**Decree on**

**the amendment of the Decree on Prudential Rules under the Financial Supervision Act (FSA), the Decree on Market Conduct Supervision of Financial Undertakings under the Wft and other decrees in the field of financial markets (the Financial Markets (Amendment) Act 2015)**

On the recommendation of Our Minister for Finance of 15 July 2014, FM/2014/1143 M,

the Department of Financial Markets on behalf of Our Minister for Security and Justice;

Having regard to articles 1:50a, 1:81, first and second paragraph, 3:17, second paragraph, introduction and parts c) and e), 3:28a, second paragraph, 3:29, third paragraph, 3:33a, first paragraph, part b), seventh paragraph, 3:33b, third paragraph, 3:57, second paragraph, 3:72, fifth paragraph, 3:73b, second paragraph, 3:116, 3:263, fourth paragraph, 3:267, fifth paragraph, 4:9, third paragraph, 4:14, second paragraph, introduction and part c), under 3, 4:15, second paragraph, introduction and part b) under 2, 4:20, first paragraph, 4:22, first paragraph, 4:25, first paragraph, 4:27a, second paragraph, 4:61 first paragraph, 4:25a of the Financial Supervision Act, articles 2:6, third paragraph, 5:10, second paragraph, 5:12 and 5:14, third paragraph of the Financial Markets Act BES, article 10f of the Sanctions Act 1977 and articles 15, first paragraph and 28 of the Prevention of Money Laundering and the Financing of Terrorism Act;

The Advice Department of the Council of State having been heard (advice of 10 October 2014, No. W06.14.0280/III);

Having seen the further report from Our Minister for Finance dated 25 November 2014, FM/2014/1580 U, the Department of Financial Markets on behalf of our Minister for Security and Justice;

Have approved and decreed:

**ARTICLE I**

The **Decree on Prudential Rules under the** **FSA** shall be amended as follows:

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Article 1 shall be amended as follows:

1. The definitions of “registered covered bond” and “covered bond” shall lapse.

2. One definition shall be inserted in alphabetical order, as follows:

*cover assets:* assets used by a bank issuing a registered covered bond in order to comply with article 3:33a, first paragraph, part a) of the Act;

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After section 6a, one section shall be inserted, as follows:

**SECTION 6b REGISTERED COVERED BONDS**

*Rules implementing articles 3:33a, first paragraph, part b) and seventh paragraph and 3:33b, third paragraph of the Act*

**Article 40d**

1. A bank issuing a registered covered bond shall ensure that the cover assets of the category to which the bond belongs shall be secured:

a. by transfer under general or special title to another legal entity; or

b. in another manner to be established by Ministerial Rule.

2. A bank shall only be considered to fulfil the first paragraph, part a), if:

a. the legal entity stated in the first paragraph, part a, with the exclusion of any other activities, was only set up to segregate the cover assets of a category of registered covered bonds from the assets of this bank and to do whatever is necessary or desirable for the respective category of registered covered bonds; and

b. they, including any other legal entities belonging to the same group, hold no shares in the legal entity stated in the first paragraph, part a), have no policy-setting authority and also have no ownership interest in any other way in this entity.

**Article 40e**

1. In the case of a request for registration of a category of registered covered bonds in accordance with article 3:33a, first paragraph, of the Act, the requesting bank shall inform De Nederlandsche Bank as to which conditions shall apply to this category of registered covered bonds, including in any case:

a. which of the following redemption structures are applied:

1. the redemption date cannot be delayed or only up to a maximum of 24 months or

2. the redemption date can be delayed by more than 24 months;

b. what type or types of cover assets are predominantly used and, in the latter case, in what proportion; and

c. in what country the debtors of the cover assets are registered, have their head offices or have their places of residence and by what laws the cover assets are managed.

2. A bank issuing a registered covered bond ensures that this bond, for the entire period it is outstanding and with respect to the conditions stated in the first paragraph, parts a), b) and c), continues to comply with the conditions as stated in the request for registration.

3. The requesting bank uses one of the following types of cover assets predominantly as cover assets in accordance with the first paragraph, part b):

a. exposures as provided for in article 129, first paragraph, part a) and part b) of the Capital Requirements Regulation, for part b) with the exception of exposures that are eligible for credit quality category 2 as referred to in part b);

b. loans that are covered by non-commercial real estate or home loans as provided for in article 129, first paragraph, part d) under i) or e) of the Capital Requirements Regulation;

c. loans that are covered by commercial real estate as provided for in article 129, first paragraph, part f) under i) of the Capital Requirements Regulation;

d. loans that are covered by liens on ships as provided for in article 129, first paragraph, part g) of the Capital Requirements Regulation or

e. other assets to be indicated by Ministerial Regulation.

4. In deviation from the third paragraph, a bank issuing a registered covered bond can apply for a combination of loans or home loans as provided for in parts b) and c) of the third paragraph provided that it commits itself to a fixed relationship between these types of cover assets.

5. A bank issuing a registered covered bond shall ensure that no conditions shall apply that stand in the way of exercising effective supervision on this registered covered bond.

**Article 40f**

1. A bank issuing a registered covered bond, shall ensure that the total value of the cover assets of the category to which this bond belongs shall be at least 105% of the nominal amount of the registered covered bonds outstanding under the respective category.

2. In addition to the first paragraph, a bank issuing a registered covered bond shall ensure that the value of the cover assets, calculated taking into consideration the restrictions provided for in article 129, first paragraph, part d) under i, e, f under i and g of the Capital Requirements Regulation, as far as applicable to the type of cover assets used, is at least equal to the nominal amount of the registered covered bonds outstanding under the respective category.

3. A bank issuing a registered covered bond may, on fulfilling the obligations provided for in the first and second paragraphs, make use of cover assets other than those stated in accordance with article 40e, first paragraph, part b) which are predominantly used as cover assets, when these cover assets consist of the following types:

a. exposures as provided for under article 129, first paragraph, part a) of the Capital Requirements Regulation;

b. exposures as provided for under article 129, first paragraph, part b) of the Capital Requirements Regulation;

c. exposures as provided for under article 129, first paragraph, part c) of the Capital Requirements Regulation or

d. exposures regarding which De Nederlandsche Bank has granted exemption pursuant to article 129, first paragraph, third line of the Capital Requirements Regulation.

4. The following limits shall apply when using cover assets mentioned in the third paragraph:

a. for the cover assets collectively: 20% of the nominal amount of the registered covered bonds outstanding under the respective category and

b. for the individual types, as provided for in parts a) to d) of the third paragraph: the limits for cover assets of a certain type as referred to in article 129, first paragraph, parts a), b) and c) and the third section of the Capital Requirements Regulation.

**Article 40g**

1. A bank issuing a registered covered bond shall ensure that the owner of the cover assets, for the category to which the bond belongs, always holds sufficient liquid assets, or generates sufficient liquid assets via the cover assets, to fulfil, for at least the next six months, the following obligations:

a. its obligation to pay interest on the outstanding registered covered bonds;

b. its obligation to pay the redemption amount on the outstanding registered covered bonds; and

c. other obligations to be established by Ministerial Rule.

2. The obligation based on the first paragraph, part b) shall not apply if the legal entity that is the owner of the cover assets, based on the conditions applying to this bond is entitled to defer payment of the redemption amount by at least six months compared to the original redemption date.

3. When calculating the amount of the obligations referred to in the first paragraph, a bank issuing a registered covered bond that is required to hold liquid assets, or arrange for the holding of liquid assets, or to generate liquid assets or arrange for this to be generated, the expected cash flows from derivatives contracts and other risk-mitigating instruments used for covering these obligations shall be taken into consideration.

**Article 40h**

A bank issuing a registered covered bond shall provide reliable and effective strategies and procedures based on which it shall continually examine, during the term of the registered covered bond, that sufficient cover assets and liquid assets with the correct characteristics have been secured, taking into account the nature and composition of these cover assets and liquid assets, the minimum amount of the cover assets as described in article 40f, first and second paragraphs and the liquid assets as described in article 40g, first paragraph.

**Article 40i**

1. De Nederlandsche Bank may decide to reject a request from a bank for registration as

provided for under article 3:33a, first paragraph of the Act, if De Nederlandsche Bank deems that the issue of the registered covered bonds by this bank is detrimental to a healthy ratio between the total amount of outstanding registered covered bonds of this bank and its total consolidated balance sheet.

2. De Nederlandsche Bank may decide to prohibit a bank issuing a registered covered bond from issuing further registered covered bonds if De Nederlandsche Bank deems that further issuance is detrimental to a healthy ratio between the total amount of outstanding registered covered bonds of this bank and its total consolidated balance sheet.

**Article 40j**

Further rules shall be stipulated by or based on a Ministerial Regulation with regard to:

a. the securing of the cover assets and the securing of payments on the registered covered bonds in an adequate, transparent and responsible manner;

b. the information to be provided by a bank issuing a registered covered bond to the holders thereof or to De Nederlandsche Bank.

**Article 40k**

De Nederlandsche Bank shall draw up a list based on article 1:107, first and third paragraphs, parts m) and n) of the Financial Supervision Act on registered categories of registered covered bonds and banks issuing registered covered bonds and shall notify this, and any amendments of this, to the European Commission and the European Securities and Markets Authority.

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Articles 124b and 124c shall lapse.

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In article 135, first paragraph, “in registered covered bonds as provided for in the Decree on Prudential rules under the Wft from a certain issuing bank” shall be replaced by: in registered covered bonds from a certain issuing bank.

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