

Equity capital markets in The Netherlands: regulatory overview

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MAIN EQUITY MARKETS/EXCHANGES

1. What are the main equity markets/exchanges in your jurisdiction? Outline the main market activity and deals in the past year.

Main equity markets/exchanges

Euronext Amsterdam (www.euronext.com), a regulated market, is the equity market/exchange in The Netherlands. According to its website, there are currently 146 listed companies on Euronext Amsterdam (some of which are dual listed on other Euronext markets). Listed shares are segmented into one of the following three categories of market capitalisation:

- AEX, for shares with a market capitalisation of EUR1 billion and above.
- AMX, for shares with a market capitalisation between EUR150 million and EUR1 billion.
- AScX, for shares with a market capitalisation of less than EUR150 million.

Market activity and deals

In 2014, six companies obtained a new listing on Euronext Amsterdam. The IPO of Pershing Square Holdings, Ltd received most media attention, and the company raised approximately EUR2.12 billion with the IPO. Two other notable IPOs were NN Group NV, an insurance company that, until its EUR1.54 billion raising IPO, formed part of banking group ING, and cable and telecommunications company Altice SA, that raised EUR1.3 billion. The other IPOs in 2014 included: the chemical company, IMCD NV (raising EUR462 million), biotech company, Probiodrug AG (raising EUR22.5 million) and construction company, Mota-Engil Africa NV (raising no new funds). As follows from the above, Euronext Amsterdam's stock market may not have been very active during 2014, but it did (and continues to) attract Dutch, as well as, non-domestic issuers.

Up to August 2015, there were a further six IPOs on Euronext Amsterdam. Kleppiere SA, a European commercial property company, already listed on Euronext Paris, opted for a dual listing on Euronext Amsterdam. GrandVision NV, active in the optical retail business, raised EUR1 billion with a market capitalisation of EUR5 billion in February 2015. Lucas Bols NV, a producer of alcoholic drinks, also went public in February 2015. Refresco Gerber NV, a soft drinks bottler, went public on 27 March 2015, with a EUR1.18 billion market capitalisation. Kiadis Pharma NV, a biopharmaceutical company, was dual listed on both Euronext Amsterdam and Euronext Brussels in July 2015. Flow Traders NV, a liquidity provider specialised in exchange traded products, is the latest company to be listed on Euronext Amsterdam, raising EUR521 million in the process.

The Dutch market awaits the IPO of the currently state-owned Dutch retail and commercial bank ABN AMRO. ABN AMRO was bailed-out by the Dutch Government in the autumn of 2008, at the height of the credit crunch. The Dutch parliament gave its approval for the IPO in June 2015.

2. What are the main regulators and legislation that applies to the equity markets/exchanges in your jurisdiction?

Regulatory bodies

The main regulator for equity markets/exchanges in The Netherlands is the Netherlands Authority for the Financial Markets (*Stichting Autoriteit Financiële Markten*) (AFM). The AFM is the competent authority to, among other things, approve prospectuses, monitor ongoing obligations of listed companies, and monitor the conduct of other market actors (that is, investors, brokers and so on) on the Dutch equity markets/exchanges.

Legislative framework

Most of the rules and regulations governing the Dutch equity markets/exchanges originate from European Union (EU) legislation (for example, Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading (Prospectus Directive), Regulation (EC) 809/2004 implementing Directive 2003/71/EC as regards prospectuses and dissemination of advertisements (Prospectus Regulation), Directive 2004/39/EC on markets in financial instruments (MiFID) and so on). Such EU legislation has been implemented into Dutch law or, in the case of regulations, is directly applicable in The Netherlands. The Financial Supervision Act (*Wet financieel toezicht*) (FSA) is the main body of law governing the Dutch equity markets/exchanges. The FSA mainly contains regulatory law, such as periodic and ongoing obligations and incidental disclosure obligations for listed companies and insider trading prohibition. Additional rules and regulations applicable to listed companies can be found in a variety of other laws, governmental decrees and regulations. Certain legislation is only applicable to listed companies that have their registered seat in The Netherlands, such as the Dutch Corporate Governance Code (which applies on a comply or explain basis to Netherlands incorporated companies listed in The Netherlands or abroad). Certain other rules (such as market rules applicable in a public takeover bid) apply only to companies listed in The Netherlands, irrespective of their jurisdiction of incorporation.

Separately, Euronext has certain specific rules and regulations in place for companies listed on one of their markets. Euronext Rule Book I contains harmonised rules, applicable to all companies listed on any of the Euronext markets (that is, Amsterdam, Brussels, Paris, Lisbon or London). Euronext also has a non-harmonised rule book for each separate market it operates. The non-harmonised rule book for a particular market only applies to the companies listed on that particular market (that is, the rule

book for Euronext Amsterdam is only applicable to companies listed on Euronext Amsterdam).

EQUITY OFFERINGS

3. What are the main requirements for a primary listing on the main markets/exchanges?

Main requirements

The main requirements for admission to listing and trading on Euronext Amsterdam are as follows:

- The company must publish a prospectus that:
 - complies with all national rules and regulations (Financial Supervision Act and so on) and with Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading (Prospectus Directive), Regulation (EC) 809/2004 implementing Directive 2003/71/EC as regards prospectuses and dissemination of advertisements (Prospectus Regulation); and
 - has been approved by the AFM or passported by another competent regulator from a European Economic Area (EEA) member state (including any EU member state) after being approved by such regulator.
- The legal structure of the company must comply with applicable laws and regulations, the company must be duly incorporated, and the shares must be validly issued:
 - the shares must be freely transferable and negotiable;
 - the company must have appointed a listing and paying agent;
 - an adequate procedure must be available for the clearing and settlement of transactions with respect to the shares; and
 - the application for admission to listing must cover all of the company's shares of the same class and type issued at the time of the application.

This is a short summary of the main requirements; further rules may apply to different companies listing in The Netherlands.

Minimum size requirements

There is no minimum market capitalisation requirement for companies listed on Euronext Amsterdam.

Trading record and accounts

In the absence of an exception, the company must, prior to listing, have audited financial statements for the preceding three financial years and the financial statements must be reported in accordance with the EU-endorsed International Financial Reporting Standards (or the equivalent Generally Accepted Accounting Principles for non-EEA issuers). If more than nine months have passed since the end of the most recently finished financial year prior to the date of the listing, the company must prepare, and disclose in its prospectus, audited semi-annual statements.

Minimum shares in public hands

Following the IPO, as a general matter, Euronext Amsterdam requires a minimum free float of 25% of the issued shares in the capital of the issuer. Under certain conditions, the free float can be lower, for instance when a large number of shares are available to the public, ensuring enough liquidity for that particular share in the market. The percentage of free float can never be lower than 5%, and at that minimum percentage, the free float must represent at least EUR5 million (based on the offering price).

4. What are the main requirements for a secondary listing on the main markets/exchanges?

Main requirements

The main requirements for a secondary listing on Euronext Amsterdam for shares already listed on another European Economic Area (EEA) regulated market are, in general, equivalent to the primary listing requirements. Because most requirements will likely already have been met by a company seeking a secondary listing, as a consequence of the company's admission to listing and trading on another EEA regulated market, the only additional requirement of substance for the company will be the preparation of an updated prospectus. If all of the following conditions are met, even a prospectus will not be required for the secondary listing on Euronext Amsterdam:

- The shares to be listed have been admitted on the other EEA regulated market for more than 18 months.
- A prospectus complying with Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading (Prospectus Directive) has been published in relation to the primary listing.
- All applicable obligations for trading on the other EEA regulated market have been met at all times.
- The issuer seeking the secondary listing on Euronext Amsterdam makes a summary document available to the public, containing basic information with regard to the secondary listing. This document complies with all national rules and regulations (Financial Supervision Act and so on).

US listed companies reporting to the US Securities Exchange Commission can use the Euronext Fast Path to Listing Procedure for a secondary listing on Euronext Amsterdam. There are no additional corporate governance obligations and the US Generally Accepted Accounting Principles are accepted. The issuer must prepare a prospectus that complies with Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading (Prospectus Directive) and Regulation (EC) 809/2004 implementing Directive 2003/71/EC as regards prospectuses and dissemination of advertisements (Prospectus Regulation). The prospectus must be approved by the Netherlands Authority for the Financial Markets. The company's annual accounts (that is, Form 20-F or Form 10-K), interim accounts, current (financial) reports containing material information and a short wrapper (a prospectus summary) put together, will usually suffice to comply with the Prospectus Directive and Prospectus Regulation. The regular disclosure obligations apply.

Minimum size requirements

The minimum size requirements are equivalent to the primary listing requirements.

Trading record and accounts

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Minimum shares in public hands

The minimum shares in public hands requirements are equivalent to the primary listing requirements.

5. What are the main ways of structuring an IPO?

The main ways of structuring an IPO in The Netherlands are similar to the main ways of structuring an IPO in other major equity market jurisdictions such as the UK (main market) and the US (for example, NYSE or NASDAQ). An IPO is commonly structured as a

public offering of shares combined with an admission to listing and trading of the shares on Euronext Amsterdam. The public offering can be structured by issuing new shares, by offering already issued shares or by a combination of both. Other structures seen recently are admission to listing and trading without an actual offering. The choice of the structure depends on the reasoning behind the IPO (that is, raising funds, realising an exit through IPO and so on). The type of underwriting also varies depending on the reasoning behind the IPO, the market conditions, and so on. However, all ways (that is, firm commitment, best-efforts and variations thereon) are present in the Dutch market, although shares are most commonly offered to the public through a best-efforts bookbuilding procedure.

6. What are the main ways of structuring a subsequent equity offering?

The main ways of structuring a subsequent equity offering in The Netherlands are fully documented offerings, rights issues and private placements (in the form of accelerated bookbuilds) with institutional investors that qualify as qualified investors. A rights issue, also common in other jurisdictions, gives the current investors in the company the opportunity to either exercise their right to acquire shares (usually at a discount) in the offering to avoid dilution, or to sell their right to acquire shares in the offering. Such a rights issue qualifies as an offer to the public and in general requires a prospectus.

A private placement with institutional investors who or that qualify as "qualified investors" is a popular alternative structure for a fully documented (or rights) offering. There is no prospectus requirement if both:

- The private placement is only directed at qualified investors (as defined under Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading (Prospectus Directive)).
- The number of shares offered to investors during a 12-month period (including the offer in the private placement) is not larger than 10% of the number of currently listed shares.

7. What are the advantages and disadvantages of rights issues/other types of follow on equity offerings?

The advantage of a rights issue is that the rights are issued to the existing shareholders, giving them the opportunity to maintain the current size of their stake in the company. Often the shareholders are able to purchase the shares under the rights issue at a discount. One disadvantage to a rights issue is that, as a result of the increase in issued share capital of the company, shareholders are diluted if they choose not to exercise their right. Having said that, if shares are to be issued and sold by the company at a low/particularly attractive valuation, the fact that all existing shareholders will have been offered the opportunity to subscribe will pre-empt shareholder unequal treatment claims, if any.

One advantage of a private placement, as described above, is that, when complying with the applicable rules, there is no prospectus requirement, limiting the costs involved in such a private placement. Another advantage is the speed of the accelerated bookbuilding process, and, as a result, additional capital can be raised in a matter of weeks. A disadvantage of a private placement (that is, offering of shares of the listed class to qualified investors without publishing an approved prospectus) can be that the number of shares that may be so issued during any 12-month period (without publishing an approved prospectus) is limited to 10% of the number of currently listed shares. Therefore, only a limited number of new shares can be issued, thus limiting the amount of capital that can be raised in private placements.

8. What are the main steps for a company applying for a primary listing of its shares? Is the procedure different for a foreign company and is a foreign company likely to seek a listing for shares or depositary receipts?

Procedure for a primary listing

In addition to the main requirements (*see Question 3*), the following steps are required for a Dutch company applying for a primary listing:

- Ensure that the company's articles of association and governance structure are compliant with Dutch statutory law and compliant with the Dutch Corporate Governance Code (the latter, on a "comply or explain" basis).
- Engage a lead underwriter to co-ordinate and assist in the entire IPO process.
- Conduct a due diligence review, prepare a prospectus and have the prospectus approved by the Netherlands Authority for the Financial Markets (AFM).
- Engage a listing and paying agent.
- Collect all documentation that is required by Euronext Amsterdam (that is, the AFM approved prospectus, a copy of the company's articles of association, the necessary corporate resolutions, ancillary documents and so on) and file the application for admission to listing and trading with Euronext Amsterdam.
- Issue the necessary shares and ensure that such issue is valid pursuant to Dutch law.
- Transfer the shares into the book entry system of the clearing and settlement institution for distribution.

Procedure for a foreign company

The procedure for a foreign company is equivalent to the process for a primary listing of a Dutch company, although in certain instances a separate prospectus would not be required (*see Question 4*). The shares of a foreign company can be directly listed, traded, cleared and settled in Amsterdam; there is no need to list depositary receipts. If depositary receipts are listed (whether by a Dutch issuer or by a non-domestic issuer), the reason will typically be either to align the listed security with securities traded elsewhere in the world, or to implement particular governance or defence features that in some jurisdictions, including The Netherlands, may to some extent be achievable through the creation and listing of depositary receipts.

ADVISERS: EQUITY OFFERING

9. Outline the role of advisers used and main documents produced in an equity offering. Does it differ for an IPO?

The common transaction team consists of:

- Management and selected key employees of the company.
- The company's legal counsel.
- The (lead) underwriters.
- The underwriters' legal counsel.
- The accountants.
- Financial communication consultants.
- Other specialists.

The exact composition depends on the nature of the deal and the business of the company. The company itself (typically, assisted by

its counsel) plays an important role in supplying other members of the transaction team with necessary information. The lead underwriters' role is to:

- Co-ordinate the overall process, especially the bookbuilding process.
- Advise on the structure and size of the offering.
- Perform/co-ordinate all marketing activities necessary to make the deal a success (for example, road shows and so on).

A bank (registered for that purpose) must act as listing, paying and settlement agent. Due to the detailed/specific rules and regulations applicable to listed companies in The Netherlands, company legal counsel advises on all legal aspects of the equity offering. Company legal counsel, among other things:

- Assists with bringing the governance structure of the company in line with the legal, regulatory and trading requirements (and, typically (subject to company specific tailoring), current best practices).
- Performs the legal due diligence required to draft a (non-misleading) prospectus.
- Assists with drafting the main documents required for the deal (for example, the prospectus, the underwriting agreement and so on).
- Maintains contact with the Authority for the Financial Markets (AFM) to facilitate the prospectus approval process.
- Advises the company on all ongoing obligations to be complied with by the company following listing.

The underwriters' legal counsel assists with drafting of the main documents (for example, the prospectus) and takes the lead on the underwriting agreement and so on. The accountant is responsible for the audit of the financials in the prospectus and must give comfort to the other advisers involved in the transaction team, using comfort letters in line with international practice.

The main documents generally produced in any equity offering are the prospectus and the underwriting agreement. However, certain deal specifics may make even such documents superfluous (a pure technical listing will not require an underwriting agreement, while a private placement to qualified investors does not require a prospectus if certain conditions (*see Questions 6 and 7*) are met). Apart from the main documents, ancillary documents (including in particular, public company articles of association, board and committee rules and regulations, anti-corruption and bribery policy, policy on bilateral contacts with shareholders, remuneration policy, related party and conflict policy, whistleblower policy, code of ethics and business conduct, share dealing code, director and officer (D&O) insurance (and, possibly, IPO insurance), D&O questionnaires, research guidelines and legal opinions) and corporate approvals (including approval of the offering, the prospectus, the underwriting agreement, the share issuance, any foreseen/prospective post-IPO share issuances, buybacks and/or redemptions, delegations to the board, establishment of IPO pricing committee, pricing committee resolutions and so on) are produced. In addition, deal or company specific documentation may be produced (for example, an agreement with a substantial or controlling shareholder).

EQUITY PROSPECTUS/MAIN OFFERING DOCUMENT

10. When is a prospectus (or other main offering document) required? What are the main publication, regulatory filing or delivery requirements?

Prospectus (or other main offering document) required

As a general matter, a prospectus is required in one of the following two situations:

- When securities are offered to the public in The Netherlands.
- When securities are admitted to trading on a regulated market (such as Euronext Amsterdam) in The Netherlands.

Securities are instruments that are transferable, including shares, bonds and other debt instruments and certain derivative instruments. An offer is considered an offer to the public if the offer is made to more than one person other than "qualified investors".

Main publication, regulatory filing or delivery requirements

The prospectus must be filed with, and prior to use must be approved by, the Authority for the Financial Markets (AFM). The filing with and the review process by the AFM is confidential. No publication of the prospectus (or any draft thereof) should take place until after approval by the AFM. In practice, it takes approximately six to eight weeks to obtain AFM approval after the first filing of the draft initial prospectus. If the issuer is incorporated under the laws of a European Economic Area (EEA) member state other than The Netherlands and intends to list on Euronext Amsterdam, the competent regulator in the other EEA member state is authorised to approve the prospectus and to passport such approved prospectus to the AFM. This allows the company to apply for admission to listing and trading on Euronext Amsterdam using the passported prospectus. The method of passporting gives companies considerable flexibility and allows for quick and cost-effective dual listings. However, if a prospectus is approved by a competent regulator in another EEA member state and drafted in a language other than English or Dutch, the company must formally provide a summary of the prospectus in Dutch. In practice, the AFM is rather lenient in this respect and allows for an English language summary as well.

Following approval by the AFM (or the passporting of an approved prospectus), the prospectus must be made publicly available by the company. The prospectus will commonly be published on the company's website and hard copies will typically be made available at the company's office address and at Euronext Amsterdam. In any case, the company must provide a hard copy on request if the prospectus has only been made available electronically. The approved prospectus will also be made available in the public registers of the AFM, which are available on the AFM's website (www.afm.nl). The prospectus remains valid for one year after approval. However, if there are material changes (which will typically be the case) a supplement may be required.

This is only a short summary of the main rules. Additional rules may apply to different types of offerings.

11. What are the main exemptions from the requirements for publication or delivery of a prospectus (or other main offering document)?

A prospectus is not required when offering non-listed securities to the public in The Netherlands, if the non-listed securities either:

- Are offered to qualified investors only or are offered to less than 150 potential investors.
- Have a consideration of at least EUR100,000 for each security.

A prospectus is also not required if a public offering of non-listed securities has a total consideration of less than EUR2.5 million calculated over a 12-month period. Under certain strict conditions, a prospectus is also not required when offering securities to directors and employees, provided that a document containing information on the offer to directors and employees is made available. In practice, when offering shares to employees, an employer (in particular also foreign corporations with limited numbers of key employees in The Netherlands) will often rely on the small number (less than 150) of offerees exemption, rather than the employee offer exemption. The employer offer exemption comes with the somewhat onerous (documentation) condition

under which the employer must, among other things, prepare a specific document containing pre-determined warnings, information on the number of shares offered, the characteristics of the shares offered, the reasons for the offering and any particulars of the offering. In line with the European Securities and Markets Authority's position, employee share options are not considered securities as these are not transferable. Their exercise is not considered an offer and also does not require a prospectus.

When securities are already admitted to listing and trading on a regulated market in The Netherlands (that is, Euronext Amsterdam), a prospectus is not required if:

- The number of shares offered to investors during any 12-month period is less than 10% of the currently listed shares.
- The securities are offered in substitution for shares of the same class or if shares are offered as part of the consideration in the context of a takeover or merger, provided that a (merger) document equivalent to a prospectus is produced.
- The securities offered result from conversion or exchange of other securities, provided the securities are of the same class as the securities already admitted to trading on Euronext Amsterdam.
- The securities are offered as a dividend, provided that both:
 - the securities are of the same class as the securities to which the dividend relates; and
 - there is a document describing the number and nature of securities and reasons for and details of the offer.

In addition and subject to certain conditions, securities that have been admitted for a certain period on another regulated market within the European Economic Area can be admitted to Euronext Amsterdam without the requirement of a prospectus.

12. What are the main content or disclosure requirements for a prospectus (or other main offering document)? What main categories of information are included?

The general content requirements are derived from the Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading (Prospectus Directive) and Regulation (EC) 809/2004 implementing the Prospectus Directive as regards prospectuses and dissemination of advertisements (Prospectus Regulation). Pursuant to the Prospectus Directive, any prospectus in the EU must contain all material information relating to the issuer and the shares offered by the issuer. In addition, it must contain all information that is necessary to enable investors to make an informed assessment of the assets and liabilities, financial position and prospects of the issuer. The exact requirements have been extensively described in the Annexes to the Prospectus Directive and the Prospectus Regulation. In short, the prospectus is comprised of several chapters/paragraphs, including the summary of the prospectus, the risk factors related to the issuer and the offer, a general description of the activities of the issuer, the financial statements, and a description of the corporate governance structure of the company. The financial statements (prepared on a consolidated basis) contain the audited financial statements of the company of the past three years, reported in accordance with EU-endorsed International Financial Reporting Standards (or equivalent Generally Accepted Accounting Principles (GAAP), including, among others, US GAAP) for non-European Economic Area issuers, as well as unaudited data for any subsequent interim period and the comparable period for the preceding year.

The prospectus must include a working capital statement stating the adequacy to the company for present purposes through the next 12 months. In The Netherlands, the proceeds of the offering

can only be included in calculating working capital if the offering is unconditional.

13. How is the prospectus (or other main offering document) prepared? Who is responsible and/or may be liable for its contents?

The members of the transaction team involved in the IPO process will also be involved in the drafting of the prospectus, although certain advisers have a more leading/prominent role compared to others. Legal counsel to the issuer usually holds the pen. Legal counsel to the issuer will, however, be dependent on the input of the other members of the transaction team involved, mainly the issuer itself.

The prospectus must contain a paragraph stating who is responsible for the content of the prospectus. The statement must contain language that, to the best of the knowledge of the responsible person, the information in the prospectus is in accordance with the actual facts and the prospectus contains no material omission that impacts the content of the prospectus. Typically, the issuer will (need to) take responsibility for most of the prospectus, with the exception of specific parts of the prospectus (identified as such in the responsibility statement in the prospectus) prepared and delivered by other deal team members/institutions (for example, description of underwriting, as delivered by the underwriters). Under the Dutch Civil Code, misleading statements, information or omissions in the prospectus can lead to civil liability.

After the Netherlands Authority for the Financial Markets (AFM) has approved the prospectus, a supplement must be prepared if significant new information or mistakes in the prospectus have been identified. The prospectus requirements also apply to such supplements, and the AFM must also approve the supplement.

MARKETING EQUITY OFFERINGS

14. How are offered equity securities marketed?

The marketing of equity securities in The Netherlands is similar to marketing of such securities in other major equity market jurisdictions such as the UK and the US. Therefore, research reports, analysts' presentations, pilot fishing, road shows, investor presentations and so on, are commonly used to market the equity securities.

Research and publicity guidelines are drafted by legal counsel with input from other advisers, containing restrictions on the content and distribution of research reports and marketing materials. Any marketing material must be in compliance with applicable law and, as such, may not be misleading and must be in line with the information contained in the prospectus.

15. Outline any potential liability for publishing research reports by participating brokers/dealers and ways used to avoid such liability.

Both the issuer and the underwriters can potentially be held liable for the content of published research reports prepared by analysts connected to the underwriters, to the extent such research reports are perceived as issued on behalf of the issuer or the underwriters.

The research reports must include disclaimers in order to mitigate potential liability for the company and the lead underwriters to the largest extent possible. The lead underwriters, their legal counsel and the company's legal counsel usually produce research guidelines and publicity guidelines for the research analysts, containing certain restrictions, in order to mitigate potential

liability to the extent possible. A further means to mitigate potential liability is to proclaim a black-out period during which no research reports may be published, so that potential investors base their investment decision (solely) on the prospectus.

BOOKBUILDING

16. Is the bookbuilding procedure used and in what circumstances? How is any related retail offer dealt with? How are orders confirmed?

The bookbuilding procedure is commonly used in The Netherlands in an IPO, in an effort to have the market "set" the introduction price. In order to facilitate the bookbuilding procedure, the Netherlands Authority for the Financial Markets can approve a prospectus that does not contain the definitive introduction price. However, the prospectus must contain the conditions of pricing and include a price range for the offer price. Investors are invited to submit their bids for the shares with the bookrunners. While institutional investors are usually not limited to certain types of bids, retail investors are commonly restricted to best order bids, which means that retail investors will be required to purchase the shares subscribed for at the introduction price set following the bookbuilding process. Once the bookbuilding procedure is complete, the introduction price will be determined by the underwriters together with the issuer and the shares will be distributed among the investors who put in a bid with the bookrunners, in line with the (type of) their bid. The introduction price is published in a separate price statement.

UNDERWRITING: EQUITY OFFERING

17. How is the underwriting for an equity offering typically structured? What are the key terms of the underwriting agreement and what is a typical underwriting fee and/or commission?

The underwriting is often structured as back-end underwriting, meaning the underwriters and the issuer will actually execute the underwriting agreement if and when the demand and likely price for the available shares is clear, that is, near the end of the bookbuilding procedure.

The underwriting agreement sets out:

- The principal obligations of the issuer and the underwriters (for example, underwriting commitment of the underwriters, sale or issue obligations of the issuer and so on).
- The closing mechanism.
- The conditions to closing (for example, absence of material adverse changes, delivery of comfort letters, legal opinions, and so on).
- The commissions, costs and expenses (*see below*).
- The representations, warranties and indemnities (*see below*).
- Possible stabilisation, over-allotment and lock-up arrangements.

The lead underwriter commonly receives a management fee and an underwriting fee, while the other underwriters receive just an underwriting fee. The issuer also commonly reimburses the reasonable expenses of the underwriters in connection with the IPO process.

The representation and warranties commonly provided by the issuer relate to the information provided by the issuer contained in, among other things, the prospectus and the marketing materials used during the IPO process. The representation and warranties

commonly provided by the underwriters relate to the placement of the shares and selling restrictions in connection with it.

TIMETABLE: EQUITY OFFERINGS

18. What is the timetable for a typical equity offering? Does it differ for an IPO?

In general, in stable market conditions, the entire IPO process takes approximately four to six months. The various steps in the timetable below broadly outline the required steps and timing of the IPO process.

First month. At the start of the IPO process, the relevant advisers are engaged by the issuer. During the initial weeks, the relevant members of the transaction team will draft the equity story of the company and, in some instances, start with a pilot-fishing exercise, usually for a week or two, to test the interest for the equity in the market.

Second month. The due diligence process begins. The issuer, together with the issuer's legal counsel starts preparing the post-IPO governance structure for the company. In the meantime, the relevant members of the transaction team initiate the process of drafting the main documents for the IPO (that is, in particular, the prospectus and the underwriting agreement). The Netherlands Authority for the Financial Markets (AFM) is preliminarily (and confidentially) notified of the intention of the issuer. Key members of the transaction team may meet the AFM review team for a brief introductory meeting on the proposed offering.

Third month. A first draft of the prospectus is submitted to the AFM. The members of the transaction team continue to work on the relevant documentation. Euronext Amsterdam is engaged (to the extent confidential discussions have not begun and there has been no interaction earlier on in the process) near the end of the third month. Arrangements are made with the selected listing/paying agent. When the documents are ready, the issuer announces its intention to float in a press release.

Fourth month. All documents are close to the final form. The marketing process is initiated. Two weeks before the actual IPO, the prospectus is approved by the AFM and published by the issuer. The marketing process is accelerated; however, the black-out period regarding research reports also starts. The bookbuilding procedure is initiated.

IPO date. One day prior to the IPO, the underwriting agreement is signed and the introduction price is determined. On the IPO date, the introduction price together with the entire offer is published in a press release (Euronext Amsterdam opens at 09:00 CET). Any stabilisation and exercise of over-allotment options can be executed up to 30 calendar days after the IPO.

A secondary offering will typically require less time from a marketing perspective, as the issuer and its proposition will already be well known to the market. In addition, in certain instances, due to the fact that there is no requirement for a prospectus, the secondary offering can be completed in a substantially shorter period of time (that is, weeks instead of months).

STABILISATION

19. Are there rules on price stabilisation and market manipulation in connection with an equity offering?

If an issuer intends to use a stabilisation mechanism, the issuer must disclose that intention in the prospectus. Under Regulation (EC) 2273/2003 implementing Directive 2003/6/EC as regards exemptions for buyback programmes and stabilisation of financial instruments (Buyback and Stabilisation Regulation), stabilisation can only be carried out for a maximum of 30 calendar days after

the start of trading. Transactions for stabilisation purposes may not be executed above the offering price and details of such transactions must be disclosed to the Netherlands Authority for the Financial Markets within seven calendar days after the transaction. In addition, the issuer must publish any stabilisation transaction, the stabilisation period and the relevant price range in a separate press release.

TAX: EQUITY ISSUES

20. What are the main tax issues when issuing and listing equity securities?

Dividend withholding tax

Distributions of profits (that is, dividends) by Dutch listed companies are generally subject to 15% Dutch dividend withholding tax (DWT). DWT is a pre-levy of Dutch corporate income tax.

For non-Dutch resident individuals, the DWT can be reduced under double taxation treaties concluded by The Netherlands. In addition, such a recipient of dividend may be entitled to a tax credit for the DWT incurred.

A Dutch listed company can in certain instances apply the participation exemption on its foreign subsidiaries. If this is the case, it can potentially partially credit withholding tax incurred on dividends by these subsidiaries against the DWT withheld on dividend payments by the Dutch listed company. As a result, dividends received from these subsidiaries will not be taxed in The Netherlands. The Dutch listed company will, however, subsequently not be able to credit foreign withholding tax. In such a case, provided certain conditions are met, The Netherlands will grant a 3% tax credit against the possible DWT due on distributions by the Dutch listed company.

Furthermore, if a Dutch listed company repurchases its own shares, the amount that exceeds the average paid-up capital is subject to DWT. The payment on a share repurchase that does not exceed the average paid-up capital or a repurchase of shares that qualifies as temporary investment is not subject to DWT.

Corporate income tax

Individuals. A Dutch resident individual holding an interest of less than 5% of a certain class of shares will generally be subject to an annual effective 1.2% Dutch personal income tax (PIT), which is levied on the fair market value of the share interest, as determined every year on the first of January. If a Dutch resident individual holds an interest of at least 5% of a certain class of shares (substantial interest), the profits made on this interest are in principle taxed at a rate of 25%.

If a non-Dutch resident individual holds an interest of less than 5% of a certain class of shares in a Dutch resident company, dividends received from and capital gains realised on such interest are generally not subject to PIT. Dividends from and capital gains derived by a non-Dutch resident from a Substantial Interest in a Dutch resident company, that cannot be allocated to the assets of an enterprise, are generally subject to PIT.

The exclusive right of The Netherlands to levy tax is often limited under double tax treaties. As a result, capital gains derived by a resident of a state from the disposal of shares is generally taxed in the state of residence.

Companies. If a Dutch resident entity owns at least 5% of the nominal paid-up share capital of a subsidiary and this subsidiary is not held as a portfolio investment or is considered a qualifying portfolio investment subsidiary, the Dutch participation exemption generally applies and dividends received from and capital gains realised on such qualifying investment, whether domestic or foreign, is exempt.

If a Dutch resident corporate entity does not meet the conditions of the participation exemption, dividends received from and capital gains realised on shares are generally subject to corporate income tax (CIT) of 25% (20% on the first EUR200,000).

Non-Dutch resident shareholders that hold a share interest of less than 5% in a class of shares in a Dutch listed company (that is, a Dutch public limited company (*naamloze vennootschap*)) will generally not be subject to Dutch CIT on dividends or capital gains. Therefore, in such cases, no CIT is due on dividends received from and capital gains realised on such interest. As a result, the DWT will form the final levy, which can possibly be credited in the jurisdiction of residence of the recipient.

If a non-Dutch resident company holds at least 5% of a class of shares or of the total nominal paid-up share capital of a Dutch subsidiary, dividends and capital gains realised may be taxable provided certain conditions are met.

The Netherlands does not levy capital tax, stamp tax or similar tax on capital contribution. The listing of shares as such is also not subject to a similar tax.

CONTINUING OBLIGATIONS

21. What are the main areas of continuing obligations applicable to listed companies and the legislation that applies?

Within four months following the end of the financial year, any company listed in the Netherlands must publish its annual report together with its audited annual accounts. They must file the annual report and annual accounts with the Netherlands Authority for the Financial Markets (AFM). Any listed company must also publish semi-annual financial results (within two months after the first half of each financial year) and quarterly financial results (within the time period starting ten weeks after the start and six weeks before the end of the first and second half of the financial year). It must file the financial results with the AFM. The annual and semi-annual financial results must be drawn up in accordance with EU-endorsed International Financial Reporting Standards (or equivalent Generally Accepted Accounting Principles). The semi-annual financial results do not have to be audited. However, if they have been audited or reviewed, the auditor's statement must be published together with the semi-annual report. The mandatory quarterly financial reporting is expected to end later in 2015 (Q4) as soon as the amended Directive 2004/109/EC on transparency requirements for securities admitted to trading on a regulated market and amending Directive 2001/34/EC (Transparency Directive) is implemented into Dutch law.

There are also incidental disclosure requirements. The issuer must disclose price sensitive information to the public without delay and file such information with the AFM. However, such disclosure may be delayed if all of the following apply:

- The delay serves the legitimate interest of the issuer.
- The delay is unlikely to mislead the public.
- The issuer is able to ensure confidentiality of the inside information (which will no longer be the case in the event of a leak; which will, accordingly, trigger a prompt disclosure obligation).

Inside information is defined as the awareness of non-public specific information that relates directly or indirectly to the company or the trading in the securities of the company, which information, if disclosed, may have a significant influence on the prices of the securities issued by the company.

The issuer must also disclose to both the public and the AFM if there are any changes in either:

- The rights attached to shares.

- The rights following a rights issue.

If the issuer intends to amend its articles of association, it must notify both Euronext Amsterdam and the AFM of that intention. Notification must be made before the notice of the general meeting is distributed (that is, the notice convening the general meeting in which a resolution to amend the articles of association will be taken).

Transactions in shares of the issuer by members of the executive board, members of the supervisory board, certain members of senior management and related persons (mainly relatives) must be disclosed. Such persons are required to notify the AFM of transactions in the company's shares or in those of an affiliated company that is a public company, listed on a regulated market (such as Euronext Amsterdam), which either:

- Is part of the same group as the company or in which the company has an interest and the most recently adopted turnover of which is at least 10% of the consolidated turnover of the company.
- Directly or indirectly provides more than 25% of the company's capital.

Major shareholders (holding more than 3% of the shares in the capital of a company) are also required to (promptly) disclose their holdings to the AFM. Increases and decreases in their shareholdings that exceed or fall below the following ownership or voting thresholds must be disclosed with the AFM: 3%, 5%, 10%, 15%, 20%, 25%, 30%, 40%, 50%, 60%, 75% and 95%.

The above shareholding notifications made to the AFM are published on the AFM's website (www.afm.nl). Notifications are to be made in AFM standardised form. No or non-timely notification to the AFM can lead to penalties.

22. Do the continuing obligations apply to listed foreign companies and to issuers of depositary receipts?

The disclosure obligations apply to issuers that are listed on any European Economic Area regulated market that have (chosen) The Netherlands as their home member state.

23. What are the penalties for breaching the continuing obligations?

Any violation of the provisions of the Financial Supervision Act constitutes an economic offence. Moreover, the Netherlands Authority for the Financial Markets (AFM) is authorised to use certain investigation and enforcement powers. The AFM may, for example, impose fines, request information, impose instructions under penalty, issue binding directions, suspend trading and reverse trades.

MARKET ABUSE AND INSIDER DEALING

24. What are the restrictions on market abuse and insider dealing?

Restrictions on market abuse/insider dealing

It is prohibited for any person to conduct or bring about a transaction or trade in securities in or from The Netherlands or from outside the European Economic Area:

- That sends out an incorrect or misleading signal to the market with regard to the supply, demand or price of those securities.

- In order to maintain an artificial price of those securities.
- Using fraud or deception.

Such person may also not disseminate information in or from The Netherlands or from outside the EEA that sends out an incorrect or misleading signal to the market with regard to the supply, demand or price of securities, if that person knows, or should reasonably suspect that the information is incorrect or misleading.

Anyone that has or is deemed to have inside information relating to the company is prohibited from trading in the shares of the company. For members of the executive board, members of the supervisory board, and certain members of the senior management of the company, who hold shares, it is prohibited to trade during certain (closed) periods connected to the company's financial calendar.

The issuer must prepare an insider trade code and an insider list. The issuer must inform all individuals on the list of the content of the inside trade code, the market abuse rules and any enforcement actions that may be imposed if there is a violation of those rules. Persons acting on behalf of the issuer, such as their legal counsel, must keep their own insider list.

Penalties for market abuse/insider dealing

See *Question 23*.

DE-LISTING

25. When can a company be de-listed?

De-listing

The issuer or certain shareholders can request Euronext Amsterdam to be de-listed from Euronext Amsterdam. A single shareholder or shareholders acting in concert that hold(s) at least 95% of the issued shares can request with the issue's approval, or entice the issuer to request, to be de-listed. The remaining minority shareholders must be offered an exit opportunity following the formal squeeze-out procedure as set out in the Dutch Civil Code. A de-listing can also occur following a public takeover bid.

Euronext Amsterdam can also unilaterally de-list a company if:

- The company fails to comply with the obligations laid down in the Euronext rule books.
- The company has been declared bankrupt.
- The company will cease to exist, for example as a result of a legal merger.
- An event has occurred with regard to the listed shares of the company that may be detrimental to a fair, orderly and efficient market for that share.
- Clearing and settlement services for the relevant type of securities are no longer available.

REFORM

26. Are there any proposals for reform of equity capital markets/exchanges? Are these proposals likely to come into force and, if so, when?

The quarterly financial reporting requirement is expected to be abolished by the end of 2015 when the amended Directive 2004/109/EC on transparency requirements for securities admitted to trading on a regulated market and amending Directive 2001/34/EC (Transparency Directive) is implemented (see *Question 21*).

ONLINE RESOURCES

Netherlands Authority for the Financial Markets (*Autoriteit Financiële Markten*) (AFM)

W www.afm.nl

Description. The official website of the AFM.

Euronext Amsterdam

W www.euronext.com

Description. The official website of Euronext, including Euronext Amsterdam.

Official Dutch Legislation Database

W wetten.overheid.nl/zoeken (Dutch)

Description. Official governmental website containing all up-to-date Dutch legislation. There is no official English translation available.

Practical Law Contributor profiles



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Recent transactions

- Advising Freescale Semiconductor (NYSE: FSL) in its US\$40 billion merger with NXP Semiconductors NV (NASDAQ: NXPI).
- Advising engineering and construction company Mota-Engil Africa NV on its listing on Euronext Amsterdam, with a market capitalisation of approximately EUR1.15 billion.
- Advising Brazilian investment bank BTG Pactual on its listing on Euronext Amsterdam.
- Advising Bloomberg on its successful public bid for the entire issued share capital of Brainpower NV.
- Advising each of Vimetco NV, Ronson Europe NV, Nanette Real Estate Group NV and Direct Holding NV on their successful IPOs, follow-on offerings and ongoing Dutch securities law compliance matters.
- Advising publicly traded Arcelor on all matters of Dutch law with respect to its US\$33.8 billion merger with publicly traded Mittal Steel Company NV.
- Advising various (international) companies listed on Euronext Amsterdam on continuing obligations to be met by listed companies.
- Advising various investors in Dutch listed companies on legal obligations to be met by shareholders.

Languages. Dutch (native), English (fluent)

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Publications. *Co-authored articles published in the International Financial Law Review, the International Law Practicum, European Lawyer and leading Dutch law journals.*



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Non-professional qualifications. LLM in Dutch law, Erasmus University of Rotterdam, 1995; MSc in business economics, Erasmus University of Rotterdam, 1996; post-graduate courses in corporate law and securities law

Recent transactions

- Advising engineering and construction company Mota-Engil Africa NV on its listing on Euronext Amsterdam, with a market capitalisation of approximately EUR1.15 billion.
- Advising Brazilian investment bank BTG Pactual on its listing on Euronext Amsterdam.
- Advising various (international) companies listed on Euronext Amsterdam on continuing obligations to be met by listed companies.
- Advising various investors in Dutch listed companies on legal obligations to be met by shareholders.

Languages. Dutch (native), English (fluent)

Professional associations/memberships. Dutch Bar Association.

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Areas of practice. Equity capital markets; public and private M&A.

Non-professional qualifications. LLM in Dutch Law, Groningen University, 2012; MSc in business administration, Groningen University, 2013

Recent transactions

- Advising engineering and construction company Mota-Engil Africa NV on its listing on Euronext Amsterdam, with a market capitalisation of approximately EUR1.15 billion.
- Advising Dassault Systèmes, world leader in 3D design software, on its acquisition of Quintiq, industry leader in planning and optimising supply chains.
- Advising global chemical company Kemira on its acquisition of AkzoNobel's paper chemical business.

Languages. Dutch (native), English (fluent)

Professional associations/memberships. Dutch Bar Association.