

AFM

In advance by fax

Linklaters LLP, Amsterdam  
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Date 29 August 2007  
Our reference TT-SAMe-07080712  
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Re: Exemption Request Conversus Capital L.P.

Dear Mr Hazeleger,

In regard to the subject indicated above, the Netherlands Authority for the Financial Markets ('AFM') reports to you as follows.

## 1. Introduction

On 17 May 2007 AFM received an application from Conversus Capital L.P. ("Conversus") to grant an exemption as referred to in Article 4:51, paragraph 5, of the Financial Supervision Act ("Wft") from the obligation to create Annual Financial Statements in accordance with Title 9 Book 2 of the Civil Code as referred to in Article 4:51, paragraph 3 Wft. The AFM grants Conversus this exemption.

This decision was reached as follows. First, AFM provides the statutory framework in paragraph 2. Subsequently AFM describes the facts that led to the decision in paragraph 3. Paragraph 4 gives an evaluation of the facts. Paragraph 5 reflects the decision. Finally, paragraph 6 provides the course of the legal process.

## 2. Statutory framework

*Wft*

*Article 2:65, first paragraph Wft provides that:*

*It is prohibited in the Netherlands to offer the right to a participating interest in an investment institution:*

*Without the administrator of the investment concern having a permit granted by the Financial Market Authority for the management of investment institutions; or*

*If it concerns an investment institution that does not have a separate administrator, without it having a permit granted by the Financial Markets Authority.*

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Article 2:66 Wft, first and second paragraphs, provides:

*Article 2:65, first paragraph, does not apply to the offering of rights of participation in an investment institution with a registered office in a State designated by Our Minister where the supervision of investment institutions is so performed as to offer sufficient security in regard to the interests which this Act attempts to protect, if Article 2:73 is met. Further regulations can be imposed by a general action of the Board of Management pertaining to the designation of States.  
A decision to designate a state as indicated in the first paragraph and the withdrawal thereof is made published in the Government Gazette.*

Article 2:73 Wft provides:

*An investment institution with registered office in a designated State as referred to in Article 2:66, first paragraph which intends to offer rights of participation in the Netherlands notifies the Financial Markets Authority of this intention, and while doing so submits a statement of supervision order, issued by the supervision agency of that designate State.  
The investment institution can commence the offering of the rights of participation in the Netherlands unless the Financial Markets Authority, before eight weeks have elapsed, has made know that the intention or the envisaged method of acting, as referred to in the first paragraph, is not in agreement with the applicable Netherlands statutory provisions.*

Article 4:51 Wft provides:

*A manager, investment institution or depository provides an annual financial statement, an annual report and other information as specified in Articles 361, first paragraph, 391, first paragraph, respectively 392, first paragraph, sections a through h, of Book 2 of the Civil Code within four months after the termination of the financial year.  
A manager or investment institution provides semi-annual financial data to the Financial Markets Authority within nine weeks after the conclusion of the first half of the financial year.  
The manager, investment institution or depository creates the annual financial statement, the annual report and the other information as referred to in the first paragraph, and the semi-annual financial data, intended in the second paragraph, in accordance with Title 9 of Book 2 of the Civil Code, with the exception of Article 403 of Book 2 of the Civil Code as far as it pertains to a manager.  
Regulations are defined by or on behalf of an order in council pertaining to the issuance and content of the annual financial statements, the annual report and the other information, intended in the first paragraph, and of the semi-annual financial data as referred to in the second paragraph.  
Notwithstanding that which is provided in Title 9, Book 2 of the Civil Code, when requested to do so, the Financial Markets Authority can grant an exemption, complete or partial, whether or not for a defined period, of that which is determined in the first, second or third paragraph, or what is determined on the basis of the fourth paragraph, if the applicant can show that these requirements cannot be reasonably met, and that the objectives that this Article attempts to meet are achieved otherwise.*

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### **3. Facts**

On 17 May 2007, Conversus submitted an application to the AFM, as referred to in Article 4:51, paragraph 5 Wft, for an exemption from the obligation to create the annual financial statements in accordance with Title 9 of Book 2 of the Civil Code as referred to in Article 4:51, paragraph 3 Wft. In summary, Conversus gave four (main) reasons in this application on the basis of which it feels it should be granted this exemption. First, Conversus proposes that the US GAAP is an internationally accepted basis of valuation that is often utilized in the financial world. Secondly, Conversus proposes that AFM has granted exemption in various, according to Conversus, comparable cases from the obligation to create the annual financial statements in accordance with Title 9 of Book 2 of the Civil Code. Thirdly, Conversus proposes that a significant number of its investors are institutional investors from the United States who expect an annual financial statement that is based on the US GAAP. Fourthly, Conversus point to the fact that a substantial part of the companies in which Conversus invests (or investment institutions) are in the “private equity” sector whose annual financial statements are based on US GAAP.

On 23 May 2007 the AFM notified Conversus that, as a closed-end institution, it is entitled to offer its rights of participation in the Netherlands on the basis of Article 2:66 Wft.

### **4. Evaluation of the facts**

In order to be considered for an exemption such as referred to in Article 4:51, fifth paragraph Wft, it must be demonstrated that the applicant cannot reasonably speaking meet the stated requirements, and that the objectives that this Article attempts to achieve can be achieved otherwise. The objectives of the Wft look out for the protection of the interests of the consumer, confidence in the financial sector, and the adequate functioning of the financial markets. These are attained by setting standards for actions undertaken by financial institutions.

Conversus indicated in its request that a significant part of its investors are institutional investors from the United States who expect that its annual financial reports have the US GAAP as its basis of valuation. Next Conversus indicates that a substantial part of the companies (or investment institutions) in which it invests create their annual accounts on the basis of the US GAAP. The AFM is of the opinion that given these circumstances it is not reasonable for Conversus to meet the stated requirements. The AFM has been of the opinion for quite some time already that the US GAAP is an acceptable basis for valuation for Conversus and comparable investment institutions. By using the US GAAP as its valuation basis for the annual financial statements Conversus utilizes a system that in the opinion of the AFM contributes satisfactorily to the clarity of its annual financial figures for interested parties. The objectives that the ACT attempts to protect are sufficiently met by this.

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## **5. Conclusion**

The AFM grants Conversus an exemption on the basis of Article 4:51, paragraph 5 Wft for the obligation stemming from Article 4:51, paragraph 3 Wft to create its annual financial statements in accordance with Title 9 of Book 2, Civil Code insofar as Conversus utilizes the US GAAP as its valuation basis for its annual financial statements.

## **6. Process of Judicial Referral**

Any interested party can file an objection against this decision within six weeks of the date of this decision. The objection is to be submitted to the AFM, Department of Judicial Affairs, PO Box 11723, 1001 GS Amsterdam.

Yours sincerely,

Financial Markets Authority,

[Signature]

S. van der Meer  
Team manager Administration Entry

[Signature]

E. Berkhout  
Head of Entry