

FINNIUS

Important changes in financial regulatory law!

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 3 MINUTES

Amendments to the scope of the bonuscap, supervisor approval for guarantees and more.

Introduction

In 2017 and 2018 Dutch financial regulation is going to change on certain important points. On 27 July 2016, the proposals for [the Financial Markets \(Amendment\) Act 2018](#) (*Wijzigingswet financiële markten 2018*) and [the Financial Markets \(Amendment\) Decree 2017](#) (*Wijzigingsbesluit financiële markten 2017*) are published for consultation.

We understand from the Ministry of Finance that there will be no Financial Markets (Amendment) Act 2017 (*Wijzigingswet financiële markten 2017*) this year. An amendment act is expected to be published later this year in order to implement small corrections to existing financial regulations. Furthermore, in October the MiFID II Implementation Act is expected to be published, which will result in extensive amendments of the Financial Supervision Act (*Wet op het financieel toezicht*) and further legislation.

Financial Markets (Amendment) Act 2018

The most important topics in the Financial Markets (Amendment) Act 2018 are:

- **Approval for joint and several liability guarantees.** Based on the proposal, prior approval of the competent authority will be required for issuing a joint and several liability guarantee by banks, insurance companies or certain investment firms for debts and liabilities following from all, or nearly all actions of third parties. An example of this would be a letter of comfort in respect of affiliates (*403-verklaring*). This approval requirement is also applicable to guarantees issued by holding companies of those financial institutions or by their group entities who provide critical services. Also, the competent authority has the authority to forbid the payment of a debt under the guarantee or to make its permission subject to further conditions. For significant banks, the European Central Bank will be the competent authority that will decide on the approval. The Dutch Central Bank (DNB) is the competent authority for the other institutions subject to the requirement. The approval requirement is solely applicable to guarantees issued after entry into force of the regulation.
- **Scope bonuscap will be increased.** Currently, managers of AIFs and UCITS and investment firms trading for own risk and expense are excepted from the rules on the bonuscap. Based on this proposal, the bonuscap will be applicable to these entities, insofar as they are part of a group subject to consolidated supervision. This means that the variable component of remuneration of employees of the abovementioned entities may not exceed 100% (or 200% with the approval of shareholders) of the fixed component of their remuneration on an annual basis. The regular bonuscap of 20% does not apply.

These rules are expected to enter into force by mid 2018.

Financial Markets (Amendment) Decree 2017

The most important topics in the Financial Markets (Amendment) Decree 2017 are:

- **Rules on robo-advice (automated advice).** The proposal contains rules for investment firms, AIFs and financial service providers who are providing robo-advice to consumers. For example, the robo-system must gather enough information from the customer, the advice must be based on this information and the advice must be explained to the customer. Furthermore, per financial product one employee must be made responsible for the robo-advice and the periodic monitoring thereof. This person must have the qualifications (*Wft-diploma*) under the Financial Supervision Act (*Wet op het financieel toezicht*) required for the provision of advice on that specific financial product.
- **Providing inducements from an investment account falls within the scope of the inducement ban.** Certain investment firms offer financial service providers the option to receive inducements from the customer from the investment account of the customer, which is managed by them. As a consequence of the Financial Markets Amendment Decree 2017, this practice is in violation with the inducement ban. The customer must pay the inducement directly to the financial service provider.

These rules are expected to enter into force on 1 July 2017.

You can react to the consultation until 8 September 2016. Should you have any questions regarding the proposals or on the preparation of a response to the consultation, we are more than happy to assist.