3107

DECREE OF 28 SEPTEMBER 1998, GIVING GENERALLY BINDING FORCE, PURSUANT TO SECTION 84(2) OF THE ACT ON THE SUPERVISION OF THE CREDIT SYSTEM 1992, TO THE COLLECTIVE GUARANTEE SCHEME OF CREDIT INSTITUTIONS FOR REPAYABLE FUNDS AND PORTFOLIO INVESTMENTS OF 17 SEPTEMBER 1998, STAATSBLAD[1] 577[2]

We, Beatrix, by the grace of God, Queen of the Netherlands, Princess of Orange-Nassau, etc. etc. etc.

By and with the advice of Our Minister of Finance of 24 September 1998, BGW 2498-M, Treasury General, Directorate for Domestic Financial Affairs, Department for Securities;
Having regard to section 84(2) of the Act on the Supervision of the Credit System 1992;

Have found good to decree:

Section 1

The credit institutions as referred to in section 84(1) of the Act on the Supervision of the Credit System 1992, as well as the institutions which rely on the exemption as referred to in article 12 of Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes (OJ no. L 135) are obliged to cooperate in the implementation of the Collective Guarantee Scheme of Credit Institutions for Repayable Funds and Portfolio Investments, which was agreed upon between De Nederlandsche Bank N.V. and the representative organizations involved on 17 September 1998 and which is annexed to this Decree.

Section 1a[3]

In the regulation, annexed to this Decree, the 'Stichting Toezicht Effectenverkeer' (Securities Board of the Netherlands) shall be read as the 'Stichting Autoriteit Financiële Markten' (Netherlands Authority for the Financial Markets).

Section 2

This Decree shall enter into force on the first day after the date of publication of the Staatsblad[1] in which it is published, and shall be retroactive up to and including 25 September 1998.

Our Minister of Finance shall be charged with the implementation of this Decree, which shall be published in the Staatsblad[1].

The Hague, 28 September 1998
Beatrix

The Minister of Finance,
G. Zalm

Issued the *sixth* of October 1998

The Minister of Justice,
A.H. Korthals

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[1] Bulletin of Acts, Orders and Decrees.
[2] Amended by Decree of 14 September 2001 (Staatsblad 415).
[3] Added by Decree of 21 June 2002 (Staatsblad 373).

EXPLANATORY MEMORANDUM

By earlier Royal Decree (hereinafter RD) the Collective Guarantee Scheme of Credit Institutions for Repayable Funds and Portfolio Investments was declared applicable to all Securities Institutions (Staatsblad[1] 556[2]) insofar as the Scheme served to implement Directive no. 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes (OJ no. L 84).

The present RD declares the Collective Guarantee Scheme of Credit Institutions for Repayable Funds and Portfolio Investments also applicable to Credit Institutions as referred to in section 84(1) of the Act on the Supervision of the Credit System 1992, as well as to the institutions which rely on the exemption as referred to in article 12 of Directive 94/19/EC on deposit-guarantee schemes insofar as the implementation of this Directive is concerned.

The Collective Guarantee Scheme of Credit Institutions for Repayable Funds and Portfolio Investments of 17 September 1998 and the concomitant Explanatory Notes constitute the Annexes to the Royal Decree of 28 September which shall be published in the Staatsblad[1].

The Minister of Finance,
G. Zalm

[1] Bulletin of Acts, Orders and Decrees.
[2] See under 3107.1.

COLLECTIVE GUARANTEE SCHEME OF CREDIT INSTITUTIONS FOR REPAYABLE FUNDS AND PORTFOLIO INVESTMENTS (CGS)

De Nederlandsche Bank NV and the Stichting Toezicht Effectenverkeer, acting within the scope of section 84 of the Act on the Supervision of the Credit System 1992 (the ASCS) and section 28a of the Act on the Supervision of Securities Trade 1995 (the ASST), have drawn up the following scheme in consultation with the Nederlandse Vereniging van Banken, the Coöperatieve Centrale Raiffeisen-Boerenleenbank BA and the Nederlandse Spaarbankbond, acting for these purposes as the representative organizations within the meaning of the ASCS and as organizations of the securities institutions which shall be subject to this scheme (securities institutions also being credit institutions) within the meaning of the ASST.

The present scheme implements the Directive on deposit-guarantee schemes of 30 May 1994 (94/19/EC; L 135/5) and, insofar as it relates to credit institutions, the Directive on investor-compensation schemes of 3 March 1997 (97/9/EC; L 84/22). In connection with the adoption of the latter Directive and the related insertion of section 28a into the ASST, the Collective Guarantee Scheme of 23 May 1996 no longer met the relevant requirements.

Definitions

Section 1

For the purposes of the provisions stipulated herein or by virtue hereof, the following terms shall have the meanings hereby respectively assigned to them:
1 the Bank: De Nederlandsche Bank N.V.;
2 investor: a natural person, legal entity or partnership that has deposited moneys or instruments at a participating institution in connection with portfolio investment transactions;
3 portfolio investment transactions: the transactions described in the definitions of broker and portfolio manager in section 1, under b and c, of the ASST, as well as the custody and administration of one or more instruments, insofar as conducted by an establishment in a Member State of a participating institution;
4 insolvent institution: the participating institution in respect of which the Bank has taken the decision as referred to in section 3(1);
5 branch: one or more legally dependent parts of a credit institution which is or are established in a State other than the State where the credit institution has its head office, subject to the provision that if a credit institution has several places of business in another Member State, these places of business shall be regarded as one branch in that Member State;
6 creditor: a natural person, legal entity or partnership that holds one or more claims in respect of deposits on a participating institution;
7 participating institutions:
a) the institutions which have been registered pursuant to section 52(2), under a, of the ASCS;
b) the institutions designated by Ministerial Order pursuant to section 84(3) of the ASCS and/or pursuant to section 28a(3) of the ASST, insofar as these institutions have been registered pursuant to section 52(2), under b, of the ASCS;
c) the institutions which have been registered pursuant to section 52(2), under c, of the ASCS, which pursuant to section 2(6) of this Scheme opt to join the present Scheme to supplement the cover in their Member State;
8 deposit: a credit balance, denominated in guilders[1] or any other currency, which is held at an establishment in a Member State of a participating institution, and which results from funds left in an account or from temporary situations deriving from normal banking transactions and which this participating institution must repay to its creditor under the

[1] To be read as: 'euros'.

applicable legal and contractual conditions, as well as any debt evidenced by a debt certificate which has been issued by the participating institution and has been registered in the name of the holder;
9 own funds: the actual own funds as at the end of the year preceding the activation of this Scheme, as known to the Bank by virtue of the implementation of the ASCS and as calculated in the context of the solvency test in pursuance of the directives as referred to in section 20 of the ASCS;
10 joint portfolio investment transaction: a portfolio investment transaction for the account of two or more persons or over which two or more persons have rights that may operate against the signature of one or more of these persons;
11 joint account: an account opened in the name of two or more creditors over which two or more creditors have rights that may operate against the signature of one or more of these creditors;
12 group: a group of partnerships and/or legal entities as defined in section 1(1), opening lines and under o, of the ASCS;
13 instruments:
– securities as defined in section 1, under a, of the ASST;
– interest, currency or equity swaps or similar contracts covered by section 1, under b and c, of the ASST;
14 Member State: a State which is a member of the European Union as well as a State, not being a Member State of the European Union, which is a party to the Agreement on the European Economic Area (Bulletin of Treaties 1992, 132);
15 Scheme: this collective guarantee scheme of credit institutions for repayable funds and portfolio investments as referred to in section 84(1) of the ASCS, and section 28a(1) of the ASST;
16 representative organizations: the representative organizations of the banking system as referred to in the Order of the Minister of Finance of 18 August 1997 (Staatscourant[1] of 25 August 1997, no. 161) in implementation of section 1(1), under d, of the ASCS;
17 directive on deposit-guarantee schemes: Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes (OJ no. L 135/5 of 31 May 1994);
18 directive on investor-compensation schemes: Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes (OJ no. L 84/22 of 26 March 1997);
19 money laundering: the criminal offence as defined in article 1 of Council Directive 91/308/EEC of 10 June 1991 on the prevention of the use of the financial system for the purpose of money laundering (OJ no. L 166/77 of 28 June 1991), as it has been made a punishable offence in the Member States or outside;
20 the ASCS: the Act on the Supervision of the Credit System 1992; and
21 the ASST: the Act on the Supervision of Securities Trade 1995.

Parties

Section 2

1 All participating institutions undertake towards each other and the Bank to fulfil the obligations they have under this Scheme.
2 The Bank hereby extends to each participating institution the offer to take upon itself the obligations the latter has under this Scheme in respect of the creditors and investors of that institution, in exchange for the acceptance by the participating institution of the obligations referred to in subsection (1). Each participating institution is required to accept this offer in writing as of the date when the Scheme enters into force or before the institution conducts operations under an authorization to be granted or before it opts to join this Scheme to supplement the cover in its Member State, as referred to in subsection (6). The agreement with a participating institution shall terminate *ipso iure* as soon as there

[1] Bulletin of Acts, Orders and Decrees.

are and will be no more obligations on the part of the participating institution to the Bank pursuant to this Scheme.
3 Under the conditions and limitations laid down in this Scheme, the Bank shall pay the creditors of and investors with participating institutions who hold any claim on such an institution and which claim is covered under this Scheme. The Bank shall no longer pay creditors and investors if the Royal Decree under section 84(2) of the ASCS and the Royal Decree under section 28a(2) of the ASST, respectively, are repealed, except if and insofar they could derive rights from the Scheme in connection with the fact that a participating institution had already become an insolvent institution prior to the repeal.
4 If a participating institution as defined in section 1, opening lines and under 7b, has been designated exclusively pursuant to section 84(3) of the ASCS or exclusively pursuant to section 28a(3) of the ASST, only creditors of this participating institution or investors with this participating institution, respectively, may derive any rights from this Scheme. The participating institution involved shall only have any obligations under this Scheme if and insofar these are the result of payments to creditors of this participating institution or investors with other participating institutions, respectively. Separate apportionment percentages as referred to in section 12(1), shall at all times be determined, unless the participating institutions referred to in the present subsection were designated pursuant to both section 84(3) of the ASCS and section 28a(3) of the ASST.
5 A participating institution whose entry in the register as referred to in section 52 of the ASCS has been cancelled, shall remain liable for the fulfilment of the obligations under the present Scheme insofar as these are the result of the fact that (an)other participating institution(s) has/have become (an) insolvent institution(s) prior to the date of cancellation.
6 The claims of creditors of and investors with Dutch-based branches of credit institutions established in other Member States shall be covered by the guarantee scheme of the Member State concerned. If the cover under the present Scheme exceeds the cover provided by the comparable guarantee scheme in that Member State, the branch concerned may opt to join the present Scheme to supplement the cover in that Member State, with due observance of the obligations ensuing from the present Scheme. In appropriate cases the Bank shall, after consultation with the representative organizations and the competent authorities of the Member State concerned, establish more detailed rules and procedures governing participation in the present Scheme and termination thereof, with due observance of the guiding principles as listed in Annex II to the directive on deposit-guarantee schemes and in Annex II to the directive on investor-compensation schemes.

Insolvency

Section 3

1 A participating institution shall become an insolvent institution at the time when the Bank decides that, in its opinion, the participating institution, for reasons directly pertaining to its financial position, does not at that time appear capable of repaying the deposits or of meeting its obligations ensuing from claims of investors, and does not appear capable either of doing so within the foreseeable future.
2 The decision referred to in subsection (1) shall be made as soon as possible, though no later than 21 days after the Bank has concluded that a situation pertains at the participating institution which necessitates application of the emergency regulations as described in section 71(2) of the ASCS or if a situation occurs necessitating a petition for its compulsory winding-up as referred to in section 1 of the Bankruptcy Act, unless such a situation no longer pertains.
3 The decision referred to in subsection (1) shall be made immediately if a judicial authority in a Member State, for reasons directly related to the financial position of the participating institution, has made a ruling which entails the suspension of the right of creditors or investors to recover their claims from the institution concerned.
4 The Bank shall announce, by means of advertisements in newspapers selected at its discretion, that requests for compensation under the present Scheme may be submitted to it within five months of the date of publication of the first advertisement.

The administrators or receivers of the insolvent institution shall be requested by the Bank to point out, in their correspondence with the creditors of and investors with the participating institution, the existence of the Scheme and the term for submission of requests for compensation.
5 Requests for compensation submitted after expiry of the term as referred to in subsection (4), shall not be considered unless the creditor or investor cannot in reason be considered to have been in default.

Scope of the cover

Section 4

1 Eligible for payment of compensation shall be all claims, remaining after set-off, of creditors in respect of deposits, except those listed in Annex A, which, at the time referred to in section 3(1), are or should have been recorded in the books of the insolvent institution and, where applicable, in the books of its branch(es) in (an)other Member State(s). As regards this compensation, the maximum as referred to in section 8(1) shall be observed.
2 To the extent that deposits carry interest, the interest accrued until the time referred to in section 3(1) shall be included in the cover provided by the Scheme.
3 Claims in respect of deposits as referred to in subsection (1), which are held with a participating institution which, pursuant to section 84(3) of the ASCS, has been designated by Ministerial Order to participate in the Scheme, or with a participating institution which has obtained additional cover pursuant to section 2(6), shall only be eligible for payment of compensation to the extent that they are based on a legal relationship which is considered part of the business operations of the institution concerned in or from the Netherlands.
4 The cover in respect of claims of creditors of participating institutions' branches in other Member States may not exceed the cover provided by the guarantee scheme based on the directive on deposit-guarantee schemes in the country of establishment of the branch concerned.

Section 5

1 Eligible for payment of compensation shall be all claims, remaining after set-off, of investors, except the investors specified in Annex B, which ensue from the inability of an insolvent institution and, where applicable, of its branch(es) in (an)other Member State(s), to
a) repay, in accordance with the legal and contractual conditions, moneys which are owed to those investors or which are owned by them and which are held for them in connection with portfolio investment transactions, or
b) return, in accordance with the legal and contractual conditions, instruments to those investors which are owned by them and which are held, administered or managed on their behalf in connection with portfolio investment transactions.
As regards the compensation, the maximum as referred to in section 8(1) shall be observed.
2 If a claim as defined in subsection (1) can also be qualified as a claim as defined in section 4(1), it is considered only to be covered by section 4.
3 The amount of the claim of the investor ensuing from the inability to return instruments shall be determined, unless otherwise stipulated by contract or law, on the basis of the market value of those instruments at the time as referred to in section 3(1).
4 Claims, as defined in subsection (1), held by an investor on a participating institution which, pursuant to section 28a(3) of the ASST, has been designated by Ministerial Order to participate in the Scheme, or on a participating institution which has obtained additional cover pursuant to section 2(6), shall only be eligible for payment of compensation to the extent that they are based on a legal relationship which is considered part of the business operations of the institution concerned in or from the Netherlands.

5 The cover in respect of claims ensuing from portfolio investment transactions of investors with participating institutions' branches in other Member States may not exceed the cover provided by the guarantee scheme based on the directive on investor-compensation schemes in the country of establishment of the branch concerned.

Section 6

1 Withdrawal of the authorization giving the participating institution the right to operate in the Netherlands as a credit institution, is without prejudice to the fact that deposits which are held at that moment by the participating institution, continue to be covered by the Scheme. This also holds for the rights of investors related to portfolio investment transactions which have taken place up to that moment.
2 The Bank may refuse payment of compensation or reclaim any amount paid if a creditor or investor submits any incorrect or fraudulent statement.

Section 7

1 Each holder of a joint account shall be regarded as a separately entitled creditor. Unless it has been laid down contractually that the holders have different entitlements to the balance of the account, they shall each receive compensation to the amount of a proportional part of that balance. For each creditor, the maximum amount as defined in section 8(1) shall be observed.
2 Each party having entitlements with respect to a joint portfolio investment transaction shall be regarded as a separately entitled investor. Unless it has been laid down contractually that these parties have different entitlements to the claims ensuing from those transactions, they shall each receive compensation to the amount of a proportional part of those claims. For each investor, the maximum amount as defined in section 8(1) shall be observed.
3 Deposits or portfolio investments in the name of a creditor or investor which are held, under contract or law, on behalf of a third party, shall be regarded as a claim of that third party, provided that the identity of this third party has been or may be ascertained prior to the time of the decision as referred to in section 3(1). If there is more than one rightful claimant, the share of each of them and the maximum compensation payable to each of them is calculated on the basis of subsections (1) and (2) of the present section. This subsection does not apply to institutions for collective investment.

Section 8

1 The maximum amount to which the Scheme provides cover for each insolvent institution is hereby set at ECU 20,000[1] for each creditor and ECU 20,000[1] for each investor. This maximum shall be applied to the total amount of the claims of the creditor or the total value of the claims of the investor, irrespective of
a) the number of that creditor's deposits or the amount of that investor's funds or instruments deposited within the framework of portfolio investment transactions,
b) the office of the insolvent institution, in the Netherlands or in any other Member State, at which deposits have been entered or portfolio investment transactions have taken place;
c) whether an investor shall also receive compensation as a creditor or vice versa.
2 The Bank may adjust the amounts specified in subsection (1) if there is an obligation thereto in implementation of Directives of the Council of the European Union and the European Parliament. In principle, both amounts shall be set at the same new level, even if there is no obligation thereto for one of the amounts. At the entry into force of the present Scheme and when revising the amounts, the Bank shall announce the level of the amounts in the Staatscourant[2].

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[1] To be read as: '20,000 euros'.
[2] Bulletin of Acts, Orders and Decrees.

Section 9

1 The Bank shall ascertain the existence and the amount of the claims referred to in section 4(1) and section 5 on the basis of the books of the institution concerned, after duly validating such claims; the Bank's ascertainment shall be binding. In its ascertainment, the Bank shall take account of any set-off of claims converted into money terms. The balance remaining after set-off shall be eligible for compensation, up to the maximum specified in section 8(1). Set-off shall first take place in respect of claims ensuing from portfolio investment transactions or deposits, depending on which set-off is the most favourable to the investor/creditor in view of the two maximum amounts.
2 Compensation shall be paid in guilders[1]. The Bank shall base the calculation of foreign-currency claims as well as of the amounts specified in section 8(1) on the representative central rates, as announced by it for spot foreign exchange transactions to the public as at the day on which the decision as referred to in section 3(1) was made.
3 The party entitled to compensation shall designate an account with a credit institution established in a Member State or with a branch in a Member State of a credit institution not established in a Member State, for payment of the compensation.

Section 10

1 The Bank shall, as soon as possible but in any case no later than three months of the date on which a creditor or investor duly submitted his claims, recompense that creditor or investor for the amount of the claims covered by the Scheme. Compensation shall take place on the condition that
– the creditor or investor concerned has declared to be cognizant of the subrogation in conformity with article 6:150, opening lines and under d, of the Civil Code up to the amount of the compensation;
– the Bank unconditionally and irrevocably succeeds to the rights of that creditor or investor towards the participating institution concerned, up to the amount of the compensation; and
– an investor also assigns to the Bank any rights towards third parties to delivery or compensation of instruments, up to the amount of the compensation.
2 The obligation to pay compensation may be suspended if the creditor or investor has submitted insufficient or insufficiently timely information for determining the validity and the amount of the claim in conformity with section 9(1). The maximum period of suspension shall not be longer than the period during which the creditor or investor is in default in this respect.
3 If, after payment of compensation, it should become evident that the creditor or investor holds no valid claim on the participating institution or holds a lower claim than the amount paid, the Bank is entitled to reclaim, on account of undue payment, the (excess) amount paid in compensation.
4 The Bank may, in very exceptional circumstances, decide that the period referred to in subsection (1) shall be extended by a maximum of three months.
5 In the event that the creditor or investor has been indicted for a criminal offence ensuing from or related to money laundering, the Bank may suspend the periods referred to in subsections (1) and (2) in respect of that creditor or investor, in view of point 3 of Annex A to the present Scheme, or point 1 of Annex B to the present Scheme, respectively. This suspension shall be terminated as soon as the decision of the competent judicial authority becomes final.

[1] To be read as: 'euros'.

Section 11

1 The total amount paid in compensation to creditors of and investors with the insolvent institution shall be apportioned among the other participating institutions, in accordance with the apportionment percentage set in conformity with section 12.
2 At the request of a group of participating institutions, and in consultation with the representative organizations, the Bank may determine that this group shall pay their contribution as a single amount. In its request, this group shall designate an institution which shall pay its contribution. The Bank shall meet the request in any case if the figures of the participating institutions which are members of the group have been consolidated in the consolidated prudential balance sheet of the designated institution.
3 The amount to be contributed by each individual participating institution shall be calculated by multiplying the applicable apportionment percentage or percentages of that participating institution by the aggregate amount payable under the present Scheme to the creditors and investors.
4 The Bank has power to collect, on a monthly basis, the contributions owed in respect of the compensation paid up to that moment on the basis of section 9.
5 The Bank has power to determine that contributions below a certain limit, to be established by it in consultation with the representative organizations, need not be paid. The aggregate amount of these contributions shall be apportioned among the participating institutions whose contributions are not below this limit, in accordance with the apportionment percentage set in conformity with section 12.

Section 12

1 If it deems this desirable or if so requested by the representative organizations, the Bank, after consulting the representative organizations, shall fix the apportionment percentage, determining in addition, with due observance of section 2(4), whether this shall involve one apportionment percentage for all compensations or two distinct apportionment percentages, one for the compensations to creditors and one for the compensations to investors.
2 The apportionment percentage for each participating institution shall be established on the basis of the data contained in consolidated prudential balance sheets provided to the Bank by the participating institutions prior to the time of the decision as defined in section 3(1). In consultation with the representative organizations, the Bank shall also decide which consolidated prudential balance sheets shall be used and which items in these balance sheets shall be included in this calculation, which is conducted by dividing the aggregate amount of these items of each participating institution by the aggregate amount of these items of all participating institutions and multiplying the outcome by one hundred percent. Data from the insolvent institution shall not be included. The calculation may be conducted for the covered claims of investors and creditors either separately or collectively.
3 Amounts which have been paid by the Bank to creditors or investors must, with due observance of the provisions laid down in section 14, be repaid to the Bank as soon as possible by the participating institutions, in accordance with the apportionment percentage as set in conformity with the present section.
4 As long as the consultation as referred to in subsections (1) and (2) has not led to agreement, the Bank may set a provisional apportionment percentage. Ninety percent of the contributions owed, calculated on the basis of this provisional apportionment percentage, must be paid to the Bank as an advance. Paid advances shall be settled with the contributions calculated on the basis of the definitive apportionment percentage.

Section 13

1 In respect of participating institutions which stand in a relationship to each other which has been approved by the Bank under section 12 of the ASCS, the Bank may decide that they shall be regarded as a single institution. In that case, the combined and consolidated prudential balance sheets in respect of the group shall form the basis for the determination of the apportionment percentage, and the central credit institution shall then be designated as the institution which is to pay the group's contribution as a single amount. This decision shall cease to be effective *ipso iure* if one of these participating institutions should become an insolvent institution because, despite the provisions in section 12, opening lines and under c, of the ASCS, it is in the situation as described in section 3(1).
2 The Bank shall publish such a decision, or any changes therein or cancellation thereof, in the Staatscourant[1]. A note shall be included in the register as referred to in section 52 of the ASCS, specifying the participating institutions regarding which a decision as defined in subsection (1) has been taken.

Section 14

1 The contributions payable in any one calendar year under the present Scheme by the combined participating institutions, whether or not increased by the contributions payable under the Investor Compensation Scheme of Securities Institutions, shall not exceed 5% of the own funds of the combined participating institutions. Any excess over this limit shall be advanced by the Bank free of interest.
2 The contribution payable in any one calendar year under the present Scheme by a participating institution shall not exceed 5% of its own funds. Any excess over this limit shall be advanced by the Bank free of interest. If warranted by the solvency or liquidity position of a participating institution, the Bank may decide that a lower percentage shall apply to this institution.

Section 15

1 If possible, the Bank shall recover from the insolvent institution the claims assigned to it in accordance with section 10(1) and/or the rights to which, in accordance with article 6:150, opening lines and under d, of the Civil Code, it has been subrogated. This obligation is secondary to the obligations ensuing for the Bank from the tasks assigned to it by law.
2 The revenues which the Bank receives from the rights to which it has been subrogated and from those which have been assigned to it, shall accrue to the participating institutions which have made a contribution. These revenues shall be apportioned on the basis of the apportionment percentage set.

Final provisions

Section 16

1 Participating institutions shall provide to actual and prospective creditors and investors information about the provisions, the application and the applicability of this Scheme and any comparable schemes to their office in the Member State where they are established and to their branches, if any. This information shall include data on the claims entailing entitlement to compensation as a creditor or as an investor, and the distinction between them. This information shall in any case be provided in the Dutch language and, where appropriate, in (one of) the official language(s) of the Member State where the branch is established.

[1] Bulletin of Acts, Orders and Decrees.

2 Participating institutions shall not use the above information for advertising purposes, when presenting themselves to the public. Following consultation with the representative organizations, the Bank may allow exceptions. The mere fact that the institution participates in this Scheme may be noted in the advertising of a participating institution.

Section 17

1 The Scheme shall be implemented by the Bank. As regards the implementation of section 5, the Bank shall cooperate with the Stichting Toezicht Effectenverkeer.
2 Matters not provided for in the present Scheme shall be decided by the Bank in consultation with the representative organizations.
3 The Bank shall record in the register referred to in section 52 of the ASCS whether an institution listed in the register is a participating institution.

Section 18

1 Activation of the Scheme in pursuance of section 6(1) shall take place only if the decision referred to in that section is made on or after the date of entry into force of this Scheme. Situations in which a similar deposit-guarantee scheme was applicable prior to the entry into effect of the present Scheme, shall be settled in accordance with the provisions of the scheme applicable at that time.
2 The participating institutions designated pursuant to section 11 of the Collective Guarantee Scheme of 23 May 1996, Staatsblad[1] 1996, no. 344, shall be regarded as having been designated pursuant to section 13.

[1] Bulletin of Acts, Orders and Decrees.

ANNEX A TO SECTION 4(1)

List of deposits not covered by the Collective Guarantee Scheme

1 Deposits of other credit institutions in their own name and for their own account.
2 All instruments covered by the definition of 'own funds' within the meaning of article 2 of Council Directive 89/299/EEC of 17 April 1989 (89/299/EEC; L 124/16, as amended since then)[1] on the own funds of credit institutions.
3 Deposits arising from transactions in respect of which a criminal conviction has been pronounced for money laundering.
4 Deposits of financial institutions within the meaning of article 1(6) of the Directive of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (89/646/EEC; L 386/1, as amended since then)[1], and amending the Directive of 12 December 1977 (77/780/EEC; L 322/30, as amended since then)[1].
5 Deposits of enterprises active in insurance operations.
6 Deposits of the Dutch and other central governments.
7 Deposits of provincial, regional, local or municipal authorities.
8 Deposits of institutions for collective investment.
9 Deposits of pension funds.
10 Deposits of:
– directors, managers, and jointly and severally liable partners of the insolvent institution;
– natural persons and legal entities holding at least 5% of the insolvent institution's capital;
– persons responsible for carrying out the statutory audit of the insolvent institution;
– natural persons and legal entities having a similar status at other enterprises forming part of the group which includes the insolvent institution.
11 Deposits of close relatives of the persons referred to under 10 and deposits of third parties acting for account of these persons. In this context, close relatives are understood to mean relatives in the first and the second degree as well as spouses and registered partners, if any. With regard to these partners, notarial documents shall show that they are the partners of the persons referred to under 10, unless they are registered partners.
12 Deposits of enterprises which form part of the group which includes the insolvent institution.
13 Deposits not registered in the name of the holder.
14 Deposits for which the depositor has, on an individual basis, obtained from the insolvent institution rates and financial concessions which have helped to aggravate this participating institution's financial situation.
15 Debts arising from acceptances and promissory notes of the insolvent institution.
16 Deposits of enterprises which are of such a size that they are not permitted to draw up abridged balance sheets pursuant to article 11 of the Fourth Council Directive of 25 July 1978 based on article 54(3)(g) of the Treaty on the annual accounts of certain types of companies (78/660/EEC; L 222/11, as amended since then).
17 Debt securities meeting the conditions of article 22(4) of the Council Directive of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (85/611/EEC; L 375/3, as amended since then).

[1] Included in Directive relating to the taking up and pursuit of the business of credit institutions (Codified Directive), 2000/12/EC of 20 March 2000, OJ L 126/1.

ANNEX B TO SECTION 5(1)

List of investors not covered by the Collective Guarantee Scheme

1 Investors whose claims arise from transactions in respect of which a criminal conviction has been pronounced for money laundering.
2 Professional and institutional investors, including:
– investment firms as defined in article 1(2) of Directive 93/22/EEC (10 May 1993; L 141/27);
– credit institutions as defined in article 1, first indent, of Directive 77/780/EEC (12 December 1977; L 322/30)[1];
– financial institutions as defined in article 1(6) of Directive 89/646/EEC (15 December 1989; L 386/1)[1];
– insurance companies,
– institutions for collective investment;
– pension funds;
– other professional and institutional investors.
3 The Dutch and other central governments.
4 Provincial, regional, local or municipal authorities.
5 Investors who are also
– directors, managers and jointly and severally liable partners of the insolvent institution;
– natural persons and legal entities holding at least 5% of the insolvent institution's capital;
– natural persons and legal entities responsible for carrying out the statutory audit of the insolvent institution;
– natural persons and legal entities having a similar status at other enterprises forming part of the group which includes the insolvent institution.
6 Close relatives of the investors referred to under 5 and third parties acting for account of these investors. In this context, close relatives are understood to mean relatives in the first and the second degree as well as spouses and (registered) partners, if any. With regard to these partners, notarial documents shall show that they are the partners of the persons referred to under 5, unless they are registered partners.
7 Enterprises which form part of the group which includes the insolvent institution.
8 Investors responsible for, or having obtained advantage from, certain facts relating to the insolvent institution, if those facts have led to the financial problems of the enterprise, or if they have helped to aggravate the enterprise's financial situation.
9 Enterprises which are of such a size that they are not permitted to draw up abridged balance sheets pursuant to article 11 of the Fourth Council Directive of 25 July 1978 based on article 54(3)(g) of the Treaty on the annual accounts of certain types of companies (78/660/EEC; L222/11, as amended since then).

[1] Included in Directive relating to the taking up and pursuit of the business of credit institutions (Codified Directive), 2000/12/EC of 20 March 2000, OJ L 126/1.

EXPLANATORY MEMORANDUM

GENERAL

The present amended Collective Guarantee Scheme (hereinafter: CGS) offers a large number of persons who have deposited funds or securities with an authorized credit institution a limited form of protection if that credit institution should fail. After all, despite the precautionary measures taken by banks and the requirements imposed by the market and by the banking supervisory authorities on their professionalism, solvency, liquidity and administrative organization, bankruptcy or suspension of payments cannot be ruled out. Insiders and professional market parties can make an independent assessment of a credit institution's financial soundness, or should be in a position to do so. However, smaller enterprises and institutions as well as private persons cannot be expected to be able to collect such necessary information, at least insofar as they do business with a bank on a modest scale. The present Scheme provides protection against the ensuing risks. In addition, the Scheme seeks to prevent these creditors and investors from (maybe unnecessarily) panicking and losing confidence in a specific bank or in all banks on the basis of incomplete information. Thus, the chance of a run on a bank and the associated systemic risk may be reduced.

The present CGS supersedes earlier versions of the scheme. This Explanatory Memorandum does not primarily seek to elucidate the newly introduced changes but aims to explain the effects of the entire scheme.

Home country control

The way in which and the degree to which creditors and investors must be offered a minimum of protection has been harmonized for the Member States of the European Union in two directives: the directive on deposit-guarantee schemes and the directive on investor-compensation schemes. The reader is referred to section 1 of the CGS for the precise details regarding these directives. The adoption by the European Parliament and the Council of the European Union of the latter directive, which must be incorporated into Dutch legislation before 26 September 1998, was the reason for the present amendment. Insofar as this directive prescribes cover for investors with credit institutions, it is implemented by the introduction of the present adapted Scheme.

Both directives are based on the concept of home country control, i.e. the Member State where the institution is established (that is, has its head office) must ensure the introduction of a scheme providing cover to the creditors of or investors with all branches of that institution within the European Union and the European Economic Area. Branches of credit institutions from other Member States, therefore, are subject to the guarantee scheme prevailing in their home country. In this context, the directives include two special provisions, viz. the so-termed export prohibition and the option of supplementary cover.
As the directives prescribe only minimum harmonization, it is possible that some branches are subject to a guarantee scheme providing broader cover (both in terms of amount and scope) than the scheme of the host country where they operate. The export prohibition means that such branches may only provide cover to their creditors up to the amount laid down in the host country scheme (here, too, both in terms of amount and scope). This prohibition is laid down in section 4(4) and section 5(5). As regards the export prohibition, it may be noted further that the directives state that it will apply up to and including 31 December 1999. Before that date, the European Commission will consider possible extension. Should the Commission want to extend the term, the directives will have to be amended to that effect.

If, however, the host country scheme provides broader cover than a branch's home country scheme, that branch must have the option to participate in the guarantee scheme of the host country by way of supplementation of its cover. The CGS provides this option in section 2(6). If a branch submits a request to that effect, further rules and procedures for participation and compensation must be agreed in bilateral consultation with the Member State involved. One possibility in this regard is the conclusion of an agreement between the Bank and the competent authorities of the Member State involved.

In the CGS, the minimum cover prescribed by the directives has hardly been extended. The decision to reject significant extension of cover was based predominantly on three factors. First, moral hazard must be avoided; both the risks run by the banks in their lending policy and the risks inherent in depositing large sums of money with banks must be taken deliberately, so that unacceptable risks must not be covered by the combined banks. Otherwise, and this is the second factor, the solvency and liquidity of the other banks which must finance the system would be threatened in the event of a collapse of a large bank. Third, the competitive position of Dutch credit institutions might be jeopardized if they, in contrast to credit institutions in other Member States, had to make provisions for major liabilities and had to adjust their rates correspondingly (level playing field).

Where possible, the main principles of the way in which the CGS must be applied in practice have not been changed. After it has been ascertained that a participating institution will not, in principle, be able to meet its obligations, creditors and investors may submit their claims to the Bank. The Bank will determine, on the basis of the books of the bank experiencing problems, whether and, if so, to what amount each creditor or investor shall be eligible for compensation. The compensation must then be paid soon, as creditors and investors could otherwise experience liquidity problems, which is the very thing to be avoided. The compensation is paid only if it is certain that the Bank, to the extent of the amount of the compensation, has taken over the creditor's or investor's claim on the insolvent bank through subrogation and/or assignment. The Bank will apportion the compensation paid among the other participating institutions in proportion to their business volume (focusing predominantly on the amount of the covered claims). The Bank will subsequently seek to recover its claims from the assets of the insolvent bank, in which process it will have the same status as the creditor or investor whose claim it has taken over. Any revenues shall subsequently be divided among the banks which have had to contribute, on the basis of apportionment, to the compensations paid.

NOTES TO INDIVIDUAL SECTIONS

Section 1

The definitions are geared to formulations in the directives, save where Dutch law provides for a definition incorporating the EC definition.

The definitions of deposit and portfolio investment transactions clarify that the scheme provides cover only insofar as the claims ensue from relationships with participating institution's branches in a Member State. It follows from the system of directives that a broader cover need not be offered.

In sections 84 of the Act on the Supervision of the Credit System 1992 (the ASCS) and 28a of the Act on the Supervision of Securities Trade 1995 (the ASST), the Minister of Finance has been authorized to decide which institutions are obliged to participate in the Scheme. The participating institutions referred to in section 1, opening lines and under 7a, will at any rate be designated. The fact is, both directives stipulate that these credit institutions, which have their head office in the Netherlands, are obliged to participate. The institutions referred to in section 1, opening lines and under 7b, will probably be designated, since there are practically no countries outside the European Union and the European Economic Area that have a comparable scheme in terms of set-up (amounts, information supply, etc.) which also applies to the creditors and investors of Dutch branches of institutions from these countries. Pursuant to both directives, these branches are hence required to participate in the local system.
If an institution has been designated by the Minister of Finance to participate, it is obliged to comply. Failure to comply with the obligations under the Scheme may result in withdrawal of the authorization as credit institution and termination of the dispensation to operate as an investment institution (see section 15(1), under g, of the ASCS and section 19(2) of the ASST). An example would be non-compliance with the obligation to enter into an agreement as referred to in section 2(2) or failure to comply with the contribution obligations. The institutions referred to in section 1, opening lines and under 7c, which constitute the third group of participating institutions, may avail themselves of the option to participate in the Scheme on the basis of section 2(6). This regards branches of credit institutions which are established in another Member State and would like to apply for broader cover. In principle, they fall within the system of their home state, but insofar as the Dutch system would offer a broader cover to their clients, they can join the Dutch scheme where this broader cover is concerned.

Section 2

Agreement with the participating institutions

As stated, every institution designated by the Minister will be obliged to participate in the new Scheme. In connection with the subrogation prescribed by the directives, it is further necessary for the Bank to conclude an agreement with each credit institution (see below under 'subrogation'). The old Scheme was couched in the form of an agreement with the representative organizations. Given that these organizations are not authorized to represent all credit institutions which (will) participate, the old set-up was abandoned. In the new set-up, the Scheme has been drawn up in conformity with the law in consultation with the representative organizations. The institutions which are required to participate, are further obliged, among other things, to enter into the agreement with the Bank referred to in section 2(2). Voluntarily participating institutions (branches of credit institutions that are established in other Member States and that want to apply for broader cover; see section 1, opening lines and under 7c) have to enter into this agreement if they opt for broader cover.

Subrogation

Both directives require Member States to ensure that the Scheme, which makes payments for the purpose of compensating creditors and/or investors, is entitled to succeed to the rights of these investors in liquidation proceedings, up to an amount equal to the amount of their compensation. In articles 1437 and 1438 of the (old) Civil Code, this was, inter alia, possible on the basis of an agreement between the creditor and the paying third party, provided that the paying third party was 'obliged' to pay. The current Civil Code has not incorporated these two cases in a form useful to the Scheme. Subrogation by means of an agreement between creditor and paying third party can only be effected by assignment. Being obliged to pay compensation is currently insufficient to effect subrogation, unless there is joint and several liability (article 6:12 of the Civil Code) or unless property of the paying third party has been encumbered (article 6:150, opening lines and under a, b, or c of the Civil Code). In its opinion, the Bank does not assume a joint and several obligation under the Scheme, nor is its property encumbered with the debts of the participating institutions. In order to remove all doubts that, in spite of this, subrogation is in evidence, the Bank has opted for subrogation pursuant to article 6:150, opening lines and under d of the Civil Code. In that context, an agreement is required between the Bank and each participating institution. For that reason, the Scheme includes an offer of the Bank, contained in section 2(2), which has to be accepted by each participating institution before it conducts operations covered by the Scheme.

Payment by the Bank

With a view to article 13 of the directive on investor-compensation schemes and article 7 of the directive on deposit-guarantee schemes, section 2(3) stipulates that the Bank shall pay the creditors and investors.

Branches from non-Member States

In the event that the investor-compensation scheme in the institution's home country meets the Dutch requirements, but the deposit-guarantee scheme does not, or the other way around, subsection four applies. If the designation has been made solely on the basis of the ASCS, the creditors of this participating institution are protected and the participating institution is required to contribute to payments of compensation to creditors of other participating institutions. The investors of this institution are not protected by the Dutch scheme in that case, but by an equivalent scheme. If the designation has been made solely on the basis of the ASST on the other hand, the investors are protected and the participating institution is required to contribute to payments of compensation to investors with other participating institutions. In that case, the institution's creditors are not covered by the Scheme because they already come under another scheme.

Section 3

Pursuant to article 1(3) of the directive on deposit-guarantee schemes and article 2(2) of the directive on investor-compensation schemes, activation of the Scheme shall depend on the decision by the competent authorities that the participating institution, for reasons directly related to its financial position, does not appear capable of repaying deposits, or meeting its obligations ensuing from claims of investors, and to have no current prospect of being able to do so. In section 3(1), activation of the Scheme is conditional on the fulfilment of one ór the other requirement. The directives stipulate that the afore-mentioned decision must be made as soon as possible and, as is evident from the directive on deposit-guarantee schemes, no later than 21 days after the competent authorities have first become satisfied that a participating institution has failed to repay a due and payable deposit. If a judicial authority has made a ruling in this context which has the effect of suspending the right of creditors or investors to submit claims against the participating

institution concerned, the date of this ruling will count as the date of cover activation if it is made before the date of the aforementioned decision.
In practice, the date of the official decision will coincide with the submission of the petition to the district court for the application of emergency regulations. After all, it will be too late for special measures as referred to in section 28 of the ASCS at that time. The period between 'after first becoming satisfied' and submission of the petition for application of the emergency regulations will be very short, considering the urgent nature of such situations. Should a situation arise where the emergency regulations are not applied and, instead, a petition for compulsory winding-up of the participating institution is or has to be filed immediately, this will also require immediate action in the context of the Scheme, and the moment of the official decision will coincide with the submission of a petition for compulsory winding-up, except, of course, if the Bank is of the opinion that the credit institution's counterparty's petition for compulsory winding-up is unfounded.
In view of the possibility that a court issues a compulsory winding-up order or declares the emergency regulations applicable while the Bank has not yet taken to the official decision as referred to in section 3(1), section 3(3) provides that the Bank must do so immediately in this situation.

The directives stipulate that a time limit may be set for submission of the claims of creditors and investors. In conformity with the minimum period referred to in article 9(1) of the directive on investor-compensation schemes, the time limit has been set at five months after the official notice of the emergency regulations; i.e. publication of the newspaper containing the notice. The notice will probably be published one or two working days at the most after the Scheme has been activated. Most requests for payment of compensation will presumably be received fairly quickly thereafter. The provision on condonable excess over this time limit (subsection five) is geared to article 6:11 of the General Administrative Law Act. In practice, any applicant will probably receive a form to be filled out, in which the formal aspects (assignment, acceptance of the subrogation) and the substantive aspects (which claim, on account of what) will be dealt with one by one. If these data and declarations are not provided in time, the Bank will be unable, in principle, to pay compensation.

Section 4

Whether or not claims against a credit institution are covered under the Scheme depends on whether they involve a deposit at a participating institution (note section 2(4), however). The definition of deposits has been taken from the directive on deposit-guarantee schemes and is broader than the definition of this concept in the First and Second Banking Coordination Directives (directive of 12 December 1977, 77/780/EEC, L322/30 and directive of 15 December 1989, 89/646/EEC, L386/1)[1]. For the definition of the concept 'normal banking transactions' reference is made to the activities as described in the Annex to the Second Banking Coordination Directive[2].

Claims regarding registered debt certificates which have been issued by participating banks, such as registered bonds and medium term notes, are also covered under the Scheme. In view of section 5, these securities could therefore be covered twice under the Scheme, viz. if the issuing institution is also the participating institution which performs investment services for the client with respect to these securities. This is to the client's benefit when determining the maximum payment of compensation. Of course, only one payment can be made with respect to each (fraction of a) security, since there is no longer any loss on account of investments if the securities are 'paid out', and there is no loss on account of deposits if the securities are 'taken over ' when compensating (partial) losses.

[1] Included in Directive relating to the taking up and pursuit of the business of credit institutions (Codified Directive), 2000/12/EC of 20 March 2000, OJ L 126/1.
[2] 'The Annex to the Second Banking Coordination Directive' is to be read as: 'Annex I to the Codified Directive'.

Another important aspect is that substantial categories of deposits have been excluded from cover. The excluded deposits are listed in Annex A. This mainly involves deposits of insiders, professional market parties and larger companies. The list has been geared closely to the allowed or required exceptions listed in the directive on deposit-guarantee schemes and in the accompanying Annex I. The only allowed exception which has not been adopted is the one for claims on account of debt certificates issued by the credit institution and claims on account of deposits in currencies other than those of the Member States or in ECU[1]. Incidentally, whether the deposit is of a private or business nature is not relevant.

The directives do not allow for the possibility to exclude subordinated claims from cover. For this reason, the exclusion contained in the previously applicable Scheme has been cancelled. Insofar as subordinated loans have been granted in a form which has not been excluded via the annexes, they are consequently covered (provided they fall within the definition of deposits).

For the purpose of clarity, section 4(3) provides that the only claims covered by the Scheme are those that are based on a legal relationship which is considered part of the business operations of the institution concerned in or from the Netherlands. Considering that, from a legal point of view, a branch and head office (and any other offices) are part of a single legal entity, confusion might otherwise arise about the level and scope of the cover. The misconception may take root that claims against the head office are also covered under the Dutch Scheme. Also, the text reflects the formulation of section 5 of the ASCS. The determination of this legal relationship will be based on the books of the branch, the monthly return to the Bank and any ruling made by the Bank under section 5 of the ASCS.

Section 5

Annex B lists the investors whose claims are not covered under the Scheme. These mainly involve insiders, professional market parties and larger companies. The list corresponds relatively closely with the allowed or required exceptions listed in the directive on investor-compensation schemes and in the accompanying Annex I.

The second subsection implements article 2(3) of the directive on investor-compensation schemes. If a claim falls within the scope of both schemes, it must be attributed to one of the two schemes. No claim shall be eligible for compensation more than once. It has been decided to bring monetary claims which also qualify as deposits (which will nearly always be the case) under the deposit-guarantee scheme.
The notes to section 4(3) also reflect the reason for inclusion of section 5(5). The notes to section 4(4) also reflect the reason for inclusion of section 5(6).

Section 7

The definitions of joint account and joint portfolio investment transactions have been formulated broadly. The aim was not, however, to include claims of institutions for collective investment, considering that their expertise can be attributed to their investors. For the sake of clarity, a provision to that effect has been included.

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[1] To be read as: 'euros'.

Section 8

The directive on investor-compensation schemes and the directive on deposit-guarantee schemes each require a minimum amount of cover of ECU 20,000[1]. In principle, indexing will take place only if occasioned by developments at a European level. In this context, the directive on deposit-guarantee schemes (protection of creditors) stipulates that the European Commission is obliged to verify whether the amount of compensation is in line with economic developments within the EU at least every five years. The first verification by the European Commission will not take place until 1 January 2005. If the European Commission would want to adapt the minimum amount of payable compensation, it will have to take the official course for amending a directive and submit a proposal to the Council and the European Parliament. This verification requirement has not been included in the directive on investor-compensation schemes. This directive may nevertheless be adapted on the same footing. Furthermore, there is no reason to let these two amounts diverge in the Netherlands. This would only create confusion and uncertainty. In principle, therefore, the Scheme provides for a link between the two maximum amounts.

Section 10

According to article 10 of the directive on deposit-guarantee schemes, the Scheme shall 'be in a position' to pay duly verified claims within three months of the date on which a participating institution has become an insolvent institution. Considering that the time limit for submitting claims may be extended, the object cannot be that all payments have to be made within three months of the activation date of the Scheme. The Scheme must be operational as soon as possible, and has to be financially able within three months of activation to make the required payments. In view of the funding method, the Scheme provides for the possibility to make all payments in time.
The above interpretation also corresponds with the more extensively described timepath for payments in article 9 of the directive on investor-compensation schemes. Payment has to be made as quickly as possible, with the Scheme being in a position to do so within three months of the date on which the validity and the amount of a claim have been determined. Since no postponement is necessary for funding purposes and a maximum term of three months for the determination is reasonable, it was decided that payment shall be made within three months of submission. If it is determined that the claim is not valid, payment is, of course, not required. If it is determined afterwards that the claim was not covered, the amount will be reclaimed from the beneficiary on account of undue payment. As regards the period of limitation of this claim, the normal periods of the Civil Code apply.
Payment of compensation does not have to be made if one or more formal requirements have not been met (e.g. the assignment), or if it is the creditor's or investor's fault that his claim cannot be determined in time, for example because, after submitting his claim, he does not provide timely information about its origin, preventing the Bank from determining its validity and amount. In the latter case, the period within which the Bank has to pay is extended by the period during which the creditor or investor failed to provide the required information or documents.

Investors and creditors have to assign to the Bank their claims against participating institutions which do not fulfil their obligations. This is required in order to ensure that the Bank, for the protection of Scheme interests, assumes the rights of investors or creditors insofar as they have been compensated by the Scheme. The Scheme ensuing from the directives merely entails that creditors or investors have to receive at least a certain minimum amount. Further advantages (double payment or preferential position over the claim to be transferred to the Scheme) are not intended. In the event of a imperfect subrogation, a claim can also be submitted to the administrator or receiver of the insolvent participating institution on the basis of an assigned claim. If the shares in the participating institution have meanwhile been taken over and it has been provided with

[1] To be read as: '20,000 euros'.

sufficient liquidity and solvency, the claim can be submitted to the participating institution's directors.
In the case of investor claims, the securities which are not returned are often not held by the participating institution (for the purpose of administration or management), but by a third party or in a separate securities account. This would typically mean that the participating institution has registered the securities in the investor's name in a collective securities account as referred to in the Securities Giro Act or has placed them into safe-keeping at a separate securities depository company. In principle, the securities are then returned to the investor because they are either not part of the participating institution's assets (in that they are held in a separate securities account) or have been deposited at another institution (securities depository company). The receiver or third party will, in principle, return the securities to the investor, as a result of which the investor will not (or no longer) have a claim against the participating institution on account of the fact that the institution is unable to return these securities. However, something could go wrong or there may be a delay. In that case, the investor may have a covered claim against the Scheme, in addition to the potentially valid claim against any third party. The investor is also required to assign the latter claim, so that he is not able to obtain both compensation and, in the end, the securities.
Perhaps superfluously, it is further pointed out that securities depository companies do not fall within the Scheme. Guarantees for the performance of obligations of securities depository companies, if issued by a participating institution, are not covered by the Scheme in case of non-performance of the securities depository company. Drawings on a guarantee (after the date on which the Scheme has been activated) are not regarded as a credit balance resulting from normal banking transactions. Incidentally, a separate securities depository company is also set up to protect clients' securities, held by the securities depository company, in case of the compulsory winding-up of a group company. Usually, a securities depository company will therefore have no other obligations.

Section 11

Provided that timely payments under the schemes are ensured, the directives leave the schemes free in how they fund themselves. The Netherlands has decided against setting up a fund where all participating institutions have to annually contribute a premium, or a comparable scheme. The Bank advances money, after which it is recompensed for this by the participating institutions. As appears from the preamble, the only requirement set by the directives is that a Member State's financial system must not be endangered by this contribution. This is covered in section 14 of the Scheme.
The participating institutions have a contribution obligation vis-à-vis the Bank in proportion to an apportionment percentage calculated on the basis of the consolidated prudential balance sheet. If desired, the Bank may collect the contribution from the participating institutions on a monthly basis regarding all amounts paid to creditors and investors up to that moment.

Section 13

Under the system of the previous schemes, Rabobank Nederland, the affiliated Rabobanks and the subsidiaries of Rabobank Nederland were regarded as a single institution for the operation of the Scheme. As far as possible, this has been maintained. Unlike the First and Second Banking Coordination Directive[1] (article 2(4), under a of the FCD and article 2(3) of the SCD, see the notes to section 4), the directives on deposit-guarantee schemes and investor-compensation schemes do not allow for a group-wide payment of compensation. As every affiliated Rabobank has a separate authorization, the Scheme has to provide cover to the clients of each individual Rabobank. The only exception concerns the funding of the Scheme.

[1] Included in Directive relating to the taking up and pursuit of the business of credit institutions (Codified Directive), 2000/12/EC of 20 March 2000, OJ L 126/1.

The fact is that the method of funding has not been regulated in the directives, so that Member States are free to come to arrangements. Without prejudicing the other banks, the exception can therefore be maintained to this extent.
Nor has the possibility been created in the directives on deposit-guarantee schemes and investor-compensation schemes to declare in advance that the individual Rabobanks will be able to meet their obligations as long as the group is able to meet its obligations. The mere fact that a cross-guarantee scheme applies between the central credit institution and the affiliated institutions, which is required under section 12 of the ASCS, is insufficient to be able to conclude that the affiliated institutions cannot encounter problems. This requires that the group actually fulfils its obligations in this respect, and provides sufficient liquidity to the affiliated credit institution that has run into problems. As long as the referenced mutual contractual obligations are fulfilled, an affiliated Rabobank is, of course, not going to find itself in a situation where the Scheme has to be activated.

Section 14

As stated with regard to section 11 of the Scheme, the directives require that the financial system may not be endangered as a result of the funding obligations with respect to the payments to be made. In the Netherlands, this has been given shape through section 14. If more money is claimed in any one calendar year than the indicated percentages, the stability of the financial system is endangered in the opinion of the Bank and the representative organizations. In that case, the contribution obligation is suspended to the next year and possibly the year after.

Section 16

The directives include both an obligation to provide information and a prohibition against advertising. Both are contained in section 16. The Member States have to ensure that the participating institutions provide their creditors and investors with information about the provisions of the guarantee scheme(s) in which they and their branches participate. In addition, provisions have to be included aimed at limiting the use of information on the Scheme for advertising purposes. This is because the use of information on the Scheme may undermine the stability of the banking system or creditors' confidence. There can be a thin line between informing and advertising. In cases where, at the Bank's discretion, this is not clear, the Bank will determine in consultation with the representative organizations, which information can and cannot be used for advertising purposes. What may, of course, be disclosed is the scheme in which an institution participates.

Section 17

The Securities Board of the Netherlands is involved in the implementation of section 5 and related provisions, because it bears primary responsibility for the implementation of the investor-compensation scheme pursuant to section 28a of the ASST. The Board and the Bank will make arrangements about the structuring of this cooperation.

The Scheme does not require a confidentiality provision. Section 64 of the ASCS and section 31 of the ASST are both fully applicable. Section 9 of the old Scheme was therefore not maintained. What must be expressed in no uncertain terms, however, is that information about whether or not a credit institution is a participating institution within the scope of the Scheme, is public information. The register that is kept by the Bank pursuant to section 52 of the ASCS, will therefore state, presumably in a note pursuant to subsection 3, which institutions are participating institutions under the Scheme. As this register is published in the *Staatscourant* (Government Gazette) every year, and can also be examined on the Bank's (periodically updated) Internet site, this information is available to everyone.

Annexes A and B

Annex A lists the claims of certain creditors and the claims regarding certain deposits which are, also on the basis of the directive on deposit-guarantee schemes, excluded from cover under the Scheme. Annex B lists the investors which are, inter alia, excluded on the basis of the directive on investor-compensation schemes. A few points are discussed below.

A10 and B5 This should rule out (any semblance of) preferential treatment and/or intermingling of interests. Of course, individuals referred to in section 8(2), under a, of the ASCS also fall within this category.
Participating institution refers to the institution that finds itself in difficulties.

A12 and B7 Although not prescribed by the directive, the definition of the notion 'group' is based on section 1, opening line and subsection 0, of the ASCS.

A15 This refers e.g. to bills of exchange and order paper.

A16 and B9 This point refers to deposits of medium-sized and large companies, whereas claims regarding deposits of (small) companies which are allowed to submit a summary balance sheet, fall within the Scheme. A company is allowed to submit a summary balance sheet if it meets two out of the following three criteria: a balance sheet total of ECU 2.5 million[1] or less, a net turnover of ECU 5 million[2] or less, an average number of employees of 50 or less during the financial year.

De Nederlandsche Bank N.V.,
A. Schilder

The Netherlands Bankers' Association
H.H.F. Wijffels
P.M. Feenstra

NB The Scheme has also been signed by the Securities Board of the Netherlands,
F.J. Loudon and J. Vroegop.

[1] To be read as: '2.5 million euros'.
[2] To be read as: '5 million euros'.