



**CYPRUS SECURITIES AND EXCHANGE COMMISSION**

**DIRECTIVE DI144-2007-02 OF THE CYPRUS SECURITIES AND EXCHANGE COMMISSION FOR THE PROFESSIONAL COMPETENCE OF INVESTMENT FIRMS AND THE NATURAL PERSONS EMPLOYED BY THEM**

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The official, legally binding text is in the Greek language.*

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**DIRECTIVE DI144-2007-02 OF THE CYPRUS SECURITIES AND EXCHANGE COMMISSION FOR THE PROFESSIONAL COMPETENCE OF INVESTMENT FIRMS AND THE NATURAL PERSONS EMPLOYED BY THEM**

The Cyprus Securities and Exchange Commission, in accordance with the powers vested in it by virtue of sections 36, 38, 39, 41 and 156 of the Investment Services and Activities and Regulated Markets Law of 2007 and for the purposes of harmonization with the actions of European Community titled:

- Official Journal of the EU:  
L 145,  
30.4.2004, p. 1.
- (a) “Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC”;
- Official Journal of the EC:  
L 114,  
27.4.2006, p.60.
- (b) ‘Directive 2006/31/EC of the European Parliament and of the Council of 5 April 2006 amending Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments, as regards certain deadlines’ and
- Official Journal of the EC : L 241,  
2.9.2006, p. 26.
- (c) ‘European Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for IFs and defined terms for the purposes of that Directive’

issue the following Directive:

## PART I – INTRODUCING PROVISIONS

- Summary title 1. The present Directive will be referred to as Directive for the Professional Competence of IFs.
- Scope of application 2. The present Directive determines and specialises the provisions of articles 36, 38, 39 and 41 of the Investment Services and Activities and Regulated Markets Law of 2007 and applies, during the provision of investment or/and ancillary services or/and the exercise of investment activities.
- Definitions 3. For the purposes of this Directive, the following definitions shall apply unless otherwise arises from the text:
- «relevant person» in relation to an IF, means any of the following persons:
- (a) a director, partner or equivalent person, manager or tied agent of the IF;
  - (b) a director, partner or equivalent person or manager of any tied agent of the IF;
  - (c) an employee of the IF or of a tied agent of the IF, as well as any other natural person whose services are placed at the disposal and under the control of the IF or of a tied agent of the IF who is involved in the provision by the IF of investment services or/and the exercise of investment activities;

(d) a natural person who is directly involved in the provision of services to the IF or to its tied agent under an outsourcing arrangement for the purpose of the provision by the IF of investment services or/and exercise of investment activities;

«Law» means the Investment Services and Activities and Regulated Markets Law of 2007;

200(I) of 2004 «UCITS Law» means the Law that regulates Open Ended Undertakings of Collective Investment in Transferable Securities (UCITS) and other Related Issues;

«durable medium» means any instrument which enables a client to store information addressed personally to that client, in a way accessible for future reference and for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

«securities financing transaction» has the meaning given by article 2 of Regulation (EC) No 1287/2006;

«execution venue» for the purposes of paragraphs 23 and 25, means a regulated market, a multilateral trading facility, a systematic internaliser or a market maker or another liquidity provider or an entity performing in a third country a function similar to any of the abovementioned;

Terms used in this Directive that are not interpreted differently shall have the meaning given to them by the Law.

Where in the present Directive reference is made to the Law, this includes the Directives issued thereof.

Conditions applying to the provision of information

**4.** (1) Where, for the purposes of this Directive, information is required to be provided in a durable medium, IFs may provide that information in a durable medium other than on paper only if:

(a) the provision of that information in that medium is appropriate to the context in which the business between the firm and the client is, or is to be, carried on; and

(b) the person to whom the information is to be provided, when offered the choice between information on paper or in that other durable medium, specifically chooses the provision of the information in that other medium.

(2) Where, pursuant to paragraphs 8, 9, 10, 11, 12 or 25(2) of this Directive, the IF provides information to a client by means of a website and that information is not addressed personally to the client, the IF shall ensure that the following conditions are satisfied:

(a) the provision of that information in that medium is appropriate to the context in which the business between the firm and the client is, or is to be, carried on;

(b) the client shall specifically consent to the provision of that information in that form;

(c) the client must be notified electronically of the address of the website, and the place on the website where the information may be accessed;

(d) the information must be up to date;

(e) the information must be accessible continuously by means of that website for such period of time as the client may reasonably need to inspect it.

(3) For the purposes of this paragraph, the provision of information by means of electronic communication shall be treated as appropriate to the context in which the business between the firm and the client is, or is to be, carried on if there is evidence that the client has regular access to the internet. The provision by the client of an e-mail address for the purposes of the carrying on of that business shall be treated as such evidence.

## **PART II – INDUCEMENTS**

Inducements

L 36(1)

**5.** The IF shall not act honestly, fairly and professionally in accordance with the best interest of a client if, in relation to the provision of an investment or ancillary service to the client, it pays or is paid any fee or commission, or provides or is provided with any non-monetary benefit, other than the following:

(a) a fee, commission or non monetary benefit paid or provided to or by the client or other person on behalf of the client;

(b) a fee, commission or non-monetary benefit paid or provided to or by a third party or a person acting on behalf of a third party, where the following conditions are satisfied:

(i) the existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount, must be clearly disclosed to the client, in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant investment or ancillary service;

It is provided that the IF may, disclose the essential terms of the arrangements relating to the fees, commissions or non-monetary benefits in summary form, provided that it undertakes to disclose further details at the request of the client and provided that it honors that undertaking.

(ii) the payment of the fee or commission, or the provision of the non-monetary benefit must be designed to enhance the quality of the relevant service to the client and not impair compliance with the IF's duty to act in the best interests of the client;

(c) proper fees which enable or are necessary for the provision of investment services, such as custody costs, settlement and exchange fees, regulatory levies or legal fees, and which, by their nature, cannot give rise to conflicts with the IF's duties to act honestly, fairly and professionally in accordance with the best interests of its clients.

### **PART III – PROVISION OF INFORMATION TO CLIENTS AND POTENTIAL CLIENTS**

Conditions with which information must comply in order to be fair, clear and not misleading

L 36(1)(a)

**6.** (1) The IF shall ensure that all information, it addresses to, or disseminates in such a way that it is likely to be received by, retail clients or potential retail clients, including marketing communications, satisfies the conditions laid down in subparagraphs 2 to 8.

(2) The information referred to in subparagraph (1):

(a) shall include the name of the IF;

(b) shall be accurate and in particular shall not emphasize any potential benefits of an investment service or financial instrument without also giving a fair and prominent indication of any relevant risks;

(c) shall be sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received;

(d) shall not disguise, diminish or obscure important items, statements or warnings.

(3) Where the information compares investment or ancillary services, financial instruments, or persons providing investment or ancillary services, the following conditions shall be satisfied:

(a) the comparison must be meaningful and presented in a fair and balanced way;

(b) the sources of the information used for the comparison must be specified;

(c) the key facts and assumptions used to make the comparison must be included.

(4) Where the information contains an indication of past performance of a financial instrument, a financial index or an investment service, the following conditions shall be satisfied:

(a) that indication must not be the most prominent feature of the communication;

(b) the information must include appropriate performance information which covers the immediately preceding 5 years, or the whole period for which the financial instrument has been offered, the financial index has been established, or the investment service has been provided if less than five years, or such longer period as the firm may decide, and in every case that performance information must be based on complete 12-month periods;

(c) the reference period and the source of information must be clearly stated;

(d) the information must contain a prominent warning that the figures refer to the past and that past performance is not a reliable indicator of future results;

(e) where the indication relies on figures denominated in a currency other than that of the Member State in which the retail client or potential retail client is resident, the currency must be clearly stated, together with a warning that the return may increase or decrease as a result of currency fluctuations;

(f) where the indication is based on gross performance, the effect of commissions, fees or other charges must be disclosed.

(5) Where the information includes or refers to simulated past performance, it must relate to a financial instrument or a financial index, and the following conditions shall be satisfied:

(a) the simulated past performance must be based on the actual past performance of one or more financial instruments or financial indices which are the same as, or underlie, the financial instrument concerned;

(b) in respect of the actual past performance referred to in point (a), the conditions set out in points (a) to (c), (e) and (f) of subparagraph 4 must be complied with;

(c) the information must contain a prominent warning that the figures refer to simulated past performance and that past performance is not a reliable indicator of future performance.

(6) Where the information contains information on future performance, the following conditions shall be satisfied:

(a) the information must not be based on or refer to simulated past performance;

(b) the information must be based on reasonable assumptions supported by objective data;

(c) where the information is based on gross performance, the effect of commissions, fees or other

charges must be disclosed;

(d) the information must contain a prominent warning that such forecasts are not a reliable indicator of future performance.

(7) Where the information refers to a particular tax treatment, it shall prominently state that the tax treatment depends on the individual circumstances of each client and may be subject to change in the future.

(8) The information shall not use the name of any competent authority in such a way that would indicate or suggest endorsement or approval by that authority of the products or services of the IF.

Information  
concerning client  
categorization

L 36(1)(β)

7. (1) The IF shall notify new clients, and existing clients that it has proceeded with their new categorization as required by the Law, as retail clients, professional clients or eligible counterparties in accordance with the Law.

(2) The IF shall inform clients, in a durable medium, about any right that client has to request a different categorization and about any limitations to the level of client protection that it would entail.

(3) The IF may, either on its own initiative or at the request of the client concerned:

(a) treat as a professional or retail client a client that might otherwise be classified as an eligible counterparty pursuant to section 41(1) of the Law;

(b) treat as a retail client a client that is considered as a professional client pursuant to Part A of Annex II of the

Law.

General  
requirements for  
information to  
clients and the  
Commission  
  
L 36(1)(b)

**8.** (1) The IF shall, in good time before a retail client or potential retail client is bound by any agreement for the provision of investment or ancillary services or before the provision of those services, whichever is the earlier, provide that client or potential client with the following information:

(a) the terms of any such agreement;

(b) the information required by paragraph 9 relating to that agreement or to those investment or ancillary services.

(2) The IF, shall, in good time, before the provision of investment or ancillary services to retail clients or potential retail clients, provide the information required under paragraphs 9 to 12.

(3) The IF shall provide the professional clients with the information referred to in paragraph 11(5) and (6) in good time before the provision of the service concerned.

(4) The information referred to in subparagraphs (1) to (3) shall be provided in a durable medium or by means of a website (where that does not constitute a durable medium) provided that the conditions specified in paragraph 4(2) are satisfied.

(5) By way of exception to subparagraphs (1) and (2), the IF may, in the following circumstances, provide the information required under subparagraph (1) to a retail client immediately after that client is bound by any agreement for the provision of

investment or ancillary services, and the information required under subparagraph 2 immediately after starting to provide the service if:

(a) the IF was unable to comply with the time limits specified in subparagraphs (1) and (2) because, at the request of the client, the agreement was concluded using a means of distance communication which prevents the IF from providing the information in accordance with subparagraphs (1) and (2);

242(I) of 2004  
94(I) of 2007

(b) in any case where Article 4(c) of the Law concerning the Distance Marketing of Consumer Financial Services does not otherwise apply, the IF complies with the requirements of that Article in relation to the retail client or potential retail client, as if that client or potential client were a 'consumer' and the IF were a 'supplier' within the meaning of that Law.

(6) The IF shall notify clients in good time about any material change to the information provided under paragraphs 9 to 12 which is relevant to a service that the IF is providing to them. That notification shall be given in a durable medium if the information to which it relates is given in a durable medium.

(7) The information contained in a marketing communication shall be consistent with any information the IF provides to its clients in the course of carrying on investment and ancillary services.

(8) Where a marketing communication of the IF contains an offer or invitation of the following nature and specifies the manner of response or includes a form by which any response may be made, it shall include such of the information referred to in paragraphs 9 to 12 as is relevant to that offer or invitation:

(a) an offer to enter into an agreement in relation to a financial instrument or investment or ancillary service with any person who responds to the communication;

(b) an invitation to any person who responds to the communication to make an offer to enter into an agreement in relation to a financial instrument or investment or ancillary service.

However, point (a) shall not apply if, in order to respond to an offer or invitation contained in the marketing communication, the potential retail client must refer to another document or documents, which, alone or in combination, contain that information.

(9) The IF shall in good time notify the Commission about any marketing communication of the IF.

Information about  
the IF and its  
services for retail  
clients and  
potential retail  
clients

L 36(1)(b)(i)

**9.** (1) The IF shall provide retail clients or potential retail clients with the following general information, where relevant:

(b) the name and address of the IF, and the contact details necessary to enable clients to communicate effectively with the IF;

(b) the languages in which the client may communicate with the IF, and receive documents and other information from the IF;

(c) the methods of communication to be used between the IF and the client including, where relevant, those for the sending and reception of orders;

(d) a statement of the fact that the IF is authorized and the name and contact address of the competent authority that has authorized it;

(e) where the IF is acting through a tied agent, a statement of this fact specifying the Member State in which that agent is registered;

(f) the nature, frequency and timing of the reports on the performance of the service to be provided by the IF to the client in accordance with section 36(1)(g) of the Law;

(g) if the IF holds client financial instruments or funds, a summary description of the steps which it takes to ensure their protection, including summary details of any relevant investor compensation or deposit guarantee scheme which applies to the IF by virtue of its activities in the Republic or in other Member State;

(h) a description, which may be provided in summary form, of the conflicts of interest policy maintained by the IF in accordance with paragraph 23 of the Directive for the Authorisation and Operating Conditions of CIFs;

(i) at any time that the client requests it, further details of that conflicts of interest policy in a durable medium or by means of a website (where that does not constitute a durable medium) provided that the conditions specified in

paragraph 4(2) are satisfied.

(2) The IF shall, when providing the investment service of portfolio management, establish an appropriate method of evaluation and comparison such as a meaningful benchmark, based on the investment objectives of the client and the types of financial instruments included in the client portfolio, so as to enable the client for whom the service is provided to assess the IF's performance.

(3) An IF shall, when it proposes to provide portfolio management services to a retail client or potential retail client, provide the client, in addition to the information required under subparagraph (1), with such of the following information as is applicable:

(a) information on the method and frequency of valuation of the financial instruments in the client portfolio;

(b) details of any delegation of the discretionary management of all or part of the financial instruments or funds in the client portfolio;

(c) a specification of any benchmark against which the performance of the client portfolio will be compared;

(d) the types of financial instrument that may be included in the client portfolio and types of transactions that may be carried out in such instruments, including any potential relevant limits;

(e) the management objectives, the level of risk to be reflected in the manager's exercise of discretion, and any specific constraints on that discretion.

Information about  
financial  
instruments  
L 36(1)(β)(ii)

**10.** (1) The IF shall provide clients or potential clients with a general description of the nature and risks of financial instruments, taking into account, in particular, the client's categorization either as a retail or professional client. That description must explain the nature of the specific type of instrument concerned, as well as the risks particular to that specific type of instrument in sufficient detail to enable the client to take investment decisions on an informed basis.

(2) The description of risks shall include, where relevant to the specific type of instrument concerned and the status and level of knowledge of the client, the following elements:

(a) the risks associated with that type of financial instrument including an explanation of leverage and its effects and the risk of losing the entire investment;

(b) the volatility of the price of the specific instrument and any limitations on the available market for such instrument;

(c) the fact that an investor might assume, as a result of transactions in such instruments, financial commitments and other additional obligations, including contingent liabilities, additional to the cost of acquiring the instruments;

(d) any margin requirements or similar obligations, applicable to instruments of that type.

114(l) of 2005

(3) If an IF provides a retail client or potential retail client with information about a financial instrument that is the subject of a current offer to the public and a prospectus has been published in connection with that offer in accordance with the Public Offer and Informative Bulletin Law, that IF shall inform the client or potential client where that prospectus is made available to the public.

(4) Where the risks associated with a financial instrument composed of two or more different financial instruments or services are likely to be greater than the risks associated with any of its components, the IF shall provide an adequate description of the components of that instrument and the way in which their interaction increases the risks.

(5) In the case of financial instruments that incorporate a guarantee by a third party, the information about the guarantee shall include sufficient details about the guarantor and the guarantee to enable the retail client or potential retail client to make a fair assessment of the guarantee.

Information requirements concerning safeguarding of retail client financial instruments or funds

**11.** (1) Where an IF holds financial instruments or funds belonging to retail clients, it shall provide those retail clients or potential retail clients with such of the information specified in subparagraphs (2) to (7) as is relevant.

N 36(1)(b)(i)

(2) The IF shall inform the retail client or potential retail client where the financial instruments or funds of that client may be held by a third party on behalf of the IF and of the responsibility of the IF for any acts or omissions of the third party and the consequences for the client of the insolvency of the third party.

(3) Where funds or financial instruments of the retail client or potential retail client, are held in an omnibus account by a third party, the IF shall inform the client of this fact and shall provide a prominent warning of the resulting risks.

(4) The IF shall inform the retail client or potential retail client where it is not possible for client financial instruments held with a third party to be separately identifiable from the proprietary financial instruments of that third party or of the IF and shall provide a prominent warning of the resulting risks.

(5) The IF shall inform the client or potential client where accounts that contain financial instruments or funds belonging to that client or potential client are or will be subject to the law of a jurisdiction other than that of a Member State and shall indicate that the rights of the client or potential client relating to those financial instruments or funds may differ accordingly.

(6) An IF shall inform the client about the existence and the terms of any security interest or lien which the IF has or may have over the client's financial instruments or funds, or any right of set-off it holds in relation to those instruments or funds. Where applicable, it shall also inform the client of the fact that a depository may have a security interest or lien over, or right of set-off in relation to those instruments or funds.

(7) An IF, before entering into securities financing transactions in relation to financial instruments held by it on behalf of a retail client, or before otherwise using such financial instruments for its own account or the account of another client, shall in good time before the use of those instruments provide the retail client, in a durable medium, with clear, full and accurate information on the obligations and responsibilities of the investment firm with respect to the use of those financial instruments, including the terms for their restitution, and on the risks involved.

Information about  
costs and  
associated charges  
  
L 36(1)(β)(iv)

**12.** The IF shall provide its retail clients and potential retail clients with information on costs and associated charges that includes such of the following elements as are relevant:

(a) the total price to be paid by the client in connection with the financial instrument or the investment or ancillary service, including all related fees, commissions, charges and expenses, and all taxes payable via the IF or, if an exact price cannot be indicated, the basis for the calculation of the total price so that the client can verify it;

(b) where any part of the total price referred to in point (a) is to be paid in or represents an amount of foreign currency, an indication of the currency involved and the applicable currency conversion rates and costs;

(c) notice of the possibility that other costs, including taxes, related to transactions in connection with the financial instrument or the investment service may arise for the client that are not paid via the IF or imposed by it;

(d) the arrangements for payment or other performance.

For the purposes of point (a), the commissions charged by the IF shall be itemised separately in every case.

Information drawn up in accordance with UCITS Law and related legislation of other member states

L 36(1)(b)(ii) & (iv)

**13.** (1) In respect of units in a collective investment undertaking covered by UCITS Law, a simplified prospectus complying with sections 37 and 87 of UCITS Law is regarded as appropriate information for the purposes of section 36(1)(b)(ii) of the Law.

(2) In respect of units in a collective investment undertaking covered by UCITS Law, a simplified prospectus complying with sections 37 and 87 of UCITS Law is regarded as appropriate information for the purposes of section 36(1)(b)(iv) of the Law with respect to the costs and associated charges related to the UCITS itself, including the exit and entry commissions.

Official Journal of  
the EU: L 375,  
31.12.1985, p. 3

(3) Subparagraphs (1) and (2) are valid and apply proportionally with respect to prospectuses that have been issued in accordance with the legislation of another member state, which incorporates the Directive 85/611/EEC of the Council of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).

#### **PART IV – ASSESSMENT OF SUITABILITY AND APPROPRIATENESS**

**Assessment of  
suitability**

L 36(1)(c)

**14.** (1) IF obtains from clients or potential clients such information as is necessary for the firm to understand the essential facts about the client and to have a reasonable basis for believing, giving due consideration to the nature and extent of the service provided, that the specific transaction to be entered into in the course of providing a portfolio management service or to be recommended in the course of providing investment advice service satisfies the following criteria:

(a) it meets the investment objectives of the client in question;

(b) it is such that the client is able financially to bear any related investment risks consistent with his investment objectives;

(c) it is such that the client has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.

(2) Where an IF provides an investment service to a professional client it shall be entitled to assume that, in relation to the products, transactions and services for which it is so classified, the client has the necessary level of experience and knowledge for the purposes of subparagraph 1(c).

Where that investment service consists in the provision of investment advice to a professional client covered by Part A of Annex II of the Law, the IF shall be entitled to assume for the purposes of subparagraph 1(b) that the client is able financially to bear any related investment risks consistent with the investment objectives of that client.

(3) The information regarding the financial situation of the client or potential client shall include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and information regarding his regular financial commitments.

(4) The information regarding the investment objectives of the client or potential client shall include, where relevant, information on the length of time for which the client wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.

(5) Where, when providing the investment service of investment advice or portfolio management, an IF does not obtain the information required under Section 36(1)(c) of the Law, then the IF shall not recommend investment services or financial instruments to the client or potential client.

**Assessment of**      **15.** IF, when assessing whether an investment service other

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**appropriateness**  
L 36(1)(d)

than the service of portfolio management or the service of investment advice, as referred to in Section 36(1) (d) of the Law is appropriate for a client, determines whether that client has the necessary experience and knowledge in order to understand the risks involved in relation to the product or investment service offered or demanded.

For those purposes, an IF shall be entitled to assume that a professional client has the necessary experience and knowledge in order to understand the risks involved in relation to those particular investment services or transactions, or types of transaction or product, for which the client is classified as a professional client.

**Provisions common to the assessment of suitability or appropriateness**  
L 36(1)(c) & (d)

**16.** (1) IF shall ensure that the information regarding a client's or potential client's knowledge and experience in the investment field includes the following, to the extent appropriate to the nature of the client, the nature and extent of the service to be provided and the anticipated type of product or transaction, including their complexity and the risks involved:

(α) the types of service, transaction and financial instrument with which the client is familiar;

(b) the nature, volume, and frequency of the client's transactions in financial instruments and the period over which they have been carried out;

(c) the level of education, and profession or relevant former profession of the client or potential client.

(2) An IF shall not encourage a client or potential client not to provide information required for the purposes of Section 36(1)

(c) and (d) of the Law.

(3) An IF shall be entitled to rely on the information provided by its clients or potential clients unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete.

**Provision of  
services in non-  
complex  
instruments**

L 36(1)(e)(i)

**17.** A financial instrument which is not specified in Section 36(1)(e)(i) of the Law is considered as non-complex if it satisfies the following criteria:

(a) it does not fall within paragraph (c) of the definition 'transferable securities' of Section 2(1) of the Law, or within paragraphs 4 -10 of Part III of Annex III of the Law;

(b) there are frequent opportunities to dispose of, redeem, or otherwise realize that instrument at prices that are publicly available to market participants and that are either market prices or prices made available, or validated, by valuation systems independent of the issuer;

(c) it does not involve any actual or potential liability for the client that exceeds the cost of acquiring the instrument;

(d) adequately comprehensive information on its characteristics is publicly available and is likely to be readily understood so as to enable the average retail client to make an informed judgment as to whether to enter into a transaction in that instrument.

**Retail client  
agreement**

L 36(1) & (f)

**18.** IF that provides an investment service other than investment advice to a new retail client for the first time after the date of application of this Directive to enter into a written basic agreement, in paper or another durable medium, with the client setting out the essential rights and obligations of the IF and the client.

The rights and duties of the parties to the agreement may be incorporated by reference to other documents or legal texts.

## **PART V - REPORTING TO CLIENT**

**Reporting  
obligations in  
respect of  
execution of  
orders other than  
for portfolio  
management**

L 36(1)(g)

**19.** (1) Where IF has carried out an order, other than for portfolio management, on behalf of a client, it takes the following action in respect of that order:

(a) the IF must promptly provide the client, in a durable medium, with the essential information concerning the execution of that order;

(b) in the case of a retail client, the IF must send the

client a notice in a durable medium confirming execution of the order as soon as possible and no later than the first business day following execution or, if the confirmation is received by the IF from a third party, no later than the first business day following receipt of the confirmation from the third party.

Point (b) shall not apply where the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the retail client by another person.

Points (a) and (b) shall not apply where orders executed on behalf of clients relate to bonds funding mortgage loan agreements with the said clients, in which case the report on the transaction shall be made at the same time as the terms of the mortgage loan are communicated, but no later than one month after the execution of the relevant order.

(2) In addition to the requirements under subparagraph 1, IF supplies the client, on request, with information about the status of his order.

(3) In the case of orders for a retail clients relating to units or shares in a collective investment undertaking which are executed periodically, IF either takes the action specified in subparagraph 1(b) or provides the retail client, at least once every six months, with the information listed in subparagraph 4 in respect of those transactions.

(4) The notice referred to in subparagraph 1(b) shall include such of the following information as is applicable and, where relevant, in accordance with Table 1 of Annex I of Regulation (EC) No 1287/2006:

(a) the reporting IF identification;

(b) the full name, in case of a physical person or the trade name in case of a legal person or other designation of the client;

(c) the trading date;

(d) the accurate trading time;

(e) the type of the order;

(f) the venue identification;

(g) the instrument identification;

(h) the buy/sell indicator;

(i) the nature of the order if other than buy/sell;

(j) the quantity;

(k) the unit price;

(l) the total consideration;

(m) a total sum of the commissions and expenses charged and, where the retail client so requests, an itemized breakdown;

(n) the client's responsibilities in relation to the settlement of the transaction, including the time limit for payment or delivery as well as the appropriate account details where these details and responsibilities have not previously been notified to the client;

(o) if the client's counterparty was the IF itself or any person in the group of IF or another client of the IF, the fact that this was the case unless the order was executed through a trading system that facilitates anonymous trading.

For the purposes of point (k), where the order is executed in tranches, the IF may supply the client with information about the price of each tranche or the average price. Where the average price is provided, the IF shall supply the retail client with information about the price of each tranche upon request.

(5) The IF may provide the client with the information referred to in subparagraph 4 using standard codes if it also provides an explanation of the codes used.

**Reporting obligations in respect of portfolio management**

L 36(1)(f)

**20.** (1) IF which provides the service of portfolio management to clients to provide each such client with a periodic statement in a durable medium of the portfolio management activities carried out on behalf of that client unless such a statement is provided by another person.

(2) In the case of retail clients, the periodic statement required under subparagraph 1 shall include, where relevant, the following information:

(a) the name of the IF;

(b) the full name, in case of a physical person or the trade name in case of a legal person or other designation of the retail client's account;

(c) a statement of the contents and the valuation of the portfolio, including details of each financial instrument held, its market value, or fair value if market value is unavailable and the cash balance at the beginning and at the end of the reporting period, and the performance of the portfolio during the reporting period;

(d) the total amount of fees and charges incurred during the reporting period, itemizing at least total management fees and total costs associated with execution, and including, where relevant, a statement that a more detailed breakdown will be provided on request;

(e) a comparison of performance during the period covered by the statement with the investment performance benchmark if so agreed between the IF and the client;

(f) the total amount of dividends, interest and other payments received during the reporting period in relation to the client's portfolio;

(g) information about other corporate actions giving rights in relation to financial instruments held in the portfolio;

(h) for each transaction executed during the period, the information referred to in paragraph 19 (4)( c) to 19 (4) (l) where relevant, unless the client elects to receive information about executed transactions on a transaction-by-transaction basis, in which case subparagraph 4 of this paragraph shall apply.

(3) In the case of retail clients, the periodic statement referred to in subparagraph 1 shall be provided once every six months, except in the following cases:

(a) where the client so requests, the periodic statement must be provided every three months;

(b) in cases where subparagraph 4 applies, the periodic statement must be provided at least once every 12 months;

(c) where the agreement between an IF and a retail client for a portfolio management service authorizes a leveraged portfolio, the periodic statement must be provided at least once a month.

IF shall inform retail clients that they have the right to make requests for the purposes of point (a).

However, the exception provided for in point (b) shall not apply in the case of transactions in financial instruments covered by paragraph (c) of the definition of 'transferable securities' of Section 2(1) of the Law or within paragraphs 4 to 10 of Part III of Annex III of the Law.

(4) (a) IF, in cases where the client elects to receive information about executed transactions on a transaction-by-transaction basis, provides promptly to the client, on the execution of a transaction by the portfolio manager, the essential information concerning that transaction in a durable medium.

(b) Where the client concerned is a retail client, the IF must send him a notice confirming the transaction and containing the information referred to in paragraph 19 (4) no later than the first business day following that execution or, if the confirmation is received by the IF from a third party, no later than the

first business day following receipt of the confirmation from the third party.

The point (b) shall not apply where the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the retail client by another person.

**Additional reporting obligations for portfolio management or contingent liability transactions**

L 36(1)(f)

**21.** IF which provides portfolio management transactions for retail clients or operate retail client accounts that include an uncovered open position in a contingent liability transaction, they also report to the retail client any losses exceeding any predetermined threshold, agreed between the firm and the client, no later than the end of the business day in which the threshold is exceeded or, in a case where the threshold is exceeded on a non-business day, the close of the next business day.

**Statements of client financial instruments or client funds**

L 36(1)(f)

**22.** (1) IF that holds client financial instruments or client funds sends at least once a year, to each client for whom it holds financial instruments or funds, a statement in a durable medium of those financial instruments or funds unless such a statement has been provided in any other periodic statement.

(2) The statement of client assets referred to in subparagraph 1 shall include the following information:

(a) details of all the financial instruments or funds held by the IF for the client at the end of the period covered by the statement;

(b) the extent to which any client financial instruments or client funds have been the subject of securities financing transactions;

(c) the extent of any benefit that has accrued to the client by virtue of participation in any securities financing transactions, and the basis on which that benefit has accrued.

In cases where the portfolio of a client includes the proceeds of one or more unsettled transactions, the information referred to in point (a) may be based either on the trade date or the settlement date, provided that the same basis is applied consistently to all such information in the statement.

(3) IF which holds financial instruments or funds and which carries out the service of portfolio management for a client may include the statement of client assets referred to in subparagraph 1 in the periodic statement it provides to that client pursuant to paragraph 20(1).

## **PART VI – BEST EXECUTION**

**Best execution  
criteria**

L 36(1) & 38(1)

**23.** (1) When executing client orders, IF takes into account the following criteria for determining the relative importance of the factors referred to in Section 38(1) of the Law:

(a) the characteristics of the client including the categorization of the client as retail or professional;

(b) the characteristics of the client order;

(c) the characteristics of financial instruments that are the subject of that order

(d) the characteristics of the execution venues to which that order can be directed.

(2) An IF satisfies its obligation under Section 38(1) of the Law to take all reasonable steps to obtain the best possible result for a client to the extent that it executes an order or a specific aspect of an order following specific instructions from the client relating to the order or the specific aspect of the order.

(3) Where an IF executes an order on behalf of a retail client, the best possible result shall be determined in terms of the total consideration, representing the price of the financial instrument and the costs related to execution, which shall include all expenses incurred by the client which are directly related to the execution of the order, including execution venue fees, clearing and settlement fees and any other fees paid to third parties involved in the execution of the order.

For the purposes of delivering best execution where there is more than one competing venue to execute an order for a

financial instrument, in order to assess and compare the results for the client that would be achieved by executing the order on each of the execution venues listed in the firm's order execution policy that is capable of executing that order, the firm's own commissions and costs for executing the order on each of the eligible execution venues shall be taken into account in that assessment.

(4) IF does not structure or charge their commissions in such a way as to discriminate unfairly between execution venues.

**Duty of IFs carrying out portfolio management and reception and transmission of orders to act in the best interests of the client**

L 36(1)

**24.** (1) IF, when providing the service of portfolio management, complies with the obligation under Section 36(1) of the Law to act in accordance with the best interests of their clients when placing orders with other entities for execution that result from decisions by the IF to deal in financial instruments on behalf of its client.

(2) IF, when providing the service of reception and transmission of orders, complies with the obligation under Section 36(1) of the Law to act in accordance with the best interests of their clients when transmitting client orders to other entities for execution.

(3) In order to comply with the above subparagraphs 1 or 2, IF takes the actions mentioned in subparagraphs 4 to 6.

(4) IF takes all reasonable steps to obtain the best possible result for their clients taking into account the factors referred to in Section 38(1) of the Law. The relative importance of these factors shall be determined by reference to the criteria set out in paragraph 23(1) and, for retail clients, to the requirement under paragraph 23(3).

An IF satisfies its obligations under subparagraph 1 or 2, and is not required to take the steps mentioned in this paragraph, to the extent that it follows specific instructions from its client when placing an order with, or transmitting an order to, another entity for execution.

(5) IF establishes and implements a policy to enable the IF to comply with the obligation in subparagraph 4. The policy shall identify, in respect of each class of instruments, the entities with which the orders are placed or to which the IF transmits orders for execution. The entities identified must have execution arrangements that enable the IF to comply with its obligations under this paragraph when it places or transmits orders to that entity for execution.

IF provides appropriate information to their clients on the policy established in accordance with this paragraph.

(6) IF monitors on a regular basis the effectiveness of the policy established in accordance with subparagraph 5 and, in particular, the execution quality of the entities identified in that policy and, where appropriate, corrects any deficiencies.

In addition, IF reviews the policy annually. Such a review shall also be carried out whenever a material change occurs that affects the ability of IF to continue to obtain the best possible result for their clients.

(7) This paragraph is not apply when the IF that provides the service of portfolio management and/or reception and transmission of orders also executes the orders received or the decisions to deal on behalf of its client's portfolio. In those cases Section 38 of the Law applies.

Execution policy  
L 38(3)-(6)

**25.** (1) IF reviews annually the execution policy established pursuant to Section 38(2) of the Law, as well as their order execution arrangements.

Such a review shall also be carried out whenever a material change occurs that affects the ability of IF to continue to obtain the best possible result for the execution of its client orders on a consistent basis using the venues included in its execution policy.

(2) IF provides retail clients with the following details on their execution policy in good time prior to the provision of the service of execution of orders:

(a) an account of the relative importance the IF assigns, in accordance with the criteria specified in paragraph 23(1), to the factors referred to in Section 38(1) of the Law, or the process by which the IF determines the relative importance of those factors;

(b) a list of the execution venues on which the IF places significant reliance in meeting its obligation to take all reasonable steps to obtain on a consistent basis the best possible result for the execution of client orders;

(c) a clear and prominent warning that any specific instructions from a client may prevent the firm from taking the steps that it has designed and implemented in its execution policy to obtain the best possible result for the execution of those orders in respect of the elements covered by those instructions.

That information shall be provided in a durable medium, or by means of a website (where that does not constitute a durable medium) provided that the conditions specified in paragraph 4(2) are satisfied.

## **PART VII – EXECUTION OF CLIENT ORDERS**

General Principles L 36(1) & 39(1) **26.** (1) IF satisfies the following conditions when carrying out client orders:

(a) ensures that orders executed on behalf of clients are promptly and accurately recorded and allocated;

(b) carries out otherwise comparable client orders sequentially and promptly unless the characteristics of the order or prevailing market conditions make this impracticable, or the interests of the client require otherwise;

(c) informs a retail client about any material difficulty relevant to the proper carrying out of orders promptly upon becoming aware of the difficulty.

(2) Where an IF is responsible for overseeing or arranging the settlement of an executed order, it shall take all reasonable steps to ensure that any client financial instruments or client funds received in settlement of that executed order are promptly and correctly delivered to the account of the appropriate client.

(3) An IF does not misuse information relating to pending client orders, and takes all reasonable steps to prevent the misuse of such information by any of its relevant persons.

**Aggregation and allocation of orders**

L 36(1) & 39(1)

**27.** (1) IF is not permitted to carry out a client order or a transaction for own account in aggregation with another client order unless the following conditions are met:

(a) it must be unlikely that the aggregation of orders and transactions will work overall to the disadvantage of any client whose order is to be aggregated;

(b) it is disclosed to each client whose order is to be aggregated that the effect of aggregation may work to its disadvantage in relation to a particular order;

(c) an order allocation policy is established and effectively implemented, providing in sufficiently precise terms for the fair allocation of aggregated orders and transactions, including how the volume and price of orders determines allocations and the treatment of partial executions.

(2) Where an IF aggregates an order with one or more other client orders and the aggregated order is partially executed, it allocates the related trades in accordance with its order allocation policy.

**Aggregation and  
allocation of  
transactions for  
own account**  
L 36(1) & 39(1)

**28.** (1) IF which has aggregated transactions for own account with one or more client orders are not allowed to allocate the related trades in a way that is detrimental to a client.

(2) Where an IF aggregates a client order with a transaction for own account and the aggregated order is partially executed, IF should allocate the related trades to the client in priority to the IF.

However, if the IF is able to demonstrate on reasonable grounds that without the combination it would not have been able to carry out the order on such advantageous terms, or at all, it may allocate the transaction for own account proportionally, in accordance with its order allocation policy referred to in paragraph 27(1)(c).

(3) IF, as part of the order allocation policy referred to in paragraph 27(1)(c), should put in place procedures designed to prevent the reallocation, in a way that is detrimental to the client, of transactions for own account which are executed in combination with client orders.

## PART VIII – ELIGIBLE COUNTERPARTIES

### Eligible counterparties

L 41(3) & (5)

**29.** (1) IF may recognise an undertaking as an eligible counterparty if that undertaking falls within a category of clients who are to be considered professional clients in accordance with the first, second and third paragraph of Part A, of Annex II of the Law, excluding any category which is explicitly mentioned in Section 41(2) of the Law.

IF may also recognise as eligible counterparties undertakings which fall within a category of clients who are to be considered professional clients in accordance with Part B of Annex II of the Law. In such cases, however, the undertaking concerned shall be recognised as an eligible counterparty only in respect of the services or transactions for which it could be treated as a professional client.

(2) Where, pursuant to the second subparagraph of Section 41(2) of the Law, an eligible counterparty requests treatment as a client whose business with an IF is subject to Sections 36, 38 and 39 of the Law, but does not expressly request treatment as a retail client, and the IF agrees to that request, the IF shall treat that eligible counterparty as a professional client.

However, where that eligible counterparty expressly requests treatment as a retail client, the provisions in respect of requests of non-professional treatment specified in the first, second and third paragraph of Part A of Annex II of the Law shall apply.

## PART IX FINAL PROVISIONS

Repeal of the IF  
Directive 1/2003

Official Gazette of  
the Republic, Third  
Annex (I):

11.4.2003

5.9.2003

12.9.2003

**30.** The Directive of Code of Business Conduct for IFs and for the natural persons employed by them, as has been amended, is hereby repealed and substituted with the present Directive.

Entry into force

**31.** This Directive enters into force from the date of its publication in the Official Gazette of the Republic.

