**Application Form for authorisation as a third country investment firm (article 2:99a and 2:99b Wft[[1]](#footnote-1))**

For information on if this is the correct form for you to use, we refer you to the Explanatory Notes at the end of this form.

Through this form you apply for a license for performing investment services in the Netherlands, while having a registered office in a third country. To be able to fully assess the application, we need you to fill out the annexes in this form.

Furthermore we need the following information:

Person in charge of this application:

|  |  |  |
| --- | --- | --- |
| Name: |  |  |
| Firm (for external advisor to the application)[[2]](#footnote-2) |  |  |
| Email address |  |  |
| Telephone number(s) |  |  |

This application is based on (choose one of the options):

* Article 2:99a Wft, for investment firms that have non professional clients or professional clients within the meaning of Section II of Annex II to Directive 2014/65/EU
* Article 2:99b Wft, for investment firms that have only eligible counterparties and professional clients within the meaning of Section I of Annex II to Directive 2014/65/EU

**Annex 1 General information concerning the firm (as referred to in article 1 of DR 2017/1943[[3]](#footnote-3))**

|  |  |  |
| --- | --- | --- |
| Name legal entity |  |  |
| Trading name(s) |  |  |
| Legal form |  |  |
| Registered office |  |  |
| Registration number in trade register |  |  |
| LEI code (if available) |  |  |
| Address of head office |  |  |
| Postal code and city of head office |  |  |
| Country |  |  |
| PO box |  |  |
| Postal code of the PO box |  |  |
| Country |  |  |
| Telephone |  |  |
| E-mail address |  |  | |
| Website |  |  |

|  |  |  |
| --- | --- | --- |
| ***For article 2:99a Wft application: Information on the mandatory branch office in the Netherlands*** |  |  |
| Address of the branch office |  |  |
| Postal code and city of branch office |  |  |
| Registration number of the branch office in trade register |  |  |
| LEI code of the branch office (if available) |  |  |
| Telephone number of the branch office |  |  |
| Name of contact person and contact data within the branch office |  |  |
| ***For article 2:99b Wft application: Information on the mandatory representative in the Netherlands*** |  |  |
| Name of the representative |  |  |
| Address of the representative |  |  |
| Postal code and city of the representative |  |  |
| Registration number of the representative in trade register |  |  |
| Telephone number of the representative |  |  |
| Contact date for the representative (email address and telephone number) |  |  |
| Copy of the mandate of the investment firm for the representative, which mandate covers the requirements in article 2:99 b subsection 1 Wft |  |  |

Please tick the appropriate boxes in the matrix belowto indicate which investment services, ancillary services and financial instruments to which the license application relates.

**Investment services and activities[[4]](#footnote-4)**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **Receipt and transmission of orders for clients** | **Execution of orders for clients** | **Portfolio management** | **Investment advice** | **Underwriting and/or placement guarantee** | **Placement without guarantee** |
| **1. Transferable securities** |  |  |  |  |  |  |
| **2. Money-market instruments** |  |  |  |  |  |  |
| **3. Units of collective investment undertakings** |  |  |  |  |  |  |
| **4. Derivatives (other than commodities) with physical or cash delivery** |  |  |  |  |  |  |
| **5. Commodity derivatives with cash settlement** |  |  |  |  |  |  |
| **6. Commodity derivatives with physical delivery traded on a platform** |  |  |  |  |  |  |
| **7. Commodity derivatives with physical delivery other than 6.** |  |  |  |  |  |  |
| **8. Credit risk derivatives** |  |  |  |  |  |  |
| **9. Contracts for differences** |  |  |  |  |  |  |
| **10. Other derivatives contracts** |  |  |  |  |  |  |
| **11. Emission allowances** |  |  |  |  |  |  |

**Ancillary services[[5]](#footnote-5)**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | **Safekeeping and administration of financial instruments** | **Provision of loans when providing investment service** | **Advice on capital structure and business strategy** | **Foreign exchange services** | **Research or financial analysis of investments** | **Services relating to underwriting** | **Derivatives services with respect to instruments falling under 5, 6, 7 and 10.** |
| **1. Transferable securities** |  |  |  |  |  |  |  |
| **2. Money-market instruments** |  |  |  |  |  |  |  |
| **3. Units of collective investment undertakings** |  |  |  |  |  |  |  |
| **4. Derivatives (other than commodities) with physical or cash delivery** |  |  |  |  |  |  |  |
| **5. Commodity derivatives with cash settlement** |  |  |  |  |  |  |  |
| **6. Commodity derivatives with physical delivery traded on a platform** |  |  |  |  |  |  |  |
| **7. Commodity derivatives with physical delivery other than 6.** |  |  |  |  |  |  |  |
| **8. Credit risk derivatives** |  |  |  |  |  |  |  |
| **9. Contracts for differences** |  |  |  |  |  |  |  |
| **10. Other derivatives contracts** |  |  |  |  |  |  |  |
| **11. Emission allowances** |  |  |  |  |  |  |  |

Does the firm apply the following work practices:

* Offering of direct electronic access;
* The application of a system of high-frequency algorithm trading.

|  |  |  |
| --- | --- | --- |
| Does the firm or the group the firm belongs to have (other) branches in the Netherlands?   * If yes, please indicate alongside the locations at which these branches are or will be operating * No |  |  |

**Annex 2 Information concerning capital (as referred to in article 2 of DR 2017/1943)[[6]](#footnote-6)**

|  |  |  |  |
| --- | --- | --- | --- |
| ***The AFM requests that you indicate where the following information is included.*** |  | ***This information is included in the following enclosure(s) (please state the name(s) of the enclosure(s) and the relevant page numbers below):*** | |
| the use of private financial resources (see article 2(a) DR 2017/1943) |  |  |
| access to capital sources and financial markets (see article 2(b) DR 2017/1943) |  |  |
| information on the use of borrowed funds (see article 2(d) DR 2017/1943) |  |  |
| the means of transferring financial resources to the firm (see article 2(e) DR 2017/1943) |  |  |
| relevant agreements and contracts (see article 2(c) DR 2017/1943) |  | The following agreements and contracts are enclosed (please state the name(s) of the enclosure(s) here): | |

**Annex 3: Information concerning daily policy makers, co-policy makers and supervisory directors (as referred to in article 4 of DR 2017/1943 and article 4:9 and 4:10 Wft)**

The following persons qualify as members of the management body or managing the branch office, or any other qualification under article 4:9 and 4:10 Wft. If there are more than 2 persons, please provide a separate list of persons.

|  |  |  |  |
| --- | --- | --- | --- |
| ***If the application refers to article 2:99a Wft, the information regards persons relevant to the branch office. Besides the management of the branch office, this will likely include persons in the management body of the head office.*** |  | ***Please fill out the answers in this column:*** | |
| ***Person 1*** |  |  | |
| Name |  |  | |
| Contact details |  |  | |
| Position |  |  | |
| Professional experience or other relevant experience |  |  | |
| Educational qualification and relevant training |  |  | |
| List of executive and non-executive directorships in other entities |  |  | |
| Effective date |  |  | |
|  |  |  | |
| ***Person 2*** |  |  | |
| Name |  |  | |
| Contact details |  |  | |
| Position |  |  | |
| Professional experience or other relevant experience |  |  | |
| Educational qualification and relevant training |  |  | |
| List of executive and non-executive directorships in other entities |  |  | |
| Effective date |  |  | |
|  |  |  | |
|  |  | ***This information is included in the following enclosure(s) (please state the name(s) of the enclosure(s) and the relevant page numbers below):*** | |
| a description of financial and non-financial interests or relationships of the person and his/her close relatives to members of the management body and key function holders in the same institution, the parent institution and subsidiaries and shareholders (see article 4 (a) (ix) DR 2017/1943) |  |  |
| details of the result of any assessment of the suitability of the members of the management body, performed by the applicant itself (see article 4 (a) (x) DR 2017/1943) |  |  |
| information on the minimum time to be devoted to functions within the firm, as referred to in article 4 (a) (xi) DR 2017/1943  Time to be devoted is defined in particular as the time required by this function when compared to other functions/activities at other companies or organisations. |  |  |
| information on human and financial resources devoted to induction and training (see article 4 (a) (xii) DR 2017/1943) |  |  |
| A list of the staff of the internal management and control bodies (see article 4 (b) DR 2017/1943) |  |  |

**Annex 4 Information on the organisation (as referred to in article 6 of DR 2017/1943)**

|  |  |  |
| --- | --- | --- |
| ***If this application is based on article 2:99a Wft, the information required concerns the branch office specifically. However if a large part is performed by the head office please include the information and references on that also.***  ***For an application based on 2:99b Wft, please refer to the investment services and activities as performed in the Netherlands and the organisation in the third country.*** |  | ***This information is included in the following enclosure(s) (please state the name(s) of the enclosure(s) and the relevant sections and page numbers here):*** |
| details of the firm’s auditors (see article 6 (b) DR 2017/1943) |  |  |
| the organisational structure and internal control systems (see article 6(c) DR 2017/1943), consisting of 6(c)(i) to (iv)) |  |  |
| the information relating to the investor compensation scheme (see article 6(d) DR 2017/1943) |  |  |
| a list of outsourced functions, services or activities (see article 6(e) DR 2017/1943) |  |  |
| measures relating to identify and to prevent and manage conflicts of interest and a description of the product governance arrangements (see article 6(f) DR 2017/1943) |  |  |
| a description of the monitoring systems (see article 6(g) DR 2017/1943) |  |  |
| information on the compliance, internal control and risk management systems (see article 6(h) DR 2017/1943) |  |  |
| information on the systems for assessing and managing the risks of money laundering (see article 6(i) DR 2017/1943) |  |  |
| business continuity plans (see article 6(j) DR 2017/1943) |  |  |
| policies relating to record management, record retention and record-keeping (see article 6(k) DR 2017/1943) |  |  |
| *a description of the other relevant processes, procedures and measures (see article 6(h) DR 2017/1943)*  This may for instance concern the following: It may be the case that a standard does not apply, for instance if you are engaged solely in proprietary trading and the standard relates to clients. The standards are described mainly in DR 2017/565[[7]](#footnote-7), but also in other regulations, such as the Wft, BGfo[[8]](#footnote-8) and other delegated regulations. The firm must determine what standards apply. Several requirements that occur frequently are included below. This list is not intended to be exhaustive.  Among other things, the description must show that the applicant has implemented all the necessary measures in order to meet the statutory requirements. Among other things, this concerns: |  |  |
| *General organisational requirements and senior management (see articles 21, 25 DR 2017/565)* |  |  |
| *Internal risk functions (see articles 22-24 DR 2017/565)* |  |  |
| *Complaints handling (see article 26 DR 2017/565)* |  |  |
| *Remuneration policy (see article 27 DR 2017/565)* |  |  |
| *Personal transactions (see articles 28, 29 DR 2017/565)* |  |  |
| *Outsourcing (see articles 30-32 DR 2017/565)* |  |  |
| *Conflicts of interest (see article 33-35 DR 2017/565)* |  |  |
| *Client categorisation (see article 45 DR 2017/565)* |  |  |
| *Information to clients (see article 46-49 DR 2017/565)* |  |  |
| *Cost and charges (see article 50 and 51 DR 2017/565)* |  |  |
| *Suitability and appropriateness (see article 54-58 DR 2017/565)* |  |  |
| *Reporting to clients (see article 59-63 DR 2017/565)* |  |  |
| *Best execution (see article 64-66 DR 2017/565)* |  |  |
| *Client order handling (see Articles 67-70 DR 2017/565)* |  |  |
| *Retention of records (see Articles 72-76 DR 2017/565)* |  |  |
| *Segregation of assets (see Section 4:87 Wft in conjunction with article 165-165g BGfo in conjunction with Sections 7:15-7:20 NRGfo[[9]](#footnote-9))* |  |  |
| *Product governance (see articles 32a-c BGfo and 9-10 DR 2017/593)* |  |  |
| *Inducements (see articles 11-13 DR 2017/593)* |  |  |
| *When providing investment advice (see articles 52-53 DR 2017/565)* |  |  |
| *When issuing or placements of financial instruments (see articles 38-43 DR 2017/565)* |  |  |
| Other regulations may also be relevant. Examples: |  |  |
| *Further requirements in relation to algorithmic trading are described (see DR 2017/589)* |  |  |
| *Further requirements in relation to market making are described (see DR 2017/578)* |  |  |
| *Further requirements in relation to transparency are described (see DR 2017/583 and 587)* |  |  |
| *Requirements in relation to the trading obligation are described (see DR 2016/2020)* |  |  |

**Checklist**

Please tick the appropriate boxes to indicate which documents are enclosed with your license application.

* The articles of association or the incorporation documents of the firm.
* Copy of the firm’s registration at the Chamber of Commerce.
* Notification form prospective appointment with related enclosures on each person to be assessed.
* Integrity screening form with related enclosures on each person to be assessed.
* “Oath or solemn affirmation” of the persons in charge of day-to-day policy.
* "Suitability matrix" for the investment firm's day-to-day policy makers.
* “Suitability matrix” for the investment firm's supervisors.
* If already in operation, the financial statements audited by an external auditor for the three years prior to submission of the license application.
* For companies in formation and companies that have been incorporated that are not yet active an opening balance sheet with an audited statement that the prudential requirements are satisfied.
* Forecasts concerning the capital position: minimum equity and solvency (3-year horizon) and other documents as referred to in article 5 (a-c) DR 2017/1943.
* Details of the capital position and figures and of any loans issued to or by the firm.
* Relevant agreements and contracts in relation to the capital raised and in relation to any loans. Details of specific clauses such as subordination clauses.
* List of direct and indirect shareholders, with participation amounts, percentages of shareholdings and types of shares held.
* Organisational diagram for each shareholder forming part of a group. If the group includes firms subject to supervision, please state the relevant supervisory agency.
* If the applicant forms part of a group: an organisational chart of the group with the main activities of each firm within the group, the identification of all regulated entities within the group and the names of the relevant regulatory authorities as well as the relationship between the financial entities of the group and the other non-financial entities of the group.
* If the direct or indirect share holder (more than 50%) is not a natural person, the documentation must also concern all members of the management body and the managing director or the sole other person who performs similar tasks.
* A business plan that complies with article 6 (a) DR 2017/1943, including financial forecasts for the next three years.
* A description of the business operations, including the processes and safeguards of these within the firm. It may be the case that a standard does not apply, for instance if the firm is engaged solely in proprietary trading and the standard relates to clients. In this case, the standard can be ignored.
* Details concerning the national competent authority and a possible contact person/department for the firm within the national competent authority.

The following documents are enclosed in addition to the documents indicated above (please list below)

**Explanatory Notes**

**When to use this application form:**

When the registered office of an investment firms is not in an EU member state, it is considered to be in a third country. In this case MiFID II generally does not apply and the investment firm that provides investment services to Dutch clients or investment activities in the Netherlands needs to apply for a license as a ‘third country investment firm’.

A general summary of the exceptions to this rule:

* When the investment firm has a branch office in the Netherlands; In this case you need to apply for a ‘regular’ MiFID II license due to article 2:99 Wft.
* When article 46 MiFIR applies. This requires at least an equivalence assessment by the European Commission and the investment firm can only perform investment services and activities to eligible counterparties and professional clients within the meaning of Section I of Annex II to Directive 2014/65/EU. In this case please follow the procedure as given by ESMA.
* When the investment firms registered office is in Australia, the United States or Switzerland, and provides investment services or dealing on own account to only eligible counterparties and professional clients within the meaning of Section I of Annex II to Directive 2014/65/EU, an exemption to the prohibition to act without a license is applicable due to article 10 Exemption Regulation[[10]](#footnote-10). You need to apply for a registration. Please use the form ‘application investment firm section 10’.
* When the investment firm only deals for own account in the Netherlands, it is exempted from the prohibition to act without a license due to article 10a Exemption Regulation. No further action is required.

For a full review of applicable rules we advise you to read the underlying rules and regulations.

**What is the difference between a license based on article 2:99 Wft, 2:99a Wft and 2:99b Wft?**

It is prohibited to provide investment services in the Netherlands without a license, as mentioned in article 2:96 Wft. There are some exceptions and exemptions to this prohibition, in which case a license is not required. When a license is required, articles 2:99 through 2:99b Wft list the requirements that have to be met in order to obtain a license.

* Article 2:99 Wft lists the requirements for investment firms with registered office in the Netherlands.
* Article 2:99a Wft lists the requirements for investment firms with registered office in a third country, that aims to have non-professional clients or professional clients within the meaning of Section II of Annex II to Directive 2014/65/EU. In this case a branch office is mandatory and it will not be possible to passport your investment services or investment activities throughout the EU member states.
* Article 2:99b Wft lists the requirements for investment firms with registered office in a third country, that aims to only have professional clients within the meaning of Section I of Annex II to Directive 2014/65/EU or eligible counterparties. In this case a representative is mandatory and it will not be possible to passport your investment services or investment activities throughout the EU member states.

The requirements for these articles largely overlap, however there are some differences.

**How to use this application form:**

It is in the interests of both the applicant and the supervisor that applications are correct and complete. The AFM has accordingly supplemented the application form with several annexes giving further details of the requirements that must in any case be addressed in the case of a license application. This list is not exhaustive, and since all the requirements have not yet been established it may be subject to change. You should therefore always consult the most recent regulation. You may also engage an adviser with experience of MiFID or other license applications. This does not release you from your own obligation to be aware of the requirements that applicants must meet. You are responsible for compliance with the legislation and regulation applying to you or your firm.

We would like to ask for your attention to the following notes on a number of points.

Explanation of matrices with investment services, investment activities, supplementary services and financial instruments

The matrices contain a summary of the relevant text in Annex I to MiFID II. For the full text, the AFM refers you to [the text of MiFID II, Annex I](http://eur-lex.europa.eu/legal-content/NL/TXT/PDF/?uri=CELEX:32014L0065&from=EN)

Auditor’s statement

An auditor’s statement is requested to evidence that an investment firm complies with the capital requirement of Section 3:53 (1) and (3) Wft. Under Section 3:53 (1) Wft, every investment firm must have a certain minimum equity (initial capital). Pursuant to Section 3:53 (3) Wft, the required minimum initial capital of a particular type of investment firm is included in Sections 48 and 50 of the Decree on Prudential Rules for Financial Undertakings (Besluit prudentiële regels Wft - Bpr).

The Audit Firms (Supervision) Act (Wet toezicht accountantsorganisaties, or Wta) has been in force since 1 October 2006. Under the Wta, only licensed audit firms may issue an auditor’s statement with regard to the financial statements of investment firms, management companies, depositaries and collective investment schemes. The AFM’s register of audit firms may be consulted to determine whether an audit firm has obtained a license under the Wta.

Persons to be assessed

There are three functions on the basis of which persons must be assessed. These are persons in charge of day-to-day policy, supervisors and co-policymakers.

The AFM qualifies only natural persons as persons in charge of day-to-day policy, supervisors and co-policymakers. All these roles may be fulfilled via legal entities, in which case the policymakers (natural persons) of the legal entity are considered to be the persons referred to in Sections 4:9 and/or 4:10 Wft. It may be that a legal entity is director of the above-stated legal entity. Ultimately the underlying natural persons must be stated here.

Resolution fund

Branches of credit institutions or investment firms from a non-member state have to contribute to the National Resolution Fund (NRF). The NRF will be funded in a period of approximately 10 years by lumpsum amounts. The expectation is that the fund will eventually consist of 3 to 4 million euros.

We also wish to draw your attention to the following:

1. In order to submit a license application, the applicant must use the correct license application form and provide the required enclosures with this form.
2. Please submit your application by uploading it on our website. For this, you first need to apply for a AFM ID. Information on this is on our website. After that, you must complete and save the application form and the Annex (with enclosures). You can then upload this document and the requested enclosures as an attachment to your application.
3. A fee is charged by the AFM to the applicant for filing the application. An invoice will follow some time after submission of the application.
4. The AFM will only process a license application if the license application form is fully completed and legally signed on behalf of the applicant.
5. A completed and signed Integrity Screening form, a Referees form, a Notification Form for prospective appointment and an “Oath or solemn affirmation” must be submitted for the persons to be assessed. These documents are available at the same web location as this application form. As regards the day-to-day policymakers and regulatory authorities, a suitability matrix per collective has to be sent in as well. For more information about the suitability assessment and the properness check, see the explanation on the AFM website.
6. The AFM is entitled to request additional information and/or documentation needed for the assessment of the license application.
7. If circumstances as stated in the license application form change during the license application process, the AFM must be informed of this in writing without delay.

If you have any questions when completing this form, please contact the Business Desk, by telephone on 0800-6800680 (available on business days from 10:00 to 17:00 hours) or by e-mail to ondernemersloket@afm.nl.

**Signature**

|  |
| --- |
| The undersigned[[11]](#footnote-11) declare that this application form and the enclosed attachments are truthful and complete.  Place Date  Name of person in charge of day-to-day policy Signature of person in charge of day-to-day policy |

1. Wft refers to the Wet op het financieel toezicht (the Dutch Act on Financial Supervision) [↑](#footnote-ref-1)
2. Using an external advisor is not mandatory. However due to the fact that all regulation is in Dutch, we do deem it preferable. [↑](#footnote-ref-2)
3. Delegated Regulation of the Commission of 14 July 2016 in addition to Directive 2015/65/EU of the European Parliament and the Council relating to regulatory technical standards with respect to information and requirements for the granting of a license to investment firms. For applications on article 2:99a and b Wft, article 41.0a of the Decree on Market Entry financial enterprises (BMfo) determines that article 1, 2, 4 and 6 of this Delegated Regulation are applicable to these firms. [↑](#footnote-ref-3)
4. We refer to Annex I to Directive 2014/65/EU for a full description of the investment services and activities as well as the financial instruments. [↑](#footnote-ref-4)
5. We refer to Annex I to Directive 2014/65 for a full description of the ancillary services as well as the financial instruments. [↑](#footnote-ref-5)
6. A copy of the financial statements audited by an external auditor for the last three years. [↑](#footnote-ref-6)
7. The Delegated Regulation supplementing Directive 2014/65/EU of the European Parliament and the Council in relation to the safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits. [↑](#footnote-ref-7)
8. BGfo is the Dutch Decree on conduct of business supervision. [↑](#footnote-ref-8)
9. NRGfo refers to the Dutch regulation on business conduct rules for financial enterprises. [↑](#footnote-ref-9)
10. Exemption Regulation for the Wft (Vrijstellingsregeling Wft). [↑](#footnote-ref-10)
11. At least one of the persons in charge of day-to-day policy must sign this application form for a license to operate an investment firm MiFID II. [↑](#footnote-ref-11)