

Title: Tales of Incompetence and Corruption of Financial Regulators in The Netherlands (including the Dutch Ministerie van Financiën, AFM, KiFid, Nationale Ombudsman)

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>DISCLAIMER: Nothing written here should imply that The Netherlands as an EU member state or its financial authorities/institutions are guilty of incompetence or corruption. It may look like that from the outside, but so far these are only "Tales" that have not been through court, nor have they been escalated to higher authorities at the level of the European Union. But this post still raises important questions that deserve answers, posted here for public record. From the perspective of retail investors, these are critical topics that deserve more in-depth investigation.

A lot has been written about financial authorities and self-regulation in the United States. Let's look at how that's structured in the European Union! It's particularly interesting because of the heavier regulations and bureaucratic process in Europe, so there are multiple forms of oversight required by the Acts/Directives themselves. National authorities and regulators can't ignore these without the entire European Union losing its credibility.

Why The Netherlands? It's where one of the biggest consumer brokers is primarily regulated (i.e. DEGIRO); all its consumer disputes are resolved there by KiFid, and the AFM as financial market regulator is acknowledged to have "conduct supervision" over DEGIRO — which by definition includes consumer facing actions and policies.

In this post, I'll present information how Dutch "self-regulation" is structured, the kind of procedures they use that appear harmful to retail investors, the legal loop-holes that seemingly allow the system to perpetrate itself, and possible ways to hold them accountable to ensure they are responsible for the damage they are causing. I will leave you to decide if (a) it looks like a system that establishes and reinforces harmful practices against retail investors, and if (b) it's being intentionally maintained this way.

****TL:DR;***deep breath*** KiFid handles consumer disputes for brokers like DEGIRO and issues judgements. Its judgements, which often just repeat the arguments they are given by financial services' lawyers, are then used by these companies to justify their policies (e.g. DEGIRO's seemingly non-compliant 20% range restrictions on all Limit Sell orders). Turns out KiFid is also funded by financial services providers, and employs advisors & consultants with ties to the financial services industry — even on the highest-level board which supposedly has oversight over KiFid's activities. Conflict of interests like share holdings are also not disclosed, and yet KiFid still calls itself impartial. KiFid thus acts as a front-line regulator in U.S.-style a "self-regulatory" system. KiFid's director refuses to answer questions of EU regulatory compliance on the record, despite the National Ombudsman acknowledging they are responsible and the first point of contact for this. The national financial authorities (AFM) claim to not have oversight over this when it's officially acknowledged they share part of the responsibility for DEGIRO's actions. The Ministry theoretically has ultimate responsibility but is systemically distanced from the mess (intentionally or not) as it does not have oversight over individual cases and has made KiFid an independent "institution" and not government. Both KiFid and the National Ombudsman refuse to provide contacts at the Ministry who has oversight over alternate dispute resolution (ADR), and there's (so far) no evidence that anyone there is ensuring compliance with EU regulations — including but not limited to ADR.****phew, breathe out*****

(In case you're curious, all this stems from a complaint of mine over 1 year ago about DEGIRO's apparently non-compliant 20% range restrictions on all Limit Sell orders. This restriction was established January 2021 after the first GME squeeze and still affects people's ability to place Limit Sell orders for GME today.)

Call for Whistleblowers

There's IMHO already enough information from insiders to raise significant regulatory and reputation questions for the Dutch financial authorities unless decisive action is taken. However, the more whistleblowers start recording everything and/or come forward, the quicker we can start fixing broken systems and the smoother the transition will be to a market that's actually fair.

I'm sure there are brave & honest people in government; now's the time for them to take action!

In particular, calling on whistleblowers from within these institutions:

1. **KiFid** — Klachteninstituut Financiële Dienstverlening *(handles consumer complaints)*
2. **AFM** — De Autoriteit Financiële Markten *(oversight over financial markets)*
3. **Nationale Ombudsman** *(holds government accountable)*
4. **Ministerie van Financiën** *(has oversight and ultimate responsibility)*
5. **Brokers** *(provide services to retail investors)*

Since anyone can be a whistleblower, even if the problems at hand are resolved before they snowball, recording extensive notes will ensure that bureaucrat involved expect to be investigated for every single one of their actions (or lack thereof). This makes it more likely for everyone to act in a compliant way — which is a big part of the solution!

*NOTE: Apparently my posts are also read in government, so I felt it was important to include this section. They are watching; many are scared. More *will* take action!*

Systemic Oppression of Retail Investors?

This due diligence is the result of a year of interactions, directly or indirectly, with these Dutch institutions. It's just an overview to paint the big picture that may not be obvious on the surface. If there's enough interest, I will gladly go into detail where I feel qualified to do so!

* [KiFid](<https://kifid.nl/>) is the institute for "Alternate Dispute Resolution" (ADR) in The Netherlands. It's where most consumer disputes are escalated. You're expected to have completed an internal complaint with the broker first, which usually takes 2-3 months. (Coincidentally, the more impactful your complaint, the longer the broker takes to handle it. Mine was overdue by ~50% the official deadline.) Then, after the broker surprisingly finds itself not-guilty, you get to submit to KiFid — which will take about a year in total!

* KiFid handles disputes but in practice it's also a front-line regulator that interprets and clarifies regulations. It uses a U.S.-style self-regulatory model: it's an organization funded by financial services providers (see [Funding Section](<https://www.kifid.nl/about/>)). KiFid brands itself as "impartial and independent", but by "independent" it means that it's technically a standalone institute that's not part of government. As for "impartial", it borrows a U.S.-style revolving door with some consultants or advisors for financial services industry that make up their committees — including [the board itself](<https://www.kifid.nl/organisatie/>). Conflict of interest much? What's worse, financial conflicts of interest (such as share ownership) are not disclosed by KiFid.

* The European Union Directive that covers Alternate Dispute Resolution (PDF) specifies that ADR institutions must disclose facts that may be considered conflict of interest — so technically KiFid is arguably in violation of the directive by not disclosing things like share ownership. You'd expect *any and all* conflicts of interest to be completely disallowed by KiFid (especially on the board, which has top-level oversight within KiFid), since branding itself as "impartial" would potentially constitute a fraudulent misrepresentation of its internal structure otherwise.

* KiFid fulfils The Netherlands' requirement for "Alternate Dispute Resolution" under European Union regulations like 2013/11/EU (PDF). Officially, the Ministry has oversight over KiFid. However it does not have oversight of individual cases. This allows the Ministry (intentionally or not) to claim plausible deniability for mishandlings at the case level, and also (intentionally or not) to distance itself from the impact of KiFid's actions at the case level. If you intend to escalate any matter to the Ministerie van Financiën, it'd help if you can show systemic flaws and instances of major failures!

* In alternate dispute resolution, you're officially not required to have a lawyer (per ADR regulation

2013/11/EU), but you're basically going up against senior council who is paid to produce dozens of pages of legalese word soup to intimidate you. The ones I received spent pages and pages on 'Ad Hominem' attacks, claiming that Reddit (incl. DEGIRO's only online forum) has no legitimacy and hosts only conspiracy theories. (Speculation: This is part of a coordinated strategy also seen elsewhere to avoid the core of the issues and instead focus on discrediting anyone who files complaints.)

* Financial service providers regularly use KiFid judgements as a way to justify their policies, like [this one: 2021-0505](<https://www.kifid.nl/judgement/uitspraak-2021-0505/>), which is why KiFid can be considered a front-line regulator. I've seen these judgements quoted as justification for internal complaints at brokers as well as in the ADR procedure itself (dozens cited). However, KiFid proudly says it operates independently and acknowledges it does not consult the AFM, so its verdicts should be considered neither authoritative nor binding as policy. In fact, even people who request ADR have a choice to accept the verdict, the verdict is only binding on the financial services companies (as per Directive 2013/11/EU linked above).

* **This creates a situation where an individual consumer accepting a KiFid verdict (like 2021-0505), after having to present a case at a high legal standard and likely overpowered by corporate lawyers, can affect financial services policy for brokers Europe-wide simply by accepting an adverse judgement during Alternate Dispute Resolution.**

* For example, 2021-0505 has become the core of the legal argument that DEGIRO uses to defend its apparently non-compliant 20% range restrictions on Limit Sell orders. "Look, we got regulatory approval!" they claim, when in fact that's quite a stretch. Note that 2021-0505 didn't even have a hearing within KiFid for experts to confer, it's unclear which experts were involved (if any), the KiFid director refused to confirm cases such as these were handled in a compliant way, and the main legal argument from the PDF summary merely quotes from DEGIRO's defense almost verbatim.

* If you're thinking, surely someone must have oversight on this? Why not contact the authorities in The Netherlands, de Autoriteit Financiële Markten (AFM)! Well, the AFM officially does not acknowledge whether it's even investigating complaints [sent its way](<https://www.afm.nl/en/consumenten/themas/klacht/melding-afm/>): **"The AFM cannot inform you whether an investigation will be conducted pursuant to your complaint."*

Intentional or not, this means there's no transparency or accountability of the AFM from the public's perspective. They could use plausible deniability as a tool to delay or archive complaints, and nobody would even know. This is similar to a corporate legal strategy that's used to claim they didn't know something (e.g. bad actors in financial markets), and therefore are not responsible for taking action sooner. Do you find it strange that financial authorities also behave like this, as if to minimize their own legal risk?

* Finally, the Ministerie van Financiën theoretically has oversight over KiFid, but not over individual cases. So you can't complain about the handling of 2021-0505 specifically — no matter how you feel about the fairness and legality of DEGIRO's 20% range restrictions on all Limit Sell orders. Apparently, the only way to have 2021-0505 repealed is for someone else to go through this self-regulatory dispute resolution again. (Even going to court may not be sufficient to repeal previous KiFid judgements.)

If you made it through this list and this sounds like a mess, it's because it is! It's a complex system that seemingly allows KiFid and its self-supervised "Alternate Dispute Resolution" to provide judgements on cases, which are then used by financial services providers (who fund KiFid) to justify their own policies. There's little to no oversight in the system, as the AFM apparently has no authority over KiFid and the Ministry does not have oversight over individual cases.

**Does it look like a system that establishes and reinforces harmful practices against retail investors to you? Does it appear as if it was intentionally setup and now maintained this way?*

Partial List of (Possible) Mistakes from Authorities So Far...

IMPORTANT NOTE: I won't provide the full text of my interactions with these institutions unless the system fails in a way that harms retail investors and/or it goes to court. As such, this section is not "Due Diligence" but rather a "For The Record" log with cryptographic signatures using sha3-256 hashes, digitally 'notarized' on the blockchain, so it can be used as evidence later.

* **KiFid's director refused to respond to questions of compliance on-the-record. It appears to me that KiFid neither has the time, resources nor inclination to handle matters of compliance with European Union

directives.** Do you also find it suspicious when people with responsibility want to address formal requests "off the record"? (Document hashes

`3091851da4eb7a73f146bb09818d3575b8751105511f9a514daed4728973e113` and
`abb4887eb3b286c8af34c96303fb290fccd8f04c220c044873d350d470b459fe`.)

* The Nationale Ombudsman responded to my escalation that KiFid is indeed the first point of contact for questions of compliance on ADR, so KiFid's dismissive handling of this matter seems problematic for Dutch compliance with European Union regulations. (Document hash
`8c3ccf0850fe864945fccbe7dcb070c0bb9bc5d576c7b0dfa54b4fac0bfc4414`.)

* The AFM suggested it does not have oversight of KiFid, apparently only the Ministerie van Financiën has oversight there — and it's unclear whether anyone is actually in that supervisory role or if they rely on "self-supervision" all the way! (Document hash
`cf4cd64f6cf13f2965dd90d8c5617880e3d768eb92a3d0d8bbdad965f26a94c5`.)

* The AFM also claimed it does not have oversight over DEGIRO either because of the flatex acquisition (based in Germany), and refused to investigate. This is also problematic because AFM is indeed responsible for "conduct supervision", [defined here](<https://www.linklaters.com/en/insights/publications/2020/january/financial-services-conduct-supervision-what-to-expect-in-four-key-eu-jurisdictions>) as follows:

>The Dutch regulator is "problem-oriented". Dutch law expresses conduct supervision in terms of outcomes, describing it as something aimed at securing orderly and transparent financial market processes, integrity in relations between market parties and due care in the provision of services to clients.

* Worse, the AFM refused to investigate DEGIRO in this matter — which is unusual because of its policy that says you won't be informed about the result complaints! But in this case it flatly denied it had oversight, which seems like a double mistake. (I speculate they got thrown off by reports of KiFid's actions.) DEGIRO later acknowledged the AFM did have responsibility for conduct supervision — which covers matters like this one. (Document hash
`c82d73b0d96cc318f341864a261ced327facfa29b13d026aeaa604484e4aaa4c`.)

* Even the Nationale Ombudsman has been dragging his feet. It first took nearly a whole month for him to reply that Kifid is outside his field of responsibility due to the fact it's an "independent" institution, and then another 3 weeks to decline to even confirm if & who at the Ministry has oversight over ADR. Does this seem like a tactic to delay the complaint and obfuscate responsibility to you? (Document hash
`523d699ec95dad03cdc0f7c54aba5173ff829bf4e72fd5ea37f7589a4c1da272`.)

Depending on how you look at it, most of the bureaucrats involved here appear either (i) unable or unwilling to perform their duties with due care, or worse, their actions are (ii) complicit in reinforcing systemic biases in favor of the financial services industry. Theoretically, either of these cases are legally actionable, so unless it's handled soon in a decisive way it's likely to be a massive problem for the Dutch government as people catch on and demand answers.

How To Decide (or Prove) Incompetence or Corruption?

DISCLAIMER: Again, nothing I've written here should imply that The Netherlands as an EU member state or its financial authorities are definitely guilty of incompetence or corruption. These are not accusations they are serious questions looking for thoughtful answers. The matter has not been assessed by a competent court (and/or a higher-level authority within Europe), and I believe there's still room for Dutch national authorities to handle things correctly. We should judge them by their ability to handle difficult situations like GME, and I believe time will tell...

Furthermore, I'm not a lawyer, and it's quite possible I've taken this as far as I can without one! If one or more lawyers are interested in taking over from here, I will gladly provide all the information I have once there's a signed agreement in place.

My focus has been on ensuring as much information as possible is recorded through the process. I believe there's enough evidence to show that authorities were informed of problems they should have acted on, and then subsequently did not act — thus IMHO they are potentially liable under commercial law and simultaneously could be in breach of multiple directives of the European Union. Whether this is considered incompetence or intentional misconduct will depend on how bureaucrats, and in particular the Dutch Ministerie van Financiën, handle the matter going forward.

For those of you who intend to file a serious complaint at any of these institutions (e.g. AFM, KiFid), or if you have already and were disappointed at how it was handled, feel free to reach out, tag me or post a reply below!

****TL:DR;** KiFid handles consumer disputes for brokers like DEGIRO and issues judgements. Its judgements, which often just repeat the arguments they are given by financial services' lawyers, are then used by these companies to justify their policies (e.g. DEGIRO's seemingly non-compliant 20% range restrictions on all Limit Sell orders). Turns out KiFid is also funded by financial services providers, and employs advisors & consultants with ties to the financial services industry — even on the highest-level board which supposedly has oversight over KiFid's activities. Conflict of interests like share holdings are also not disclosed, and yet KiFid still calls itself impartial. KiFid thus acts as a front-line regulator in U.S.-style a "self-regulatory" system. KiFid's director refuses to answer questions of EU regulatory compliance on the record, despite the National Ombudsman acknowledging they are responsible and the first point of contact for this. The national financial authorities (AFM) claim to not have oversight over this when it's officially acknowledged they share part of the responsibility for DEGIRO's actions. Worse, the Ministry theoretically has ultimate responsibility but is systemically distanced from the mess (intentionally or not) as it does not have oversight over individual cases and has made KiFid an independent "institution" and not government. Both KiFid and the National Ombudsman refuse to provide contacts at the Ministry who has oversight over alternate dispute resolution (ADR), and there's (so far) no evidence that anyone there is ensuring compliance with EU regulations — including but not limited to ADR.**