example would be the appointment of an independent compliance officer to work temporarily in the undertaking and examine and, where necessary, adjust all procedures. The supervisor may also require an undertaking itself to draw up a plan of action setting out when and what specific measures will be taken to prevent any repetition in the future.

If an assessment as referred to in part 1.5 (b) finds that a policymaker lacks the required expertise, the supervisor may issue an instruction with the intention of securing the dismissal of the policymaker concerned and, possibly, the appointment of a new policymaker within a specified period.

Reassessment and the relationship between the criteria in part 1.2.1 en chapter 2

Chapter 2 provides that where the expertise requirements specified in part 1.2.1 are assessed in relation to policymakers of undertakings from groups B and C before they take office, this should be done on a proportionate basis (i.e. an assessment as referred to in part 1.5(a)). This does not mean that the *requirements* are less strict; the *assessment* is implemented differently, for example for practical reasons (see also the general notes, sections 7 and 8). The principle-based criteria in chapter 1 form the basis of the expertise assessment. This applies to every policymaker of every undertaking. It goes without saying, therefore, that any reassessment is also based on chapter 1 since in practice a reassessment focuses on the functioning of a policymaker.

1.6 Information and antecedents

Undertakings have the responsibility to select, appoint and retain policymakers having the required expertise, and the supervisor has the responsibility to establish the expertise of a policymaker on the basis of sufficient and reliable information. In the opinion of the supervisor, it is not desirable for a proposed appointment to be announced prior to the assessment of expertise by the supervisor. The basic principle is that an undertaking should convince the supervisor of the expertise of the persons it proposes to appoint.

In assessing the expertise of a policymaker, the supervisor uses various information sources, including:

- a) the 'proposed appointment' notification form truthfully completed and signed by the undertaking, including information obtained by the supervisor from the persons named as references in the form;
- b) supervision information and antecedents: including formal and informal supervision measures such as a 'normative' interview and a proposal to take a formal measure. If a policymaker changes job or moves to a different undertaking, the supervisor may use information obtained in relation to the previous position when assessing his or her expertise for the new job.
- c) the policy (the processes and procedures) of an undertaking that underlie recruitment and selection and (periodic) appraisals in respect of expertise. This policy and its results form part of an undertaking's communication with the supervisor about the expertise of its policymakers. Good (and well-documented) policy and effective implementation can be of assistance in demonstrating expertise.

Part of this policy is the use of job profiles in the recruitment and selection policymakers and their periodic appraisal. The results of appraisals can be helpful in this connection and are also a welcome source of information for the supervisor.

It is advisable that the parts of this policy rule that formulate the basic principles and define expertise should be used by an undertaking as a guide in drawing up or critically reviewing and, when necessary, adjusting the policy on recruitment and selection and the appraisal of policymakers. If a policymaker is selected, a written record of this should be kept. Ideally, this record should contain not only the selection decision but also the considerations leading to the appointment, including any agreements about expertise enhancement.

The supervisor recommends that an undertaking should carry out periodic (preferably annual) appraisals of the functioning of its policymakers in practice. In such periodic appraisals, the functioning of a policymaker should preferably be viewed in the light of the position that he or she holds and the job profile on the basis of which he or she was

appointed. The periodic appraisal should show expertise by reference to specific practical examples. It is advisable to keep a written record of periodic appraisals. Ideally, the record should contain not only the final conclusion but also the considerations leading to it, including any agreements about expertise enhancement.

Where there is a collective, it is important for the undertaking to ensure that the recruitment & selection and appraisal processes take into account the composition and functioning of the collective and the role that an individual policymaker plays or will play in practice in the collective.

In the case of pension funds and occupational pension funds the composition of the management board is prescribed by law. The board of a pension fund consists of representatives of employers and employees. The board of an occupational pension fund consists of representatives of the occupational pension association that has requested that membership be made obligatory for the profession concerned. Responsibility for the appointment of a pension fund manager rests in principle not with the fund but, primarily, with the employers and employees making the appointment (i.e. the associations of employers and employees or the occupational pension association). This means that the information included in part 1.6.2(c)(i) (documented policy on recruitment & selection and appraisal and the results thereof) is relevant only if it concerns a policymaker appointed by the fund itself, for example a director of a pension office.

On the other hand, the information included in part 1.6.2(c)(ii) (job profile) is also relevant to managers of pension funds and occupational pension funds. The supervisor considers it desirable for pension funds and occupational pension funds to submit a job profile to the party making the appointment, together with a request that it seek a candidate who matches the profile as closely as possible. When the profile is drawn up, the funds are expected to take account of the areas of expertise listed in article 14, paragraph 3 and article 30 of the Decree implementing the Pension Act and the Obligatory Occupational Pension Schemes Act and of the competencies listed in the annex to this policy rule. When assessing expertise, the supervisor may not only ask to be supplied with the job profile but also request the management of the pension fund or occupational pension fund to indicate to what extent the board considers that the candidate board member meets the profile. As regards the information referred to in

part 1.6.2(c)(iii), where the expertise of managers of pension funds or occupational pension funds is reassessed, the supervisor will ask to be supplied with the results of the periodic self-evaluation, which pension funds and occupational pension funds are required to carry out under the Principles of Pension Fund Governance.

- d) Other information to be supplied by the undertaking insofar as relevant to the assessment of a policymaker's expertise.
- e. Other information. Information about such matters as a policymaker's involvement in a suspension of payment or bankruptcy. The importance attached to antecedents differs according to whether they are used to assess expertise or integrity. In the case of an expertise assessment, the criterion is to what extent the involvement of the policymaker in a suspension of payments or bankruptcy is evidence of a lack of expertise on the part of the policymaker. By contrast, antecedents are used in an integrity assessment primarily to determine the integrity of the policymaker. In this sense, therefore, integrity and expertise assessments are complementary. The aim of both an expertise and an integrity assessment is to ensure the integrity and stability of the financial markets and bolster confidence in them.
- f. Information in the public domain: examples are information from other supervisors, government ministries, the Dutch Securities Institute (DSI) or the trade register of the Chambers of Commerce.

Information requests

The information referred to above is generally already available to the undertakings concerned (e.g. the policy on recruitment & selection and appraisal of policymakers and a job profile). The supervisor does not therefore expect any increase in compliance costs as a consequence of the provision of this information. An undertaking needs supply this information only with the notification form. If an undertaking does not have this information, it may demonstrate the expertise in some other way.

The supervisor is authorised to request information necessary for the assessment of expertise (pursuant to section 4:2 of the General Administrative Law Act (*Algemene wet bestuursrecht*)). The information request has been modified to take account of the manner in which the statutory expertise requirement is elaborated in this policy rule.

1.7 Evaluation of information and antecedents

The available information and antecedents are used and evaluated by the supervisor in assessing expertise. Various factors as listed in part 1.7 a) to g) (inclusive) play a role in this connection. Not all information and antecedents ‘count’ to the same extent. For example, failure to publish financial statements in time is an offence and may be indicative of a lack of expertise (for example, it may indicate that policymakers have insufficient control over this). However, failure to draw up the financial statements is a much more serious offence. In such a case there is not only a lack of transparency but also an absence of adequate business operations.

In terms of content, part 1.7 is comparable to article 9 of the Decree on Prudential Rules (*Besluit prudentiële regels / Bpr*) and article 16 of the Decree on Conduct of Business Supervision of Financial Undertakings (*Besluit gedragstoezicht financiële ondernemingen / Bgfo*) concerning the assessment of integrity.

The evaluation of the information and/or antecedents may involve, for example, actions performed by the policymaker concerned in the course of his or her profession. If the policymaker has various antecedents, the information or antecedent to the assessed should be viewed in the light of the combination and/or the pattern of information of antecedents.

Another factor that is taken into account in evaluating information and/or antecedents concerns the interests that the law seeks to protect. For this purpose the law means the Financial Supervision Act, the Pension Act, the Obligatory Occupational Pension Schemes Act, the Supervision of Trust Offices Act and related secondary legislation.

The importance of the information and/or antecedent indicates to what extent the policymaker will lack the required expertise to perform his or her duties. For this purpose it is of less importance whether a policymaker consistently acts in a manner indicative of a lack of expertise and to what extent more information and/or antecedents are available regarding such acts.

The importance to be attached to the information and/or antecedent decreases over time. In principle, less importance is attached to old information and antecedents when assessing expertise.

As regards the ‘attitude and reasoning’ factor, the supervisor attaches importance to a ‘correct’ attitude on the part of the undertaking and the policymaker concerned and to ‘plausible/credible and detailed’ reasoning. It can be inferred from the attitude, reasoning and explanation of the persons subject to assessment how they themselves evaluate the information and whether they comprehend that the information can shed light on their ability to act expertly and whether they have learned from any consequences.

A special category of information also plays a role in the assessment of attitude, namely failure to mention relevant information (on the notification form) to the supervisor. Failure to mention information constitutes a supervision antecedent. Information withheld in this way may be discovered by the supervisor from other sources. Failure to mention information will therefore always play a separate role in the assessment of the expertise of a policymaker, particularly in relation to professional conduct that is an element of expertise.

The supervisor may evaluate the available information and antecedents in conjunction with one another. This may mean, for example, that although certain information or a certain antecedent does not in itself warrant a finding that the policymaker lacks expertise, the combination and/or pattern of information and/or antecedents nonetheless warrants a finding that the policymaker lacks sufficient expertise. The importance and age of the other information or other antecedent play an important role in this connection. A clearer and less static picture of the functioning of a policymaker is obtained from the complete overview of the available information and antecedents. The evaluation of a single antecedent need not result in a finding that a policymaker lacks expertise or needs to improve his or her expertise. However, it may do so. The combination of the information and antecedents also sheds light on the pattern of acts and/or omissions of a policymaker and may, in combination, result in a finding that the policymaker does not possess (or no longer possesses) the required expertise or must improve a particular element of his or her expertise.

1.8 Cooperation

The part of the policy rule dealing with cooperation applies regardless of provisions in statutory rules and the covenant between the AFM and DNB on cooperation and coordination in the field of supervision, on regulations and policy, on national and international consultations and on other duties of common interest relating to the implementation of the Financial Supervision Act, the Pension Act, the Obligatory

Occupational Pension Schemes Act and the Supervision of Trust Offices Act. As prudential supervision and conduct of business supervision run to some extent in parallel, it is important for DNB and the AFM to coordinate their efforts and work together when assessing expertise. The formulation of joint policy such as this policy rule is an important starting point. If the expertise of a policymaker of an undertaking is a matter to be assessed in practice by both DNB and the AFM, the supervisors will make agreements in specific cases about cooperation and the exchange of information relating to the assessment.

In order to ensure uniform and consistent application of this policy rule, the two supervisors will hold periodic consultations on pending and completed expertise assessments. A joint panel of DNB and the AFM will meet fairly regularly for this purpose in order to discuss a variety of cases (both relatively simple and more complex assessments). This joint panel is also primarily responsible for assessing whether the policy rule should be modified on the basis of the cases discussed.

CHAPTER 2 – FURTHER PROVISIONS GOVERNING ASSESSMENT OF POLICYMAKERS OF UNDERTAKINGS IN GROUPS B AND C PRIOR TO THEIR TAKING OFFICE

Part 1.5 sets out the different assessment moments, namely: (a) before a policymaker takes office at the time of application for authorisation or registration or the proposed appointment of a new policymaker to an undertaking that already has an authorisation or is registered and (b) after a policymaker has taken office.

Chapter 2 describes the expertise requirements for assessments under part 1.5(a) of policymakers (prior to their taking office) of undertakings in groups B and C. As regards group B, the supervisor may, if there is reasonable cause, assess expertise prior to the date on which the policymaker takes office by reference to part 1.2.1, by way of addition to the requirements in chapter 2. Part 1.2.1 does not apply in respect of group C, where assessment takes place before the policymaker takes office.

The expertise requirements referred to in part 1.5(a) for policymakers of undertakings in groups B and C are set out in the table on page 48.

<i>Overview of the implementation of part 1.2.1 (expertise) for policymakers of undertakings of groups B and C for assessment as referred to in 1.5 (a) (before policymaker takes office)</i>					
	<i>Managerial skills necessary for day-to-day policy</i>	<i>Leadership skills necessary in a hierarchical relationship</i>	<i>General and specific professional knowledge</i>	<i>Expertise in relation to business operations</i>	
Group B (2.4.1) credit provider, investment firm (with the exception of a tied agent), manager of collective investment schemes and depositary;	2 years' work experience, of which at least 1 year was continuous	2 years' work experience, of which at least 1 year was continuous	2 years' work experience, of which at least 1 year was continuous and in a relevant work setting	2 years' work experience, of which at least 1 year was continuous	
Small undertakings Group B (2.4.2) Undertaking as referred to in 2.3.1. with a maximum of 6 persons, including policymakers	1 year's continuous work experience	n/a	1 year's continuous work experience	1 year's continuous work experience	
Collective clause Group B (2.4.3.) Undertaking as referred to in 2.3.1 with more than 2 policymakers	Every policymaker	Minimum of 2 policymakers	Joint requirement for the collective, but each policymaker has either specific professional knowledge or expertise regarding the business operations		
Group B (2.5) Tied agent	n/a	n/a	1 year's work experience		
Group C (2.7.1) Financial service provider (with the exception of those in groups A and B)	2 years' work experience, of which at least 1 year was continuous and in a relevant work setting	2 years' work experience, of which at least 1 year was continuous and in a relevant work setting	n/a	n/a	
Group C (2.7.1) Investment product intermediary and adviser; payment institution; electronic money institution and trust office	2 years' work experience, of which at least 1 year was continuous and in a relevant work setting	2 years' work experience, of which at least 1 year was continuous and in a relevant work setting	2 years' work experience, of which at least 1 year was continuous in a relevant work setting	n/a	
Collective clause Group C (2.7.2) Undertaking as referred to in 2.7.1 with more than 2 policymakers	Every policymaker	One of the policymakers	Every policymaker	n/a	
Group C (2.8) small financial service provider (with the exception of an investment product intermediary and adviser); funeral expenses and benefits-in-kind insurer and mutual insurance society (certified)	<ul style="list-style-type: none"> managerial experience gained over a period of at least one year in a work setting relevant to the undertaking; or a higher professional education (HBO) certificate of a course of study relevant to the undertaking; or a higher professional education (HBO) certificate and at least two years' work experience in a work setting relevant to the undertaking; or ten years' work experience in a work setting relevant to the undertaking, of which at least five years was continuous. 			n/a	

1. General

2.1 *Period when experience gained*

In the case of the expertise assessment, policymakers must have acquired general and specific professional knowledge and/or experience no more than five years before the moment of assessment. This part of the expertise is subject to changes in the market and/or legislation and rapidly ceases to be up to date. This is why the supervisor considers that knowledge and/or experience gained more than five years previously is insufficiently up to date to be considered applicable and relevant. The expertise in respect of managerial and leadership skills and business operations and the supporting evidence must have been acquired no more than ten years before the moment of assessment. Knowledge and skills of this kind are less likely to become outdated as a result of changes in the market and/or legislation. However, the supervisor still imposes a maximum term as skills are only usable if they have been applied over a given period and in the not too distant past.

2.2. *Size of undertaking*

The expertise of a policymaker can be checked by the supervisor in relation to the size and growth of the undertaking concerned. For example, the supervisor may reassess the expertise of policymakers of a small undertaking once it expands and has a staff of more than six persons. For this purpose the supervisor includes a provision in the authorisation of the undertaking to the effect that it must obtain approval for expansion of its workforce beyond six persons. This provision gives these policymakers the possibility of gaining leadership skills in a hierarchical setting. They can comply with the requirement in this policy rule for leadership skills gained in a hierarchical setting by means of the passage of time (two years).

Example

An undertaking has only two policymakers and no other staff. As the policymakers do not satisfy the requirement of two years' leadership experience in a hierarchical organisation, an authorisation is issued subject to the condition that the undertaking must notify the supervisor if it wishes to expand its workforce beyond 6 persons. If the undertaking expands and has a staff of more than 6 persons, it must notify the supervisor. At this stage, the policymakers will be reassessed in the light of the minimum requirements, i.e. two years' work experience of which at least one year was continuous.

2.3 *Application of chapter 1*

Where policymakers of undertakings in groups B and C are assessed before they take office, chapter 1 otherwise applies in full. This means, for example, that where there is an assessment of managerial skills or the relevant work setting within which the work experience must be gained, the assessment variables such as the intended position and the type of undertaking are taken into account.

2. Credit provider, investment firm, manager of collective investment scheme, investment company, depositary (group B)

2.4 Credit provider, investment firm (with the exception of a tied agent), manager of collective investment scheme, investment company and depositary

This part elaborates the requirements for expertise contained in part 1.2.1 for policymakers of undertakings in group B. The requirements specified at the start of this part are minimum requirements.

a) Managerial skills

Managerial skills necessary to determine day-to-day policy properly. Assessing these skills involves examining the work experience that has been gained and is useful for managing an undertaking, taking into account the level of work experience, the role and the degree of responsibility within the undertaking. Examples are responsibility for cross-department matters, duties requiring organisational skills and the role within an undertaking. Managerial skills may also be evident from the responsibility assumed by a policymaker, for example through independent entrepreneurship. By contrast, leadership skills are always gained by being in charge of a number of staff.

b) Hierarchical leadership skills

Providing leadership in a hierarchy involves knowing from experience how to discharge the responsibilities and exercise the powers necessary to manage an organisational unit.

Example

Some months ago a policymaker sold his audit firm. He founded the firm and managed it for 25 years. Under his direction the firm grew from 1 to 3 branches. He was ultimately in charge, directly and indirectly, of 50 people and was responsible for the firm's strategy, planning and budget. He has thus demonstrated that he has hierarchical leadership and managerial skills.

A policymaker gained leadership experience by acting as a team leader for three years. In his case the job involved managing staff and providing input for their appraisals. He had limited authorisation to sign and the management team conducted the appraisal interviews. This policymaker does not therefore have hierarchical leadership experience. However, this experience does qualify as managerial experience.

Another policymaker worked as a fund manager for five years. In this capacity he was responsible for managing assets worth EUR 100 million. The fund manager took independent investment decisions within his remit, but did not manage staff, was not involved in the departmental budget and had only limited responsibilities in respect of matters beyond his fund. He does not therefore fulfil the requirements for hierarchical leadership or managerial skills.

A policymaker demonstrates that he or she has the skill to take decisions on the appointment of staff and on their responsibilities, training and appraisal. Hierarchical leadership skills should be distinguished from functional leadership skills. A functional leader does not, for example, have ultimate responsibility for staff and often does not conduct appraisal interviews independently. Hierarchical leadership skills are less relevant for the policymaker of a small undertaking. Both the managerial and the leadership skills may be gained in a non-financial undertaking.

c) General and specific professional knowledge

General expertise includes general knowledge of the financial markets, financial products and financial services relevant to an undertaking and the (statutory) supervision framework applicable to the undertaking. This may be demonstrated on the basis of sufficient work experience or training. Specific professional knowledge means the services expertise required for performing the work of an undertaking. The nature of

an undertaking determines in part the required expertise. Where a management company performs management activities for various types of collective investment scheme, the policymaker's expertise may be considered valid for particular types of collective investment scheme provided that the policymakers collectively have the expertise in respect of all the different types of collective investment scheme concerned.

d) Expertise in respect of business operations

A policymaker must have expertise in respect of business operations, which also includes monitoring and controlling financial risks. The knowledge and experience may have been gained in a non-financial undertaking, but must be related to the nature of the undertaking in which the policymaker will work. Factors that will be taken into account in the assessment include the size of the undertaking where the experience was gained, the position in which the policymaker gained his or her experience and the complexity of the undertaking where this occurred. The experience must be appropriate to the undertaking to which the policymaker is to be appointed and the position he or she will hold.

A policymaker must have gained the knowledge and skills described above during two years' work experience, at least one of which was a continuous period. As noted, the work experience for the general and specific professional knowledge must have been gained in a relevant work setting.

Small undertaking

In the case of a small undertaking (i.e. an undertaking with up to 6 staff, including the policymakers) as referred to in part 2.4.1, it is sufficient if the required knowledge and skills have been gained during one year's continuous work experience. It was found in practice that the requirement of managerial skills in a hierarchical setting can be too restrictive for a small undertaking. There are even undertakings that decide never to employ staff. An exception is therefore made in this respect for small undertakings, for which only managerial skills, alongside knowledge of business operations and professional know-how, are required.

Collective

A division of duties between policymakers of undertakings referred to in part 2.4.1 is possible. The supervisor distinguishes in this connection between knowledge and skills that are essential for each policymaker and knowledge and skills already sufficiently possessed by the board. For example, policymakers should in any event have gained two years' experience (one of which was continuous) of hierarchical leadership skills and managerial skills. The other policymakers should in any event have gained two years' experience (one of which was continuous) of managerial skills. In addition, policymakers of the undertakings referred to in part 2.2 should have specific professional knowledge and expertise in respect of business operations, but it is not necessary for each individual policymaker to have such knowledge and skills.

When the expertise of policymakers is assessed, the basic principle is that the people who determine day-to-day policy should have the expertise jointly. This means, for example, that not all policymakers need to have hierarchical leadership experience as long as at least two policymakers fulfil this condition. If one of these

policyholders drops out, the remaining policyholders should make up for the lost expertise. This means that the expertise of the remaining policyholders must be reassessed in order to determine whether together the collective still has sufficient expertise. If it transpires that it does not, the relevant policyholders are no longer sufficiently expert. This situation may be remedied by appointing a new policyholder who at least possesses the lost expertise. Alternatively, the policyholders in office may have gained experience in this field since their approval. Any proposed change to the policyholder collective (i.e. including a retirement) should be notified to the supervisor.

Example

An undertaking has two policyholders and seven employees. One of the policyholders will be retiring in two years' time and wishes to arrange his succession in advance. One of the female staff would like to take over his share of the business and is put forward by the investment firm as policyholder. Owing to the small size of the firm and the flat organisational structure she has not gained any leadership experience. However, she has been responsible for drawing up the annual plan and the corporate strategy, has managed an asset management portfolio for many years and has specific professional knowledge. As a result, she meets the requirements for a third policyholder despite the fact that she can only show managerial experience.

2.5 Tied agent

To demonstrate expertise as referred to in part 1.2.1 a tied agent must at least show that he/she has general and specific professional knowledge. The holder of the authorisation has full responsibility for the services performed by the tied agent. It is logical, therefore, that responsibility for business practice should rest with the central undertaking. In view of the nature of the activities, however, it is important for the agent to have and apply professional knowledge.

2.6 Minimum requirements

If there is reasonable cause, the expertise may be assessed not only on the basis of the minimum requirements but also by reference to part 1.2.1.

Example

A policyholder fulfils the minimum requirements of knowledge, skills and experience, but has failed in the (recent) past as a policyholder of another undertaking in ensuring proper compliance. In this case the supervisor may also take into account the experience and competencies of this policyholder in respect of business operations.

If it is found that a policyholder has provided incorrect information to one or more customers in the past, the supervisor is entitled to assess the experience and competencies of the policyholder, for example his or her ability to manage the organisation in accordance with ethical and professional standards.

3. Financial service provider (with the exception of a financial service provider in groups A and B); payment institution; electronic money institution; funeral expenses and benefits-in-kind insurer; mutual insurance society (certified); trust office (group C)

2.7 Financial service provider (with the exception of a financial service provider in groups A and B); payment institution; electronic money institution; trust office

A policymaker of a financial service provider (with the exception of a financial service provider in groups A and B), payment institution, electronic money institution or trust office has expertise as referred to in part 1.2.1 if he/she has managerial and leadership skills.

a) Managerial skills

Managerial skills necessary to determine day-to-day policy properly. Assessing these skills involves examining the work experience that has been gained and is useful for managing an undertaking, taking into account the level of work experience, the role and the degree of responsibility within the undertaking. Examples are responsibility for cross-department matters, duties requiring organisational skills and the role within an undertaking. Managerial skills may also be evident from the responsibility assumed by a policymaker, for example through independent entrepreneurship. By contrast, leadership skills are always gained by being in charge of a number of staff.

Example

A candidate for a position as policymaker is currently an account manager at a firm of insurance brokers. An account manager is a good example of a type of position in which no managerial skills are usually gained. Although account managers have their own portfolio and responsibility for their own account, this is insufficient to demonstrate the managerial skills needed by a policymaker. Managing and maintaining external (or internal) contacts with customers is not sufficient in itself. Candidates must instead show that they have had responsibility going beyond the management of their own portfolio, for example responsibility for the budget and/or financial statements of the undertaking where they work and responsibility for the strategic decisions within the undertaking.

Another candidate for a position as policymaker is an agent (or adviser) who is in the employment of a financial service provider and has his or her own portfolio in his role as agent. Although the agent provides advice independently, responsibility for the policy to be pursued, the strategy and the budget lies with the financial service provider as employer.

b) Hierarchical leadership skills

Providing leadership in a hierarchy involves knowing from experience how to discharge the responsibilities and exercise the powers necessary to manage an organisational unit. It is important for a policymaker to demonstrate that he or she has the skill to take decisions on the appointment of staff and on their responsibilities, training and appraisal. A policymaker gains these skills in an undertaking where he or she works in a relevant work setting. This should in any event be within a financial undertaking. The experience must be sufficiently related to the undertaking concerned and the duties which the policymaker will discharge.

In addition, the law (section 4:9, subsection 2, Financial Supervision Act) prescribes how professional expertise must be guaranteed within the undertaking of a financial service provider. Article 4:9 of the Decree on Conduct of Business Supervision of Financial Undertakings defines the professional requirements for performance of the activities within a financial service provider.

c) General and specific professional knowledge

There is no supplementary statutory framework prescribing what professional requirements should be met by investment product intermediaries and advisers and policymakers of a payment institution, electronic money institution or trust office. This is why it is expressly provided in this part that they must be able to demonstrate specific and general professional knowledge.

Collective

This part is based on the principle that leadership responsibilities may be divided within a collective in the case of the undertakings referred to in 2.7.1. At least one policymaker should have gained hierarchical leadership skills over a period of two years (one of which must be continuous). The other policymakers should in any event have gained managerial skills over a period of two years, one of which should be continuous.

Example

An undertaking gives notice of the appointment of two new policymakers. One policymaker has 15 years' leadership experience as manager of a department at an insurance company. This qualifies as hierarchical leadership and managerial experience. The other policymaker has 5 years' experience as customer relations officer at the same insurance company and has been responsible in that capacity for overseeing a large cross-department project involving new strategy and planning for the insurance company. This does not qualify as hierarchical leadership experience because the policymaker has not managed an organisational unit or taken decisions on the appointment of staff. However, it does qualify as managerial experience because he has been responsible for determining new day-to-day policy, strategy and planning for the insurer. As the first policymaker has both skills and the second has only managerial skills, they together meet the requirements set for the management board.

2.8 Small financial service provider (with the exception of an investment product intermediary or adviser); funeral expenses and benefits-in-kind insurer; mutual insurance society (certified).

A financial service provider is classified as small if it employs six or fewer people (including the policymakers). An exception is made if a policymaker is unable to comply with the requirement of two years' work experience, of which at least one must be continuous, in a relevant work setting. A policymaker may comply with the requirements by demonstrating that he or she has:

- (i) gained managerial experience during a period of at least one year in a work setting relevant to the undertaking; or
- (ii) a higher professional education (HBO) certificate of a course of study relevant to the undertaking; or
- (iii) a higher professional education (HBO) certificate and at least two years' work experience in a work setting relevant to the undertaking; or
- (iv) ten years' work experience in a work setting relevant to the undertaking, of which at least five years formed a continuous period.

The continuous work experience may have been gained in different positions.

Example

A financial service provider has only one policymaker and two employees. As the policymaker cannot comply with the requirement of two years' managerial and hierarchical leadership experience, it is sufficient for him to have, for example, a higher professional certificate in business economics. Another example concerns a policymaker with a higher professional certificate in psychology. This too is sufficient provided that he has at

least two years' work experience in a work setting relevant to the provision of financial services, such as a retail bank or mortgage adviser.

If the requirements of part 2.8 are fulfilled, an authorisation will be granted subject to the restriction that the undertaking does not employ more than six staff. If the financial service provider wishes to expand and employ a staff of more than six, it must notify the supervisor. The policymakers will then be reassessed by reference to the minimum requirements of a least two years' work experience, of which at least one year must be continuous.

CHAPTER 3 – FINAL PROVISIONS

3.1 Evaluation

As explained in part 1.8, a joint panel of the AFM and DNB monitors the application of this policy rule to ensure consistency. This panel will also identify any problems in the assessment. The policy rule will be periodically evaluated, partly on the basis of the panel's findings.

3.2 Repeal

The Expertise of Day-to-day Policymakers (sections 4:9 and 5:29 of the Financial Supervision Act) Policy Rule of the Netherlands Authority for the Financial Markets of 24 March 2008 (Government Gazette 2008, no. 69, p. 21) and the Expertise of Day-to-day Policymakers (section 4:9 of the Financial Supervision Act) Policy Rule of the Netherlands Authority for the Financial Markets of 12 December 2006 (Government Gazette 2006, 251, p. 44) are repealed with effect from the entry into force of this policy rule. The latter policy rule was erroneously not repealed upon the entry into force of the former policy rule. This omission is hereby rectified.

3.3 Entry into force

Policymakers whose expertise has already been assessed on the date on which this policy will enter into force and are already working as a policymaker will not be reassessed after the entry into force of this policy rule. Reassessment of these policymakers will take place only when facts and circumstances as referred to in part 1.5 (b) occur. At that time these policymakers will be assessed on the basis of the criteria in this policy rule. Policymakers who take office after the entry into force of this policy rule (as referred to in part 1.5 (a)) will be assessed on the basis of the criteria in this policy rule.

Part 3.4 needs no further commentary.
