

European Corporate Governance Network

Country Survey

Ownership and Control in The Netherlands

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INTRODUCTION

The main purpose of this paper is to exhibit some of the evidence available regarding the ownership and control of Dutch listed companies that has become available as a result of the transposition of the EU Transparency Directive. At the same time, the paper describes the legal framework for the disclosure of share ownership, together with some of the specificities of the Dutch legal and institutional framework for corporate governance. As much as possible, the analysis addresses the topics suggested by the 1996-97 Work Programme of the European Corporate Governance Network.

The paper is organised as follows. Section A of the paper describes the various legal forms of enterprises in the Netherlands and exhibits basic population statistics. The purpose of this section is to place listed firms in context, and to give an idea of their relative importance in Dutch economic activity. Section B describes the framework for reporting and publicizing ownership stakes that was enacted in order to carry out the aims of the Transparency Directive. A summary of the public debate on the effectiveness of the relevant legislation, as reported in the Dutch financial press, is included. This discussion at the same time serves as a caution in interpreting the quantitative data.

Sections C and D are the heart of the paper. Section C contains descriptive statistics concerning large blockholdings in Dutch listed companies, while Section D focuses on ownership of share stakes by company insiders.

Lastly, Section E gives some information about the outside supervision of Dutch listed companies.

A. LEGAL FORMS OF ENTERPRISES IN THE NETHERLANDS

a. *Types of company*

A first crucial legal distinction between various types of Dutch companies concerns whether they do or do not exist as a separate legal entity (*rechtspersoon*) in their own right. The main point at issue here is whether the resources drawn together by the company are a separate unit, or whether they are not sharply distinguishable from the non-company related property of the parties involved.

Firms that constitute legal entities (*met rechtspersoonlijkheid*)

These are the largest and most important firms (*NVs* and *BVs*), together with a set of less economically important legal forms like cooperatives, associations, mutual insurance societies and foundations.

NVs and *BVs* (public and private limited corporations)

The *naamloze vennootschap* (*N.V.*) is an “anonymous” limited company. In 1971, a new legal form, the *besloten vennootschap* (*B.V.*) or closed limited company was introduced, at the same time that *NVs* were first obliged by law to publish their annual accounts. 90% of the 50,000 or so *NVs* existing at the time subsequently converted to *BV* status. *BVs* are generally smaller firms, and also sometimes (increasingly) used as a form of professional partnership.

Let us first consider the common features of these two legal forms:

- *limited liability*. In the past, in both cases this important feature has been abused for personal enrichment at the expense of creditors (assets removed and debts allowed to accumulate). As a result, there is now sharper supervision at the stage where the firm is founded, the legal accountability of managers has been strengthened and procedures to wind up empty shells put into place.
- *procedures for founding a company*. The legal entity is set up by a notary's deed that records the amount of capital issued, the identity of the founding executives, and the statutes, which must include the name, seat of business (which must be in the Netherlands) and goals of business, the number of shares, the provisions for replacement of executives and any procedures for blocking the transfer of shares. A declaration of approval is needed from the Minister of Justice, who can deny it if shady people are involved or the proposed statutes do not conform to the law. All this information must be registered in the *handelsregister* (company register maintained by the *Kamer van Koophandel* (Chamber of Commerce)); the information required on an ongoing basis (annual accounts, etc.) is specified in articles 5-20 of the relevant law, the *handelsregisterwet*. Such information about individual firms is publicly available for viewing; extracts and summaries are supplied on request at cost.
- *organisational structure*. The company will have a management (*bestuur*) and a shareholder's meeting (*algemene vergadering van aandeelhouders*) which (unless the company is subject to the 'structural regime' described below) appoints management (*bestuur*) and directors (*commissarissen*) and approves annual accounts (unless it is a single-owner company). The management is held personally responsible for any misbehaviour prior to a bankruptcy, the

presentation of misleading accounts, improper payment of taxes, taking on obligations to third parties that clearly cannot be met, and environmental damage. The shareholders' meeting has residual rights not allocated elsewhere, as well as the right to approve annual accounts, appoint investigating accountants, increase and decrease the firm's capital, hire and fire management, appoint at least 2/3 of *commissarissen* and alter the statutes. By law, the statutes cannot require more than a 2/3 majority for most decisions. In many cases there will be supervisory and advisory board of directors (*raad van commissarissen* - I will refer to this body as the Supervisory Board) and an enterprise council (*ondernemingsraad* - to be referred to as Council).

- There are special regulations governing the structure of larger firms, known as the structural regime or *structuurregeling*. All firms which ordinarily employ at least 100 employees or at least 35 for 1/3 of normal working hours, must set up a Council. This is a body for representing and consulting the views of employees. It has a right to relevant information, a right to advise on major decisions (e.g. transfers of ownership, relocation and important investments); it can delay decisions it disagrees with for 1 month and appeal to the *ondernemingskamer* (company chamber) of the Amsterdam Court. Its permission is required for changes to social arrangements (pensions, working hours, wages, safety rules) and if it disagrees the employer must obtain a local judge's decision to go ahead. These and other large firms (with capital and reserves of at least f25 mn, with a legal obligation to set up a Council or with at least 100 employees in the Netherlands) are also obliged to set up a Supervisory Board (*raad van commissarissen*) which inherits some powers otherwise held by the shareholders' meeting. Such a Board consists of at least three members; new members are appointed by coöptation by the Board itself (unless the Shareholders' Meeting or Council object), and the statutes can determine that one or more are to be government appointees. Supervisory Board members (*commissarissen*) have a tenure of at most 4 years. The board supervises important managerial decisions, appoints and dismisses the management board (*raad van bestuur*) and draws up the yearly accounts (which are subjected to shareholder approval).

In practice the *structuurregime* gives shareholders very little say in the appointment or removal of Supervisory Board members and management, and the coöptation system is currently the topic of intense public debate.

- *certification of share capital*. A commonly used device for denying voting rights to shareholders is to set up an *administratiekantoor* (AK: administration office) that holds the original shares and issues share certificates instead. The *administratievoorwaarden* (conditions of administration) determine the exact status of certificate holders' rights, which usually include a right to dividends (net of administrative costs) but no voting rights at the shareholders' meeting: these are exercised by the AK. The certificates can be owner-registered or bearer; and the rules of the *fondsenreglement* (stock exchange listing requirements) give prerequisites for the listing of certificates. Certificate holders retain the right to attend and speak at shareholders' meetings, to challenge the legitimacy of company decisions, to obtain annual accounts for free and to call for extra meetings just like any shareholder. Certification is used as a means of protection against hostile takeovers.
- *priority shares (prioriteits aandelen) and preference shares ('prefs')*: priority shares have specific control rights, for example they may have the right to make a binding nomination for the appointment of management. *Prefs* are sometimes issued on a temporary basis into friendly hands, not to raise capital but to change the balance of power in the shareholders' meeting; a common method of defence

against hostile takeovers, that is legally permitted if it is in the interest of the company as a whole.

- *enqueterecht* (right to call for an investigation): shareholders or certificateholders owning at least 10% of the share capital (or f500,000 nominal, whichever is lower) can request an investigation into the company's affairs by court-appointed experts.
- *publication of accounts*. Dutch law in this respect conforms closely to European guidelines.

The major differences between NVs and BVs are the following:

- *transferability of shares*. An NV can issue both bearer and registered shares (*aandelen aan toonder* and *aandelen op naam* respectively); a BV can only issue registered shares. Whereas the statutes of an NV **can** limit the free transferability of shares, the statutes of a BV **must** do so (except possibly for transfers to other existing shareholders, close family and the BV itself). Such a *blokkeringsregeling* (arrangement for blocking undesired transfers) can take one of two forms. Either transfers are subject to approval by an organ of the company designated in the statutes; or a right of first refusal must be given to certain persons (or persons to be determined by a designated organ of the company). And transfers require a notary's deed. Clearly, no such restrictions are possible for bearer shares; and NV status is a prerequisite for a stock exchange listing.
- *constraints on the issue and buyback of shares*. These are stricter for an NV than for a BV. For example, a BV can acquire up to 50% of its own issued capital; an NV only 10% without ongoing shareholder approval. In a BV, the statutes can rule out preemptive rights for existing shareholders when new capital is issued; in an NV, a decision of the shareholder meeting is required.

Other companies that are separate legal entities

These are economically less important. A brief description:

- *coöperatie* and *onderlinge waarborgmaatschappij* (cooperatives and mutual insurance societies). These are set up by a notary's deed that specifies the statutes, its name, its goals, the obligations of members, the liability of members (none, limited or full), the way it is run and the division of any proceeds at liquidation. It must register in the *handelsregister* and include the list of members if they are to be liable. The *structuurregeling* applies if the cooperative is large or has at least 100 employees.
Cooperatives are rather uncommon, and mainly used in agriculture.
- *Europees Economisch Samenwerkingsverband (EESV)*. An organisation founded by members from different countries, as described in EU ordinance # 2137.
- *stichting* (foundation). A stichting has no members; it is set up by a notary's deed which describes its name, purpose, location, procedures for appointing and removing management, and the destination of its surpluses. Its goal cannot be payouts to founders. It must be registered by the *kamer van koophandel*.

Foundations are used in the nonprofit sector and also for trade associations, pension funds and the earlier mentioned *administratiekantoren*.

Enterprises without a separate legal existence (*zonder rechtspersoonlijkheid*)

Firms that are not separate legal entities are the property of two or more legal subjects (either people or legal entities) who enter into a cooperative agreement. They include the following forms (leaving aside *eenmanszaken*, or single-person businesses, which are not separately regulated by law):

- *maatschap* (partnership): a flexible, free-form agreement between partners (known as *maten* or *vennoten*) to contribute inputs such as physical assets or skilled labour and divide the proceeds according to agreed rules (in equal proportions, if not otherwise specified). Partners are obliged not to engage in outside activities that might be harmful to the partnership. All partners are authorised to engage in its normal business; unusual decisions (e.g. the buying of new premises by a partnership of doctors) must be taken by all the partners together, or delegated by explicit arrangement. Partners are liable in equal proportion for obligations to third parties such as creditors (unless other arrangements have been specified). However, if partners take actions for which they are not authorised they are personally responsible (unless other partners have enforced the action or benefited from it).

Common examples: professional personal services not requiring very large investments: doctors, lawyers, accountants, notaries.

- *vennootschap onder firma (V.O.F.)*: a partnership similar to a *maatschap*, with one important difference: the partnership has *afgescheiden vermogen* (ring-fenced assets) to which creditors of the partnership have prior recourse, before any creditors of the partners on personal account. Thus third parties cannot net out their debts to the VOF against money owed to them by partners in private capacity. Any activities pursued on behalf of the VOF give rise to claims on the entire assets of the partnership, and every partner is responsible for the entire payment and not just a pro rata share (they are *hoofdelijk aansprakelijk*: jointly and severally liable). The VOF is regarded as a firm with a common name (*firma*). The VOF must be registered in the *Handelsregister*, which gives a public record of its name, purpose and activities, and any limits on the powers of members (if these are overstepped, the partner concerned is personally liable towards third parties for such unauthorised actions).

The VOF is a very popular legal form (there are nearly 90,000 of them). For third parties doing business with a VOF, there is more security than with a *maatschap*. The business which partners are authorized to conduct on behalf of the VOF is clearly stated in the *handelsregister*, there are assets to which those trading with the VOF have prior recourse over the private creditors of the partners, and all partners are liable for the entire debt of the VOF.

- *commanditaire vennootschap* (partnership with silent partners): a device for allowing one or more “silent” partners (*commanditaire vennoten*) to supply money to a VOF whilst limiting their liability to the amount of their contribution. The involvement of the silent partners in managerial activities is strictly proscribed.

b. Basic Population Statistics

Table A.b.1 records the number of enterprises by legal form. Clearly the NVs are quite small in number, though these are on average the largest firms.

Table A.b.1 Number of enterprises by legal form, 1 January 1995

Legal form	Number of firms
Naamloze vennootschappen	2042
Besloten vennootschappen	156170
Eenmanszaken	332438
V.O.F.	87072
Various others	72601
Total	650323

Source: Centraal Bureau voor de Statistiek (CBS),
Statistisch Jaarboek 1996.

Table A.b.2 cross-classifies firms by activity and legal form. Activity is classified by SBI'93 code (a Dutch classification system based on NACE, with minor variations to take account of peculiarly Dutch situations. The activities can be transposed into English from their NACE code). The legal forms along the top of the table have all been described already, apart from the last two: *overheid* or public sector and *overige (incl. onbekend)* or other (incl. unknown).

Table A.b.2. Enterprises by activity and legal form, January 1 1994. [Table 4 of CBS, *Bedrijven in Nederland, 1996*, p. 50.]

SBI 93	Totaal	Rechtsvorm								
		Naamloze vennoot- schappen	Besloten vennoot- schappen	Coöpe- ratieve vereniging	Stich- tingen	Eenmans- zaken	Maat- schappen	Vennoot- schappen	Overheid	Overige (incl. onbekend)
Totaal	607590	1030	128030	2000	18705	236410	5375	83050	1395	131600
A 01 Landbouw en jacht	116685	0	1005	150	20	5290	25	1625	10	108560
02 Bosbouw; dienstverlening tbv de bosbouw	495	0	55	5	10	335	0	75	0	5
B 05 Visserij, kweken van vis en schaaldieren	745	0	300	0	0	140	5	280	0	20
C 10 Turfwinning	10	0	10	0	0	0	0	0	0	0
11 Aardolie- en aardgaswinning	105	5	75	0	0	0	0	5	0	20
14 Zand-, grind-, klei-, zoutwinning	135	0	95	0	0	15	0	20	0	5
D 15 Voedingsmiddelen en drankenindustrie	6160	5	1915	60	20	1835	0	2210	5	110
16 Tabakverwerkende industrie	30	0	20	0	0	5	0	0	0	0
17 Textielindustrie	1370	5	550	0	0	600	0	195	0	15
18 Kleding- en bontindustrie	2255	0	380	0	0	1555	0	275	0	45
19 Leer-, lederwaren- en schoenindustrie	460	0	185	0	0	200	0	70	0	5
20 Hout-, kurk-, rietindustrie	2325	0	770	0	0	1170	0	365	0	20
21 Papier(waren) en karton(waren)	345	5	255	0	0	45	0	20	0	15
22 Uitgeverijen, drukkerijen, reproductie	6410	10	2795	15	175	2195	0	1080	0	135
23 Aardolie- en steenkoolverwerkende industrie	35	0	25	0	0	0	0	0	0	0
24 Chemische industrie	755	5	565	5	5	100	0	50	0	30
25 Rubber- en kunststofverwerkende industrie	1335	5	905	0	0	255	0	135	0	30
26 Glas-, aardewerk-, cement-, kalkindustrie	1465	5	730	0	0	480	0	225	0	20
27 Basismetalenindustrie	250	0	185	0	0	40	0	20	0	5
28 Metaalproductenindustrie	6530	10	3040	0	0	2510	0	865	0	95
29 Machine en apparatenindustrie	3955	15	2385	5	5	1035	0	450	0	65
30 Kantoomachine en computerindustrie	265	0	95	0	0	120	0	35	0	10
31 Overige elektrische apparatenindustrie	860	5	465	0	0	270	0	100	0	20
32 Audio-, video-, telecom-apparatenindustrie	240	0	115	0	0	80	0	40	0	5
33 Medische en optische apparatenindustrie	1645	5	670	0	5	625	5	310	0	25
34 Auto-, aanhangwagen- en opleggerindustrie	625	5	350	0	0	170	0	85	0	15
35 Overige transportmiddelenindustrie	1310	5	475	0	5	610	0	190	0	20
36 Meubel- en overige industrie n.e.g.	5125	0	1195	10	55	2910	0	795	0	160
37 Voorbereiding tot recycling	65	0	45	0	0	10	0	10	0	0
E 40 Openbare energievoorzieningsbedrijven	140	70	35	15	0	0	0	10	0	15
41 Waterleidingbedrijven	25	25	0	0	0	0	0	0	0	0
F 45 Bouwnijverheid	41880	15	13345	30	10	20520	0	7600	5	360
G 50 Handel, reparatie auto's en motorfietsen	19060	15	6020	5	10	9265	0	3490	0	245
51 Groothandel en handelsbemiddeling	48885	105	21655	285	50	18205	10	6405	15	2155
52 Detailhandel (incl. reparatie)	87275	5	12905	45	240	49405	10	23580	25	1055
H 55 Horeca	37540	20	3950	40	320	20700	5	11840	5	660
I 60 Vervoer over land	11215	30	3920	330	15	3775	0	2985	0	160
61 Vervoer over water	5025	5	600	5	10	2270	40	1965	0	135
62 Vervoer door de lucht	125	5	55	0	0	35	0	10	0	20
63 Dienstverlening t.b.v. het vervoer	4665	15	2210	100	110	1350	0	415	10	445
64 Post en telecommunicatie	1175	10	175	15	30	710	0	175	0	65
J 65 Financiële instellingen (ex verzekering)	1055	130	745	10	30	20	0	10	0	110
66 Verzekeringswezen en pensioenfondsen	630	120	40	255	85	5	0	5	0	130
67 Activiteiten tbv financiële instellingen	9840	80	4755	30	215	3330	15	1120	0	300
K 70 Verhuur van en handel in onroerend goed	16695	110	11395	65	590	2790	20	910	5	815
71 Verhuur van roerende goederen	3975	10	1115	30	15	2020	0	695	0	90
72 Computerservice, informatietechnologie	6925	10	2125	15	55	3600	10	920	5	190
73 Research	960	5	300	10	260	245	5	70	0	70
74 Overige zakelijke dienstverlening	57210	50	15810	195	970	30905	1320	6625	25	1305
L 75 Openbaar bestuur, sociale verzekeringen	1295	0	10	30	70	10	0	0	20	1155
M 80 Onderwijs	16800	5	745	5	3980	8700	15	915	80	2360
N 85 Gezondheids- en welzijnzorg	39360	5	3140	30	7405	19460	3855	455	985	4025
O 90 Milieudienstverlening	590	10	285	0	5	65	0	70	0	155
91 Ideële en belangenorganisaties	2960	0	70	130	1255	45	0	15	20	1420
92 Cultuur, sport en recreatie	12430	80	2090	45	2500	2190	20	845	155	4505
93 Overige dienstverlening	17850	0	885	20	155	14175	10	2375	15	215

The most reliable and comprehensive **size distribution** data are those published by the *Centraal Bureau voor de Statistiek* (CBS).¹ Their data are based on the *Algemeen Bedrijfsregister* (General Register of Companies) in which, in principle, all Dutch companies are included; the characteristics recorded in this database (economic activity code, number of employees, name and address) form the basis for the classification used in CBS statistics. Additional data sources and sample surveys are used to correct, update and complete the statistics.

The company demographic information published by the CBS invariably uses *employment* as the basis for the size classification. Thus we do not have size distribution data by total assets or sales readily available. Such information is, however, in principle available for smaller subsets of all firms such as *NVs*, listed companies, larger companies, etc. using the REACH CD-ROM database. We reproduce here the size distribution in terms of workforce

Table A.b.3 Enterprises by size of workforce, 1 January 1995

Employees per firm	Number of firms
0	330,394
1 to 5	227,267
5 to 10	40,402
10 to 100	47,322
100 or more	4,938
Total	650,323

Source: CBS, Statistisch Jaarboek 1996

The size distribution of the different legal forms, by number of employees, in January 1994 is given in Table A.b.4.

¹ Somewhat more detailed information than is published is available at cost from the CBS: Economic Demography group, Sector Waarnemingsmethodologie, tel. 045 5707937, fax 045 5706266.

Table A.b.4 Enterprises by legal form and size of workforce, January 1 1994

Legal form	Total	Number of employees								
		0	1 to 5	5 to 10	10 to 20	20 to 50	50 to 100	100 to 200	200 to 500	500 & more
Total	607590	312525	199610	39670	24290	18685	6530	3235	1995	1055
NV	1030	140	225	80	105	130	90	70	95	95
BV	128030	26880	44290	20650	15655	12975	4295	1875	985	430
Cooperatives	2000	595	920	155	95	105	40	30	40	15
Foundations	18705	1405	9440	2185	1860	1990	855	530	300	140
One-man cos.	236410	146860	80255	6805	1765	630	85	10	0	0
Partnerships	5375	940	3450	515	275	125	35	10	10	10
VOFs	83050	34670	39350	6115	2105	695	85	25	10	5
Public sector	1395	395	895	50	15	15	10	0	5	5
Other (incl. unkn.)	131600	100640	20785	3110	2410	2030	1035	685	545	355

Source: CBS, Bedrijven in Nederland, 1996 (Table 5 p. 51)

B. DISCLOSURE OF BLOCKHOLDINGS IN THE NETHERLANDS: THE CURRENT SITUATION

a. *The legal framework for disclosure of large shareholdings*

To our knowledge there is no legal obligation to disclose ownership stakes in unlisted NVs and BVs (except in the case of single-owner companies, where the identity of the owner must be recorded in the publicly accessible *handelsregister* together with a written account of all transactions between himself and the company). If the company has issued registered shares (*aandelen op naam*), as is the case for all BVs and many NVs, its management obviously keeps a register of shareholdings (*aandelenregister*), which must include the names and addresses of all the shareholders. But there is no legal obligation to make this information freely and conveniently accessible to the general public.

For **listed companies** (which must clearly be NVs, for BVs do not have freely transferable shares), shareholders are subject to the disclosure requirements of the law that carries out the EU Transparency Directive 88/627, namely the *Wet Melding Zeggenschapsrecht* (henceforth the *WMZ*). Shareholders in all NVs incorporated under Dutch law and listed on a European Union stock exchange must notify both the company itself and the *Stichting Toezicht Effectenverkeer* or *STE* (a foundation set up in 1988 to supervise share trading on behalf of the Minister of Finance) of any purchases or sales of share stakes which cross the boundaries of 5, 10, 25, 50 or 66 2/3 % of issued capital.

The first *WMZ* went into effect on February 1 1992. Recently, some of the more glaring defects of the law have been repaired, with a new version of the *WMZ* replacing the old one as of June 1 1997². As our data in this paper were collected under the old regime, we will describe both, and give a brief review of the public debate surrounding the *WMZ*.

Under both versions of the *WMZ*, investors are obliged to notify a listed company of any purchases or sales of its shares which lead their share stake to cross the notifiable boundaries of 5, 10, 25, 50 or 66 2/3 %. This **obligation to notify applies to both voting rights and ownership (income) rights separately**. At the same time, the investor must indicate whether the stake is indirect (*middelijk*), that is, held via a daughter company or a third party; and whether the stake represents a potential (*potentieel*) stake rather than a current one, for example in case of a convertible bond or a warrant.

The listed company concerned is obliged to transmit this information promptly to the *STE*, which under the new law publishes the announcement in the financial press (in practice, *Het Financieele Dagblad*) in a standardised format, after verifying the information, after between 5 and 9 calendar days³. (Under the old

² Enacted 29 November 1996. Text in *Staatsblad* 1996, nr. 629.

³ At the same time, the Amsterdam stock exchange's *fondsenreglement* (provisions governing listed companies) requires the company to report all price-sensitive information promptly so that it can be made public by the exchange on its electronic information dissemination system *Beursnet*. In practice, most mutations in large shareholdings would

law, the company itself was responsible for making an announcement in a newspaper with nationwide circulation. But it was felt that direct publication of the information by the *STE* would be more transparent and less error-prone.)

A major source of concern with the share stake database maintained by the *STE* is that over time, it has become increasingly contaminated. The main problem is that share stakes can and do cross the notifiable percentage boundaries whenever the total outstanding share capital of the company changes; for example as a result of employee option plans, stock dividends, or mergers paid for by issuing shares. A large shareholder, who takes no active part in this modification of the denominator, has no obligation to report the resulting change in his percentage stake even if his percentage stake crosses a notifiable boundary as a result of the dilution. Thus over time the quality of the database, which is based on initial notifications of percentage stakes, has deteriorated. The *STE* has pleaded strenuously but unsuccessfully for the new law to institute a periodic (say annual) obligation for companies to report their total share capital and the holdings of their known large shareholders, so that the *STE*'s database would give a more accurate picture of current blockholdings. The government and a majority in Parliament felt that periodic disclosure would impose an unnecessary burden on companies and large shareholders, though leftwing parties generally spoke out in favour of more disclosure. The *STE* is now sufficiently concerned by the contamination of its database that it has threatened again (in May 1997) to lock up its data base and stop providing *WMZ* data to third parties who request it (mostly multinationals, institutional investors, analysts and the press) and to limit its role to publishing the original notifications in the press.

The *STE* views the *WMZ* as a means of providing greater transparency regarding the ownership structure of listed companies. The Minister of Finance, however, indicated to Parliament in 1996 (prior to the adoption of the revised law) that he felt its role is simply to make market movements visible. Opposition to the tightening of the law was not based on considerations of administrative cost alone: since 1995, a pressure group to protect the privacy of large individual shareholders has been pursuing a lawsuit to limit information dissemination by the *STE*.

The new *WMZ* repairs several other deficiencies of the old law:

- One important lacuna concerned pre-existing large shareholders of companies listed after the original *WMZ* went into effect; such shareholders were not obliged to notify their stakes. From now on all initial shareholders in newly listed companies must disclose any large stakes⁴ (*initiele meldingsplicht*).
- Professional intermediaries (banks, underwriters of new issues) who retain stakes of over 5% 'on the shelf' (*emissierestanten*) 3 months after a new issue or placing, must disclose such stakes as they will be regarded as part of their investment rather than trading portfolio.

reasonably be considered price-sensitive, so that the information is likely to be made public on the exchange before the *STE* publishes it.

⁴ Large shareholders in the 70 or so companies that were listed between February 1992 and June 1997 were given a July 1 1997 deadline to disclose their holdings; but by then, only 20 notifications had been received, some of which were incorrect, whilst the *STE* was expecting a total of about 280, namely roughly four notifications per company involved!

- Custodians (*bewaarders*) are now exempt from the obligation to disclose provided that they have no control rights.
- There is now a standard form on which information must be disclosed to the *STE*, and the information must include the exact date on which the notification obligation arose and details of how the stake is held (e.g. via a daughter company, “for the account of”, or via a voting agreement)
- The law was rephrased in terms of six “bands” (0-5, 5-10, 10-25, 25-50, 50-66 2/3, 66 2/3-up); shareholders must report any movement of their stake into a different band. In the past, people did not seem to understand that they also had to disclose whenever their stake crossed a boundary downwards (a significant source of inaccuracy in the *STE* database).
- Open-end funds or unit trusts (*BMVKs: beleggingsmaatschappijen met veranderlijk kapitaal*, or investment companies with varying capital, who buy in or expand their own share capital in response to investor demand at a price close to the intrinsic value of the underlying portfolio) now have weaker disclosure obligations, with 0-25% treated as one band.
- If a natural person discloses a stake, his/her “daughter” company does not need to do so as well (this was already the case for group companies under the old *WMZ*). Thus double notifications are reduced.
- The *STE* is empowered to correct inaccurate data.

Up to the end of May 1997 there have been a total of 3300 *WMZ* disclosures. The notifying listed company pays the processing cost to the *STE*, currently running at about f2300.- excluding the cost of newspaper publication.

b. Public availability of data

The *STE* itself does not provide a record of disclosures in electronic form; indeed, in May 1997 it announced that it would no longer provide data to third parties at all because of its concerns about the inaccuracy of its database. Starting in 1992, when the *WMZ* first went into effect, the main Dutch financial newspaper *Het Financieele Dagblad* has periodically published a supplement with a complete overview of all disclosed blockholdings, based on the original situation in 1992 adjusted by intervening announcements of changes⁵.

The database has over time become increasingly inaccurate for a number of reasons. First of all, when shareholders’ proportional stakes are changed, not by any trading of their own but by changes in the total amount of issued capital of the company, they do not need to report such changes. In addition, stakeholders tend to be forgetful about notifying decreases in their stakes. There have also been cases of large shareholders attempting to avoid or delay disclosure in order to hide their controlling interest from the public eye⁶. Lastly, pre-existing large shareholders in the 70 or so companies newly listed between February 1992 and June 1997 have not until July 1997 been obliged to disclose their stakes.

⁵ The two most recent overviews were published on 28 May 1996 and 31 May 1997. The newspaper’s published data is taken from a related commercial data provider, which has collected it in electronic form.

⁶ *Financieele Dagblad*, 7 May 1993. Possible sanctions range from polite reminders to fines and imprisonment.

The *Financieele Dagblad* has taken some measures to improve the accuracy of the data:

- Whenever there is a series of filings by the same shareholder in the same company, only the most recent one has been kept
- Any disclosures of stakes strictly below 5% in the *STE* database have been eliminated
- “Remnants” of overlapping stakes (direct and indirect), arising after only one sale is reported, have been removed
- Some disclosures that have been published in the press but apparently not sent to the *STE* are included.

The data is organised in the *FD* as follows. For each blockholding six categories are distinguished:

- a *kapitaalbelang* (includes b and c): total ownership (capital, dividend) rights
- b *middellijk kapitaalbelang*: indirect ownership (held by a subsidiary or a firm with which the filing firm has a long term agreement on joint policies in exercising the voting rights)
- c *potentieel kapitaalbelang*: potential ownership, for example from warrants, convertibles, or call options.
- d *stemrecht* (includes e and f): voting rights
- e *middellijk stemrecht*: indirect voting rights
- f *potentieel stemrecht*: potential voting rights

Clearly, these data are imperfect and further cleaning up work would be desirable before they are used in empirical research:

- indirect holdings need to be clarified. Sometimes in-depth perusal of the original notifications may be enough; but sometimes it may be necessary to contact the persons and/or companies involved, in hopes that they will be forthcoming with the information;
- the earlier mentioned deterioration of the data set over time due to changes in the denominator is hard to deal with unless the relevant law is tightened;
- share stakes of directors and company insiders are not included in the data base and need to be collected separately.

For all its faults, the *FD* database is the only one currently available, and in the next sections we will base our quantitative analysis on it.

C. OWNERSHIP STRUCTURE AND VOTING RIGHTS: QUANTITATIVE ANALYSIS

a. *The data*

As mentioned before, the Dutch disclosure requirements concern listed firms and we will focus on those alone. Our ownership data for Dutch listed companies are taken from the annual overview published in the appendix of *Het Financieele Dagblad* on May 28, 1996. The data describe the situation on May 8, 1996. The sample consists of 137 Dutch industrial companies listed on the Amsterdam Exchange. Only blockholdings of at least 5% are taken into account.

As in The Netherlands no groups of listed companies are found, we do not analyse groups separately. In addition, we focus on direct holdings only. Regarding indirect holdings, we can only obtain information regarding stakes of listed firms in other listed firms. Thus the data for indirect holdings would very incomplete. In any case, the data for the listed firms only reveals few and minor stakes, and no controlling stakes.

Many Dutch companies issue common shares directly to administrative offices (*administratiekantoren*) which in turn issue depository receipts after detaching voting rights. Ownership stakes reported by these administrative offices are excluded. Trusts for non-paid up preferred stock are also excluded. In addition, we adjust the data, wherever possible, for double reporting.

We make three adjustments to the data reported in *Het Financieele Dagblad*. First, many Dutch firms issue a large proportion of their shares in nonvoting certificate form via an administrative office (*administratiekantoor*), as described in Section A.a of this paper. The filings of such administrative offices are removed from the data set, as the ownership structure of the AK itself is unknown (though it is generally controlled by the company's management). Second, potential stakes are removed from the data. In general, the potential rights are non-paid up preferred stock placed in a foundation (*stichting preferente aandelen* or *stichting continuïteit*). Third, the indirect stakes may lead to double counting, as both the subsidiary and the parent may have filed the same stake; indeed, if the parent is a person and not a company, that is obligatory under the pre- June 1997 law. We try to correct for this by eliminating the stake of the subsidiary. The following example illustrates our procedure:

Example: WEGENER

Shareholder	a	b	c	d	e	f
Amev/VSB NV	5.15	5.15	0	-	-	-
Britt Holding BV	5	0	0	-	-	-
Heinsbroek, H.Ph.J.E.	5.837	0	0	-	-	-
Houwert, C.J.	21.27	21.27	0	-	-	-
Loeff Beheer, BV van der	21.27	0	0	-	-	-
Scottish Widows Invt.	5.38	0	0	-	-	-
Telegraaf, Holdingsmij NV	15.93	15.93	0	-	-	-
Wegener, St.Adm.Ktr	99.998	0	0	99.998	0	0
Wegener, St.Pref.Aand.	99.99	0	99.99	99.99	0	99.99
Wovang BV	5	0	0	-	-	-

Note: Column headings are defined in section B.b above.

For Wegener we would make the following adjustments. First, a 99.998% stake of administration office ('Wegener, St.Adm.ktr') is reported. This entry will be deleted. Second, a 99.99% potential stake of preferred stock is reported by a foundation ('Wegener, St.Pref.Aand'). This entry will be deleted. Third, we investigate the indirect stakes in columns b and e. In the row an indirect stake of Amev/VSB is reported. The problem is that we cannot find the direct shareholder, because no stake of the same magnitude is reported. This entry will not be deleted. Mr C.J Houwert reported an indirect stake of 21.27%. Van der Loeff Beheer has reported a stake of exactly the same percentage. It is very likely that mr C.J. Houwert controls Van der Loeff Beheer. For this reason this latter entry will be deleted. As with the stake of Amev/VSB, the stake of Telegraaf shows no clear resemblance with the other stakes. We choose to remove double entries as much as possible by eliminating the subsidiaries.

b. Analysis of findings

Table C.b.1 represents average ownership (of income rights) by company size and ownership stake classes. We find that the average size of the largest stake is 28.16%. There is a sharp decline for the second largest stake; here the average is 9.19%. We also report average stakes in companies classified into different size groups based on total assets at the end of 1995. Here we observe that average largest block (in percentage terms) decreases as the size of companies increases. For example, for companies in the smallest size category (total assets less than £70m) the average largest stake is 35.45%, while for companies in the largest size category (total assets over £2000m) the average stake is 28.16%.

Table C.b.2 repeats the analysis for voting rights. The same pattern of concentration decreasing with firm size is found. On the face of it, the voting blocks are comparable in size but slightly smaller than the ownership blocks of Table C.b.1. However, it should be remembered that blocks controlled by

Administratiekantoren, as well as potential rights (which are often triggered whenever there is a takeover threat) are not included in the analysis. Thus voting rights are in reality, when it matters, more concentrated than our table would suggest; and typically controlled to a large extent by company insiders.

We also analyse the ownership data based on a broad categorisation of **types of investors** (Tables C.b.3 and C.b.4). The average reported ownership stakes (income rights) of banks, insurance companies and other financial institutions are 7.21%, 2.37% and 15.48% respectively. Individuals and corporations have average stakes of 10.79% and 10.64% respectively. Voting rights are, again, somewhat less concentrated.

Graphical plots are provided in Figures 1 to 4 at the end of the paper.

Table C.b.5 describes the use of *administratiekantoren*. We selected all shareholdings labelled *administratiekantoor* or *stichting continuïteit* (“continuity foundation”), excluding any stakes that represent a potential rather than a current interest. The *AK*’s function is to detach voting rights from the shares that it controls, passing them on to investors in nonvoting certificate form; control of the *AK*’s votes typically rests with a foundation board appointed by the underlying firm and/or its initial shareholders. 55 of the 137 firms in the sample used this device; and, as can be seen from the table, in the majority of these cases more than 2/3 of the firm’s share capital was certificated.

Table C.b.6 describes a common device for countering the threat of takeovers: the use of *potential capital*, contingent claims which are only issued under specified circumstances, such as when the continuity of the firm is under threat (in other words, in case of takeover threats). These potential claims are typically held by a body called a *stichting preferente aandelen* or a *stichting continuïteit*. We limit our table to those firms where potential capital is at least 25% of the currently outstanding capital (thus excluding various individuals and employee share option schemes which typically hold no more than about a 10% stake). Note that potential stakes can and do exceed 100% in some cases, as the denominator is currently outstanding capital. We find that 35 of the 137 sample firms have important amounts of potential capital; indeed, in 27 of these the amount of potential capital is 98% or above, suggesting that the purpose of the potential stakes is to achieve a voting majority of 50% under the control of company management in any circumstances which trigger the the potential voting rights.

The conversion of shares into nonvoting certificates and the use of potential shareholdings do not seem to be substitute defence devices, as many firms use both. 18 firms both use an *AK* and have outstanding potential capital rights of over 25%.

Table C.b.1: Average ownership stakes of largest shareholders, May 1996. Means (and in parentheses, medians) are taken over the entire sample.

Size class	Number of observations	Largest stake	2 nd largest stake	3 rd largest stake	4 th largest stake	5-10 th largest stakes
1	29	35.45 (37.04)	14.51 (10.00)	6.00 (5.57)	2.67 (0)	6.53 (0)
2	28	30.31 (18.75)	9.25 (8.33)	5.47 (5.94)	3.94 (5.07)	7.81 (2.55)
3	27	31.38 (25.54)	11.07 (9.54)	5.03 (5.47)	3.88 (5.09)	4.39 (0)
4	28	21.42 (14.31)	7.71 (5.79)	3.00 (0)	2.02 (0)	2.08 (0)
5	25	21.35 (8.70)	2.57 (0)	1.39 (0)	0.91 (0)	0.66 (0)
All firms	137	28.16 (19.40)	9.19 (7.52)	4.25 (5.13)	2.71 (0)	4.39 (0)

Note: Size categories are defined in terms of total assets (TA) in millions of Dutch guilders on 31 December 1995:

- 1 TA < 70
- 2 70 < TA 300
- 3 300 < TA 550
- 4 550 < TA 2000
- 5 2000 TA

Table C.b.2. Largest blocks of voting rights, May 1996. Means (medians in parentheses).

Size class	Number of observations	Largest stake	2 nd largest stake	3 rd largest stake	4 th largest stake	5-10 th largest stakes
1	29	32.29 (37.02)	12.06 (10.00)	4.11 (0)	1.50 (0)	3.04 (0)
2	28	26.54 (17.53)	7.55 (7.80)	4.23 (5.18)	3.19 (2.51)	6.52 (0)
3	27	27.39 (20.06)	6.01 (5.39)	2.57 (0)	1.84 (0)	2.06 (0)
4	28	18.41 (11.34)	5.84 (0)	1.87 (0)	1.15 (0)	0.56 (0)
5	25	18.70 (6.30)	1.34 (0)	0.41 (0)	0.00 (0)	0.00 (0)
All firms	137	24.83 (14.91)	6.72 (5.33)	2.70 (0)	1.56 (0)	2.50 (0)

Size classes are defined in Table C.b.1.

Table C.b.3: Ownership blocks by types of large shareholders, May 1996. Means (medians) are taken over the entire sample.

Size class	Number of observations	Banks	Insurance companies	Other financial institutions	Pension funds	<i>Participatie maatschappijen</i>	Individuals	Industrial firms	State
1	29	5.74 (0)	1.82 (0)	23.81 (19.49)	1.36 (0)	0 (0)	19.11 (8.67)	11.59 (0)	1.72 (0)
2	28	9.64 (5.06)	3.58 (0)	15.11 (11.18)	0.51 (0)	0.65 (0)	20.42 (12.66)	6.85 (0)	0 (0)
3	27	6.82 (5.89)	3.00 (0)	23.29 (10.29)	0 (0)	0.38 (0)	4.94 (0)	17.32 (0)	0 (0)
4	28	7.83 (5.72)	1.49 (0)	9.03 (2.50)	0.80 (0)	0.45 (0)	6.01 (0)	10.62 (0)	0 (0)
5	25	5.90 (5.54)	1.97 (0)	5.05 (0)	0.22 (0)	0 (0)	2.00 (0)	6.57 (0)	5.18 (0)
All firms	137	7.21 (5.14)	2.37 (0)	15.48 (9.91)	0.60 (0)	0.30 (0)	10.79 (0)	10.64 (0)	1.31 (0)

Size classes are defined under Table C.b.1.

Table C.b.4 Voting rights by type of investor, May 1996. Means (medians in parentheses).

Size class	Number of observations	Banks	Insurance companies	Other financial institutions	Pension funds	<i>Participatie maatschappijen</i>	Individuals	Industrial firms	State
1	29	3.66 (0)	0.72 (0)	19.17 (10.00)	1.05 (0)	0 (0)	16.80 (0)	9.87 (0)	1.72 (0)
2	28	5.93 (0)	2.76 (0)	12.27 (10.00)	0.51 (0)	0.68 (0)	19.76 (8.33)	6.14 (0)	0 (0)
3	27	4.25 (0)	1.57 (0)	15.55 (5.01)	0 (0)	0.38 (0)	2.79 (0)	15.33 (0)	0 (0)
4	28	4.55 (0)	0.89 (0)	7.83 (0)	0.37 (0)	0.45 (0)	4.83 (0)	8.90 (0)	0 (0)
5	25	2.98 (0)	1.30 (0)	2.42 (0)	0.00 (0)	0 (0)	2.00 (0)	6.57 (0)	5.18 (0)
All firms	137	4.30 (0)	1.45 (0)	11.67 (0)	0.40 (0)	0.30 (0)	9.49 (0)	9.38 (0)	1.31 (0)

Size classes are defined under Table C.b.1.

Table C.b.5 Certification of shares

	Number of firms
No <i>administratiekantoor</i>	82
At least one <i>administratiekantoor</i> - with shareholdings (x) of:	55
$x \leq 25\%$	5
$25\% < x \leq 50\%$	15
$50 < x \leq 66 \frac{2}{3}\%$	5
$66 \frac{2}{3}\% < x \leq 90\%$	10
$90 < x \leq 99\%$	10
$99\% < x$	10

Note: All holdings that are labelled *administratiekantoor* or *stichting continuïteit* are included unless they represent potential rather than actual capital. In seven cases there were two (rather than one) AKs involved.

Table C.b.6 Potential stakes over 25%

	Number of firms
No potential capital over 25% reported	104
At least 25% potential capital - representing shareholdings (x) of:	35
$25\% < x \leq 50\%$	8
$50\% < x \leq 98\%$	0
$98\% < x \leq 100\%$	24
$100\% < x$	3

D INSIDE SUPERVISION

Most listed Dutch companies are large enough to fall under the *structuurregime* described in Section A.a, whereby the supervisory board is appointed by coöptation without direct shareholder input, and the management board is appointed by the supervisory board. There is much current debate on whether the shareholders and the employees of companies should have greater powers to appoint, re-appoint and depose Supervisory Board members.

Table D.1 describes average board sizes and the composition of boards, for listed firms only, for our sample of 137 listed Dutch industrial firms.

As far as we know, there has not yet been any systematic quantitative information collected about Dutch supervisory boards. The only information available is the names of individuals acting as members of different Boards. According to the October 1996 report published by the Dutch Committee on Corporate Governance, 69 individuals are members of two Boards, 39 persons are members of three Boards, and 20 persons are members of at least four Boards.

Table D.2 represents the *percentage of shares owned by board members*. The first column lists the 25 firms in which blockholders (with stakes large enough to be reported in accordance with the *WMZ*) or members of their family are on the supervisory or management board. The second column (*RvB*) provides the percentage of shares owned by members of the managerial board (*raad van bestuur*). The third column (*RvB/RvC*) adds the percentage of shares owned by the supervisory board (*raad van commissarissen*). In the fourth column (*RvB/RvC/Fam*) the percentage of shares owned by people with the same family name as member of the managerial and supervisory board is added. The average stakes (taken over the 25 firms with an inside blockholder) are 24.77%, 37.26% and 39.84% respectively.

Table D.1. Management board (RvB) and supervisory board (RvC) size and composition. Means (medians) are taken over the entire sample.

Size class	Number of observations	Number of positions: RvB	Number of positions: RvC	Total board size	Number of firms with insiders In RvB	Number of firms with insiders in RvC	Average stake of insiders RvB	Average stake of insiders RvC
1	29	1.76 (2)	3.10 (3)	4.86 (5)	5 (17.2%)	4 (13.8%)	5.70 (0)	11.91 (0)
2	28	1.93 (2)	3.71 (4)	5.64 (6)	7 (25.0%)	3 (10.7%)	9.90 (0)	13.56 (0)
3	27	2.41 (2)	5.00 (5)	7.41 (7)	2 (7.4%)	0 (0%)	2.07 (0)	2.07 (0)
4	28	2.89 (2)	5.36 (5)	8.25 (8)	3 (10.7%)	1 (3.6%)	4.32 (0)	5.37 (0)
5	25	4.84 (4)	7.52 (7)	12.36 (11)	0 (0%)	0 (0%)	0 (0)	0 (0)
All firms	137	2.72 (2)	4.87 (5)	7.58 (7)	17 (12.2%)	25 (18.2%)	4.52 (0)	6.80 (0)

Size classes are by total assets on 31-12-1995, as defined under Table C.b.1.

Table D.2. Insider ownership of listed firms. 'RvB' is the managerial board (*raad van bestuur*). 'RvC' is the supervisory board (*raad van commissarissen*). 'Fam' includes blockholders with the same surname as one or more member of one of the boards. Data reflect disclosed stakes (of at least 5%) only.

Naam	RvB	RvB/RvC	RvB/RvC/Fam
Sligro Beheer N.V.	0.00	12.46	23.85
Gouda Vuurvast Holding N.V.	0.00	13.60	13.60
Rood Testhouse International N.V.	0.00	19.40	19.40
N.V. Holdingmaatschappij De Telegraaf	0.00	29.41	29.41
Neways Electronics International N.V.	0.00	42.84	42.84
Cindu International N.V.	0.00	46.93	46.93
Burgman Heybroek N.V.	0.00	49.98	49.98
Naeff N.V.	0.00	97.05	97.05
Aalberts Industries N.V.	7.85	7.85	31.85
Nedcon Groep N.V.	8.67	8.67	8.67
Flexovit International N.V.	8.78	8.78	8.78
N.V. Dico International	10.58	10.58	10.58
Tulip Computers N.V.	17.53	17.53	17.53
Delft Instruments N.V.	20.41	20.41	20.41
Wegener N.V.	21.27	21.27	21.27
De Drie Electronics Beheer N.V.	24.40	24.40	48.80
Kondor Wessels Groep N.V.	35.35	35.35	40.85
Mulder Boskoop N.V.	44.65	44.65	44.65
Koninklijke Begemann Groep N.V.	46.60	46.60	46.60
Baan Company N.V.	47.60	47.60	47.60
Content Beheer N.V.	51.70	51.70	51.70
Randstad Holding N.V.	53.06	53.06	53.06
A.I.R. Holdings N.V.	55.63	55.63	55.63
Hollandia Industriële Maatschappij N.V.	77.10	77.10	77.10
Free Record Shop Holding N.V.	88.22	88.22	88.22
Average (over all 137 firms)	4.52	6.80	7.27

E. OUTSIDE SUPERVISION

Stock Market Institutions and Supervision of Securities Trading

There is one officially approved stock market in The Netherlands, now called the Amsterdam Exchanges Effectenbeurs N.V. (AEX-Effectenbeurs N.V.; AEX for short). The AEX is the outcome of a merger at the end of 1996 of three pre-existing institutions: the Amsterdam Stock Exchange (*de Amsterdamse Effectenbeurs*) the European Option Exchange (*de Europese Optiebeurs*) and the Financial Futures Market Amsterdam (*de Financiële Termijnmarkt Amsterdam*). At the same time, the governance structure of the exchange has been changed from a members' organisation to a straight commercial venture, a joint-stock company (NV), with share capital that will be listed in the near future. Currently ownership of the parent company, the *Amsterdamse Beursholding*, is as follows:

- members of the *Vereniging voor de Effectenhandel* (50%)
- institutional investors (25%)
- listed firms (25%)

This major change has coincided with a considerable upheaval in the regulatory structure. In particular, a working agreement reached between the AEX and the STE (*Stichting Toezicht Effectenverkeer*) in December 1996 confirmed a major shift away from self-regulation by the exchange to regulation by an independent outside body, the STE, whose supervisory role is now much broader than it has been to date. Responsibilities of the AEX and the STE have been divided as follows. The STE will carry out all control and supervision tasks that are not "exchange-specific"; in particular, it will now be in charge of vetting and licensing those who want to participate in securities trading, thus in effect controlling access to exchange membership. The STE will also monitor and verify the *maand- en kwartaalrapportages* (monthly and quarterly financial reports) of member firms; these are used to determine whether firms are financially sound enough to meet the criteria for permission to trade on own account or, in general, to engage in exchange-traded securities business. Meanwhile, the compliance division of the AEX will continue to monitor members' day-to-day position-taking. The AEX will also continue to take charge of evaluating candidates for a new listing, and approve prospectuses and other documents put forth by firms who issue listed securities.

The impetus for this shift away from self-regulation is partly derived from public perception of past failures. In two notorious cases of bankruptcies of securities houses, the exchange members' self-regulatory body (the *vereniging voor effectenhandel*) had failed to take action despite clear signs that there were problems. The Nusse Brink case concerned a firm that was allowed to continue trading for own account even when its equity capital fell below the prescribed norm; the authorities failed to verify the financial information provided by the firm despite clear signs of administrative failures within it. In the case of Regio Effect, its directors were accepted as exchange members even though it was known that they had been denied options exchange membership and fired from their previous banking jobs because of a massive suspected fraud involving options contracts. They subsequently continued with a host of unauthorised and fraudulent practices (misappropriation of clients' funds, misleading disclosures of their financial position, settlement at false stock prices, etc.); the authorities were

extremely slow to respond to signs of these activities thrown up by routine monitoring.

At the same time, the conversion of the exchange into a commercial organisation also makes a self-regulatory approach to supervision less appropriate.

Formally, the supervision of securities trading is the responsibility of the Ministry of Finance. The Minister, however, has delegated most of his tasks and authorities to the *STE*, which in turn supervises the selfregulation by the exchange. Some changes to the current version of the law governing securities business (the *Wet Toezicht Effectenverkeer 1995*, or *WTE* for short) are required to delimit the areas of competence and adjust to the new regime⁷. A revised *WTE* is currently being debated in parliament.

Meanwhile, some further changes are expected in the longer term to cope with the increased degree of integration between banking, securities business and insurance. Many integrated Dutch financial firms, such as Fortis and ING, are commingling these activities, necessarily creating overlap between the authorities responsible for supervision, and creating an impetus for a possible future merger of the three relevant authorities:

- the *STE* for securities business;
- *De Nederlandsche Bank* for banking supervision; and
- the *Verzekeringkamer* for insurance companies.

So far cooperation between these authorities is mostly limited to producing a joint register for vetting individuals who wish to run businesses in these areas. An added reason for integration of the three authorities is that financial fraud so often has an international dimension. The Bank for International Settlements has recently suggested that placing supervisory authority in one hand within each country would facilitate liason among supervisors in different countries.

Listing requirements

As of January 1 1997, the Minister of Finance has awarded the status of “competent authority” for purposes of the evaluation of new candidates for listing to the *AEX*⁸ (formerly, the *vereniging voor effectenhandel* was in charge). Firms who want a listing must sign the *Fondesenreglement*⁹ and the *Modelcode*. The *Fondesenreglement* sets down trading rules and listing requirements such as the size and composition of the capital issued, and the contents of the prospectus. The *Modelcode* contains agreements about, among other things, trading in the listed company’s own shares and options by company officials. These rules, developed over time by the *vereniging voor effectenhandel*, form the basis for trading on the *AEX*.

⁷ For example, the *STE*’s denial of a licence to a securities firm was challenged in court in April 1997.

⁸ Despite some dissent from the *STE*, which felt that the new exchange holding company has a commercial interest in evaluating potential new listings. An interesting possibility will soon arise: will the *AEX* be evaluating its own listing prospectus in the near future?

⁹ An ongoing dispute concerns the listing agreement of CSM, a company which has refused to sign a section of the *Fondesenreglement* forbidding the use of ‘niet-royeerbare certificaten’ as a takeover defense measure. CSM has been using this device for 60 years. The exchange has tried to terminate CSM’s listing unilaterally; but this decision has been successfully challenged by CSM in court.

Since the abolition of the Officiële Parallelmarkt in October 1993 there has been only a one-tier market on the Amsterdam Exchanges. Just recently a second tier has been established by the foundation of the New Market Amsterdam (*Nieuwe Markt Amsterdam: NMAX*) segment of the AEX. The listing requirements on the AEX main market (*Officiële Markt*) are:

- a history of at least five years.
- in at least three of these five years a profit must have been reported.
- at least f10.000.000 equity capital.
- at least 10% of the equity capital must be available for trading with a market value of at least f10.000.000.
- a listed firm has to be a *N.V.* or a *cooperatie*.
- a listed firm has to obey to additional requirements set down in the *fondsenreglement*.

The listing requirements on the *Nieuwe Markt* are:

- a history of at least three years.
- at least ECU 1.000.000 equity capital.
- at least ECU 1.000.000 (market value) of the equity capital must be available for trading.
- quarterly disclosure.
- the same additional requirements set down in the *fondsenreglement* apply.
- lock-up: initial shareholders with a stake larger than 5% are not allowed to sell shares during a certain period.
- a sponsor (bank or brokerage house) is required during the first three years of listing.

The *Nieuwe Markt* is linked to the French and Belgian second-tier markets in the *Euro-NM* initiative, an attempt to develop a unified trading forum for small European companies.

The rules with respect to the distribution of information before a public offering are framed in the *Fondsenreglement*. Some rules are: an unlisted security is not eligible for trading until a prospectus has been published (article 8). The prospectus must be published: a) in a Dutch newspaper that is distributed nationwide or has a large circulation, or b) as a brochure which must be available free of charge to the general public (article 20, paragraph 2). Every new potentially price-sensitive fact that becomes known during the period in between the determination of the contents of the prospectus and the first day of trading, must be published in a supplementary document (article 21, paragraph 1).

Insider trading

Rules regarding the use of inside information are framed in article 46 of the current law on the supervision of securities trading, the *Wet Toezicht Effectenverkeer 1995*. In addition, the *Modelcode* that forms a part of the AEX listing agreement bans trading by high-ranking company officials at sensitive times such as the period around the publication of company financial results.

At the moment proposals for amendment of the law are under consideration by the parliament. The proposed changes would lighten the burden of proof somewhat, as it has proved extremely difficult to prosecute even blatant cases of misuse of inside information successfully. In particular, the prosecutor will no longer need to prove that it was clear in advance how the stock price would move. There is also some debate about making it possible for insider trading to

be prosecuted under civil rather than criminal law, which a correspondingly less stringent burden of proof. In addition, the law is to be more closely aligned with European guidelines; and the prohibition is to be extended to initial public offerings. There are also proposals regarding a *meldingsplicht* (obligation to disclose) for securities trading by certain individuals, including supervisory board members (*commissarissen*) and executives, associated with the issuing firm. Some other issues that are being debated are the regulation of employee share option plans to prevent related insider trading, the recognition of “Chinese walls” within banks and securities firms (so that a division can still trade even if price-sensitive information exists elsewhere in the firm), share issuance and underwriting procedures, and clarification of the legality of building up stakes in a company that is to be taken over.

The rules are enforced as follows. Suspicious dealings, possibly uncovered by the exchange’s routine surveillance procedures, are investigated by the *STE*, in co-operation with the Ministry of Finance’s *Economische Controle Dienst* and the *Openbaar Ministerie* or *OM* (which prosecutes suspected offenders if the evidence is strong enough).

The *OM* is severely understaffed and therefore quite slow, and it has in the past not always taken a very tough line¹⁰. Moreover the burden of proof is very high, and the collapse of an important insider trading case (HCS) generated a public perception that inside information can be abused with impunity in The Netherlands. More recently, in the Weveler case in 1997, the *OM* has been more successful, obtaining a conviction in a case without absolute proof or incriminating witness declarations, just strong circumstantial evidence. Several other well-publicised cases are currently pending.

Possible penalties for insider trading include fines, disgorgement of profits and a prison sentence.

Takeover rules

Rules regarding conduct in takeover situations are spelled out in the Merger Conduct Code of a national body, the Social and Economic Council (the *sociaal economische raad* or *SER*). This code gives rules for negotiations leading up to a possible merger or participation. The Merger Conduct Code is designed to protect two parties: shareholders and employees. With respect to shareholders: (i) all holders of shares for which a bid is made should have access to as complete and accurate as possible information regarding the merits of the bid; (ii) they should all receive equal opportunities to accept or reject the bid; (iii) unjustified gains to inside shareholders as a result of inside information should be prevented. Preventing the abuse of inside information is achieved by obliging every managerial and supervisory board member of the company involved to notify the above mentioned *SER* of their shareholdings and their transactions therein (both direct and indirect) during the six months preceding the merger announcement. If a third party makes a higher bid in the meantime, the management of the company that is taking over must promptly make public the

¹⁰ In a case that came to public attention as a result of journalists’ efforts in February 1997, the public prosecutor had in 1995 agreed to a quiet settlement even though the defendant admitted guilt and the facts of the case were unambiguously established. Only after the case came to light in 1997, was the person concerned (a senior ABN-Amro bank employee) forced to step down from his job.

measures on its part to which this bid gives rise. To shareholders who retain their shares after the bid, no higher bid may be made during the three following years, other than with the permission of the *SER*-commission or in regular stock exchange trading. In early 1996 the *SER* brought out an advisory document, proposing, amongst other things, to give a legal foundation to the *SER* merger rules. This could ameliorate a number of deficiencies in the rules.

As mentioned before, the listing agreement with the *AEX* also places some limits on companies' arsenal of defenses against hostile takeovers, as well as on trading by insiders.

Auditors

The annual and semi-annual financial reports published by companies are subjected to auditor scrutiny before release. In recent years some auditing firms have changed their structure to create limited liability. There are some well-known cases where auditors have been brought to court, for example, the Smit-Trafo initial public offering and the Vie d'Or case.

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Figure 1a (ownership)

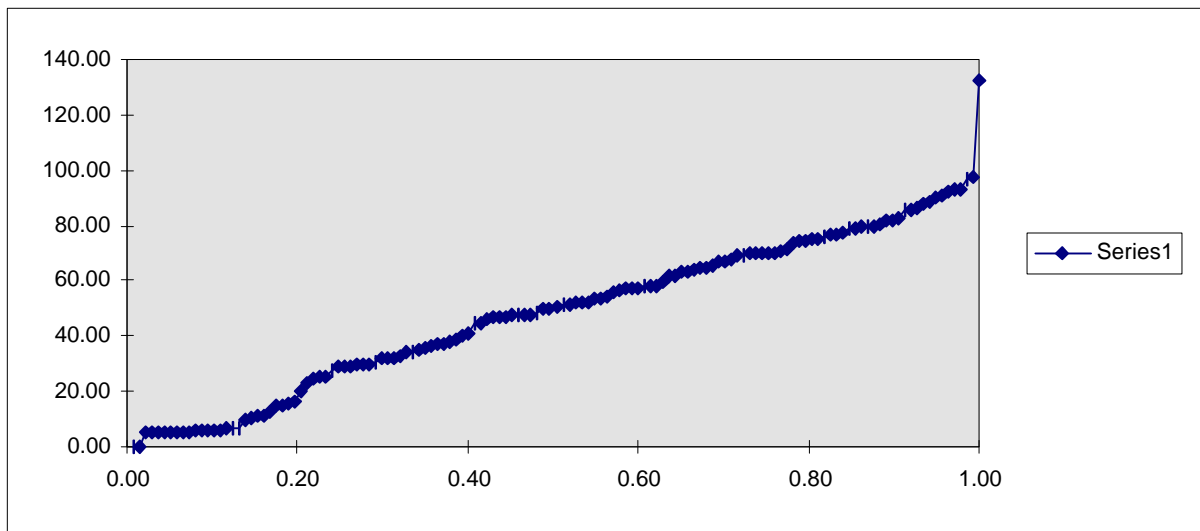


Figure 1b (control)

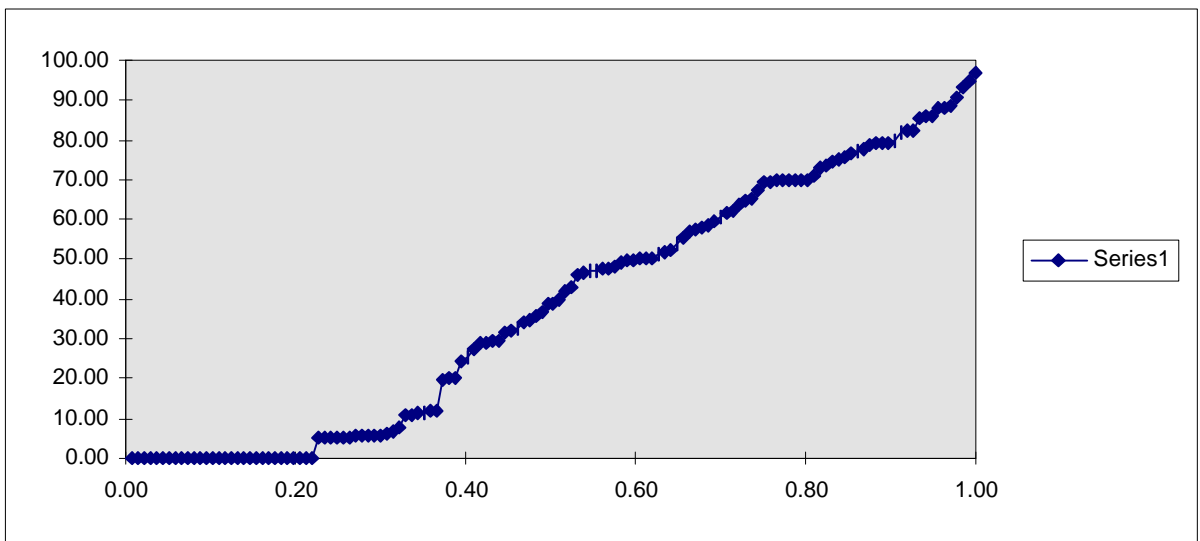


Figure 2a (ownership)

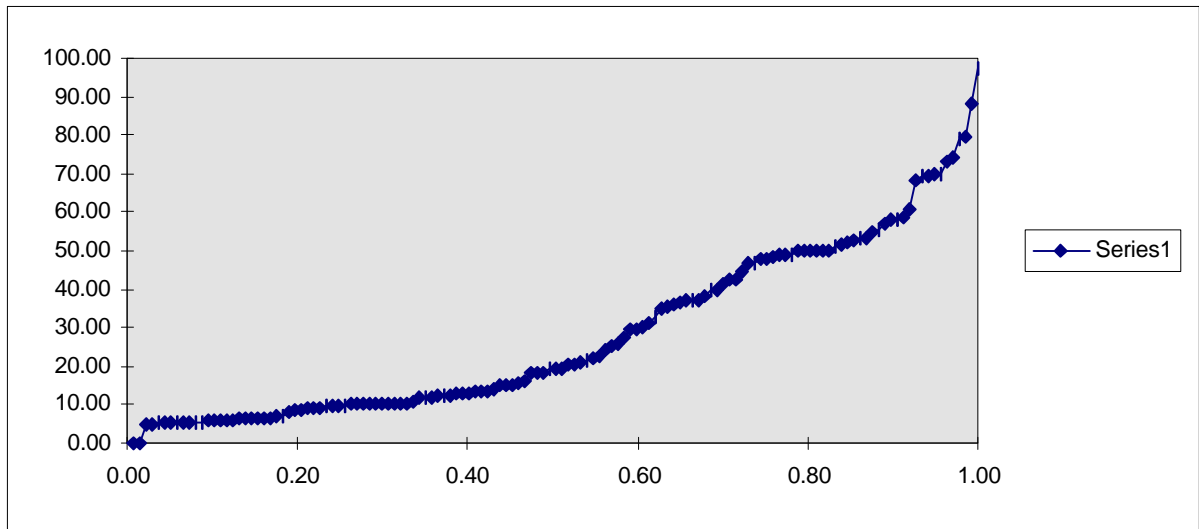


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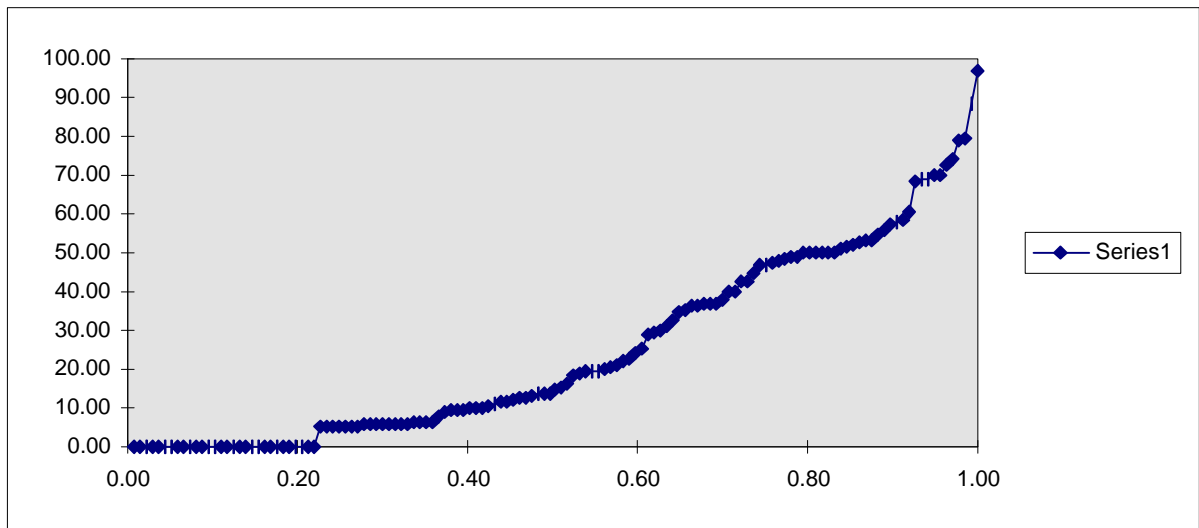


Figure 3a (ownership)

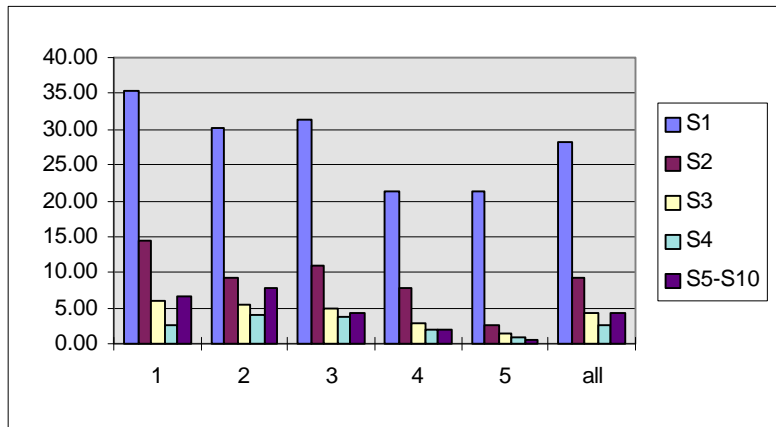


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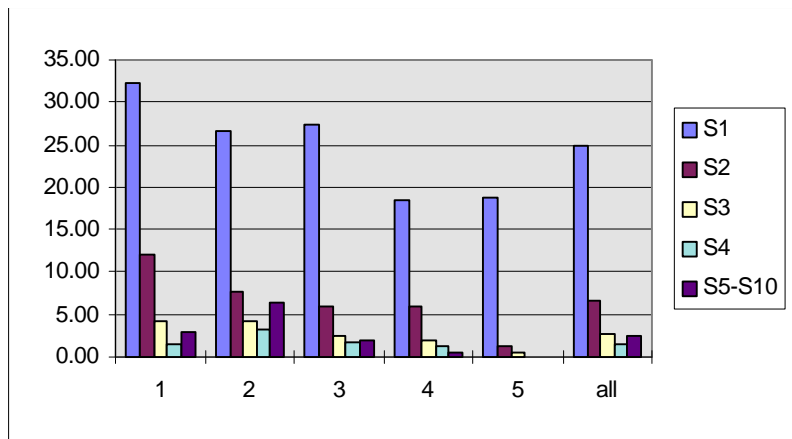


Figure 4a (ownership)

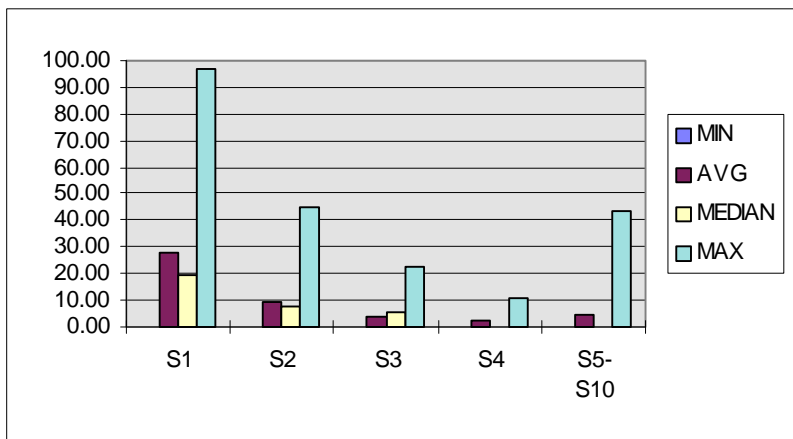


Figure 4b (control)

