

# Defining supervision for the BES islands

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# AGENDA



## Part I: General supervisory approach

## Part II: Priority issues

- Information provision
- Tie-in sales
- Commission
- Responsible lending
- Appropriate advice

## Questions

## Part I

### General supervisory approach

1. What is our mission?
2. What does the AFM supervise?
3. What is our general approach?
4. How do we communicate with each other?
5. What happens if we investigate an organisation?
6. What measures can we apply?
7. What is our enforcement strategy?
8. What can you expect from us in 2012?
9. What issues have our special interest?

# What is our mission?



## The AFM is *the business conduct supervisor*

- The AFM promotes the conscientious provision of financial services to consumers.
- Companies and individuals that provide financial services have to be experts, trustworthy and ethical.
- The information from financial companies and pension managers needs to be factually correct, understandable and not misleading.
- A financial service provider exercises due care in the provision of products and services to consumers and customers.

# What does the AFM supervise?



## Division of tasks between DNB and AFM\*

	<i>Credit institution</i>	<i>Insurers</i>	<i>Money transaction office</i>	<i>Trust office</i>	<i>Collective investment companies/ asset managers</i>	<i>Intermediaries /advisers/ credit providers</i>
<i>Market access</i>	DNB	DNB	DNB	DNB	<b>AFM</b>	<b>AFM</b>
<i>Continuous prudential supervision</i>	DNB	DNB	-	-	DNB	-
<i>Continuous business conduct supervision</i>	<b>AFM</b>	<b>AFM</b>	<b>AFM</b>	-	<b>AFM</b>	<b>AFM</b>
<i>Integrity Investigations</i>	DNB	DNB	DNB	DNB	<b>AFM</b>	<b>AFM</b>

• The AFM also has a statutory duty to supervise capital market activities: issuances, public offerings, securities markets and financial infrastructure. These types of activity do not currently occur on the BES Islands.

•\*\* There are no registered collective investment companies or asset managers on the islands at present.

# What is our approach?

## Risk-based supervision

- Focus on key problem areas
- Intensity of supervision depends on size of problem
- No permanent representation on the BES Islands
- As far as possible, remotely monitoring of compliance
- No regular reports, ad hoc requests for information instead
- Regular visits and on-the-spot investigations
- Additional interventions in response to alerts

# How do we communicate with each other?



## You have information or a question for us

- No account management. This means the AFM does not have fixed contacts for BES companies (or for Dutch companies)
- During an investigation, though, the supervisor or supervisors fulfil the role of contact
- Email [BES@afm.nl](mailto:BES@afm.nl) for questions, comments and notifications concerning irregularities (or call the company helpdesk on +31 900 6800 680)
- For general questions, you can also consult AFM's website, [www.afm.nl](http://www.afm.nl) > professionals > BES companies (general information and Q&As)

## We have information or a question for you

- General contacts and those relating to an investigation are by letter, telephone or email
- Regularly check our website [www.afm.nl](http://www.afm.nl) > professionals > BES companies for information on relevant developments in supervision or regulations (such as new guidelines)
- Regularly check the FAQs on our website as well
- You can subscribe to our Dutch newsletters if you wish
- Publication of fines and incremental penalties in local newspapers

# What can you expect from us in 2012?



## 2012 supervision agenda

- Current round table sessions: publicising standards and expectations. Documenting and addressing issues and bottlenecks
- Visit in June to set a baseline for measuring the progress the institutions have made with preparation for implementing the BES FMA
- Particular attention to a number of issues: responsible lending, information provision, tie-in sales, commission and appropriate advice
- Investigations at one or more institutions in autumn 2012
- Results will define the direction for long-term supervisory strategy

# What is our enforcement policy?



## AFM enforcement policy

- Largely a preventative approach, with hard enforcement employing formal measures as necessary
- Standards have to be known
- Materiality always taken into account for an offence (seriousness, duration and culpability)
- As well as attitude and track record (repeat offences if any)
- Enforcement measures can have two objectives: punitive and restorative

# What is our enforcement policy?



## Enforcement measures

- Interview introduction of standards
- Reliability is not beyond doubt on the basis of new assessment
- Imposition of an instruction
- Imposition of an order on pain of a penalty payment (publication)
- Imposition of a penalty (publication)
- Appointment of a custodian
- Withdraw licence

# What is the structure of an AFM investigation?



## Key steps in an investigation

1. Institution receives a notification letter
2. We want to inspect all relevant information and take copies of documents if necessary
3. If there is insufficient copying capacity, we take the original files and copy them ourselves
4. If need be, the AFM prepares a draft report or a letter containing its findings
5. In the case of a draft report, the institution is able to present its case at a hearing
6. Decision on what formal measures to take, if any

## Part II

### Priority issues

1. Information provision
2. Tie-in sales
3. Commission
4. Appropriate advice
5. Responsible lending

# 1. Information provision

- Information is factually correct, explicit and non-misleading
- Customer must be well informed in advance (pre-contractual information)

# 1. Information provision

## *Legal framework*

- Information is factually correct, explicit and non-misleading.
- Customer must be well informed in advance (pre-contractual information)

## *What action do we expect from you?*

- Assess the information provided about your services or products, and amend it as necessary.
- The most obvious examples are your website and product leaflets, as well as radio and TV commercials and word-of-mouth advertising.
- Possibly test how clear your information material is to the target group.

## *What action do we take?*

- The AFM will assess whether the information you provide conforms to the regulations. We will not always announce this action in advance.
- During a visit, the AFM has the right to request leaflets and other advertising material.

# 1. Information provision

## Example misleading advertisement:

*the cheapest life insurance*

- *Lowest price*
- *No small print*
- *Easy to shut down*

*Only today of \$400,- to \$200,-!*

# 1. Information provision

## Example misleading advertisement: 'teaser rates'

BECAM

708

**U kunt ruim 3 procent besparen op uw lening!**

FINANCIERINGEN

DOORLOPEND KREDIET				
Kredietlimiet	Te betalen per maand	Effectieve rente op jaarbasis	Theoretische looptijd	Totale theoretische prijs
€ 15.000,-	€ 300,-	6,4%	58 mnd.	€ 17.429,-
€ 20.000,-	€ 400,-	6,4%	58 mnd.	€ 23.239,-

Voor dit product is een prospectus opgesteld. Vraag erom of kijk op onze website. Vraag naar de voorwaarden.

WWW.BECAM.NL

BEL 0900 9865 (lokaal tarief)

Totale prijs Doorlopend Krediet van € 15.000,-\*

<b>Postbank</b>	<b>9,6%</b>	<b>€ 18.990,-</b>
<b>BECAM</b>	<b>6,4%</b>	<b>€ 17.429,-</b>
<b>Voordeel</b>	<b>3,2%</b>	<b>€ 1.561,-</b>

TROS 02

Europeaan 40a, 8303 GJ Emmeloord. Geopend op werkdagen van 7.00 tot 24.00 uur en in het weekend van 9.00 tot 20.00 uur.

Onderdeel van DSB Bank

VEILIG LENEN

\* Bron: MoneyView 19-12-2007.



## 2. Tie-in sales



- When a borrower enters into a loan agreement, the lender cannot compel the borrower to enter into an additional agreement for a financial product or service, unless ...

## 2. Tie-in sales



### *Legal framework*

- When a borrower enters into a loan agreement, the lender cannot compel the borrower to enter into an additional agreement for a financial product or service, unless ...

### *What action do we expect from you?*

- Ensure advisers are aware that it is illegal to compel customers to assign other products or change intermediary in order to obtain a loan. The way to achieve this is by issuing instructions, giving training courses, etc.
- Examples: To take out a mortgage loan, a consumer is also obliged to assign all his/her insurance policies to the bank. When taking out a loan for the purchase of a car, the borrower is also obliged to take out car insurance.

### *What action do we take?*

- The AFM will determine whether when customers take out a loan they are also obliged to assign the insurance policies to the bank.

### 3. Commission



- The remuneration that an advisor or broker receives from the provider of a financial product for services rendered must not pose an actual or potential threat to the interests of the consumer or customer.

# 3. Commission



## *Legal framework*

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## *What action do we expect from you?*

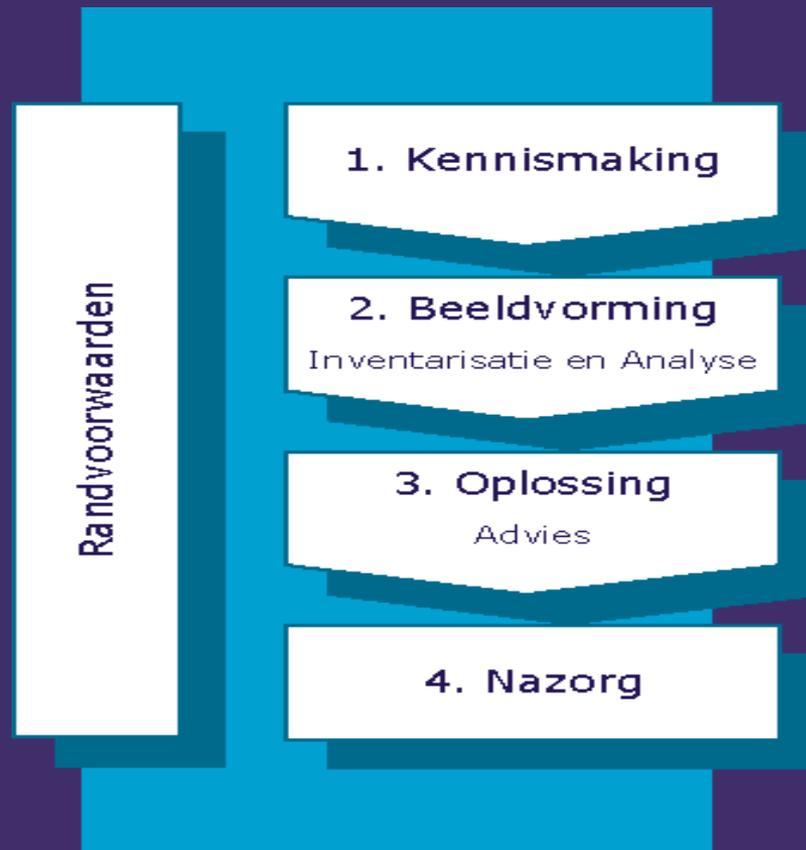
- In the view of the AFM, the commission has to be appropriate, meaning that the services must be in proportion to the remuneration. Example: If 80% in costs are factored into a product, the AFM doubts whether the product is actually appropriate. It leaves little of the premium over to cover the risk.
- At the very least, make sure the amount of commission being paid is made clear to customers and recorded in their files.

## *What action do we take?*

- The AFM will assess whether a product is appropriate, including the cost content and what this is as a percentage of the premium being paid.
- The AFM will determine the amount being paid in commission and the services that the intermediary provides in return.
- The AFM will assess whether the information provided to the consumer explicitly states the amount paid to the adviser or broker (only for life insurance).

## 4. Appropriate advice

### The four steps of the advising process



## 4. Appropriate advice



- A financial service provider who advises consumers or customers, bases the advice on each individual's financial position, knowledge, objectives and risk appetite
- Providers explain their advice

# 4. Appropriate advice



## *Legal framework*

- A financial service provider who advises consumers or customers, bases the advice on each individual's financial position, knowledge, objectives and risk appetite.
- Providers explain their advice.

## *What action do we expect from you?*

- Depending on the complexity of the product, ensure that the information obtained about the financial position, knowledge and experience, objective and risk appetite is recorded in the file. Ask the consumer further questions as well.
- If the consumer does not receive advice, state this explicitly in advance and record the fact;
- Ensure the advice to purchase a product matches the customer's profile. If the consumer wants to deviate from the advice, record this in the file

## *What action do we take?*

- The AFM checks whether all the relevant information about the financial position, risk appetite, knowledge and experience, and objective has been documented;
- The AFM then compares the documented information with the product that was recommended and purchased, to assess whether the advice given is appropriate for the consumer;
- In cases where a consumer wants to deviate from the advice given, the AFM determines whether the deviation has been documented and is justified. The deviation has to be substantiated

## 5. Responsible lending



- A lender will not enter into a loan agreement with a consumer if the transaction is irresponsible given the risk of excessive credit being granted
- The lender obtains information on the financial position of the consumer

# 5. Responsible lending



## *Legal framework*

- A lender will not enter into a loan agreement with a consumer if the transaction is irresponsible given the risk of excessive credit being granted;
- The lender obtains information on the financial position of the consumer.

## *What action do we expect from you?*

- Ensure there is a transparent acceptance policy and apply it consistently;
- Ensure there is a clear picture of the consumer's financial situation;
- Use the AFM model on the website to prevent the granting of excessive credit;
- Do not automatically provide income protection insurance with every type of credit;
- If there are deviations, provide adequate substantiation of them in the file;
- Do not exceed the maximum credit compensation percentage (Section 5:15 of the FMA).

## *What action do we take?*

- The AFM checks whether the model has been correctly applied and whether all deviations (if any) are properly justified;
- It also evaluates the documenting of deviations;
- The AFM verifies that the credit compensation percentage does not exceed its limit.

## 5. Responsible lending



Basic assumptions of the model (see Section 7:16 of the BES FMA):

1. Prevent the lending of an amount that would deprive a consumer of money to satisfy his/her primary needs;
2. A higher baseline amount applies to people with higher incomes;
3. The same standard of living is used for mortgage loans and consumer credit.

## 5. Responsible lending



### Input for the model:

Household type	Single person
Net income	600.00
Mortgage loan/ Consumer credit	Consumer credit
Actual housing costs*	200.00
Current monthly financial expenses	150.00
Requested financing term in months	60
Effective interest rate	16.00%
Baseline amount	618.00
Living standard amount**	721.00
5% of the baseline amount	30.90
(net-income – living standard amount) 2 / net-income	-
Gross monthly financial expenses	30.90
Current monthly financial expenses	150.00
Net monthly financial expenses	119.10-
Maximum possible credit	-

## 5. Responsible lending



### Input for the model:

Household type	Two adults
Net income	1,500.00
Mortgage loan/ Consumer credit	Mortgage loan
Actual housing costs*	-
Current monthly financial expenses	250.00
Requested financing term in months	360
Effective interest rate	7.00%
Baseline amount	927.00
Living standard amount**	782.00
5% of the baseline amount	46.35
(net-income – living standard amount) 2 / net-income	343.68
Gross monthly financial expenses	390.03
Current monthly financial expenses	250.00
Net monthly financial expenses	140.03
Maximum possible credit	21,512.88

# Questions?



Website: [www.afm.nl](http://www.afm.nl) > professionals > BES companies

Please email your questions and notifications concerning irregularities to [BES@afm.nl](mailto:BES@afm.nl)

Bureau D&O has published action plans and newsletters for the situation in the Netherlands on [www.deno.nl](http://www.deno.nl)