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1 April 2011

Dear Sir or Madam,

Re: new supervisory architecture for the Belgian financial sector

In the wake of the financial crisis, a process has been under way at both the national and the international levels to rethink the shape of the supervisory architecture for the financial sector. In various countries of the European Union, in particular, there was a rapidly growing convergence on the need for a rapprochement between the micro- and the macro-prudential components of the supervision of financial institutions.

Parallel to these European developments, in Belgium too the main lines were drawn for a new organization of supervision. We wish hereby to inform you of recent developments in this regard.

1. Introduction of the Twin Peaks model

In line with international developments, and building on the recommendations formulated by a national working group¹, the Belgian government opted, in the Law of 2 July 2010, to develop the supervision of the financial sector towards a bipartite model known as the "Twin Peaks" model.

This bipartite model is intended to provide a structure for the two major objectives of the supervision of the financial sector:

- maintaining the macro- and microeconomic stability of the financial system, which falls within the competence of the central bank, that is, the **National Bank of Belgium** (hereafter "the National Bank");
- ensuring that market processes are equitable and transparent, that relationships between market participants are appropriate and that clients are treated honestly, fairly and professionally (notably from the perspective of rules of conduct), tasks which fall henceforth within the competence of the **Financial Services and Markets Authority** (FSMA), formerly the CBFA.

The National Bank is a member of the following European supervisory authorities: the EBA (European Banking Authority) and EIOPA (European Insurance and Occupational Pensions Authority).

The FSMA (ex-CBFA) is a member of the following European supervisory authorities: ESMA (European Securities and Markets Authority) and EIOPA (European Insurance and Occupational Pensions Authority).

In the run-up to the actual introduction of the Twin Peaks model, supervision of systemically relevant institutions was entrusted, from 21 October 2010, to a newly established Committee for Systemic Risks and System-relevant Financial Institutions (abbreviated "CREFS-CSRSFI"). This committee was made up of the management committees of the National Bank and of the CBFA. As from March 31, 2011, this committee has ceased to exist.

¹ At the request of the Belgian government, the High-level Committee on a New Financial Architecture (Haut Comité pour une nouvelle architecture financière / Hoog Comité voor een Nieuwe Financiële Architectuur) was established, chaired by Baron Alexandre Lamfalussy. This committee, which was mandated to prepare proposals for a more effective supervisory architecture, released its report in June 2009.



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The new division of powers between the National Bank and the FSMA took effect on 1 April 2011. New legal provisions² set out the organization of the transfer of powers between the FSMA/CBFA and the National Bank and clarify the detailed procedures regarding the transfer. Those procedures are intended to specify the responsibilities of both supervisory authorities, as well as their operation and governance, in the light of their respective powers, and to organize their cooperation on issues that are partly of joint concern.

2. The institutions concerned

The Twin Peaks model consists, on the one hand, in a separation between the supervision of compliance with prudential rules and of compliance with rules of conduct. On the other hand, it is marked by the full integration of micro- and macro-prudential supervision. Thus, the National Bank, which already monitored macroeconomic developments, will henceforth also be responsible for the individual prudential supervision of the following institutions within the financial system:

- credit institutions, including financial services groups;
- investment firms that have the status of a stockbroking firm;
- insurance companies;
- reinsurance companies;
- clearing institutions;
- settlement institutions and equivalent institutions;
- payment institutions;
- electronic money institutions;
- surety companies.

The National Bank will also serve as supervisor of all the above institutions within the meaning of the Law of 11 January 1993 on preventing use of the financial system for purposes of money laundering and terrorist financing.

3. Key dates for the new division of powers – Continuity

The new division of powers took effect on 1 April 2011. The new supervisory architecture thus also entered into force on that date. The CBFA's prudential supervisory staff have been transferred to the National Bank.

As from 1 April 2011, the National Bank is competent to exercise all the prerogatives related to its mandate as prudential supervisor and to take all the decisions necessary for the exercise of those prerogatives.

The reform of the supervisory architecture has been predicated on full continuity of supervision, in the sense that all decisions taken by the CBFA or the CREFS-CSRSFI under the terms of their former powers remain legally valid. The administrative decisions taken by the CBFA and the CREFS-CSRSFI before the date of the transfer of powers will continue to have effect even after this date, until such time as the National Bank may, where appropriate, revise or revoke them.

² Royal Decree of 3 March 2011 on the development of the supervisory architecture for the financial sector (Belgian Official Gazette [*Belgisch Staatsblad/Moniteur belge*] of 9 March 2011).



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As regards the bilateral and multilateral cooperation agreements with other supervisors (the so-called Memoranda of Understanding, hereafter "MoUs"), the principle of continuity applies as well. Each of these MoUs will be entrusted either to the National Bank or the FSMA, depending on their respective powers, or to both institutions together.

4. The CBFA becomes the FSMA

Following the reform and in order to better reflect the evolution of its mandate, and in particular its specialization in the supervision of rules of conduct, the CBFA has been renamed the Financial Services and Markets Authority (abbreviated "FSMA").

The FSMA has been given six principal tasks:

- 1° supervision of the financial markets;
- 2° supervision of rules of conduct;
- 3° supervision of financial products;
- 4° financial education of the public;
- 5° supervision of institutions for occupational retirement provision;
- 6° supervision (including, where applicable, compliance with anti-money laundering legislation) of various financial actors: intermediaries in banking services, insurance intermediaries, management companies of undertakings for collective investment, portfolio management and investment advice companies, and currency exchange offices (bureaux de change).

More specifically, the main powers exercised by the FSMA and that are of interest for foreign authorities are the following:

1) The FSMA will be responsible for supervision of:

- the rules governing public offerings of securities and takeover bids;
- financial information by listed companies;
- markets and market operators, including the prevention and sanctioning of market abuse;
- undertakings for collective investment;
- management companies of undertakings for collective investment;
- portfolio management and investment advice companies;
- currency exchange offices (bureaux de change);
- insurance and reinsurance intermediaries;
- intermediaries in banking and investment services;
- the companies and operations referred to in the Law of 4 August 1992 on mortgage credit;
- the Law of 25 June 1992 on the non-life insurance contract, as well as certain non-prudential provisions of the Law of 9 July 1975 on the supervision of insurance companies;
- compliance with the rules aimed at protecting the public against the offer of illicit products or services.



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- 2) The FSMA also exercises the powers of the former CBFA to supervise compliance with the rules of conduct by those categories of institutions which will henceforth be subject to prudential supervision by the National Bank³. The FSMA has explicit responsibility for imposing recovery measures on those institutions in the event of non-compliance with the relevant rules. These rules aim specifically to ensure that investors, customers and other stakeholders are treated honestly, fairly and professionally, in particular as regards the integrity of the company, its conduct of business and the care taken in treating the aforementioned persons.
- 3) The FSMA is also competent as regards the supervision of institutions for occupational retirement provision, and of social and labour law in the field of occupational retirement provision.
- 4) The rules of conduct *sensu lato* that apply to companies in the financial sector may, by Royal Decree, be extended to, among others, rules governing advertising, advantages linked to services provided and transparency in prices, commissions and fees.
- 5) The FSMA shall also issue, on the advice of the Consumer Affairs Council (Conseil de la consommation/Raad voor het Gebruik), regulations that are intended to prohibit or impose restrictive conditions on trade in retail investment products (traceability of products), or to enhance the transparency of pricing and administrative fees related to those products.
- 6) Lastly, the task of the FSMA is, more generally, to contribute to the financial education of savers and investors.

5. Practical arrangements

The email address of your usual contact person will become `firstname.surname@nbb.be` if it is a staff member of the CBFA who has transferred to the National Bank, or `firstname.surname@fsma.be` if it is a staff member who is remaining at the FSMA (former CBFA).

The central telephone number of the National Bank is +32 (0)2 221 21 11. Your usual contact person will send you his or her new direct extension number. The phone numbers of the FSMA (former CBFA) remain unchanged.

Additional information is available on the website of the National Bank (www.bnb.be) or the new website of the FSMA (www.fsma.be).

Yours sincerely,

JEAN-PAUL SERVAIS
Chairman of the FSMA
(Financial Services and Markets Authority)

LUC COENE
Governor of the National Bank of Belgium

³ The scope of rules of conduct particular to the provision of investment services that currently apply to credit institutions and investment firms may be extended to insurance companies.