

Circular

Brussels, 14 September 2017

Reference: NBB_2017_23

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Circular to financial institutions on acquisitions, increases, reductions and transfers of qualifying holdings

Scope

- *credit institutions governed by Belgian law*
 - *insurance companies governed by Belgian law*
 - *reinsurance companies governed by Belgian law*
 - *stockbroking firms governed by Belgian law*
 - *financial holding companies governed by Belgian law*
 - *insurance holding companies governed by Belgian law*
 - *mixed financial holding companies governed by Belgian law*
- (hereinafter collectively referred to as 'financial institutions')

Summary/Objectives

In addition to the legal notification requirements imposed upon proposed acquirers, the prudential laws provide for the obligation for the financial institutions themselves to report to the supervisor on both an occasional and a periodic basis.

As a complement to the communication from the National Bank of Belgium to proposed acquirers and shareholders, this circular therefore aims to clarify the procedures for implementing these obligations imposed upon the financial institutions themselves.

Legal references

- *Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies: Articles 71 (insurance or reinsurance companies) and 443 (insurance holding companies and mixed financial holding companies belonging to an insurance group); and*
- *Law of 25 April 2014 on the legal status and supervision of credit institutions and stockbroking firms: Articles 53 (credit institutions), 212 (financial holding companies and mixed financial holding companies belonging to a banking group) and 517 (stockbroking firms).*

Structure

1. *Context and objectives*
2. *Occasional statements*
3. *Annual statements*
4. *Procedure for the transmission of the statements required*
5. *Entry into force*

Dear Sir,
Dear Madam,

From a prudential point of view, it is essential that persons who are likely to influence the management of financial institutions because of their direct or indirect holdings in the capital of such institutions should have the qualities necessary for the supervisor to consider that they will exercise this influence to promote a sound and prudent management of these institutions.

Not only is this prudential requirement a prerequisite for authorisation to be granted, but it continues to apply afterwards, inter alia in the form of the need to perform a prudential assessment of the qualities of natural or legal persons who have decided to acquire or significantly increase a holding in the capital of a financial institution. However, this prudential assessment must be performed in such a way that it does not unduly hinder acquisitions in the financial sector.

1. Context and objectives

Following the publication on 5 May 2017 of the joint guidelines of the European supervisory authorities or 'ESAs' (i.e. the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority) on the prudential assessment of acquisitions and increases of qualifying holdings in financial sector entities¹, the National Bank of Belgium has published on its website 'Communication NBB_2017_22 to persons intending to acquire, increase, reduce or transfer a qualifying holding in the capital of a financial institution and to persons owning a qualifying holding', which is targeted at the proposed acquirers of a qualifying holding and at shareholders and which replaces former Communication NBB_2009_31.

This Communication specifies inter alia the circumstances in which the proposed acquirers and transferors are required to notify the competent supervisor of their intention², the practical details of the notification procedure and the prudential assessment process, as well as the procedure to be followed by shareholders if new elements appear that could influence their assessment. Annexes to that communication include the notification forms which proposed acquirers and shareholders are urged to use.

In addition to the legal notification requirements imposed upon proposed acquirers, the prudential laws provide for the obligation for the financial institutions themselves to report to the supervisor on both an occasional and a periodic basis.

¹ Cf. Annex 8 of Communication NBB_2017_22 to persons intending to acquire, increase, reduce or transfer a qualifying holding in the capital of a financial institution and to persons owning a qualifying holding, in which the joint guidelines of the ESAs are included in their entirety.

² Namely (i) for insurance and reinsurance companies governed by Belgian law, insurance holding companies governed by Belgian law and mixed financial holding companies belonging to a Belgian insurance group: the National Bank of Belgium; (ii) for credit institutions governed by Belgian law, financial holding companies governed by Belgian law and mixed financial holding companies belonging to a Belgian banking group: the European Central Bank (ECB) in accordance with the division of powers laid down in or pursuant to the SSM Regulation with regard to the supervision of credit institutions, and (iii) for stockbroking firms governed by Belgian law: the National Bank of Belgium.

As a complement to the aforementioned communication from the National Bank of Belgium to proposed acquirers and shareholders, this circular therefore aims to clarify the procedures for implementing these obligations imposed upon the financial institutions themselves.

2. Occasional statements

Under the aforementioned legal provisions, financial institutions must notify the supervisor as soon as they become aware of any acquisition or disposition of their securities or units whereby the transferor or the transferee crosses a notification threshold as defined by the law. Such is the case where the holding concerned:

- ✓ acquires or loses the characteristics of a qualifying shareholding (i.e. a shareholding of more than or equal to 10 % of the capital or voting rights, or below this threshold but giving the shareholder significant influence on the management of the financial institution);
- ✓ exceeds or falls below a 20 %, 30 % or 50 % threshold;
- ✓ entails that the financial institution becomes or ceases to be the subsidiary of the person performing the acquisition or the disposition.

It should be noted that the reporting obligations of the proposed acquirer or of the transferring shareholder on the one hand, and of the financial institution on the other hand, are complementary but not identical. Thus, while the proposed acquirers or the transferring shareholders must meet their legal obligation to notify the supervisor prior to the realisation of their proposed acquisition or disposition as soon as they have made their decision, the obligation of financial institutions to inform the supervisor of any acquisition or disposition of their securities or units arises 'as soon as they become aware' of it. Depending on the circumstances, such notification may therefore be required prior to the realisation of the transaction, where the financial institution concerned is informed in advance of the decision of the proposed acquirer or of the transferring shareholder to carry it out.

On the other hand, such notification may be required only after the event, if the financial institution becomes aware of the acquisition or disposition of its securities or units after the transaction has effectively been carried out.

Such notifications to the supervisor may be based on information obtained from various sources by the financial institution. As such, the requirement for notification to the supervisor applies *inter alia* where the acquisition or disposition is reported to the financial institution pursuant to Article 515 of the Companies Code or where the financial institution has to record transfers of registered shares or membership units in the shareholder or membership register. More generally, this obligation shall also apply where credible information³ is directly or indirectly communicated to the financial institution outside of any obligation under the law or the institution's articles of association. The supervisor also advises financial institutions to check, after each ordinary or extraordinary general meeting of shareholders, whether the register of attending shareholders shows any changes in the shareholder structure that might require them to issue an occasional statement to the supervisor.

In such situations, financial institutions are invited to fill out the occasional statement document included in Annex 1 and submit it to the supervisor⁴. It should also be noted that a financial institution is not exempted from complying with its obligation to provide the supervisor with an occasional statement on the grounds that the proposed acquirer or the shareholder who has decided to transfer all or part of his qualifying shareholding has fulfilled his own legal obligation of prior notification to the supervisor.

³ 'Credible information' refers to information that the financial institution can reasonably believe to be correct.

⁴ In case of a transfer or acquisition where the shareholder is already known (e.g. in case of an intra-group transaction without any real change in the control or in case of a transfer of indirect holdings without any change in the percentage held at the higher level in the shareholding structure), it could be agreed with the supervisor that some of the information requested in annex 1 need not be submitted. The supervisor should be contacted in advance for that purpose.

As a complement to the legal obligation on occasional reporting of acquisitions and transfers of qualifying holdings by financial institutions, the supervisor also invites the latter to notify it promptly, as part of the ongoing dialogue that is necessary for optimal prudential supervision, of any acquisition or disposition of their shares or membership units which, although not falling under the legal obligation of occasional reporting, may have a significant effect on the prudential assessment of the financial institution's situation. Such is for instance the case where the financial institution becomes aware of an acquisition or transfer whereby the acquirer or the transferor has crossed or will cross the 5 % threshold, and therefore must itself notify the supervisor for purely information purposes (cf. point 3.c) of Communication NBB_2017_22 to persons intending to acquire, increase, reduce or transfer a qualifying holding in the capital of a financial institution and to persons owning a qualifying holding).

3. Annual statements

The aforementioned legal provisions also provide that financial institutions should inform the supervisor at least once a year of the identity of their shareholders or members who, directly or indirectly, alone or in concert, own qualifying holdings in their capital, as well as the proportion of capital and voting rights thus held.

Financial institutions are invited to make this annual statement in the month following their ordinary general meeting, based on all sources of reliable information at their disposal, including statements of acquisition or disposition addressed to them pursuant to Article 515 of the Companies Code, their shareholder or membership register, and the list of shareholders present at the latest ordinary general meeting.

They are asked to fill out the annual statement form included in Annex 2 and submit it to the supervisor.

4. Procedure for the transmission of the statements required

In accordance with Circular NBB_2016_40 of 12 October 2016, financial institutions should submit the required information and documents to the supervisor using the eCorporate communication platform.

5. Entry into force

This circular shall apply from 1 October 2017 onwards and shall replace Circular CBFA_2009_32 of 18 November_2009 to financial institutions with regard to the acquisition, increase, reduction and transfer of qualifying holdings.

A copy of this circular is being sent to the auditor(s) of your company or institution.

Yours faithfully,

Jan Smets

*Annexes: - NBB_2017_23-1 / Change in the capital and its composition – Occasional statement
- NBB_2017_23-2 / The capital and its composition - Annual statement*