

## Delta Lloyd seeks to resolve legal dispute with DNB

- DNB fine imposed on Delta Lloyd Leven set at € 22,680,000
- Delta Lloyd accepts the ruling and will not lodge an appeal
- CFO Emiel Roozen decides to step down
- Supervisory Board chairman Jean Frijns to resign as of 1 October 2015
- AFM fine of € 750,000 imposed on Delta Lloyd Asset Management

Last Friday, the administrative court in Rotterdam delivered a ruling in the proceedings brought against the fine<sup>1</sup> imposed on Delta Lloyd Levensverzekering NV (Delta Lloyd Leven) by the Dutch Central Bank (DNB) and against DNB's instruction to 'dismiss' the CFO of Delta Lloyd NV. Delta Lloyd had requested the court to deliver a ruling about a difference of opinion with DNB<sup>1</sup>. Now that the ruling has been handed down, Delta Lloyd seeks to resolve the situation as soon as possible in the interest of all stakeholders, which is why it will not lodge an appeal.

### Court ruling

In its ruling, the court endorsed the view taken by DNB and, as a result, upheld the fine that DNB imposed on Delta Lloyd Levensverzekering NV. The court did lower the fine by € 120,000, reducing it to € 22,680,000. The court allowed Delta Lloyd's appeals against the dismissal of CFO Emiel Roozen, suspended the instruction and ordered DNB to come up with a new decision on the objections filed by Delta Lloyd.

DNB will also have to take a new decision on the publication of the fining decision once it becomes irrevocable. The ruling of the administrative court will be posted later today on [www.rechtspraak.nl](http://www.rechtspraak.nl). For a summary of the court ruling, see the annex to this press release.

### Summary of other implications

- In the interest of the company, CFO Emiel Roozen has decided to step down as of today.
- Emiel Roozen's portfolio will temporarily be spread across the members of the Executive Board. The Delta Lloyd Supervisory Board has every intention of nominating a new CFO later this year.
- Supervisory Board chairman Jean Frijns has resigned his position and will step down on 1 October 2015.
- Delta Lloyd plans to convene an Extraordinary General Meeting of Shareholders (EGM) to fill the resulting vacancies. Further details will follow through the usual channels.
- The Netherlands Authority for the Financial Markets (AFM) imposed a € 750,000 fine on Delta Lloyd Asset Management in its capacity as the competent regulator. AFM conducted its own investigation into the events of June 2012. This investigation focused on the organisational structure of Delta Lloyd Asset Management NV, the Delta Lloyd NV investment business, and the degree to which this structure guarantees sound and ethical operational management (Section 4:14(1) of the Dutch Financial Supervision Act<sup>ii</sup>). Delta Lloyd has filed a pro forma objection to this fine with AFM.

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<sup>1</sup> See Delta Lloyd press releases of 22 and 23 December 2014



## Annex<sup>2</sup>

### **Fine**

The Dutch Central Bank (DNB) has imposed a € 22,800,000 fine on Delta Lloyd Levensverzekering N.V. ("DL Leven") for breaching Sections 3:10 and 3:17 of the Dutch Financial Supervision Act ("the Act") in the period from 27 June 2012 to 2 July 2012.

After close of trade on 2 July 2012, DNB announced the introduction of an Ultimate Forward Rate (UFR) for insurance companies as of 30 June 2012. The UFR is a fixed actuarial interest rate for insurance liabilities with terms to maturity in excess of 20 years, which has since been used to calculate the financial strength of Dutch insurance companies.

DNB claims that, surrounding the introduction of the UFR, DL Leven acted in breach of Section 3:10(1) of the Act by conducting transactions based on confidential information with a view to achieving a financial gain. DNB also alleges that DL Leven breached Section 3:17(1) of the Act by acting in contravention of internal risk and governance rules when conducting these transactions. As a result, DNB imposed a fine on DL Leven. The fine amounted to € 21,600,000 (i.e. the financial gain DNB claims DL Leven achieved) plus € 1,200,000 in the form of an (additional) penalty. The court in Rotterdam has ruled that DNB was correct in its assessment that DL Leven acted in breach of Sections 3:10 and 3:17 of the Act. DNB was justified in imposing a fine on DL Leven for its infringement. The grounds for appeal against the calculation of the achieved financial gain have also been rejected. The court has moderated the fine by € 120,000 (10% of € 1,200,000) because DNB missed a deadline in providing a number of documents to Delta Lloyd N.V. ("DL") and DL Leven. As a result, the total fine amounts to € 22,680,000.

### **Publication of fine**

DNB has decided that it will publish the fining decision under Section 1:97 of the Act early, i.e. before it has become irrevocable. The arguments presented against this decision included the assertion that early publication of the fining decision is in contravention of the principle of legal certainty. The violations were committed in 2012, while DNB has only been competent to publish fining decisions for such violations since 1 August 2014. The court endorsed this view, just like the provisional relief court in its ruling of 29 January 2015 (ECLI:NL:RBROT:2015:618). The court awarded the appeals against the publication decision and revoked DNB's decision to publish the fining decision early.

### **Dismissal of Roozen**

DNB claims that E.A.A. Roozen ("Roozen") is no longer suitable as an executive director of DL and as a supervisory director of DL Leven. For this reason, DNB has instructed DL and DL Leven, pursuant to Section 1:75 of the Act to dismiss Roozen as soon as possible, but by 1 January 2016 at the latest, by having him resign as an executive director of DL and a supervisory director of DL Leven.

The court in Rotterdam has ruled that DNB did not properly substantiate why the supervisory history between DNB and DL in the period prior (and unrelated) to the introduction of the UFR might corroborate the conclusion that Roozen is not suitable as an executive director of DL and as a supervisory director of DL Leven. In respect of Roozen's actions at the time of the introduction of the UFR, the court has ruled that DNB was correct in taking the view that this is relevant to the Roozen's suitability and affects it negatively. However, the claimants are right in arguing that DNB's accusations

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<sup>2</sup> Based on the summary prepared by the Rotterdam administrative court on 31 July 2015

against Roozen affect his integrity at least as much as his suitability. Given that DNB does not doubt Roozen's integrity, the upholding of the legal effects of the instruction for reasons of unsuitability merely because of his actions at the time of the introduction of the UFR does not automatically stand to reason. In addition, the court has ruled that DNB acted in contravention of the Policy Rule on Suitability 2012 by failing to make sufficient allowance for the changes in the composition of the DL Executive Board and the DL Leven Supervisory Board, and for the competencies of the other executive and supervisory directors in its assessment. The court allowed the appeals and suspended the dismissal instruction for up to three months after publication of the new decisions on the objections of DL, DL Leven and Roozen.

### **Document availability**

Ruling on fine and publication of fining decision: case number ROT 15/2850 and ROT 15/2851;  
ELCI:NL:ROT:2015:\*\*\*

Ruling on dismissal of Roozen: case numbers ROT 14/8944 and ROT 15/318; ECLI:NL:ROT:2015:\*\*\*

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<sup>i</sup> Pursuant to Sections 3:10 and 3:17 of the Dutch Financial Supervision Act.

#### **Section 3:10**

1. A[n] (...) insurer having its registered office in the Netherlands shall pursue an adequate policy that safeguards sound and ethical business operations. This shall mean that:

- a) measures are taken to prevent conflicts of interest;
- b) measures are taken to prevent the financial undertaking or its employees from committing offences or other transgressions of the law that could damage confidence in the financial undertaking or in the financial markets;
- c) measures are taken to prevent confidence in the financial undertaking or in the financial markets from being damaged because of its clients; and
- d) measures are taken to prevent the financial undertaking or its employees from performing other acts that go against generally accepted standards to such an extent that they may seriously damage confidence in the financial undertaking or in the financial markets.

2. Rules relating to the minimum requirements to be satisfied by the policy referred to in Subsection 1 may be laid down by or pursuant to a Decree. (...)

#### **Section 3:17**

1. A[n] ... insurer having its registered office in the Netherlands shall organise its operations in such a way as to safeguard sound and ethical business operations.

2. Rules relating to Subsection 1 shall be laid down by or pursuant to a Decree. These rules shall concern:

- a) management of business processes and business risks;
- b) integrity, which is understood to mean the prevention of:
  - 1) conflicts of interest;
  - 2) offences or other transgressions of the law committed by the financial undertaking or its employees that could damage confidence in the financial undertaking or in the financial markets;
  - 3) relations with clients that could damage confidence in the financial undertaking or in the financial markets; and
  - 4) other acts performed by the financial undertaking or its employees that go against generally accepted standards to such an extent that they may seriously damage confidence in the financial undertaking or in the financial markets;
- c) the soundness of the financial undertaking, which shall be understood to mean:
  - 1) (...)

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- 2) *management of other risks that may affect the soundness of the financial undertaking;*  
(...)

**ii Section 4:14**

1. *A management company, investment fund, investment firm or depositary shall organise its operations in such a way as to safeguard sound and ethical business operations.*
2. *Rules relating to Subsection 1 shall be laid down by or pursuant to a Decree. These rules shall concern:*
  - a) *management of business processes and business risks;*  
(...)