

MARKET BULLETIN

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Title	Netherlands: Recent changes to insurer and intermediary regulations
Purpose	To inform the market of recent changes to the regulation of insurers and intermediaries in the Financial Services Amendment Decree 2013 and the Regulation on oaths or promises in the Financial Sector 2013
Type	Event
From	Cameron Murray, Senior Manager International Regulatory Affairs
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Related links	

Executive Summary

Since 2009, the Ministry of Finance has pursued a programme of legislative reform to create a culture within the financial services sector that is focussed on the interests of clients and consumers rather than product driven sales. This reform programme has involved a series of regulatory changes regarding the nature, disclosure and standards in respect of the remuneration paid to advisers, intermediaries, reinsurance intermediaries and authorised agents. It has also involved changes to how conflicts of interest are dealt with. The enforcement of the legislation is in the hands of the Authority for the Financial Markets (AFM).¹ AFM's agenda is particularly aimed at protecting consumers who purchase 'high hazard' financial products such as life insurance, payment protection insurance and funeral insurance.

The Financial Markets Amendment Decree (Wijzigingsbesluit financiële markten 2013) ("the Decree") is effective from 1 January 2013 (unless otherwise stated below). It creates new regulations that affect insurers, advisers, intermediaries and authorised agents. The Decree makes various amendments to the Decree on the Supervision of the Conduct of Financial Enterprises pursuant to the Act on Financial Supervision (Besluit Gedragstoezicht financiële ondernemingen Wft, BGFO) ("the BGFO").

The Decree introduces changes in four key areas:

¹ The AFM is the conduct of business regulator in the Netherlands.

1. Product development procedures.
2. Absence of advice given to consumers and clients.
3. Remuneration of advisers, intermediaries and authorised agents.
4. Provision of information to consumers and clients.

In addition, the Regulation on oaths or promises in the Financial Sector 2013 (Regeling eed of belofte financiële sector 2013) ("the Regulation") introduces an oath to be taken by the senior management and policy makers of firms in the financial services sector.

Financial service providers in the Netherlands may be licensed to act as advisers, intermediaries, reinsurance intermediaries or authorised agents. A financial service provider may hold more than one of the above licences simultaneously, within certain conditions. An adviser is not permitted to be a coverholder. A (re)insurance intermediary may hold a prior submit or matrix binding authority agreement with an insurer and an authorised agent may hold a full binding authority agreement. If a financial services provider has licences to act as both an intermediary and an authorised agent, it must keep the administration and operation of these two functions separate within its organisation. For further details please refer to the Intermediary Regulation section of Crystal, see the link below.

<http://crystal.lloyds.com/SearchResults?mc=135&c=04051&t=1&d=1>

This market bulletin provides a summary of the new provisions that apply to insurers, advisers, intermediaries and authorised agents. However, the provisions are very detailed and managing agents are advised to refer to the original legislative text for full details and seek their own legal advice if necessary.

1. Product development procedures

To protect consumers and society from the sale of inappropriate financial products, the Ministry of Finance has made it mandatory for insurers, advisers, intermediaries and authorised agents who offer or put together financial products to have adequate procedures in place for the development of such products. The procedures must ensure that the interests of consumer, client and beneficiary of the product are taken into consideration in a balanced way both during the development of the product and in how the product performs. This requirement also applies to insurers, advisers, intermediaries and authorised agents who create a new product from a combination of existing products.

The product development procedures must include the following features, although this list is not exhaustive:-

- The target group for the product and the financial aims of that group must be defined. Conversely, this includes the requirement to define those groups for whom the product is not suitable.
- Analyses should be performed of how the product and its separate components will work in various scenarios in order to show that the product will satisfy the target group's financial aims and perform as intended. Such analyses should be proportional to the complexity of the product and its impact on the consumer, client and beneficiary.

- The product information provided to the consumer must be tailored to the target group, correct, clear and not misleading. The method of distribution must also be tailored to the target group so that a product is not deliberately presented to a consumer for whom it is not relevant.
- Insurers, advisers, intermediaries and authorised agents must ensure that their distribution channels understand who the target group is and the appropriate distribution approach for it.
- There must be a regular assessment of financial products offered to the market from 1 January 2013 onwards to ensure that they meet the above standards.

2. Execution only

There is no legal obligation to give advice. However, Article 80e of the BGFO states that where insurers, intermediaries or authorised agents deal with payment protection insurance, a complex product², or individual incapacity to work insurance without providing advice, they must take certain action. The insurer, intermediary or authorised agent must assess whether the consumer or client has sufficient knowledge and experience to understand the risks associated with the product concerned and the financial service to be provided to him. This requirement only applies to the insurer, intermediary or authorised agent that has direct contact with the consumer or client.

The level of information required to ascertain the consumer's or client's knowledge and experience should be in proportion to the nature of the financial product, its complexity and its associated risks.

If, based on this information, the insurer, intermediary or authorised agent reaches the conclusion that execution only is not suitable for the consumer or client, the insurer, intermediary or authorised agent should recommend to the consumer or client that he should take advice.

3. Remuneration of intermediaries

As part of the Ministry of Finance's goal for the financial services sector to give client-centred advice, it has introduced a number of measures to remove the remuneration incentives that apply to advisers, intermediaries and authorised agents in respect of certain products.

Under the Decree, Articles 86b-e and 86j-m of the BGFO relate to the nature of remuneration that may be paid to advisers, intermediaries and authorised agents.

² See Appendix 1 for the definition of a complex product.

Article 86c

Advisers and authorised agents are not permitted to receive any commission, either directly or indirectly, in respect of payment protection insurance, complex products, individual incapacity for work insurance, term life or funeral insurance. This does not apply to:

- Fees paid by the client, unless the level of the fee is unreasonable.
- Commission that is required for providing the financial service concerned.
- Commission paid by one intermediary or adviser to another.
- Small business gifts with a collective value of less than EUR 100 per year.

This requirement has been in force since 1 January 2013 and applies to all contracts that have incepted or renewed since that date.

Article 86d

Intermediaries and advisers are only permitted to receive the following types of commission in respect of indemnity insurance that is not payment protection insurance, individual incapacity for work insurance or term life:

- Fees paid by the client, unless the level of the fee is unreasonable.
- Commission where the intermediary or adviser provides, as the clients' request, comprehensible information about the existence, nature and level (or the method of calculation if the amount is not available) of the commission.
- Commission that is required for providing the financial service concerned.
- Small business gifts with a collective value of less than EUR 100 per year.

This requirement has been in force since 1 January 2012 and applies to all contracts that have incepted or renewed since that date.

Article 86e

Authorised agents are not permitted to receive any commission, either directly or indirectly, that is not necessary for the provision of the service. This does not apply to:

- Commission provided by a third party where the payment of the commission does not detract from the obligation of the agent to act in the client's interests.
- Small business gifts with a collective value of less than EUR 100 per year.

This requirement has been in force since 1 January 2012 and applies to all contracts that have incepted or renewed since that date.

Article 86k

Agents and intermediaries are not permitted to receive commission in respect of payment protection insurance, complex products or funeral insurance that are not necessary for providing the service concerned. The following exceptions apply:

- Fees paid by the client, or
- Commission provided by a third party where;
 - o the intermediary or adviser provides extensive, accurate and comprehensible information to the client about the existence, nature and level (or the method of calculation if the amount is not available) of the commission, prior to the service being provided to the client, and,
 - o the payment of the commission improves the quality of the service provided and does not detract from the obligation of the agent or intermediary to act in the client's interests.
- Small business gifts with a collective value of less than EUR 100 per year.

This requirement applies to payment protection insurance and funeral products that inceptioned or renewed between 1 January 2010 and 31 December 2012 and to complex products that inceptioned or renewed between 1 January 2007 and 31 December 2012.

4. Provision of information to consumers and clients

The AFM is committed to ensuring that financial service providers are transparent regarding the nature, costs and quality of their services so that clients can make well informed decisions. Under the Decree, Articles 86f, 86g and 86i of the BGFO extend the circumstances in which such information must be provided to clients.

An insurer, adviser, intermediary or authorised agent must provide the client with a 'service provision document' prior to providing him with a financial service in respect of payment protection insurance, a complex product, individual incapacity for work insurance, term life or a funeral insurance policy. The document has to be provided by the insurer, adviser, intermediary or authorised agent that has direct contact with the client and it must be available on its website. The document has to be tailored to the specific enquiry of the client. The document must include the following information:

- Whether the firm provides advice, and if so, whether it is based on an objective analysis.
- Whether the firm has a contractual obligation to act exclusively on behalf of other particular providers. If so, it must provide the names of the other providers on request.
- Whether the firm has a contractual obligation to act as an agent for a particular provider. If so, it must provide the names of the other providers on request.
- Whether the firm acts as an agent in addition to providing advice, and the costs charged for this.
- Whether the firm is entitled to provide other services once an insurance contract has been concluded. If so, the manner in which the costs for these are charged.
- Whether the firm exclusively provides advice about its own products or those from other providers.
- Whether the firm has a qualified share in a particular provider or its parent company.
- Whether a particular provider or its parent company has a qualified share in the firm.
- If the firm is an agent or adviser that doesn't provide any other services, the average cost for its financial service and the manner in which this is charged to the client.
- The average cost charged by the firm to the client for the advice and distribution costs of arranging an insurance contract under each service provided. Insurers, advisers, intermediaries and authorised agents who are obliged to provide a service information

document are required to have a cost-price model to calculate the advice and distribution costs of a particular product. The model must be approved by an accountant annually.

Advisers and intermediaries must provide the client with the following information when providing advice in respect of indemnity insurance that is not payment protection insurance, individual incapacity for work insurance or term life.

- Whether the firm provides advice based on an objective analysis.
- Whether the firm has a contractual obligation to provide advice exclusively for one or more other providers. If so, it must provide the names of the other providers on request.
- Whether the firm has a contractual obligation to provide advice exclusively for other providers and therefore does not provide advice on the basis of objective analysis. If so, it must provide the names of the other providers on request.
- The manner in which the firm is reimbursed.
- Whether the firm has a qualified share in a particular provider.
- Whether a particular provider or its parent company has a qualified share in the firm.

This obligation enters into force 1 July 2013. From that date the documents will no longer be free format. The AFM has been given the legal power to prescribe a model format for the documents.

Regulation on oaths or promises in the Financial Sector 2013

This Regulation introduces an oath that must be taken by senior management and policymakers of some financial service providers to promise that they will act with integrity, balance the interests of all stakeholders in their business, abide by laws and regulations that apply to their business and not abuse their position. It is another measure that has the aim of creating a culture that is focussed on consumers and professionalism in the financial services sector.

A similar requirement already exists in the banking sector in the Netherlands and it has been extended to insurers, advisers, intermediaries and authorised agents. In the context of the Lloyd's market, the requirement only applies to advisers, intermediaries and authorised agents that have their registered office in the Netherlands, i.e., local coverholders and service companies. It does not apply to managing agents/syndicates or to intermediaries located outside the Netherlands elsewhere in the European Economic Area (EEA).

The text of the oath is contained in Appendices 1 and 2 of the Regulation.

Further information

Copies of the Financial Services Amendment Decree 2013, the current version of the BGFO and the Regulation on oaths or promises in the Financial Sector 2013 are available in Dutch from Lloyd's. Lloyd's has English translations of: the key Articles of the Decree and the corresponding explanatory notes; the Articles of the Regulation.

If you require further information or wish to discuss this matter in more detail, please contact:

Lloyd's International Trading Advice
Lloyd's Desk, Ground Floor, Underwriting Room
Telephone: + 44 (0) 20 7327 6677
Email: Lita@lloyds.com
www.lloyds.com/crystal

APPENDIX 1 – DEFINITION OF A COMPLEX PRODUCT

The definition is provided in Article 1 of the BGFO.

Complex product:

1. Combination of two or more financial products that includes at least one financial product whose value is dependent on the developments in financial markets or other markets;
2. Right to participate in an investment that is not tradable or at the request of the participants at the expense of the assets directly or indirectly purchased or redeemed;
3. Life insurance that is not funeral insurance for a natural person or term life insurance
4. Combination of a mortgage loan with a life insurance as referred to in 3 above, or a savings account;
5. Investment goods;
6. Home mortgage savings accounts referred to in Article 3.116a, second paragraph, of the Income Tax Act 2001;
7. Investment for the purpose of own property referred to in Article 3.116a, third paragraph, of the Income Tax Act 2001;
8. Annuity savings account under Article 3.126a, first paragraph, of the Income Tax Act 2001;
9. Annuity investment as defined in Article 3.126a, first paragraph, of the Income Tax Act 2001;
10. Other financial product by ministerial regulation;
11. Combination of one or more of the products referred to in 2 – 10 above with one or more financial products.