

Based on international data, lending in foreign currencies has been historically very low within the Netherlands. Therefore, the AFM decided not to issue further guidance or requirements for financial institutions to provide borrowers (retail consumers) with adequate information regarding the risks involved in foreign currency lending.

Although the AFM decided not to issue further guidance on FX lending, there do exist more general requirements which are applicable to financial enterprises when they advise consumers on foreign currency lending. There are no specific rules applicable to financial institutions advising or selling to non-financial corporates. Within the near future the “duty of care”, that currently applies to financial institutions offering financial services to retail clients, will be extended to (semi)professional parties.

The Dutch act on Financial Supervision (Wet op het financieel toezicht; Wft) contains advisory, pre-contractual information requirements and specific rules concerning product governance. Please find below a short description of these provisions in our national legislation.

- *A financial enterprise that offers or composes a financial product and makes such product available in the market shall have appropriate procedures and policies in place to ensure that balanced consideration has been given to the interests of consumers, clients and the beneficiaries of such financial product during the development of the financial product, and that the financial product is demonstrably the result of this consideration of interests.*
- *In case a financial enterprise advises a consumer it shall, in the interest of the consumer or client, obtain information about the latter’s financial position, knowledge, experience, objectives and risk tolerance, insofar as this is reasonably relevant to the advice or the portfolio management (Section 4:23 (1) a Wft).*
- *Prior to issuing advice, providing an investment service, providing an ancillary service or concluding a contract regarding a financial product other than a financial instrument, an investment firm or financial service provider shall supply information to the consumer or, where it concerns a financial instrument or insurance, to the client insofar as this is reasonably relevant for an adequate assessment of that service or product. Rules may be laid down by or pursuant to a Decree as regards the information referred to in the preceding sentence (Section 4:20 (1) Wft).*
- There is an overarching framework applicable to financial enterprises who offer financial products to retail clients. The applicable legislation establishes governing principles on the product development process. The following paragraph describes the essence of this legislation. *“A financial enterprise that offers or composes a financial product and makes such product available in the market shall have appropriate procedures and policies in place to ensure that balanced consideration has been given to the interests of consumers, clients and the beneficiaries of such financial product during the development of the financial product, and that the financial product is demonstrably the result of this consideration of interests.”* Together with the requirements on the duty of care (also applicable to advisors giving advice or selling FX lending products) a customer should receive an advice on a product that fits its interests and is suitable to its needs (Section 32 of the Market Conduct Supervision (Financial Institutions) Decree, hereinafter, “Bgfo”).

The rules on the product development process as well as the duty of care, implicitly contain encouragements for the financial institutions to offer retail clients domestic currency loans (as these

correspond better to the risk appetite of most retail clients, with a few exception under particular circumstances).

Additionally, the Consumer Credit Directive (2008/48/EC) sets out rules for unsecured funding. It entails provisions on advertising and pre-contractual information.

Further to the legal requirements mentioned above, the AFM developed a specific supervisory theme that focuses on the duty of financial enterprises to put their customers' interest first. This means that the product advised to a retail client must have an added value, it needs to be safe, cost efficient and comprehensible. This supervisory theme has a broad scope and is in principle also applicable to foreign currency lending (to retail clients).

#### Actions planned

Since lending in foreign currencies has a low prevalence within the Netherlands, the existing regulation and supervision seems appropriate to our opinion. However, the AFM will keep monitoring whether specific obligations to financial institutions are needed to provide borrowers with info regarding the risks of foreign currency lending.

Dutch act on Financial Supervision (Wet op het financieel toezicht; Wft)

[http://wetten.overheid.nl/BWBR0020368/geldigheidsdatum\\_13-12-2013](http://wetten.overheid.nl/BWBR0020368/geldigheidsdatum_13-12-2013)