**Amendment to the Financial Supervision Act (FSA) Implementing Rules on registered covered bonds**

*Regulation from the Minister for Finance dated 9 December 2014, FM 2014/1900 M, Department of Financial Markets, on the amendment to the FSA Implementing Rules related to the implementation of a new legal framework for registered covered bonds.*

THE MINISTER FOR FINANCE,

Based on article 40j of the Decree on Prudential Rules under the FSA;

DECIDES:

**Article I**

The FSA Implementing Rules shall be amended as follows:

A

In article 1, the definitions “offering programme”, “request”, “covered bonds” and “legal adviser” shall be deleted.

B

Section 9a shall be amended as follows:

**SECTION 9A. REGISTERED COVERED BONDS**

Conditions related to the implementation of article 40j of the Decree on Prudential Rules under the FSA

**Article 20a**

A bank that makes a request pursuant to article 3:33a, first paragraph of the Act shall submit to De Nederlandsche Bank with respect to the bonds issued, or to be issued, per category:

a. a legal opinion from a legal expert that is independent from the requesting bank from which De Nederlandsche Bank can conclude that the bonds comply with article 40d, first paragraph of the Decree on Prudential Rules under the FSA;

b. the data and documents on which the legal opinion pursuant to part a) is based;

c. a plan for adequate management of the cover assets in the event that the bank is no longer able to manage the cover assets;

d. the agreement(s) of the legal entity that is the owner of the cover assets with its director(s);

e. the agreement with an external auditor for auditing the cover assets provided for under article 20f, first paragraph;

f. a written declaration from a director of the bank that makes the request to the effect that the bonds comply with articles 40d to 40h inclusive of the Decree on Prudential Rules under the FSA; and

g. all other data and documents that De Nederlandsche Bank deems necessary in order to assess the request.

**Article 20b**

1. A bank issuing a registered covered bond shall ensure that the director of the owner of the cover assets:

a. is a trust company with a permit based on the Trust Company Supervision Act; or

b. a legal person or a natural person under foreign law who is permitted based on the law applying to this legal entity to carry out similar work as a trust company pursuant to part a) and to whom requirements of supervision and regulation are applied that are at least equal to those applied in the Netherlands.

2. A bank issuing a registered covered bond shall ensure that the owner of the cover assets shall not enter into legally binding transactions through which this legal entity shall assume obligations that rank the same or higher than the obligation to pay the principal sum and interest to the registered covered bondholders, unless these are conducive to or are associated with the management, risk management, payment and administration of the registered covered bonds or the cover assets.

3. A bank issuing a registered covered bond shall ensure that the owner of the cover assets shall only enter into derivative contracts or other agreements for the purpose of risk mitigation:

a. as far as this is necessary for the risk management on behalf of the registered covered bondholders;

b. provided that they do not entitle the counterparty to terminate, dissolve, suspend or to otherwise limit the implementation of the risk mitigating derivative contracts or other agreements due to the loss of the bank’s creditworthiness; and

c. provided that they, in the event of the loss of sufficient creditworthiness of the counterparty, shall force this counterparty to provide suitable security or to arrange for its replacement by another counterparty.

**Article 20c**

1. A bank issuing a registered covered bond shall ensure that the debtor of the cover assets shall have his place of residence, is established or has its registered office, within the borders of the European Union or another Member State of the European Economic Area or a third party country considered by the European Commission based on article 107, fourth paragraph, of the Capital Requirements Regulation as countries that having in place requirements for supervision and regulation that are at least equal to those of the European Union.

2. A bank issuing a registered covered bond shall ensure that if applicable, the collateral belonging to the cover assets shall be located within the borders of the European Union or another Member State of the European Economic Area or one of the third party countries as referred to in the first paragraph.

**Article 20d**

1. When applying article 40f, first and second paragraphs, of the Decree on Prudential Rules under the FSA, the value of the cover assets of the type(s) that a bank issuing registered covered bonds has or have used predominantly as cover assets, in accordance with article 40e, first paragraph, part b) of the Decree on Prudential Rules under the FSA, shall be the nominal amount.

2. The following shall be deducted from the value of the cover assets as provided for under article 40f of the Decree on Prudential Rules under the FSA, first and second paragraphs:

a. cover assets with respect to which non-payment regarding a specific debtor shall be considered as having occurred as referred to in article 178 of the Capital Requirements Regulation;

b. cover assets consisting of a claim regarding to which another party – next to the owner of the covers assets – is entitled to a part of the revenues from this claim, based on the party’s proportion of the entitlement in that claim; and

c. exposures as provided for under article 129, first paragraph, part c) and the third section of the Capital Requirements Regulation as far as this relates to exposures regarding the bank issuing registered covered bonds or regarding legal persons belonging to the same group.

3. In the application of articles 40f, third paragraph and 40g, first paragraph of the Decree on Prudential Rules under the FSA, the value of the cover assets or the liquid assets referred to in these articles will be based on market value in accordance with an internationally accepted accounting standard. In deviation from the previous sentence, the value of the cover assets or the liquid assets consisting of cash funds shall be the nominal value

4. Articles 208 and 229, first paragraph of the Capital Requirements Regulation shall apply to the cover assets as referred to in article 40f, first and second paragraphs as far as this relates to cover assets to which is referred in article 129, first paragraph, parts d) under i), e) and f) of the Capital Requirements Regulation.

5. The collateral of cover assets consisting of loans or home loans as provided for under article 129, first paragraph, parts d) under i), e) and f) of the Capital Requirements Regulation shall be revalued at least once a year. De Nederlandsche Bank may demand that the revaluation under the previous sentence takes place more frequently.

**Article 20e**

1. The following shall be considered as liquid assets provided for under article 40g of the Decree on Prudential Rules under the FSA:

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; and

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

2. In addition to article 40g, first paragraph, parts a) and b) of the Decree on Prudential Rules under the FSA, a bank issuing registered covered bonds shall ensure that the legal entity that is the owner of the cover assets, holds sufficient liquid assets, or generate these by way of the cover assets, in order to be able to fulfil its payment obligations for the next six months towards third parties who, if the bank is no longer able to manage the covers assets itself with respect to the obligation to pay the principal sum and interest to the registered covered bondholders, rank the same or higher compared to legal entity that is the owner of the cover assets.

**Article 20f**

1. A bank issuing a registered covered bond shall ensure that prior to the first issue under a category of registered covered bonds, an agreement shall be entered into with an external auditor for auditing the cover assets.

2. The external auditor, when auditing the cover assets as provided for in the first paragraph, shall have at least the following contractual obligations:

a. examine at least annually as to whether the bank provided for in the first paragraph has correctly calculated that it complies with article 40f, first and second paragraphs, of the Decree on Prudential Rules under the FSA; and

a. examine at least annually as to whether the bank provided for in the first paragraph has correctly calculated that it complies with article 40g, first paragraph, of the Decree on Prudential Rules under the FSA.

3. The agreement with the auditor for the audits as provided for in the second paragraph includes safeguards that these audits shall remain in place after the bank provided for in the first paragraph is no longer able to manage the cover assets itself.

4. A bank issuing a registered covered bond shall ensure that as long as the bank does not become unable to manage the cover assets itself an external auditor shall audit, on a random basis, the files relating to the cover assets at least annually.

**Article 20g**

1. A bank issuing a registered covered bond shall regularly carry out stress tests in order to establish whether in situations of financial stress, there is still a healthy ratio between the total amount of outstanding registered covered bonds compared to the bank’s total consolidated balance sheet, pursuant to article 40i, first and second paragraphs of the Decree on Prudential Rules under the FSA.

2. The stress tests provided for in the first paragraph shall relate at least to:
a. the credit risk;

b. the interest rate risk;

c. the currency risk;

d. the liquidity risk and

e. other risks that the De Nederlandsche Bank deems relevant.

3. In carrying out the stress tests provided for in the first paragraph, account shall be taken of the relevant risk-mitigating factors such as derivative contracts and other agreements entered into for the purpose of risk mitigation.

**Article 20h**

1. A bank issuing a registered covered bond:

a. shall demonstrate to De Nederlandsche Bank at least once per quarter that the registered covered bond complies with articles 40e, paragraphs two to five inclusive, 40f and 40g of the Decree on Prudential Rules under the FSA by providing De Nederlandsche Bank with reports on the cover assets and the associated obligations and explaining these.

b. shall demonstrate to De Nederlandsche Bank at least annually that the bank complies with article 40h; and

c. shall provide De Nederlandsche Bank at least annually with the information that De Nederlandsche Bank needs in order to exercise its powers under article 40i.

2. A bank issuing a registered covered bond shall provide De Nederlandsche Bank with the annual accounts and the annual report of the legal entity that is the owner of the cover assets within six months after the end of the financial year. The bank shall state whether or not the annual accounts have been adopted and approved in accordance with the legal entity’s articles of association or memorandum of association.

3. A bank issuing a registered covered bond and that intends, during the term of this registered covered bond, to make significant amendments to the conditions applying to it shall inform De Nederlandsche Bank of this before doing so.

4. A bank issuing a registered covered bond shall provide De Nederlandsche Bank with all relevant data and documents relating to the registered covered bond, which the De Nederlandsche Bank considers necessary in the interests of supervision, as often as De Nederlandsche Bank deems necessary.

**Article 20i**

1. A bank issuing a registered covered bond shall provide, for each category, at least quarterly the following information to the holders of these registered covered bonds:

a. information on the credit, market, currency, interest and liquidity risks associated with the cover assets and the registered covered bonds;

b. the total nominal value of the outstanding registered covered bonds;
c. the total value and composition of the cover assets and the geographical distribution of the cover assets;

d. the ratio between the total value of the cover assets in accordance with article 40f, first paragraph of the Decree on Prudential Rules under the FSA and the total nominal value of the outstanding registered covered bonds;

e. the ratio between the value of cover assets as based on the applicable conditions and the total nominal value of the outstanding registered covered bonds;

f. the ratio between the total value and composition of the liquid assets and the payment obligations pursuant to article 40g, first paragraph, parts a), b) and c) of the Decree on Prudential Rules under the FSA;

g. the maturity profile of both the cover assets and the outstanding registered covered bonds;

h. the percentage of the cover assets which payments are due by more than ninety days; and

i. information on the counterparties of the owner of the cover assets.

2. The information stated in the first paragraph is provided in sufficient detail in order to enable the registered covered bondholders to carry out an adequate risk analysis.

**Article III**

This FSA Implementing Rule shall take effect from 1 January 2015.

This FSA Implementing Rule shall be placed in the Staatscourant together with the explanatory notes.

THE MINISTER FOR FINANCE,

J.R.V.A. Dijsselbloem