# INVESTMENT MANAGEMENT

## AMENDMENT EXEMPTION REGULATION

### Introduction

On 3 November 2011, an amendment to the Exemption Regulation pursuant to the Dutch Act on Financial Supervision (*Vrijstellingsregeling WFT*) ("**Exemption Regulation**") was published in the State Gazette (*Staatscourant*). This amendment is necessary to introduce a transitional regime for certain offerors of units ("**Units**") in existing collective investment schemes in view of the pending amendment of one the grounds for an exemption from the license requirement applying to offerors of Units. The current value threshold for an exemption from the license requirement for the offering of Units will increase 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 Unit (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 Unit as of 1 January 2012[1].

### Transitional Regime

Pursuant to the amendment of the Exemption Regulation, offerors of Units who, prior to 1 January 2012, relied solely on the €50,000 Exemption in order to be exempt from the license requirement will be required to apply for a license from the Dutch Authority for the Financial Markets ("**AFM**") ultimately by 31 January 2012, if they plan to continue offering Units after 31 December 2011.

Until the AFM has decided on the license request, the exemption from a license requirement will continue to apply in respect of Units offered. If the AFM refuses the license application, it may set a term for the winding up of the collective investment scheme. Offerors of Units who relied on other grounds for an exemption, do not have to apply for a license. Although they will have to comply with the new warning statement regulations as of 1 January 2012.

Offerors of Units who, pursuant to the amendment, apply for a license under the transitional regime and are therefore exempted from the license requirement already have to comply with all relevant conduct of business rules as of 1 January 2012.

### AFM Press Release

Today, the AFM issued a press release in respect of the transitional regime. In this press release the AFM currently takes the view that the obligation to request a license under the transitional regime not only applies to managers of collective investment schemes and offerors of Units in collective investment schemes, whose Units will be offered after 31 December 2011, but also if these Units have been offered before

[1] The amendment to the Exemption Regulation also applies to offerors of certain investment objects, which will not be discussed in this News Update.

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that date under the €50,000 Exemption, unless the collective investment scheme is wound up by 1 January 2012. The AFM also states that the transitional regime does not apply to offers made after 31 December 2011. The press release further states that if the AFM refuses the license, the manager/offeror may only continue its activities if it complies with the amended Exemption Regulation by consolidating the offered Units into Units of at least €100,000.

In our view, this seems to imply that it may be possible for offerors of Units that have thus far relied solely on the €50,000 Exemption and wish to remain exempt from a license requirement, to achieve this by restructuring their outstanding Units in order to comply with the new €100,000 threshold and by complying with the new warning statement regulations as of 1 January 2012.

Offerors of Units should check their documentation to determine whether they relied solely on the €50,000 Exemption when offering Units prior to 1 January 2012. If so, it should be determined whether the collective investment scheme wishes and will be able to restructure the Units in order meet the new €100,000 threshold. If that is not possible, the offeror/ manager will have to (i) apply for a license from the AFM ultimately by 31 January 2012, (ii) prepare itself to comply with the license requirements, and (iii) comply with the relevant conduct of business rules as of 1 January 2012, or, alternatively, wind up the collective investment scheme prior to 1 January 2012.

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

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