

News Update

INVESTMENT MANAGEMENT

AMENDMENT TRANSITIONAL REGIME EXEMPTION REGULATION

Introduction

The regulation published in the State Gazette (*Staatscourant*) on 22 December 2011 ("**22 December 2011 Regulation**") replaces the transitional regime related to the entry into force per 1 January 2012 of the increase of certain exemption thresholds with a transitional regime more favourable to offerors of units ("**Units**") and managers of collective investment schemes.

On 1 January 2012, certain amendments to the Exemption Regulation pursuant to the Dutch Act on Financial Supervision (*Vrijstellingsregeling WFT*) ("**Exemption Regulation**") will enter into force. The amendments increase the current value threshold for an exemption from the license requirement for the offering of Units from a nominal value of at least €50,000 or its foreign currency equivalent per Unit or, alternatively, a consideration of at least €50,000 per participant (these exemptions hereafter referred to as the "**€50,000 Exemption**") to a nominal value of at least €100,000 or its foreign currency equivalent per Unit, or, alternatively, a consideration of at least €100,000 per participant (these

exemptions will hereafter be referred to as the "**€100,000 Exemption**").¹

Initial Transitional Regime

The initial transitional regime in respect of these amendments required the managers of collective investment schemes to apply for a license from the AFM ultimately by 31 January 2012, in order for offerors of their Units to be able to continue to rely on the €50,000 Exemption in respect of Units offered thereunder prior to 1 January 2012, if the collective investment scheme would still be managed after 31 December 2011.

Amendment Transitional Regime

As a result of the 22 December 2011 Regulation, the initial transitional regime is replaced. It will no longer be necessary for managers of ongoing collective investment schemes to (i) apply for a license ultimately by 31 January 2012, or (ii) restructure the collective investment scheme to avoid triggering a license requirement in respect of Units offered under the €50,000 Exemption prior to 1 January 2012.

Instead, offerors of Units will until 22 July 2013 be able to continue to rely on the €50,000 Exemption in respect of outstanding Units

¹ The amendments also relate to offerors of certain investment objects, those amendments, the transitional regime (which differs from the regime for collective investment schemes) in respect thereof and the amendments thereto will not be discussed in this News Update.

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offered under the €50,000 Exemption prior to 1 January 2012.

Managers of collective investment schemes whose outstanding Units were offered under the €50,000 Exemption prior to 1 January 2012, will continue to be exempt from the provisions in the part "Prudential supervision of financial undertakings" and the part "Conduct of business supervision of financial Undertakings" of the Dutch Act on Financial Supervision, until 22 July 2013.

As of 22 July 2013, the Alternative Investment Fund Managers Directive ("AIFMD") should be implemented in national law and the rules and regulations resulting therefrom should be complied with.

No transitional regime applies to the offering of Units on or after 1 January 2012. Unless the €100,000 Exemption or another exemption in the Exemption Regulation applies, such offers will therefore be subject to a license requirement and AFM supervision.

In addition, it should be noted that as of 1 January 2012 the new warning statement regulations will also enter into force and will have to be complied with. I.e. managers of collective investment schemes and offerors of Units who wish to remain exempt from supervision and license requirements until 22 July 2013, should ensure that any offers of Units on or after 1 January 2012 meet the criteria for the €100,000 Exemption or another exemption in the Exemption Regulation and comply with the new warning statement regulations.

If you have any queries regarding this newsletter, please do not hesitate to contact one of our investment management specialists.

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