We are writing in response to your consultation on the amendment of the Financial Supervision Act and the Banking Act 1998 to implement Directive (EU) 2024/1619 on capital requirements for banks and Directive (EU) 2024/2994 on exposures to central counterparties (Capital Requirements Implementation Act 2026) (the **Bill**) and in particular its implementation of EU Directive 2024/1619 amending Directive 2013/36 (**CRD VI**).

We are acting for the Bank Policy Institute and Loan Market Association jointly (on behalf of their memberships). We and our clients believe that we have identified some unintended errors in the Bill which we wanted to bring to your attention, as further described below.

Background

In broad terms, Article 21c of CRD VI (and the proposed amended Article 2:20 of the Financial Supervision Act) prohibits the provision of "core banking services" (being the activities in points 1, 2 and 6 of Annex I to Directive 2013/36/EU, as amended (**CRD**)) by third-country institutions other than from a locally licensed branch, subject to exemptions (the **Branch Requirement**).

Issue 1: Article 21c(5) – "grandfathering"

Article 21c(5) of CRD VI states that the Branch Requirement is without prejudice to existing contracts that were entered into before 11 July 2026, to "*preserve clients' acquired right under existing contracts*". This means that legacy contracts for the provision of core banking services entered into lawfully before that date will not attract licensing requirements for the service provider.

This provision is not implemented in the Bill. The correlation table in the explanatory note relating to the Bill states that this is not required because this is a transitional provision for a situation that does not exist in the Netherlands since there is already a licensing regime for branches. We understand this is a reference to the current Article 2:20 of the Financial Supervision Act stating that it is prohibited for any person with a registered office in a non-Member State to conduct banking business from a branch office located in the Netherlands without a license granted for that purpose by De Nederlandsche Bank.

We do not think it is correct that in the Netherlands there is no need to implement the grandfathering provision as provided for by CRD VI. The provision does not relate to branch regulation as such, but rather preserves the status quo where local recipients of core banking services have already entered into contracts which would otherwise now become unlawful as a result of the Branch Requirement. For example, it is currently permissible to lend to a customer in the Netherlands from another jurisdiction without obtaining a licence (unless such customer is a consumer). We think the purpose of Article 21c(5) is clearly intended to carve out from the Branch Requirement any lawful contracts entered into with an EU customer under the existing regime before 11 July 2026.

If the Netherlands does not implement this provision, then Dutch customers who have previously acquired rights in relation to e.g. lending contracts would be prejudiced once the Branch Requirement goes live. From the correlation table, we understand this was not the intention for omitting this provision in the Bill. We kindly ask that you review this omission in the next draft of the Bill.

Issue 2: Article 2:20(3)

Articles 21c(4) and 47(2) of CRD VI provide for an exemption – the so-called "MiFID exemption" – whereby the branch and licensing requirement laid down in Article 21c of CRD VI shall not apply where the core banking services provided by the relevant third-country institution are "accommodating ancillary services" to services provided under Directive 2014/65/EU, as amended (**MiFID**).

We endorse the approach taken in the Netherlands transposition to explicitly include within the scope of the exemption core banking services which are provided in the context of Section A or Section B Annex I MiFID

services i.e. including custody. We think this is helpful in clarifying market concern on this issue following ambiguity in the Level 1 CRD VI and that the inclusion of Section B Annex I services is necessary to prevent significant disruption in European markets for access to services (like custody) which we do not think are the intended target of the Branch Requirement.

Separately, we note that the relevant transposing provision (a new Article 2:20(3) of the Financial Supervision Act) says that "*the first paragraph shall not apply if the activities referred to in the first paragraph are directly related to the performance of and necessary to carry out"* MiFID services.

We believe this is narrower than the MiFID exemption as set out in CRD VI. The EU level text only requires that core banking services be "accommodating ancillary services" to the relevant MiFID service for the exemption to apply. It does not require that they are "necessary", and we believe that "directly related to" could be interpreted as having narrower scope than "accommodating ancillary to".

If this exemption is transposed differently across Member States, this would create unequal access to such services for recipients, and in this case potentially restricts access to the MiFID services in question for customers in the Netherlands where this was not intended under CRD VI. We would argue that transposition in line with the EU-level text would provide the most certainty for market participants.

From the explanatory note, we have not identified any intention or policy reason to implement this exemption more narrowly than under CRD VI. "We would recommend the following amendment to Article 2:20(3) of the draft Financial Supervision Act:

"*The first paragraph shall not apply ~~if the activities mentioned in the first paragraph are directly related to the operation of and are necessary to implement the~~ to the services or activities ~~mentioned~~ listed in Annex I, part A or B, of the Markets in Financial Instruments Directive 2014, including any accommodating ancillary services thereto (including the activities listed in items 1, 2 and 6 of Annex I of the Capital Requirements Directive).'*"

Issue 3: explanatory note regarding Article 21c(3) "reverse solicitation"

We note that the new Article 2:20(3) of the Financial Supervision Act implements Article 21c(3) (regarding services provided at the exclusive initiative of the client) directly by reference.

However, the corresponding explanatory note implies that the exemption is implemented more narrowly than Article 21c(3). The explanatory note says that "*It is also not permitted, on the basis of Article 21c, third paragraph, CRD to offer other products, activities or services if a service is purchased by an EU citizen, unless this other service is necessary for the service initially requested*."

However, Article 21c(3) of CRD VI is clear that "closely related" products may also be offered to existing EU clients. Since this is the case in the Bill (given it incorporates Article 21c(3) directly), we assume that this is an oversight in the explanatory note. We kindly request that this is clarified.