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Regarding the provisions quoted in the response below, as far as possible, hyperlinks to these provisions (in the respective language or, if available, in English) are set out in Document CESR/04-075 for each country.

IMPORTANT NOTICE

In the interest of transparency and to inform interested parties, CESR has published the following (together the “Tables”):

- *the Correspondence Tables on the CESR Standards for Investor Protection (Ref. CESR/03-416b to 423b, CESR/03-134/Country);*
- *the Correspondence Tables on the CESR Standards for Alternative Trading Systems (Ref. CESR/03-415b, CESR/03-135/Country);*
- *the Synthesis Tables (Ref. CESR/03-427b and CESR/03-432b);*
- *the List of Alternative Trading Systems currently operating in Member States¹ (Ref. CESR/03-497b);*
- *the explanatory notes and caveats attached to the Tables.*

The Tables were produced by the Members of CESR¹ within the constraints of and solely for the purposes of the CESR Review Panel process of monitoring the status of implementation of the CESR Standards for Investor Protection² and the CESR Standards for Alternative Trading Systems³ in Member States.

The Tables have no legal effect; they do not present any interpretation of, or definitive position on, existing law or regulation in any jurisdiction. The Tables should not be relied upon for any purpose other than the purpose for which they were prepared. In particular, they should not be relied upon as a substitute for, or as guidance on, any aspect of the regulatory system of any Member State or as a defence in supervisory activities or enforcement proceedings; and they cannot be used to restrict competent authorities in taking regulatory or enforcement actions.

The information set out in the Tables is the response of each Member’s self-assessment. For this reason, the content of the Tables regarding a particular Member State has been prepared solely by the relevant Member on a best-efforts basis. (In a next step, the CESR Review Panel is going to conduct a common and collective peer exercise in reviewing the responses from all Members.) In case of discrepancy between the tables containing the responses from all CESR Members and the tables containing the individual responses from a particular CESR Member, the latter should be referred to.

The Tables provide a “snap shot” and will be up-dated on a regular basis to take account of regulatory developments in Member States. Therefore, they cannot be considered as fully finalised or definitive reflections of regulatory provisions in Member States. The Tables should also be read in light of current and future developments in the formulation of the proposed Directive on Markets in Financial Instruments (“ISD2”) and the future Level 2 implementing measures, and without prejudice to the position of any Member State in those developments.

For a more detailed account of the process, methodology and first, interim results, please see the “First Interim Report” by the Review Panel (Ref. CESR/03-414b).

¹ For reasons of simplicity, the term “Member” in this context refers to all participants in the Review Panel, i.e. CESR Members, CESR Observers, and the Polish securities regulators; this applies to the term “Member State” accordingly.

² “A European Regime of Investor Protection - The Harmonization of Conduct of Business Rules” (Ref. CESR/01-014d, April 2002) and “A European Regime of Investor Protection – The Professional and the Counterparty Regimes” (Ref. CESR/02-098b, July 2002).

³ Ref. CESR/02-086b, July 2002.

CORRESPONDENCE TABLE ON STANDARDS FOR INVESTOR PROTECTION
(REF. CESR/01-014D AND CESR/02-098B)

AUSTRIA

A CONDUCT OF BUSINESS RULES FOR THE “RETAIL REGIME”

1. STANDARDS AND RULES OF GENERAL APPLICATION

1.1 GENERAL

Standard /Rule	Implementing authority(ies)	Implementing measure ⁴	Comments
1. An investment firm must at all times act honestly, fairly and professionally in accordance with the best interests of its customers and the integrity of the market.	Austrian Parliament (hereinafter “AP”)	Art. 13 ASSA	An investment firm’s obligation to act honestly, fairly and professionally in the best interests of its customers and the integrity of the market is a general principle of the Austrian Securities Supervision Act (hereinafter “ASSA”) and applied common market standard. This standard is laid down in Art. 13 par 1 ASSA and does not require further implementing measures.
2. An investment firm must have and must employ effectively the resources and procedures that are necessary for the proper performance of its business activities, including back-up procedures and systems so as to reasonably ensure that investment services can be provided without interruption.	AP	Art. 16 ASSA	Art. 16 par. 1 ASSA requires that an investment firm has to have in place and effectively use adequate resources and procedures for the proper performance of investment services. An investment firm’s obligation to implement procedures necessary for proper performance is within the scope of the ASSA and applied common market standard. This standard does not require further implementing measures.

⁴ Any derogation to the application of the implementing measures should be mentioned.

<p>3. An investment firm must ensure that any persons or entities with which it is undertaking authorisable investment business are authorised to conduct that business by the relevant regulator.</p>	<p>AP</p>	<p>Art. 21 par 1 ASSA in connection with Art. 39 of the Austrian Banking Act (ABA) Art 16 par 1 ASSA</p>	<p>In course of general diligence obligations determined in the ASSA and the Austrian Banking Act (hereinafter “ABA”), the managers of an investment firm shall inform themselves about and appropriately limit the risks of banking transactions which includes that they have to ensure that co-operation partners are authorised to conduct investment services by the relevant regulator. Furthermore, it is laid down in Art 16 par 1 ASSA that a credit institute has to have in place and effectively use adequate means and procedures for the proper performance of investment services, which includes the rule 3. This standard does not require further implementing measures.</p>
<p>4. Investment firm that outsources functions retains full responsibility for the outsourced activity and must ensure that the providers of such outsourcing are able to perform these functions reliably, professionally and in the best interests of its customers.⁵</p>	<p>AP</p>	<p>Art. 16 par 3 ASSA</p>	<p>Outsourced functions retain in full responsibility and have to be provided reliably, professionally and in the customer’s best interest according to general diligence provisions laid down in the ASSA and the ABA. For this purpose, the investment firm has to implement adequate internal control procedures that are suitable to counteract violations of obligations arising under the ASSA which includes the control of outsourced functions. This standard does not require further implementing measures.</p>

1.2. CONFLICTS OF INTEREST AND INDUCEMENTS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments

⁵ This standard is not intended to interfere with relevant provisions on civil liability, applicable at national level.

<p>5. An investment firm must take all reasonable steps to ensure that conflicts of interest between itself and its customers and between one customer and another are identified and then prevented or managed in such a way that the interests of customers are not adversely affected. For these purposes the investment firm must establish an internal independence policy, including Chinese walls as appropriate.</p>	<p>AP</p> <p>Austrian Federal Economic Chamber (hereinafter "AFEC")</p> <p>Austrian Financial Markets Authority (hereinafter "FMA")/ Austrian Federal Economic Chamber (hereinafter "AFEC")</p>	<p>Art. 16 ASSA</p> <p>Standard Compliance Code for Austrian credit institutions (14.12.1999) (SCC)</p>	<p>Art. 16 par 2 ASSA states that an investment firm has to be organized in such manner that when providing investment services conflicts of interest between these legal entities and their customer or between different customers are minimized to the greatest extent possible.</p> <p>The prevention and avoidance of conflicts of interest is stated in the standard compliance code for credit institutions (hereinafter "SCC") - which is a self-binding rulebook established and acknowledged by all Austrian credit institutions. The obligation to establish an internal policy is implemented common market standard for credit institutions and as such reviewed by the FMA in the course of on-site-inspections and permanent supervision.</p> <p>The establishment of an internal independence policy is required by the FMA in course of the licensing procedure of other investment firms than credit institutions and is already reviewed by the FMA in the course of on-site-inspections and permanent supervision.</p>
<p>7. Where conflicts of interest cannot be reasonably avoided or managed with the internal independence policy, an investment firm must not undertake business with or on behalf of a customer where it has directly or indirectly a conflicting interest, including any such interest arising from intra-group dealings, joint provision of more than one service or other business dealings of the investment firm or any affiliated entity, unless it has previously disclosed to the customer the nature and extent of its interest, either in writing or by telephone and recorded by the firm and the customer has expressly agreed to engage in such business with the investment firm. Where possible, this disclosure must be given at the beginning of the customer relationship; otherwise it must be given prior to the customer entering into any relevant transaction.</p>	<p>AP</p>	<p>Art. 13 par 2 ASSA Art 16 par 2 ASSA</p>	<p>Art. 13 par 2 ASSA laid down that an investment firm endeavour to avoid conflicts of interest and ensure that in the event of unavoidable conflicts of interest the customer order is executed with due regard to the interest of the customer this includes the information of all sorts on conflicts of interest.</p> <p>The avoidance of conflict of interest is determined by provisions of Art 13 par 2 and 16 par 2 ASSA and can be overall assumed to be common market standard and applied practice. This rule does not require further implementing measures.</p>

<p>6. An investment firm, its members of the board, directors, partners, employees and tied-agents may offer or receive inducements only if they can reasonably assist the firm in the provision of services to its customers. Where inducements are received disclosure of such inducements must be made to the customer.</p>	<p>AP FMA/AFEC</p>	<p>Art. 13 par. 4 ASSA</p>	<p>The disclosure of relevant general information to the customer, in concrete the provision of all relevant material information to their customers to the extent necessary to safeguard the interest of the customer, is laid down in Art. 13. par. 4 ASSA. The implementation of inducement guidelines will be implemented as market standard and interpretation guidelines to the general information duties.</p>
<p>8. Where inducements are permitted an investment firm must act in the best interest of the customer and inform the customer at the beginning of the relationship, which may give rise to conflicts of interest between itself and its customers, about the investment firm's policy on inducements and at least once a year in writing of the relevant details of such inducements.</p>	<p>AP FMA/AFEC</p>	<p>Art. 13 par. 2 ASSA</p>	<p>Acting in the best interest of the customer and the avoidance of conflict of interests is determined in Art. 13 par. 2 of the ASSA. The implementation of a written policy means an innovation and will be adopted as market standard and as such reviewed by the FMA in the course of on-site-inspections and permanent supervision.</p>

1.3 COMPLIANCE AND CODE OF CONDUCT

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
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<p>9. An investment firm must take all reasonable measures to ensure that the firm and its members of the board, directors, partners, employees and tied-agents at all time act in accordance with the best interests of its customers and the integrity of the market by establishing and implementing adequate compliance policies and procedures, including an independent compliance function and an internal code of conduct.</p>	<p>AP AFEC</p> <p>FMA</p>	<p>Art. 13 para 1 ASSA, Art. 82 para 5a Austrian Stock Exchange Act, 5.1 SCC, Art 16 para 1 and 3 ASSA</p>	<p>About 900 credit institutions, providing investment services, are established on the Austrian Capital Market. In addition, only about 90 investment firms are supposed to be investment firms in the understanding of the ISD. All other firms providing investment services are supposed to be firms under the exemption of Art. 2 para 2 Directive 93/22. Generally, the 900 credit institutions have enacted meaningful and significant compliance rules, which are based on Art. 82 para 5a of the Austrian Stock Exchange Act (hereinafter, referred to as “ASEA”) in combination with the SCC. The SCC contains every aspect of compliance especially the establishment of an independent compliance function, which is responsible for the control of the compliance rules and an internal code of conduct. As laid down in Art. 13 para 3 of the ASSA, all investment firms have to act in the best interest of their clients. According to Art. 16 para 2 of the ASSA, credit institutions have to be organized in such a manner that in case of providing investment services conflicts of interest between these legal entities and their customers or between different customers are minimized to the greatest extent possible. According to Art. 16 para 3 of the ASSA (compliance organisation, internal audit, dual control) adequate internal control procedures that are suitable to counteract violations of obligations arising under ASSA have to be implemented. The sum of the regulatory rules is basis for the on site inspections of the Austrian Financial Market Authority (“FMA”) and a possible breach of these regulations is punished with a fine of up to 7.000 €.</p> <p>The 90 investment firms, which provide investment services beyond credit institutions, also have to apply the commitments as laid down in Art. 13 and. 16 para 3 of the ASSA, which is in the understanding of the FMA the need to implement compliance rules/functions adequate to their size, number of their employees, business fields and their client ship, but not summarized in a specific rule book. The above mentioned compliance rules are a requirement for obtaining a license and will be checked up during the licensing procedure and as well as during the on site inspections of the FMA. Furthermore, it should be noted that these 90 investment firms are mainly small firms with usually upon to 5 employees.</p> <p>To act in the customer’s best interest is determined in Art 13 para 2 ASSA and is within the scope of provisions of the ASEA and in particular in point 5.1. of the SCC, which regulates the structure of the compliance organisation. It can be assumed as common market standard for credit institutions and other investment firms than credit institutions.</p>
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<p>11. The persons responsible for the compliance function must have the necessary expertise, resources, authority and must have full access to all relevant information enabling them to perform their duties. They must perform their monitoring duties independently of all persons and activities subject to their monitoring.</p>	<p>FMA, AFEC. AP</p>	<p>5.2. SCC Art. 16 para 3 ASSA</p>	<p>Point 5.2. of the SCC regulates the competencies of the compliance officers. These competencies are: the permanent supervision of the compliance rules, the advice of the management board for implementation questions in connection with the compliance rule book, the education of the employees in compliance. To fulfil his duties the compliance officers should have full access to all data (accounts, records, documents and personnel data) and the management board has to give the compliance officer all the authority he needs to fulfil his duties; For smaller investment firms the compliance obligations are part of the internal control procedure, which are implemented through Art. 16 par 3 ASSA. The qualification of the compliance officer and his access possibility to all data he needs to fulfil his task is part of the on site inspections of the FMA, especially by smaller investment firms.</p>
<p>12. A summary of the results of the monitoring must be reported to the senior management of the investment firm and to the internal or external auditors. The investment firm must report these results, together with remedies adopted, to the competent authority at least once a year.</p>	<p>AP FMA Ministry of Finance AP</p>	<p>Art. 63 par. 4 ABA; Art. 23, 23a ASSA; Art. 63 par 3 ABA</p>	<p>The ABA (Art. 63 par. 4) and ASSA (Art. 23, 23a ASSA) state the requirement of a report - the bank supervision audit report for credit institutions and the investment firm supervision audit report for all other investment firms – which is liable approved by a certified public accountant, which contains the confirmation that a credit institution or investment firm complied with the rules of the ASSA and ABA.</p> <p>Art 63 par 3 ABA contains the obligation for the bank auditor, that if facts are established by him, on the basis of which he judges that the functioning of credit institutions or the fulfilment of its obligation is no longer guaranteed, or that statutory or other legal provisions are violated, he shall without delay report these facts to the FMA.</p>

<p>13. An investment firm must ensure that the competent authority is informed, without undue delay, of serious breaches of the conduct of business rules. In assessing whether the breaches are serious, an investment firm must take into account the impact on regulatory goals and on the capacity to provide services, their frequency, the damages suffered by customers.</p>	<p>FMA</p>	<p>The FMA recommends to investment firms to inform the FMA as competent authority.</p>	<p>An obligation to inform the FMA as competent authority in cases of serious breaches of the conduct business rules means an impermissible self incrimination and infringes substantial principles of Austrian law. Therefore, the implementation of this rule as an obligation for investment firms can not be accomplished. Please see 12.</p>
<p>14. The compliance function must: - regularly verify the adequacy of policies and procedures to ensure compliance with the regulations on investment services; - provide advisory assistance and support to the various business areas of the investment firm on problems concerning compliance with the regulations on investment services.</p>	<p>FMA, AFEC AP</p>	<p>5.1. SCC 5.2. SCC Art. 16 para 3 ASSA</p>	<p>Please see rules 9 and 14. Point 5.1 of the SCC determines in detail the function and task of a compliance function and the obligation of ongoing supervision of the observance of compliance rules. This rule is fully implemented for all investment firms through the ASSA and additional regulation in the SCC.</p>
<p>10. An investment firm must be able to demonstrate that it has not acted in breach of the conduct of business rules and the internal code of conduct and that its organization, policies and procedures facilitate such compliance.</p>	<p>AP AFEC/FMA</p>	<p>Art. 63 para 4 ABA; Art 23, 23a ASSA;</p>	<p>Please see the report mentioned upon in point 12, where a certified public accountant has to approve the compliance with the in the ASSA laid down conduct of business rules.</p> <p>The external auditor occupies a very important supervision function of investment firms. Once a year every investment firm has to demonstrate the external auditor that it has not acted in breach of the conduct of business rules. Concerning this matter the investment firm has to transmit a report to the FMA, as laid down for credit institutions in the Austrian Banking Act and for other investment firms in the ASSA. Rule 10 does not require the demonstration of the compliance directly to the authority. In our opinion the demonstration to the external auditor and the subsequent transmission of the report to the authority is sufficient to fulfil Standard 10.</p> <p>The compliance with regulations regarding the conduct of business rules is covered by provisions of the SCC and it is reviewed by the FMA in course of on-site-inspections, which safeguards compliance of the investment firms sufficiently. This standard does not require further implementing measures.</p>

<p>15. An investment firm must keep records relevant for the purpose of demonstrating compliance with the conduct of business rules, for a period of five years in order to enable the competent authority to verify compliance with these rules. Tape recording of orders must be kept for a period of one year.</p>	<p>AP</p>	<p>Art 17 ASSA</p>	<p>Art 17 ASSA regulates records and archiving requirements. These records must be kept at least six years, which is even stronger than rule 15. Rule 15 is for this reason fully implemented.</p>
<p>16. An investment firm must keep a register of customer complaints related to the provision of the investment services and the measures taken for their resolution and must regularly verify whether complaints are adequately processed.</p>	<p>AP FMA/AFEC</p>	<p>Art. 16 ASSA 5.2. SCC</p>	<p>Art. 16 ASSA lays down that an investment firm has to have in place and effectively use adequate means and procedures for the proper performance which contains the obligation to have a register of customer complaints.</p> <p>Above that, the requirement of having a complaint management is also content of the SCC. It is one of the tasks of the compliance officer that the investment firm implements a complaint management and that customer complaints will be solved in the best interest of the customer. The complaint management contains, that the compliance officer has to organize measures for the resolution of a customer complaint and has to care that the complaint is adequately processed. Furthermore the complaint management is part of the on site inspections and the licensing procedure by the FMA for all investment firms.</p>
<p>17. An investment firm must establish a code of conduct for members of the board, directors, partners, employees and tied-agents. The code of conduct must contain:</p> <ul style="list-style-type: none"> a) the rules and procedure to meet the obligation to protect data of a confidential nature; b) the rules and procedures for carrying out personal transactions involving financial instruments; c) the rules and procedures governing the business relationship with customers in order to ensure that the persons referred to above, in particular where a conflict of interest may arise, always act in the best interests of customers, and that such persons do not take advantage of any confidential information; d) the investment firm's policy on conflicts of interest and inducements. 	<p>AP AFEC AFEC</p>	<p>Art 16 and 18 ASSA, SCC and the Directive for Personal Transactions of Bank Employees.</p>	<p>The content of this standard is implemented as market standard.</p>

1.4. COLD CALLING⁶

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
18. For the purpose of protecting customers from undue pressure to enter into a contract, cold calls can only be made to potential customers in accordance with the rules set out below.	AP	Art. 12 par. 3 ASSA Art. 107 Telecommunication law (hereinafter TCL)	Cold calling activities are prohibited in Art. 12 par. 3 ASSA. Therefore, the implementation of Standard/Rules 18. – 24. can not be accomplished. Art. 107 TCL adopted in August 2003 lays down nearly the same regulation as Art. 12 par. 3 ASSA and foresees a much higher penalty for cold calling.
19. Cold calls may only be made by persons employed by, or appointed as tied-agent ⁷ by an investment firm. Responsibility for the competence and activities of such persons rests with the firm.	Please see 18.	Please see 18.	Please see 18.
20. An investment firm cold calling customers may do so only between the hours of 9.00 a.m. and 9.00 p.m. Monday to Saturday (local time for the customer) and excluding local national holidays.	Please see 18.	Please see 18.	Please see 18.
21. The identity of the person making the cold call, the investment firm on whose behalf the person is acting, and the commercial purpose of the cold call must be explicitly identified at the beginning of any conversation with the consumer. The caller must also make reference to the frozen period (see par. 24) during which orders may not be executed.	Please see 18.	Please see 18.	Please see 18.
22. The person making the cold call is also required to establish whether the potential customer wishes the cold call to proceed or not. An investment firm must abide by a request from the customer either to end the cold call and/or not to cold call again.	Please see 18.	Please see 18.	Please see 18.
23. An investment firm must not exert undue pressure on a potential customer during the course of a cold call and must be able to demonstrate that this is not the case, for example, by recording any such telephone calls.	Please see 18.	Please see 18.	Please see 18.
24. During the period for which the customer benefits from a right of withdrawal from the contract (as determined by Article 4.a of the Distance Marketing Directive), an investment firm shall not execute any customer orders in respect of financial instruments under the contract.	Please see 18.	Please see 18.	Please see 18.

2. INFORMATION TO BE PROVIDED TO CUSTOMERS

⁶ These rules are without prejudice to any provisions of EU law governing the means whereby or conditions under which an investment firm or its tied-agent may initiate unsolicited contacts with a prospective customer.

⁷ This is without prejudice to the applicability of professional requirements, imposed at national level.

2.1) BASIC REQUIREMENTS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p>25. An investment firm must pay due regard to the information needs of its customers and communicate information to them that is fair, clear, and not misleading.</p>	<p>AP AFEC, FMA</p>	<p>Art. 13 para 4 ASSA 4.1.Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998) (hereinafter GL)</p>	<p>The fair, clear and not misleading information obligation is covered by provisions of Art. 13 par 4 ASSA and the GL. In line of the implementation of the Dir 93/22 in Austria, the AFEC established in accordance with the Capital Market experts of all sectors of Austrian credit institutions, and with some investment firms and in coordination with the FMA a new handbook (=GL). This handbook is the result of a long coordination procedure to find a common market sense and market understanding among all parties concerned. As an attachment the handbook also contains the standard risk statements and risk statements for specific kind of financial instruments. As it normally works in Austria this handbook was transported through the AFEC among all her participants, which established this rule book as minimum standard while providing investment services. The content of this handbook is also a guideline for the on site inspections at credit institutions and other investment firms by the FMA. It is even basis for the investigations by the FMA, relating breaches of the conduct of business rules. This handbook is a binding regulation which is the common market standard for all investment firms in Austria and is accepted by the FMA as interpretation of the ASSA.</p>

<p>27. The firm must ensure that information provided to customers is clear and comprehensible. The content and purpose of the information should be easily understood and key items should be given due prominence. The method of presentation of the information must not disguise, diminish or obscure important warnings or statements.</p>	<p>AP AFEC, FMA</p>	<p>Art. 13 para 4 ASSA 4.1.Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998) Please see also 25</p>	<p>Clear and comprehensive information duties are widely laid down in provisions of the Art. 13 par. 4 ASSA and the GL and can be assumed as common market standard and applied practice. The GL is based on the fundamental idea of giving costumers all information they need for finding out which financial instrument does comply with his needs. Following the GL the customer gets complete, correct, on a timely basis and an under stable advice within the provision of investment services. This rule does not require further implementing measures and is already fully implemented.</p>
<p>26. An investment firm must supply its customers on a timely basis with the information that enables them to make informed investment decisions.</p>	<p>AP AFEC/FMA</p>	<p>Art. 13 par. 4 ASSA 4.1.Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998)</p>	<p>This standard is statutorily implemented in the ASSA and additionally in the GL . As mentioned under rule 27 the customer gets information on a timely basis, to enable him to understand the effects of his investment decision, which is in our point of view is the fully implementation of standard 26. This rule does not require further implementing measures.</p>

<p>28. In supplying information on a timely basis the investment firm must take into consideration: a) the urgency of the situation and b) the time necessary for a customer to absorb and react to the information provided and c) the terms of business agreed with the customer.</p>	<p>AP AFEC, FMA</p>	<p>Art 13 par 4 ASSA 4.1. c. Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998)</p>	<p>Timely based information to the customer under consideration of the items mention under a) to c) are common market standard and intentionally covered by provisions of the ASSA. Furthermore, the GL lays down that the customer needs to get complete, correct, timely and understandable information in order to assess the effects of the investment.</p> <p>As already mentioned under Standard 26 and 27 it is laid down in the GL that the investment firm has to enable the customer to get to know and understand the characteristics, the changes, the risks of the investment form and to consider the investment form as appropriate for him. This means the investment firm needs to give him all the information and all the time the customer needs to make the right investment decision. This is in our opinion of the full implementation of standard 28.</p> <p>This rule does not require further implementing measures.</p>
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2.2.) MARKETING COMMUNICATIONS ⁸

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p>29. If an investment firm provides information in a marketing communication it must be fair, clear and not misleading.</p>	<p>AP</p>	<p>Art. 2 Law against unfair competition (UWG) ASSA ABA</p>	<p>Art. 2 UWG generally lays down that unfair competition and misleading information in advertisement is forbidden. The provision of fair, clear and not misleading marketing communication is also captured by general diligence regulations in the ASSA and the ABA and it is market standard and applied practice. This standard does not require further implementing measures.</p>

⁸ This is without prejudice of EU or national provision requiring authorisation and/or other requirements affecting the provision of marketing services.

30. The promotional purpose of marketing communications issued by an investment firm must not be disguised.	AP FMA/AFEC	Art. 2 Law against unfair competition (UWG)	Art. 2 UWG generally lays down that unfair competition and misleading information in advertisement is forbidden It is within the scope of general diligence and information provision of the ASSA and ABA and common market standard that promotional purposes of marketing communications are not disguised. This standard does not require further implementing measures.
31. The information provided by an investment firm in a marketing communication must be consistent with the information it provides to its customers in the course of the provision of the investment services.	AP /AFEC	Please see 30.	Please see 30
32. Any marketing communication must contain at least the information about the investment firm defined in points a) and b) of paragraph 36. In case of a cross border marketing communication, the information provided must in addition state that information about the firm can also be obtained from or through the competent authority of the Member State where the customer resides.	AP FMA/AFEC	Please see 30.	Please see 30
33. An investment firm must not use the name of the competent authority in such a way that would indicate endorsement or approval of its services.	AP FMA/AFEC	Please see 30.	Please see 30
34. Where a marketing communication refers to a financial instrument or an investment service it must contain at least the information referred to in points a) and d) of paragraph 40.	AP FMA/AFEC	Please see 30.	Please see 30

2.3) INFORMATION ABOUT THE INVESTMENT FIRM

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
35. Before providing investment services an investment firm must supply adequate information about itself and the services it provides.	AP AFEC	Art. 13 par. 4 ASSA Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998)	It is already market standard that investment firms supply adequate information about themselves and the provided services.

<p>36. An investment firm must provide customers with the following information prior to the commencement of provision of investment services:</p> <ul style="list-style-type: none"> a) the identity of the investment firm, the (financial) group to which the investment firm belongs, its postal address and telephone number; b) the fact that the investment firm is authorised and/or registered and the name of the competent authority that has authorised and/or registered it; c) the functions that the investment firm performs so that the customer is able to assess the scope of the firm's responsibilities; d) the relevant compensation scheme(s); e) where such a procedure exists, a description of the mechanism(s) for settling disputes between the parties such as an out-of-court complaint and redress mechanism; f) an outline of the firm's policies in relation to conflicts of interest and inducements; g) the languages in which the customer can communicate with the investment firm. 	<p>AP</p> <p>FMA AFEC</p>	<p>Art 13 par 4 ASSA</p> <p>Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998)</p> <p>Art. 93 par. 8 ABA</p>	<p>The information mention in a), e) and g) are already provided to customer as a consequence of obligations under the GL and general information duties under the ASSA.</p> <p>The information mentioned in d is laid down in Art. 93 par. ABA</p> <p>Information duties not covered by the GL and the general information duties under the ASSA will be implemented as market standard.</p>
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2.4) INFORMATION ON FINANCIAL INSTRUMENTS AND INVESTMENT SERVICES

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
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<p>37. An investment firm must inform customers of the key features of investment services and financial instruments envisaged, according to the nature of such instruments and services.</p>	<p>AP AFEC</p>	<p>Art 13 par ASSA 4.1. b Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998)</p>	<p>The provision of key features of the envisaged investment services and financial services is statutorily in the ASSA and additionally determined in the GL. This standard does not require further implementing measures.</p>
<p>40. The information provided to customers can be delivered using standard documentation but must include the following as a minimum: a) a description of the main characteristics ⁹ of the instrument/service, including the nature of the financial commitment, whether the instruments involved are traded on a regulated market or not and the risks involved; b) price, including commissions, fees and other charges, relating to the transaction, the instrument or service; c) arrangements for payment and performance; d) details on any cancellation rights or rights of reflection that may apply.</p>	<p>AP/AFEC</p>	<p>Art. 13 par. 4 ASSA 4.1.a and b and 6. Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998)</p>	<p>This information obligation is covered by provisions of the ASSA and GL , which lay down the obligation to provide the customer with general information about the instrument and service and information about the general and specific risk of an instrument or service. This standard does not require further implementing measures.</p>
<p>38. An investment firm must communicate clearly and precisely to the customer all the charges relating to the services or instruments envisaged and how the charges are calculated.</p>	<p>AP AFEC</p>	<p>Art. 13 par 4 ASSA 6. Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998)</p>	<p>The obligation to communicate clearly and precisely to the customer all the charges relating to the services or instruments is covered by provisions of the ASSA and point 6 of the GL. This standard does not require further implementing measures.</p>
<p>41. The information to be disclosed to customers on commissions, charges and fees must contain: a) the basis or amount of the charges for transactions, products or services, detailing, where appropriate, the percentage or rate applicable, the frequency with which it is applied, any maximum or fixed minimum fees and, where the commission or fee must be paid in foreign currency, the currency involved; b) if various investment firms are to be involved in a transaction or service, an estimate of the other fees that will be payable.</p>	<p>AP AFEC</p>	<p>Art. 13 par 4 ASSA 6. Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998)</p>	<p>The information duties on commissions, charges and fees are captured by provisions of the ASSA and point 6 of the GL. This rule does not require further implementing measures.</p>
<p>42. In order to give a fair and adequate description of the investment service or financial instrument, an investment firm must avoid accentuating the potential benefits of an investment service or financial instrument without also giving a fair indication of the risks.</p>	<p>AP AFEC</p>	<p>Art. 13 par. 1 and par 4 ASSA 4.1.a and b Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998)</p>	<p>Fair and adequate descriptions of investment services and financial instruments are compulsory covered by provisions of the ASSA and point 4.1.a and b of the GL. This rule does not require further implementing measures.</p>

⁹ If the customer envisages undertaking transactions in derivatives, the information provided must include an explanation of their characteristics (especially the leverage effect, the duration of the contract, the liquidity and volatility of the market), a description of their underlying parameters (e.g. equities/interest rates/currencies), and the method to be used to execute the customer's transactions (in particular, whether on a regulated market or not).

<p>43. The fair and adequate description of a compound product must contain all the relevant characteristics of the composite instruments including, for example, the different services involved, the duration of the product, whether the instrument involves credit, the interest due, etc.</p>	<p>AP AFEC</p>	<p>Please see 42 Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998)</p>	<p>Please see 42.</p>
<p>44. The information on financial instruments and investment services must not state or imply that the performance of services or of the investment is guaranteed unless there is a legally enforceable arrangement to meet in full an investor's claim under the guarantee. Sufficient detail about the guarantor and the guarantee must be provided to enable the investor to make a fair assessment of the guarantee.</p>	<p>AP</p>	<p>Austrian Civil Code</p>	<p>The provision that statements of guarantees can only be given when there is a legally enforceable guarantee is covered by general principals of Austrian civil law. This rule does not require further implementing measures.</p>
<p>45. When information provided refers to a particular tax treatment the investment firm must advise the customer that the tax treatment depends on his personal situation and is subject to change and that he may wish to obtain independent tax advice.</p>	<p>AP AFEC, FMA</p>	<p>Art. 13 para 4 ASSA 4.1.c Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998)</p>	<p>It is common market standard that information on tax treatment is given with advice that the tax treatment depends on the customer's personal situation. This rule is market standard and is laid down in point 4.1.c of the GL and applied practice. Further regulation concerning the tax situation of a customer is laid down in the Annex of the GL - in the general risk statement. The Annex regulates that the investment firm only has to give advice of the general tax aspects of a product. The specific tax advice for the customer is on the other hand part of the job of a professional tax adviser. This rule does not require further implementing measures.</p>

<p>39. If information provided by an investment firm refers either to the past performance or to a forecast of the future performance of a financial instrument or investment service, this information must be relevant to the instrument or service being promoted and the source of the information must be stated.</p>	<p>AP FMA /AFEC</p>	<p>Art 13 par 4 ASSA</p> <p>Risk warning Degree for property funds</p> <p>Federal Act on Investment Funds</p>	<p>These information duties are in general covered by provisions of the ASSA and ABA. Lately has been clarified by The Austrian Supreme Court in the ruling 9 Ob 230/02t from February 26, 2003, which straightened out that a credit institution has to pay indemnity for not telling the customers that the past performance of a financial instruments is not a guarantee for future performance of the financial instrument. The concrete details concerning the source will be implemented as market standard and interpretation guidelines to the general information duties.</p> <p>The decree will be implemented in October 2003 and contains the information that past performance of a financial instrument is not a guarantee for future performance. The prospectus to provide ucits has to contain the above mentioned information.</p>
<p>46. If a reference to historical performance of investment services or financial instruments is made, it must be clearly expressed that the figures refer to the past, and that they may not constitute reliable guidance as to the performance of these services and instruments in the future.</p>	<p>FMA/AFEC</p>	<p>Please see 39.</p>	<p>Please see 39</p>

<p>47. The use of simulated returns is prohibited. If the information refers to actual returns based on past performance:</p> <ul style="list-style-type: none"> a) the reference period must be stated and must not be less than one year; b) where returns relate to more than one year, they must either be reduced to a compound annual rate or stated separately as annual returns; c) where a compound annual return is presented for more than one year, a reference period of five years must be used provided the relevant data are available. If the relevant data are not available over a reference period of five years (e.g. because the financial instrument or the investment portfolio has not existed for such a period), the returns may be measured from the issue date or the date on which the portfolio was established; d) where a benchmark is used to compare returns, it must be identified and its reference period must be relevant, clear and sufficient to provide a fair and balanced indication of performance of the investment service or financial instrument being promoted; e) if the return figures are not denominated in local currency, the currency used must be stated and reference shall be made to the currency risk for the return in local currency; f) the information for the comparison should be based on net performances or if it is based on gross performances commissions, fees or other charges have to be disclosed. 	AFEC	Please 39.	Please see 39
<p>48. The relevant provisions on actual returns shall apply to the method of calculating and presenting any future returns. Information on estimated future returns must state that these future returns are forecasts. Such forecasts must in turn be based on objective, realistic assumptions of investment returns.</p>	AFEC	Please 39.	Please see 39
<p>49. Any estimate, forecast or promise contained in the information on financial instruments and investment services must be clearly expressed, must state the assumptions on which it is based, must be relevant and must not mislead the customer.</p>	AFEC	Please 39.	Please see 39
<p>50. If information provided contains comparisons, the requirement of being fair, clear and not misleading means that the comparisons must:</p> <ul style="list-style-type: none"> a) be based either on data from attributed sources or disclosed assumptions; b) be presented in a fair and balanced way; c) take reasonable steps not to omit any fact that is material to the comparison. 	AP/AFEC/FMA	4.1.c Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998)	As mentioned above, the GL lays down the specific information duties of an investment firm. The demand for fair and clear comparisons is covered by provisions of the ASSA and point 4.1. c of the GL. This standard does not require further implementing measures.

2.5) RISK WARNINGS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p>51. An investment firm must provide its customers with risk statements that warn of the risks associated with financial instruments and transactions having regard to the customer’s knowledge, experience, investment objectives and risk profile.</p>	<p>AP AFEC</p>	<p>Art. 13 para 4 ASSA 4.1. b and 6 Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998)</p>	<p>The provision of customers with risk statements is explicitly determined in the ASSA and in detail determined in point 4.1.b and 6 of the GL. The guideline regulates the obligation to provide the customer with information about the general risk of a financial instrument (market and interest development) or service and with information about the specific risk of a financial instrument (security of a financial instrument, duration, exchange risk, currency and interest risk) or service. This standard does not require further implementing measures.</p>
<p>53. An investment firm must provide its customers with risk warnings as appropriate. Instances where the type of instrument or transaction envisaged makes specific risk warnings necessary include:</p> <ul style="list-style-type: none"> - financial instruments not traded on a regulated market; - transactions in illiquid financial instruments; - leveraged transactions; - financial instruments subject to high volatility in normal market conditions; - securities repurchase agreements or securities lending agreements; - transactions which involve credit, margin payments or the deposit of collateral; - transactions involving foreign exchange risk. 	<p>AP AFEC</p>	<p>Art. 13 para 4 ASSA 4.1. b and 6 Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998)</p>	<p>The provision of risk warnings is covered by provisions of the Art 13 para 4 ASSA and additionally in point 4.1.b and 6 of the GL.</p> <p>The GL lays down that an investment firm has to point out every specific risk of a financial instrument. The customer has to understand the operating mode of the financial instrument and all the risks. Rule 53/1 points out some transactions, which normally are aligned with higher risks. The GL sets even higher standards, because it restricts the duty of an investment firm to give advice not to specific transactions. The investment firm needs to tell the customer all information he needs to understand the risk.</p> <p>This rule does not require further implementing measures. Please see also 51.</p>

<p>53. The investment firm must also, where necessary, inform the customer of risks associated with:</p> <ul style="list-style-type: none"> a) clearing house protections (e.g. that although the performance of a transaction is sometimes ‘guaranteed’ by the exchange or clearing house this guarantee will not necessarily protect the customer in the event of default by the investment firm or another counterparty); b) suspension of trading or listing (e.g. that under certain trading conditions it may be impossible to liquidate a position); c) insolvency (e.g. that in the event of default of an investment firm involved with the customer’s transaction, positions may be liquidated automatically and actual assets lodged as collateral may be irrecoverable). 	<p>AP AFEC/FMA</p>	<p>Art. 13 para 4 ASSA 4.1. b and 6 Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998)</p>	<p>Please see also 25. The provision with all necessary information and risk warnings is covered by provisions of the ASSA and in point 4.1. b and 6 of the GL. This rule does not require further implementing measures. Please see also 51.</p>
<p>52. Risk warnings must be given due prominence. They must not be concealed or masked in any way by the wording, design or format of the information provided.</p>	<p>AP AFEC/FMA</p>	<p>Art. 13 para 4 ASSA 4.1. b and 6 Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998)</p>	<p>Please see also 25. This standard is stated in the ASSA and in detail determined in point 4.1.b and 6 of the GL. This standard does not require further implementing measures. Please see also 51.</p>
<p>54. Risk warnings about derivatives must disclose that the instrument can be subject to sudden and sharp falls in value. Where the investor may not only lose his entire investment but may also be required to pay more later, he must also be warned about this fact and the possible obligation to provide extra funding.</p>	<p>AP AFEC, FMA</p>	<p>Art. 13 para 4 ASSA 4.1. b and 6 Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998)</p>	<p>Please see 51 and 25. As mentioned above under rule 25 the GL includes as attachment standardized risk statements for derivative products, which include literally all information required in Rule 54. In our opinion rule 54 is therefore fully implemented.</p>

2.6. CUSTOMER REPORTING

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
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<p>55. An investment firm must ensure that a customer is provided promptly with the essential information concerning the execution of his order.</p>	<p>AP</p> <p>AFEC, Institutions;</p>	<p>Credit</p> <p>General terms and obligation of Austrian credit institutions (GTC)</p>	<p>Art. 383 ff Austrian Commercial Code</p> <p>In Austria only credit intuitions have the permission to transmit orders to the stock exchange or execute these orders by themselves. All other investment firms need the support of credit institutions. The execution of orders in Austria is undertaken in form of transactions on a commission basis. The further details of such transactions are laid down in the GTCs. In Austria these GTCs are a common market understanding of all credit institutions. These GTCs were worked out by the AFEC, the working chamber, the association for consumerism and all credit institutions in Austria – so all credit institutions use the same GTCs. For using the services of the specific credit institution the customer and the credit institution close an agreement. The general principles of this agreement are laid down in Art. 383 ff Austrian Commercial Code.</p> <p>A credit institution executes orders to buy or sell shares as commission agent and has to report the principal about the execution of the order and has to give account of the business.</p> <p>In the General terms and obligation of Austrian credit institutions Z 62 – 65, is laid down the standard of performance, the site and time of execution;</p> <p>The customer’s provision with information concerning the execution of his orders is within the scope of provision of the ASSA. This standard does not require further implementing measures.</p>
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<p>58. No later than the first business day following the execution of the transaction or receipt of confirmation of execution by a third party, an investment firm must send to the customer¹⁰, by fax, mail or electronic means (provided the firm reasonably believes that the customer can store it on a permanent medium), a contract note or confirmation notice which includes the following information:</p> <ul style="list-style-type: none"> a) the name of the firm; b) the name of the customer account; c) the time of execution, if available, or a statement that the time of execution will be supplied on request; d) date of execution; e) the type of transaction; e.g. buy, sell, subscription etc.; f) the market on which the transaction was carried out or the fact that it was carried out off-market; g) the financial instrument and the quantities involved in the transaction; h) the unit price applied and the total consideration; i) whether the customer's counterparty was the investment firm itself or any related party; j) the commissions and expenses charged; k) the time limit and procedure for the settlement of the transaction, e.g. details (name and number) of the bank account and securities account. <p>If a transaction is not executed within one business day of receipt of the customer order, an investment firm must send a written confirmation of the order to the customer. The confirmation notice must include customer order details, date and time of reception and, where applicable, date and time of transmission.</p>	<p>AP</p> <p>AFEC, Credit Institutions;</p> <p>FMA/AFEC</p>	<p>Art. 383 ff Austrian Commercial Code</p> <p>General terms and obligation of Austrian credit institutions</p>	<p>A credit institution executes orders to buy or sell shares as commission agent and has to report the principal about the execution of the order and has to give account of the business.</p> <p>In the General terms and obligation of Austrian credit institutions Z 62 – 65, is laid down the standard of performance, the site and time of execution;</p> <p>It is general common standard covered by provisions of the ASSA, the General Terms and Conditions for Banking Activities of Austrian Credit Institutions (hereinafter "GTC") and the GL that a customer is provided with a confirmation notice containing the information mention in a) to k). This rule does not require further implementing measures.</p> <p>The obligation to inform a customer that an order was not executed will be adopted in the guidelines for the practically exercise of conduct of business rules.</p>
<p>59. The investment firm must notify the customer immediately if it refuses to accept or transmit an order. The firm must inform customers as soon as possible if it is unable to transmit their orders.</p>	<p>AP/AFEC</p>		<p>The obligation to notify to the customer that the investment firm refuses to accept or transmit an order is within the scope of the ASSA and general common market standard. This rule does not require further implementing measures. Please see 55 and 58</p>

¹⁰ The reference to "send to the customer" includes to a tied-agent, other than the firm, nominated by the customer in writing.

<p>56. Where an investment firm has control of, or is holding assets belonging to a customer, it must arrange for proper identification and regular confirmation of such assets to the customer.</p>	<p>AP</p>	<p>Austrian Civil Code, Austrian Commercial Code ; Austrian Securities Deposit Law General terms and obligation of Austrian credit institutions</p>	<p>In Austria only credit institutions are allowed to hold assets of their clients –principles to this are laid down in the Austrian Securities Deposit Law. The commitment for regular confirmation of the assets which belong to the costumers is laid down in the Austrian Commercial Code and the GTC (point F Z 38), which are based on the Austrian Commercial Code. Point F Z 38 regulates a regular information commitment of the credit institution.</p> <p>This standard is covered by Austrian civil law standards. This standard does not require further implementing measures.</p> <p>Further regulation is laid down in the General terms and obligation of Austrian Credit Institutions;</p>
<p>60. An investment firm must send to its customer at least once a year or as often as agreed with the customer a statement of all assets held in custody on behalf of each customer. The statement must also:</p> <ul style="list-style-type: none"> a) identify assets which have been pledged to the firm or any third parties as collateral; b) identify assets which have been lent; c) clearly and consistently show movement of assets based on either trade date or settlement date. 	<p>AFEC, Credit Institutions; FMA AFEC</p>	<p>General terms and obligation of Austrian credit institutions</p>	<p>As mentioned above under rule 56 it is implemented in Austria that the investment firm has to transmit to the customer regularly a statement of all assets. It is laid down in Z 38 of the General terms and obligation of Austrian credit institutions that a statement of all assets held in custody on behalf of each customer is forwarded to the client once a year</p> <p>The specifications required under a) and b) are not within the standard contents of the statements. This part of the rule will be implemented as market standard. Rule 60 is at least partly implemented.</p>

<p>57. An investment firm that operates customer accounts, which include uncovered open positions, must provide regular statements of such positions.</p>	<p>FMA/AFEC</p>	<p>Special terms and conditions for future and options trading with securities of the Austrian Credit Institutions.</p> <p>General terms and obligation of Austrian credit institutions</p>	<p>This information is part of a specific service to the client. It is in the interest of the investment firm that the customer is aware that his account has uncovered open positions. Because of this specific service, all credit institutions use specific terms and conditions for futures and options trading with securities. These special terms were implemented in the same way as the GTC as mentioned under standard 55. These terms regulate the principles of the specific service, which include the information commitment in Standard 57 and Rule 61.</p> <p>Credit Institutions have referring to Z 66 of General terms and obligation of Austrian credit institutions the right to refuse the execution of client orders, if sufficient cover is missing.</p>
<p>61. Where an account includes uncovered open positions¹¹, an investment firm must send to its customer a monthly statement, which includes the following:</p> <ul style="list-style-type: none"> a) information about the options contract, e.g. market price, date of exercise, exercise price, as well as any incidental costs connected with the exercise; b) each payment made by the customer as a result of the margin requirements in respect of the open positions and the amount of the unrealised profit or loss attributable to open positions; c) the resulting profit or loss arising from positions closed during the period. 	<p>AFEC</p>	<p>Special terms and conditions for future and options trading with securities of the Austrian Credit Institutions.</p>	<p>Please see rule 57.</p>

3. THE “KNOW-YOUR-CUSTOMER STANDARD” AND THE DUTY TO CARE

3.1 INFORMATION FROM THE CUSTOMER

¹¹ Examples of uncovered open positions include:

- (1) short positions on cash instruments;
- (2) selling a call option on an investment not held in the portfolio;
- (3) unsettled sales of call options on currency in amounts greater than the portfolio’s holding of that currency in cash or in readily realisable securities denominated in that currency;
- (4) transactions having the effect of ‘selling’ an index to an amount greater than the portfolio’s holdings of designated investments included in that index.

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p>62. Prior to providing any investment service to a customer for the first time and throughout the business relationship, an investment firm must be in possession of adequate documentation on the identity of the customer, as well as the identity and legal capacity of any representative of the customer. In addition, prior to providing any investment service the investment firm must seek to obtain from the customer information enabling an investment firm</p> <ul style="list-style-type: none"> a. to determine whether the investment services envisaged are appropriate for the customer¹² and b. to meet any duties owing to the customer in respect of the services to be provided. 	<p>AP</p> <p>AP</p> <p>AFEC</p>	<p>Art. 13 par 3 and Art. 17 par 1 ASSA</p> <p>Art. 40 ABA</p> <p>Art. 41 ABA</p> <p>Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998)</p>	<p>According to Art. 13 ASSA, the investment firms have to request information from their customers with respect to their experience in or knowledge of transactions that are to be the subject matter of investment services, with respect to the objectives sought in such transactions and with respect to their financial situations to the extent necessary to safeguard the interests of the customers and shall keep records of the information pursuant to Art. 13 par 3 ASSA. This standard does not require further implementing measures.</p> <p>Investment firms shall register the identity of a customer, when entering into a permanent business relationship.</p> <p>Investment firms shall request the customer to declare whether he intends to execute the business relationship for his own account or for someone's else account. If the customer to conduct the business relationship or transaction for someone else's account, he shall inform the investment firm about the trustor's identity:</p> <p>The GL contains further regulation about rule 62 No. a and b.</p>
<p>63. The “know-your-customer” standard applies to each investment firm having a direct business relationship with the customer with respect to investment services. However, where two or more investment firms are involved in providing an investment service and each has a direct relationship with the customer, an investment firm may rely on the information received from another of such investment firms.</p>	<p>FMA/AFEC</p>	<p>Art. 21 para 1 ASSA in connection with Art. 40 and 41 ABA</p>	<p>The “know your customer” standard in regard of two or more involved investment firms is common market standard and applied practise. This rule does not require further implementing measures.</p> <p>The Austrian Legislation is even stronger than rule 63. If two investment firms provide services to the same customer, one investment firm can rely only on the information received from the other investment firm, if it has no direct contact to the client.</p>

¹² This is not considered to be investment advice according to the definition of the paper.

<p>64. An investment firm must obtain evidence of the identity of its customers in accordance with national laws and regulations implementing the provisions of Council Directive 91/308 on the prevention of the use of the financial system for the purpose of money laundering. Until such evidence is obtained, an investment firm must not provide any investment services to the customer concerned.</p>	<p>AP</p>	<p>Art. 21 par 1 ASSA in connection with Art. 40 and 41 ABA</p>	<p>This rule is as a matter of course implemented in the ABA. Please see 62 This rule does not require further implementing measures.</p>
<p>65. An investment firm must seek to obtain information on the customer's knowledge and experience¹³ in the investment field, his investment objectives and risk profile,¹⁴ his financial situation/capacity and any trading restrictions applicable to the customer. The extent of the information required will vary according to the standards laid down in paragraph 62, second subparagraph.</p>	<p>AP/AFEC/FMA</p>	<p>Art. 13 para 3 ASSA, Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998)</p>	<p>The obligation to seek information on the customer's knowledge and experience in the investment field, his investment objectives and risk profile and his financial situation/capacity is determined explicitly in the Art. 13 par 3 ASSA. Furthermore the GL gives further advice for the categorization of customers (conservative, some risk, and speculative) and some further advice to ask all information of the client. This rule does not require further implementing measures. Please see also 62.</p>
<p>66. An investment firm shall be entitled to rely on the information provided by the customer, unless it is manifestly inaccurate or incomplete or the firm is aware that the information is inaccurate or incomplete. In this case paragraph 69 applies.</p>	<p>AP</p>	<p>2.2 Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998)</p>	<p>Covered by provisions stated in the ASSA an investment firm can rely on the information provided by the customer, unless it is manifestly inaccurate or incomplete or the firm is aware that the information is inaccurate or incomplete. This rule does not require further implementing measures.</p>
<p>67. An investment firm must take reasonable care to keep the customer profile under review, also taking into consideration the development of the relationship between the investment firm and the customer. The customer must be advised that he should inform the investment firm of any major changes affecting his investment objectives, risk profile, financial situation/capacity, trading restrictions, or the identity or capacity of his representative. Should the firm become aware of a major change in the situation previously described by the customer, it must request additional information.</p>	<p>FMA/AFEC</p>	<p>Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998)</p>	<p>It is literally laid down in the GL that the investment firm has to inform the customer that it is also in his interest and in his obligation that he tells the investment firm changes in the information he has already given. Furthermore it is laid down that the investment firm has to actualize the customer profile if it gets to know new information.</p> <p>It is general common market standard that customer profiles are reviewed and adopted every three years and by reason. This rule does not require further implementing measures.</p>

¹³ Information on the customer's investment knowledge and experience includes the types of services, transactions and products the customer is familiar with and his trading history, i.e. the nature, volume, frequency and timeframe of his transactions.

¹⁴ Information on the customer's investment objectives and risk profile includes the temporal horizon of the customer's future investments, as well as his preferences regarding risk-taking and recurrent income.

68. An investment firm must draw up and implement appropriate written internal policies and procedures to keep and update all documents required for customer identification and profile, as well as records of customer addresses and telephone/fax numbers.	AP	Art 16 and 17 ASSA	Art 16 of the ASSA foresees that market intermediaries are required to have in place and effectively use adequate means and procedures for the proper performance of the investment services and as a consequence of the provision of Art 17 of ASSA to keep record and update all documents of the customer.
69. An investment firm must warn the customer that any refusal to supply information may adversely affect the ability of the investment firm to act in the best interest of the customer. If a customer refuses to supply information the investment firm must warn him in writing that this may adversely affect the ability of the investment firm to act in his best interest.	AP/AFEC	2.2 Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998)	The content of rule 69 is literally laid down in the GL and does not need further implementation.
70. The customer should not be invited not to provide information.	FMA/AFEC	2.2 Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998)	The GL contains the recommendation to record the refusal of the customer to provide information and the investment firm has to document it, if a customer refuses the information. The documentation gives proof, why the customer refuses the information. It is general common market standard not to invite the customer not to provide information and does not require further implementing measures.

3.2 THE INVESTMENT FIRM'S DUTY TO CARE FOR THE CUSTOMER ¹⁵

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
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¹⁵ After having obtained the information from the customer according to chapter 3.1., the extent of an investment firm's duty to care for the customer depends on the nature of the investment service to be provided: where the service to be provided is a full hand-holding service of transmission or execution of order par. 72-76 apply; where the service to be provided is the pure transmission or execution of orders (This implies that no investment advice is provided and that suitability will not be tested on a transaction-by-transaction-basis) par. 74, 76 and 77 apply.

<p>72. When an investment firm provides investment advice to the customer, it must have reasonable grounds to believe, in light of the information disclosed to it by the customer and the information available to it, including the information arising from the customer relationship, that this investment advice is suitable for him. The investment firm must communicate the reasons why the advice is considered to be in the best interest of the customers at the time the advice is given.</p>	<p>AP</p>	<p>Art. 16 para 3 ASSA, 13 para 3 ASSA, 3.1. – 3.5. Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998)</p>	<p>According to Art 13 para 3 of the ASSA the investment firm has to ask the customer about the information mentioned in rule 65. This information is documented in a customer profile. Furthermore the investment firm has to categorize the customer in a risk group. Every risk group is linked to groups of financial instruments, which can be subject of the investment advice to the customer of this specific risk group. The customer profile and the categorization in a risk group gives proof that the financial instrument is adequate for the customer and is an information which is given to the customer in the way of the investment advice. This is a main principle of the Art 13 para ASSA and is further laid down in the GL. The obligation for an investment firm to implement adequate internal control procedures that are suitable to counteract violations of obligations arising under the ASSA, contain the obligation to provide suitable investment advices to the customer. This rule does not require further implementing measures.</p>
<p>73. Before accepting an order an investment firm must take reasonable care to verify that the order is suitable for the customer in light of the information disclosed to it by the customer and the information available to it, including the information arising from the customer relationship.</p>	<p>AP</p>	<p>Art. 16 para 3 ASSA, 13 par 3 ASSA, 3.1. – 3.5. Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998)</p>	<p>Please see 72.</p>

<p>75. Where an investment firm receives an order regarding a transaction that it considers – in the light of the information disclosed to it by the customer and the information available to it, including the information arising from the customer relationship – not suitable¹⁶ for the customer, it must advise the customer accordingly and provide appropriate information on the transaction, including any necessary risk warning. The investment firm may transmit or execute the order only if the customer nonetheless confirms his intention to proceed with the transaction in writing or by telephone and recorded, and provided that such confirmation contains an explicit reference to the warning received.</p>	<p>AP FMA/AFEC</p>	<p>3.5. Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998)</p>	<p>Point 3.5 lays down that an investment firm meets the obligation to give advice to the customer if it receives an order from a customer not suitable for him.</p> <p>It is not common market standard to let the customer confirm the transaction in writing or by telephone and recorded. It will be implemented as market standard that there must be a written documentation of the client order in form of a note for the file after a telephone call with the customer.</p>
<p>74. An investment firm must take reasonable care to verify that the customer has sufficient financial resources to settle the proposed transaction.</p>	<p>AP Credit Institutions</p>	<p>Art. 13 par 3 ASSA Z 66 General terms and obligation of Austrian credit institutions</p>	<p>At the beginning of the investment services provided by the credit institution the customer has to conclude an agreement with the credit institution about opening an account. In this agreement there are laid down the credit facilities, which can be drawn on by the customer.</p> <p>It is common market standard that investment firms verify that the customer has sufficient financial resources to settle the proposed transaction, which is laid down in Art. 13 par 3 ASSA. This standard does not require further implementing measures.</p> <p>Furthermore, the investment firm has to check if the account of the customer is covered for the execution of the transaction. Normally the investment firm doesn't fulfil the proposed transaction of the client until it receives the amount of money on the clearing account. If not, the credit institution has the right according to Z 66 of the General terms and obligation of Austrian credit institutions to refuse to execute the transaction</p>

¹⁶ A transaction may be considered unsuitable for a customer, *inter alia*, because of the instrument involved (e.g. derivatives), because of the type of transaction (e.g. sale of options), because of the characteristics of the order (e.g. size or price specifications) or because of the frequency of the customer's trading.

76. An investment firm may accept an order without having taken reasonable steps to verify the immediate availability of the funds (securities) necessary for carrying out the related purchase (sale) only if an adequate credit facility has been agreed on beforehand.	Credit Institutions	Z 66 General terms and obligation of Austrian credit institutions	Please see 74.
77. Where the service to be provided is the pure transmission or execution of orders (either through a special distribution channel, in individual cases or generally) the customer must be made aware of this fact prior to the transaction taking place for the first time. On the basis of the information obtained from the customer on opening the account, the investment firm will define an appropriate service including investment parameters, i.e. types of instruments, types of transactions and types of orders, and inform the customer accordingly. Where the investment firm receives an order regarding a transaction, which is not in line with the defined investment parameters, it must warn the customer accordingly and provide appropriate information on the transaction, including any necessary risk warning(s). The investment firm may transmit or execute the order only if the customer nonetheless confirms his intention to proceed with the transaction in writing or by telephone and recorded, and provided that such confirmation contains an explicit reference to the warning received.	AFEC, FMA	4.e Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998)	The GL deals with the specific kind of business – the execution only business. It gives a definition for the execution only business and lays down the rights and duties of the investment firm in connection with this kind of business. This standard is in general common market standard. This standard does not require further implementing measures. Not implemented in Austria is the written or given confirmation (by telephone and/or taped) of an order, which does not meet his risk profile. This adoptions in regard to “execution only”- business will be implemented in line with the revised ISD.

4. CUSTOMER AGREEMENTS

4.1) BASIC CUSTOMER AGREEMENT

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
78. Prior to providing any investment service, an investment firm must enter into a signed written agreement with the customer setting out the rights and obligations of the parties, a description of the services to be provided, and all other items of information necessary for the proper understanding and performance of the agreement.	AP/AFEC	Art. 17 para 3 lit. 2 ASSA B 1 Z 3 GTC	The demand for a signed written agreement between the customer and the investment firm is captured by provisions of the ASSA and especially the GTC. The investment firm has to hand out the customer according to Art 17 para 3 lit. 2 a copy of the complete customer contract. This standard does not require further implementing measures.

<p>79. The customer agreement must be clear and easily understandable by the customer.</p>	<p>AP/AFEC</p>	<p>Art. 17 para 3 lit. 4 ASSA B 1 Z 3 GTC</p>	<p>The investment firm has to provide all relevant material information in a way to safeguard every time the interest of the customers, which includes that a customer agreement must be clear and easily understandable by the customer. This standard is covered by provisions of the ASSA and the GTC. This standard does not require further implementing measures.</p>
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<p>80. The customer agreement must contain the following items as a minimum:</p> <ul style="list-style-type: none"> a) the identity, postal address and telephone number of each of the parties; b) the names of any persons authorised to represent the customer for the purposes of the agreement, in particular the names of the natural persons authorised to represent the customer who is a legal entity; c) the investment firm's general terms of business for investment services and any particular terms agreed between the parties concerning, e.g. margin requirements or potential obligations where securities may be purchased on credit d) a general description of the investment services, including custody, offered by the investment firm and the types of financial instruments to which such services relate; e) the types of orders and instructions that the customer may place with the investment firm, the medium/media for sending them (e.g. by telephone, E-mail or post) and the alternative medium to be used when normal media are unavailable; f) the information to be given by the investment firm to the customer regarding the performance of services including the medium/media for sending the information and the type, frequency and rapidity of the information to be given e.g. regarding order execution or portfolio evaluation; g) details of the investment firm's fees and prices for investment services, including information on how they are to be calculated, the frequency with which they are to be charged and the manner of payment; h) the name of the competent authority which has authorised the investment firm; i) the law applicable to the contract, as ascertained to the best of the knowledge of the firm or as agreed between the parties; j) the duration of the agreement and the procedures for amending, renewing, terminating or withdrawing from it; k) where such a procedure exists, a description of the mechanism for settling disputes between the parties such as an out-of-court complaint and redress mechanism; l) the actions that the investment firm shall or may take in the event the customer does not honour his obligations (e. g. payment of money due to the investment firm), in particular whether the investment firm is allowed to dispose of any of the customer's assets, the timeframe for doing so and the information to be given to the customer in such circumstances; m) the languages in which the customer can communicate with the investment firm. 	<p>AP</p> <p>Credit institutions</p> <p>Credit institutions</p> <p>Credit institutions</p> <p>Credit institutions</p> <p>Credit institutions</p> <p>Credit institutions</p> <p>FMA/AAFEC</p> <p>Credit institutions</p> <p>Credit institutions</p> <p>Credit institutions</p>	<p>a)</p> <p>b) Z 31, 32 General terms and obligation of Austrian credit institutions</p> <p>c) Z 74 General terms and obligation of Austrian credit institutions</p> <p>d) Z 69 General terms and obligation of Austrian credit institutions</p> <p>e) Z 3 General terms and obligation of Austrian credit institutions</p> <p>f) Z 16, 17 General terms and obligation of Austrian credit institutions</p> <p>g) Z 43, 44, 45, 46 General terms and obligation of Austrian credit institutions</p> <p>i) Z 20 General terms and obligation of Austrian credit institutions</p> <p>j) Z 22, 23 General terms and obligation of Austrian credit institutions</p> <p>l) 23, 24, 10, 11, 12, 13 General terms and obligation of Austrian credit institutions</p>	<p>a) The information obligations under this rule are covered by provisions of the GTC and the items are contained in several different documents and guidelines.</p> <p>b) Z 31 power to draw from an account, Z 32 signatory power</p> <p>c) Z 74 Future and options trading</p> <p>d) Z 69 safe custody</p> <p>e) Z3 issues of statements</p> <p>f) Z 16 Argumentation, Z 17 communication of missing information</p> <p>g) Z 43 Fees, amount of fees, change of fees</p> <p>h) This rule is not common standard and will be implemented as market standard and interpretation guidelines to the general information duties.</p> <p>i) Z 20 law applicable</p> <p>j) Z 22 and 23 Cancellation</p> <p>l) cancellation and the Z 10 ff obligation to co-operate and responsibility of the client</p> <p>For all investment firms which are no credit institutions the obligation to work with customers on basis of General terms and obligation will be implemented as market standard.</p>
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81. Rather than containing all the above items itself, the contract may refer to other documents containing certain of them, e.g. the general terms of business, the types of investment services offered, the types of orders and information to be sent by the parties and the fee schedule, provided that all the contractual documents so referred to are provided to the customer prior to the signing of the contract.	AFEC, Institutions;	Credit	Please see 80.	This rule does not require further implementing measures. Please see 80.
82. Where a custody service related to the other services provided by the firm to the customer is provided, either directly by the investment firm party to the contract with the customer or indirectly by another investment firm, the contract must contain at least a brief indication of the rights and obligations of the parties, including the provisions relating to the exercise of voting rights attaching to the securities held.	AFEC, Institutions;	Credit	Z 69 – 72 General terms and obligation of Austrian Credit Institutions;	It is determined in provisions of the GTC that the contract must contain brief indication of the rights and obligations of the parties. This rule does not require further implementing measures.
83. The contract must state that any modification of the agreement by the investment firm, e.g. regarding fees, requires the prior notification of the customer, and the contract must provide a sufficient opportunity for the customer to terminate the agreement.	AFEC, Institutions;	Credit	Z 43 – 45 General terms and obligation of Austrian Credit Institutions;	Please see 78 and 80 lit. g
84. A copy of the agreement signed by the customer (and any related contractual documents) must be kept by the investment firm for the duration of the customer relationship and for at least five years after the end of the relationship; a copy must be provided to the customer immediately after signing, and at any time subsequently on request.	AP		Art. 17 ASSA	This rule is more severe determined in the ASSA. Article 17 ASSA obliges the investment firm to keep record of all customer based documents for at least six years. This rule does not require further implementing measures.

4.2) CUSTOMER AGREEMENT INVOLVING TRADING IN DERIVATIVES

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
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<p>85. Prior to providing the services of reception/transmission and/or execution of orders involving derivatives, a customer agreement containing the relevant provisions of the basic customer agreement as well as certain additional provisions specific to trading in derivatives must be signed between the parties.</p>	AFEC	Special terms and conditions for future and options trading with securities of Austrian Credit Institutions, Z 74 General terms and obligations of Austrian Credit Institutions;	Additional provisions specific to trading in derivatives to the basic customer agreement are covered by provisions of the guidelines for the practically exercise of conduct of business rules and the “Special terms and conditions for future and options trading with securities of Austrian Credit institutes”. This standard does not require further implementing measures.
<p>86. In addition to the relevant items of the basic customer agreement, where the firm provides services involving derivatives, the customer agreement must contain:</p> <ul style="list-style-type: none"> - the type(s) of instruments and transactions envisaged, - the obligations of the investment firm with respect to the transactions envisaged, in particular its reporting and notice obligations to the customer, - the obligations of the customer with respect to the transactions envisaged, in particular his financial commitments toward the investment firm and the time allowed for honouring such commitments, - an appropriate warning calling to the customer’s attention the risks involved in the transactions envisaged. 	AFEC	Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998)	The obligatory addition of relevant items to the basic customer agreement is captured by provisions of the GTC and the GL. This rule does not require further implementing measures.
<p>87. The contract must mention the types of transactions envisaged, in particular whether the customer intends to undertake transactions giving rise to contingent liabilities, the types of instruments envisaged, in particular whether they are traded on a regulated market or not, and it must refer to the documentation on such instruments provided by the investment firm to the customer for information purposes.</p>	AFEC	Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998)	It is within the scope of the GTC and the GL that the contract must mention the types of transactions envisaged. This rule does not require further implementing measures.
<p>88. The contract must provide for the immediate confirmation of derivatives transactions and the immediate notice to the customer of his payment obligations as they arise, as well as the procedures to be used for such confirmation and notice.</p>	AFEC	Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998)	The obligation under this rule is within the scope of the GTC and the guidelines for the practically exercise of conduct of business rules. This rule does not require further implementing measures.
<p>89. The contract, or the documentation referred to in the contract, must provide adequate information on any margin requirements or similar obligations, regardless of the source of such rules and requirements, e.g. an exchange or clearing house, or the investment firm itself. This document must indicate how margin will be calculated and charged, the assets (cash, securities, etc.) accepted as margin, the frequency of margin calls and the timetable for the delivery or payment of margin by the customer to the investment firm. The contract must require immediate notification to the customer of any change in margin rules.</p>	AFEC	Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998)	It is determined in the GTC and the guidelines for the practically exercise of conduct of business rules that the contract, or the documentation referred to in the contract, must provide adequate information on any margin requirements or similar obligations. This rule does not require further implementing measures.

90. The warning given to the customer should reflect the transactions envisaged, in particular where potential losses may exceed the amounts invested, as well as the experience, knowledge and financial situation/capacity of the customer or type of customer involved, and should be given due prominence in the contract.	AFEC	Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998)	The obligation to give the customer adequate risk warnings is stated in the GTC and the GL. This rule does not require further implementing measures.
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5.- DEALING REQUIREMENTS

5.1) RECEPTION AND TRANSMISSION OF CUSTOMER ORDERS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
91. An investment firm must record and process customer orders in accordance with the customer's instructions and in such a way as to facilitate best execution.	AP	Art 17 ASSA, Art. 13 ASSA	Art. 17 of the ASSA lays down that an investment firm shall keep record the order and the customer's instruction in this context as well as the execution of the order. Furthermore the investment firm has to keep record of the information given by the customer according to his experience, in or knowledge of transactions that are to be the subject matter of the investment, his objectives sought in such transactions and his financial situation. Finally the investment firm has to act always in the best interest of the customer which contains the commitment to facilitate best execution. This standard is explicitly determined in the ASSA. This standard does not require further implementing measures.

<p>93. An investment firm must ensure that, prior to their transmission for execution, orders given by customers are clear and precise and include the following:</p> <ul style="list-style-type: none"> a) the name of the customer and of any person acting on his behalf, b) the date and time of the order, c) the financial instrument to be traded, d) the size of the order, e) the nature of the order, e.g., subscription, buy, sell, exercise etc., f) any other relevant details and particular instructions from the customer for the order to be properly transmitted and executed, e.g. limit orders, validity period and market of execution; g) the account for which the order has to be executed. 	<p>AP</p> <p>AFEC, FMA</p> <p>AP</p>	<p>Art 17 ASSA</p> <p>Art 384 Austrian Commercial Code</p> <p>General terms and obligation of Austrian Credit Institutions;</p> <p>Securities reporting decree</p> <p>Art 18 ASSA</p>	<p>To execute an order the mentioned items need to be recorded by the investment firm, detailed provisions are determined in the ASSA. Art 17 par 1 ASSA lays down that the investment firm shall keep records of the order and the customer's instructions in this context as well as the execution of the order, the name of the employee who has contacted the customer and the time of placement and execution of the order;</p> <p>As commission agent the credit institution has to fulfil the order in diligence of a prudent business man.</p> <p>The GTC and the securities-reporting decree – this decree obliges the credit institutions to report all relevant information concerning securities transaction in a predetermined electronically way to the FMA. In addition, the computer based execution systems used by Austrian credit institutions ensure the compliance with that rule as well. This rule does not require further implementing measures.</p>
<p>94. An investment firm must record orders immediately, documenting and verifying all relevant items of proper execution.</p>	<p>AP</p>	<p>Art 17 ASSA</p>	<p>The recording of all relevant items of proper execution is statutorily determined in the ASSA. This standard does not require further implementing measures. Please see 93.</p>
<p>95. An investment firm must keep a record of telephone orders on magnetic tape or an equivalent medium. Investment firms must duly inform the customer that the conversation will be recorded.</p>	<p>AFEC</p>	<p>Austria Data Protection Act</p>	<p>The obligation of keeping record of a telephone order on magnetic tape will be implemented as market standard, if there is no further written confirmation of the order of the customer.</p> <p>The obligation to inform a customer about the fact that the telephone conversation will be recorded is a substantial principal of Austrian law reflected in the Austrian Data Protection Act.</p>
<p>96. Before transmitting orders on behalf of several beneficiaries on an aggregated basis, an investment firm must pre-assign such orders in order to ensure that they can identify and match the orders with the relevant customer at any time.</p>	<p>AP</p>	<p>Art 18 ASSA</p>	<p>The computer based execution systems used by Austrian credit institutions ensure the compliance with this rule, so that the pre-assign can be assumed as common market standard. This rule does not require further implementing measures. Furthermore, investment firms shall ensure adequate monitoring and security regarding electronic data processing</p>

<p>97. An investment firm must transmit orders promptly and sequentially and must take all reasonable care to transmit orders in a way to facilitate their best execution, taking into account all relevant details of the process of transmission, e.g. the size and characteristics of the order.</p>	<p>AP</p>	<p>Art 13 ASSA</p>	<p>As mentioned under rule 91 the principle of best execution is laid down in the ASSA and is fully implemented in Austria. This rule is statutorily stated in the ASSA, which lays down the principle that an investment firm shall always act with the necessary expertise, diligence and conscientiousness in the best interest of their customer, which includes the obligation to transmit orders promptly and sequentially. This rule does not require further implementing measures.</p>
<p>92. An investment firm must ensure that the firm and its members of the board, directors, partners, employees and tied-agents do not use the information they possess on customers orders to the disadvantage of customers' interest.</p>	<p>AP</p>	<p>Art 14 par 3 ASSA</p>	<p>Investment firms shall be prohibited from concluding sale or purchase transactions in financial instruments on the basis of their knowledge of the order situation with the intent to gain pecuniary benefit for themselves or a third party. The primacy of the customer's interest is a vital standard determined in the ASSA. This standard does not require further implementing measures.</p>
<p>98. An investment firm must take all reasonable steps to refrain from transmitting orders for its own account or the account of its members of the board, directors, partners, employees and tied-agents before those of customers in identical or better conditions than the latter ("front running").</p>	<p>AP</p>	<p>Art 14 par 3 ASSA</p>	<p>The prohibition of "front running" is determined in Art 14 par 3 ASSA. This standard does not require further implementing measures. Please see 92.</p>
<p>99. An investment firm, which aggregates orders, must pre-assign such orders prior to transmitting them.</p>	<p>AP</p>	<p>Art 18 ASSA</p>	<p>Please see 96.</p>
<p>100. An investment firm may transmit orders for its own account and for its customers account on an aggregated basis when it is clearly in accordance with the best interest of the customer and provided that the best execution standard is respected.</p>	<p>AP</p>	<p>Art 18 ASSA</p>	<p>This rule is captured by provisions of the ASSA. This rule does not require further implementing measures. Please see 96.</p>
<p>101. In the case of orders in connection with public offers of securities, an investment firm may transmit such orders provided that they offer the relevant prospectus to the customer or informs the customer where it is available.</p>	<p>AP</p>	<p>Art 17 par 3 ASSA</p>	<p>The obligation to provide customers with the relevant prospectus is determined explicitly in Art 17 par 3 ASSA, which lays down that an investment firm shall provide if requested the prospectus or any changes thereto if such documents where required under other federal law. This rule does not require further implementing measures.</p>

5.2) EXECUTION OF ORDERS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p>102. An investment firm must take all care to obtain the best possible result for the customer with reference to price, costs born by the customer, size, nature of the transactions, time of reception of order, speed and likelihood of execution and trading venue taking into account the state of the relevant market(s). The relevant market(s) shall be deemed to be the market(s) offering the most favourable trading conditions also in terms of transparency, liquidity and clearing and settlement arrangements in connection with the envisaged transaction. If the investment firm executes in another trading venue, it must be able to demonstrate to the customer that this was done in accordance with his best interest.</p>	<p>AP AP</p>	<p>Art 384 Austrian Commercial Code Z 62 General terms and obligations of Austrian Credit Institutions in connection with Art 400 ff Austrian Commercial Code</p>	<p>Please see also to standard 91 and rule 97. As commission agent, the credit institution has to fulfil the order in diligence of a prudent business man. As a commission agent, the credit institute has to provide evidence that the order was executed at the market price. Execution in the customers' best interest is also determined in the ASSA. As best execution – standards will be adopted explicitly in the revised ISD, this standard will be implemented in line with the revised ISD.</p>
<p>104. An investment firm acting as principal in relation to a customer order must inform the customer accordingly beforehand and must be in a position to justify the price at which the transaction is executed, with reference to the prices and volumes in the relevant market(s), where appropriate, or the presumed value determined on the basis of objective elements, e.g. mark-to-market.</p>	<p>AP</p>	<p>Art 384 Austrian Commercial Code Z 62 General terms and obligations of Austrian Credit Institutions in connection with Art 400 ff Austrian Commercial Code</p>	<p>As mentioned above this business constructed in Austria as transactions on commission basis, which is laid down in the Austrian Commercial Code. The commission agent (which is always the credit institute) has to provide evidence that the order was executed at the market price, which covers rule 104. This rule is therefore covered by provisions of the Austrian Commercial Act and the ASSA, as well as the GTC. This rule does not require further implementing measures. Please see 102.</p>
<p>105. An investment firm must take all reasonable steps to refrain from executing orders for its own account or the account of its members of the board, directors, partners, employees and tied-agents before those of customers in identical or better conditions than the latter ("front running").</p>	<p>AP</p>	<p>Art 14 par 3 ASSA</p>	<p>Investment firms shall be prohibited from concluding sale or purchase transactions in financial instruments on the basis of their knowledge of the order situation with the intent to gain pecuniary benefit for themselves or a third party. The prohibition of front running is stated in the ASSA. This rule does not require further implementing measures.</p>

<p>103. An investment firm must ensure that orders are executed in accordance with the instructions from the customer.</p>	<p>AP</p>	<p>Art 16 para 3 ASSA, Art 384 Austrian Commercial Code</p> <p>Z 62 General terms and obligations of Austrian Credit Institutions in connection with Art 400 ff Austrian Commercial Code</p>	<p>According to Art 384 para 1 Austrian Commercial Code the commission agent has to fulfil the order in due care of a prudent business man and has to follow the instructions of the customer.</p> <p>According to Art 16 para 3 of ASSA, an investment firm has to have adequate internal control procedures that are suitable to counteract violations of obligations under ASSA. The control that orders are executed in accordance with the instructions from the customer is one part of the control procedures. This standard does not require further implementing measures.</p>
<p>106. An investment firm must execute orders promptly and sequentially, unless the characteristics of the order and/or prevailing market conditions make this impossible or require otherwise in the interest of the customer.</p>	<p>AP</p>	<p>Art 13 ASSA</p>	<p>This rule is determined in the ASSA. This rule does not require further implementing measures. Please see 97.</p>
<p>107. Customer orders may be matched internally only if such offsetting is clearly in accordance with the best interest of the customers involved and provided that the best execution standard is respected.</p>	<p>AP</p>	<p>Art 13 ASSA</p>	<p>The implementation of rules concerning the internally matching of orders will be undertaken in line with the revised ISD. Please 96.</p>
<p>108. If an investment firm aggregates orders, it must pre-assign such orders prior to executing them.</p>	<p>AP</p>	<p>Art 18 ASSA</p>	<p>The pre-assignment of aggregated orders is guaranteed by the computer based executions systems used by Austrian credit institutions. This rule does not require further implementing measures. Please see 96.</p>
<p>109. The price received or paid by the customer shall be identified separately from the fees and costs to the customer.</p>	<p>AFEC</p>	<p>General terms and obligations of Austrian Credit Institutions</p>	<p>It is common market standard and determined in the GTC that price received or paid by the customer is identified separately from the fees and costs to the customer. This rule does not require further implementing measures.</p>
<p>110. An investment firm must inform customers of relevant risks or impediments for the proper execution of the orders. If, due to market conditions, or for any other reason, an order cannot be executed according to the instructions given by the customer, an investment firm must ensure that the customer is duly informed as soon as possible.</p>	<p>AP/AFEC/FMA</p>	<p>6. Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998)</p> <p>Art 13 para 3 ASSA</p>	<p>This rule is covered by several provisions of the ASSA and the GL. This rule does not require further implementing measures.</p>

5.3) POST- EXECUTION OF ORDERS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
111. An investment firm must ensure the proper and speedy recording, allocation and distribution of executed transactions.		Art 13 ASSA Art 384 Austrian Commercial Code	This rule is covered by provisions of the ASSA and the Austrian Commercial Code, which lays down that the credit institution as commission agent has to fulfil the order due care of a prudent business man and he has to report the principal immediately after he has fulfilled the commission, to give account for the transaction and he has to give the principal all the information he needs. If the commission agent doesn't fulfil the commission transaction in accordance with the instructions of the customer he owes him compensation. This rule can be assumed as common market standard. This standard does not require further implementing measures.
113. An investment firm must record the essential elements of transactions, including those carried out for its own account, immediately after their execution. An investment firm must record in an analogous manner the orders they give and the transactions they carry out for the purpose of remedying errors made in recording, transmitting or executing orders.	AP	Art 10 ASSA, securities reporting decree; Art 17 ASSA	The obligations stated in this rule are determined in the ASSA and in the securities-reporting decree. This rule does not require further implementing measures.
114. An investment firm must ensure that once a transaction is executed it is promptly allocated to the account of the relevant customer(s).	AP	Art 18 ASSA	The allocation of executed orders is guaranteed by the computer based executions systems used by Austrian credit institutions. This rule does not require further implementing measures. Please see 96.
112. Where orders for own and customer accounts have been aggregated, the investment firm must not allocate the related trades in any way that is detrimental to any customer. If such an aggregated order is only partially executed, allocation to customers must take priority over allocation to the investment firm.	AP	Art 18 ASSA	This standard is covered by provisions of the ASSA and is guaranteed by the computer based executions systems used by Austrian credit institutions. This standard does not require further implementing measures. Please see 96.

<p>115. Where an order has been executed in several tranches, the investment firm must inform the customer about the price of execution of each tranche, unless the customer requests an average price. If customer orders have been aggregated and such an aggregated order has been partially executed, the investment firm must allocate the related trade on a proportional basis, unless the firm has a different allocation policy and the customers involved have been informed accordingly prior to the execution. An investment firm must have procedures in place to prevent that reallocation of principal transactions executed along with customers transactions on an aggregated basis give unfair preference to the investment firm or to any of its customers for whom it deals.</p>	AP	Art 18 ASSA	Please see 111. This standard is covered by provisions of the ASSA and is guaranteed by the computer based executions systems used by Austrian credit institutions. This rule does not require further implementing measures. Please see 96.
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6. INDIVIDUAL DISCRETIONARY PORTFOLIO MANAGEMENT

In addition to the foregoing standards and rules, additional provisions apply to the service of individual portfolio management.

6.1. CUSTOMER AGREEMENTS FOR DISCRETIONARY PORTFOLIO MANAGEMENT

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
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<p>116. Prior to the provision of any discretionary portfolio management service, a customer agreement containing the relevant provisions of the basic customer agreement mentioned above, as well as certain additional provisions specific to portfolio management must be signed between the parties.</p>	<p>AP</p>	<p>Art 13, 17 and 16 ASSA</p>	<p>The requirement of a specific customer agreement is not regulated in the ASSA. But it is common practice that the service of portfolio management in Austria is provided only on basis of a written agreement, where the basis of the service, especially the information laid down in rule 118 are contained. The check of this agreement is a fix part of the licensing procedure, where the investment firm has to provide to the FMA standard agreements, which are checked by the FMA and the check of the agreement is also part of the on site inspections of the FMA.</p> <p>Individual Portfolio Management and the requirement of a specific customer agreement therefore is regulated to a large extent in several different provisions of the ASSA, the GTC and the GL and laid down in various documents regarding the customer relationship. There is no unified set of rules and the working-out and implementation of such a rulebook will be realized in line with the revised ISD. Therefore, the following questions regarding the implementation of standards and rules for individual discretionary portfolio management cannot be answered finally at this stage.</p>
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<p>118. Instead of the items referred to in paragraph 80.e) , the customer agreement must contain:</p> <ul style="list-style-type: none"> a) the management objective(s) and any specific constraints on discretionary management, b) the types of financial instruments that may be included within the portfolio and the types of transactions that may be carried out in such instruments, including any related limits. <p>In addition to the above, the customer agreement must contain:</p> <ul style="list-style-type: none"> c) without prejudice of paragraph 121, the benchmark against which performance will be compared, d) the basis on which the instruments are to be assessed at the date of valuation, e) details regarding the delegation of the management function where this is permitted. 	AP	<p>Art. 13 para 3 ASSA, Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998)</p> <p>Art 13 para 4 ASSA, GL</p>	<p>Point a and b are according to Art. 13 para 3 of the ASSA a fix and inherent part of the costumer agreement, which lays in combination with the GL in case of portfolio management also the advice, which gives the customer the product, which fits on his profile down. Point a and b are implemented through the ASSA.</p> <p>Point c is part of the GL which manifests the commitment to give the customer all information he needs for getting the best advice.</p> <p>Point d is part of the customer agreement.</p> <p>Point e the outsourcing of the core service is not allowed in Austria.</p> <p>At least rule 118 is fully implemented in Austria and it is as above mentioned fix part of the on site inspection through the FMA to check the customer agreements, if they are in the best interest of the customer and contain the information laid down in rule 118.</p>
<p>119. The contract must indicate the objectives and the level of risk agreed upon, and any particular constraints on discretionary management resulting from the customer's personal circumstances as referred to in paragraph 62 or his request to exclude certain types of investments (certain business sectors for example).</p>	AP	Art. 13 para 3 ASSA	<p>For the service of portfolio management the same rules apply as for the other investment services, which include that the contract must indicate the objectives and the level of risk agreed upon and any particular constraints on discretionary management resulting from the costumer's personal circumstances. As above mentioned this is also a fix part of the licensing procedure and on site inspections of the FMA. This rule is least partly implemented.</p>

<p>120. If an investment firm is mandated to invest in any of the following types of instruments or to undertake any of the following types of transactions, the contract must state so explicitly and provide adequate information on the scope of the investment firm's discretionary authority regarding these instruments and transactions:</p> <ul style="list-style-type: none"> - financial instruments not traded on a regulated market, - illiquid or highly volatile financial instruments, - leveraged transactions, - securities repurchase agreements or securities lending agreements, - transactions involving credit, margin payments or deposit of collateral, - transactions involving foreign exchange risk. 	AP	<p>Art. 13 para 4 ASS A, 4.1. b and 6 Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998)</p>	<p>Especially the duty to provide adequate information about specific instruments and transactions is content of the ASSA in combination with the GL. As mentioned under rule 53/1 the GL gets even further than the CESR paper, because the investment firm has to provide the customer all information he needs to understand the specific risk of a product.</p>
<p>121. For information purposes with respect to the customer, the contract must indicate an appropriate benchmark, based on financial indicators produced by third parties and in common use, that is consistent with management objectives and against which the future results are to be compared. Where it is not feasible to establish such a benchmark in view of specific customer objectives, this must be stated clearly in the contract and an alternative measure of performance must be indicated.</p>			
<p>122. The contract must state whether the financial instruments are to be valued at bid/ask or offer or mid-market price, including any relevant currency exchange rates, and, where relevant, by reference to indicators such as yield curves or other pricing models or the methodology to be used to value unlisted equities.</p>	AFEC, AP	<p>Austrian Commercial Code (383ff), General terms and obligations of Austrian Credit Institutions</p>	<p>The financial instruments are always valued at bid/ask price. The way of valuation is part of the contract and will also be inspected by the FMA during the on site inspections.</p>
<p>123. The contract must define a specific reporting requirement in the event of losses, defined as a marked-to-market decrease in the value of the portfolio as compared to the value of the portfolio as stated in the most recent periodic report (after neutralisation of any contributions or withdrawals). The contract must set a percentage threshold and a time period to warn the customer accordingly.</p>	AFEC, AP	<p>Austrian Commercial Code (383ff), General terms and obligations of Austrian Credit Institutions</p>	<p>As mentioned under rule 60 the investment firm has a reporting commitment about the services it provides to the customer which is laid down in the Austrian Commercial Code and additional regulation is laid down in the General terms of Austrian Credit Institutions. The way of reporting and providing information to the customer while providing portfolio management is inspected by the FMA during their on site inspections.</p>
<p>124. If the contract provides for a variable management fee based on the performance of the management service, the method of calculation must be clearly defined in the contract.</p>	AP, AFEC	<p>Art. 13 para 4 ASSA, ACC, General terms and obligations of Austrian Credit Institutions</p>	<p>The information about fees, provisions, is contained in every contract. This commitment is part of the general information duties an investment firm has to fulfil. The commission scheme is part of the on site inspections of the FMA, where the FMA checks if the commission scheme is in the best interest of the customer and if there are no potential conflicts within the commission scheme.</p>

<p>125. The contract must provide:</p> <ul style="list-style-type: none"> - that the customer may terminate the agreement with immediate effect, subject only to the completion of all transactions already commenced and the time necessary to liquidate the portfolio where this is required by the customer; - that the investment firm may terminate the agreement subject to a two-week notice, provided however that where the portfolio cannot be liquidated (where required by the customer) within this timeframe, the agreement may be extended for the necessary additional period, and provided that where the customer so agrees after being informed of the firm's intention to terminate, the agreement may be terminated in the timeframe agreed between the parties. <p>In both cases, the termination must take place on terms that are fair and reasonable for both parties.</p>			
<p>117. Where the conditions for delegating management of the portfolio are met and the contract allows the investment firm to delegate this function, the contract must state that the delegator retains full responsibility for the protection of the customer's interests.</p>	AP	Art 16 para 3 ASSA	In Austria the outsourcing of the core service to a not licensed investment firm is not possible. If the investment firm does outsource some supporting functions, the third party has to be part of the control system, which is required under Art. 16 para 3 ASSA and the investment firm retain full responsibility for the protection of customer interests.
<p>126. If an investment firm is mandated to delegate management of any or all of the customer's assets, this must be stated in the contract and adequate information must be supplied in this regard, both to the customer and to the competent authority. The contract must also provide that the customer will be informed prior to any significant change regarding delegation of portfolio management.</p>	AP	ASSA, general licence obligation (Art 20 ASSA)	If an investment firm does outsource the portfolio management to another investment firm, this investment firm has to fulfil the service on basis of their own license. So this investment firm has to fulfil all duties like the other one.

<p>127. An investment firm may delegate the portfolio management function to another investment firm only if such delegatee firm is authorised in its home country to provide portfolio management services on an individual basis and is qualified and capable of undertaking the function in question. The mandate shall not prevent the effectiveness of supervision over the delegator, and in particular, it must not prevent the delegator from acting in the best interests of its customers. In no case the investment firm may delegate its functions to the extent that it becomes a letter box entity. Furthermore, it may so delegate to a non-EEA investment firm so authorised in its home country only if an appropriate formal arrangement between regulators enables them to exchange material information concerning both cross-border delegations and the delegatee.</p>	AP	ASSA, general licence obligation (Art 20 ASSA)	Please see rules 117 and 126
<p>128. The delegation agreement, in writing:</p> <ul style="list-style-type: none"> a) must be revocable with immediate effect by the delegator; b) must provide for sufficient notice to be given to the delegator by the delegatee of termination of the agreement; c) must be in conformity with the indications contained in the customer agreement with the delegator; d) must require, where the execution of transactions is not subject to the prior consent of the delegator, the delegatee to observe the investment guidelines, including investment allocation criteria, laid down from time to time by the delegator; e) must be formulated so as to avoid conflicts of interest between the delegator and the delegatee; f) must provide for the delegator to receive a continuous flow of information on the transactions carried out by the delegatee permitting it to monitor effectively at any time the activity of the delegatee and to reconstruct the assets under management belonging to each customer of the delegator. 	AP	ASSA, general licence obligation (Art 20 ASSA)	Please see rules 117 and 126

6.2 PERIODIC INFORMATION

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
129. An investment firm must send periodic statements to its portfolio management customers so as to enable them to assess the performance of the service.	AFEC	Austrian Commercial Code (383ff), General terms and obligations of Austrian Credit Institutions	As mentioned under rule 123 the investment firm has to report on the basis of the General terms of Austrian credit institutions. This commitment includes the sending of periodic statements so as to enable the client to assess the performance. This is also part of the on site inspections of the Austrian FMA.
130. Periodic statements for portfolio management customers must contain: a) a statement of the contents and valuation of the portfolio, including details of each investment held, its market value and the performance of the portfolio and the cash balance, at the beginning and at the end of the reporting period; b) a management report on the strategy implemented (to be provided at least yearly); c) the total amount of fees and charges incurred during the period and an indication of their nature; d) information on any remuneration received from a third party and details of its calculation basis; e) the total amount of dividends, interest and other payments received during the period.		Art 13 para 4 ASSA, Austrian Commercial Code (383ff), General terms and obligations of Austrian Credit Institutions	Most of the required content of the periodic information is standard information, which is normally sent to the customer. The concrete design of the reports varies from investment firm to investment firm. The report has at least to contain every information that the client knows like i.e. the performance, the cost etc. This is as above mentioned also part of the on site inspections of the FMA.
131. If the basis for valuing any of the assets in the portfolio has changed with respect to the methods described in the portfolio management agreement, these changes must be indicated in the statement along with their impact on profits and/or losses.	Please see 122.	Please see 122.	Please see 122.
132. Periodic statements must include full information on any remuneration received by the investment firm or the manager from a third party that is attributable to services performed for the customer by the manager of the portfolio.			
133. In case the customer has elected – in derogation to rule 58 - not to receive information on each transaction in due course carried out by the portfolio manager, the periodic statement containing details of each transaction must be provided at least every three months. Where the details of each transaction are notified after each transaction to the customer, the periodic statement may be provided only every six months.			
134. Where the contract authorises a leveraged portfolio, the customer must receive a periodic statement at least once a month, including an assessment of the risks.			

6.3. MANAGEMENT REQUIREMENTS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
135. An investment firm must take all reasonable steps necessary to ensure the independence of the portfolio management function and mitigate the risk of customers' interests being harmed by any conflict of interest, in particular by providing for the strict separation of functions within the investment firm and its group.	AP	Art 13 and 16 ASSA	This standard is fulfilled through the general requirements of an investment firm to avoid conflicts of interests. The investment firm has to implement an organisation which supports the prevention of conflicts of interest. These requirements are laid down in Art. 13 and 16 of the ASSA.
138. The structure of the investment firm, its policies and procedures must seek to ensure the independence of the portfolio management function.	AP, AFEC	Art 16 ASSA, Art 82 para 5a ASEA, SCC,	The portfolio management function is part of the compliance organisation of a credit institutions and it is compulsory to define it as area of confidentiality. So this is - in connection with the reason mentioned under rule 135 - sufficient to fulfil rule 138. Furthermore the compliance organisation of the investment firm is part of the on site inspections of the FMA, which checks if there are potential conflicts of interest between the different services of the investment firm.
136. An investment firm must define investment strategies for its portfolio management services and carry out transactions in accordance with such strategies, taking into account the terms of the customer agreement.	AP	Art 13 para 3 and 4 ASSA	The investment firm defines general investment strategies, which investment strategies are part of the customer agreement. The customer has to find out together with the investment firm by giving information about his risk profile which investment strategy is best for him. The FMA controls during the on site inspections if the concrete customer portfolio fits together with the investment strategy.
139. The investment firm must maintain records of its investment strategies, as well as the analyses and forecasts underlying them.	AP	Art 17 para 1 and 3ASSA	As mentioned under rule 136 the investment strategies are part of the customer agreement. According to Art 17 para 3 the investment firm has to provide the customer with a copy of the complete customer contract. The investment firm has to keep record the order and the customer instructions.

<p>137. The transactions carried out by the portfolio manager, both individually and as a whole, must be exclusively motivated by the interests of the customer and in accordance with agreed management objectives.</p>	<p>AP</p>	<p>Art 13ASSA, Art 14 ASSA</p>	<p>As a main principle the investment firm has to act always in the best interest of the customer, which also applies for the service of portfolio management. Furthermore it is part of the compliance organisation to assure the independence of the portfolio management. Art 14 of the ASSA forbids moreover front running, parallel running, scalping and pushing.</p>
<p>140. The investment firm must ensure that its orders are executed as efficiently as possible and in particular that:</p> <ul style="list-style-type: none"> a) orders issued are immediately recorded by the firm; b) transactions executed are recorded and the portfolios affected are adjusted as quickly as possible; c) the portfolios affected and the relevant amounts are determined, or objectively determinable, no later than the time at which the order is issued and cannot be changed, except for the purposes of rectifying an error, after the execution of the order, regardless of whether the order relates to one or more accounts. 	<p>AP</p>	<p>Art 17 ASSA</p>	<p>Point a and b are literally laid down in Art 17 para 1 ASSA.</p> <p>Point c is warranted by the mainly in Austria (90% of all credit institutions use it) used GEOS-system.</p>

B. CONDUCT OF BUSINESS RULES FOR THE “PROFESSIONAL REGIME”

COMMENT: AS THE FIELD OF CATEGORISATION IS WITHIN THE SCOPE OF THE REVISED ISD ALL IMPLEMENTATION MEASURES NEED TO BE TAKEN UNDER THE CATEGORISATION PAPER WILL BE IMPLEMENTED IN LINE WITH THE REVISED ISD. THEREFORE THE FOLLOWING QUESTIONS CANNOT BE ANSWERED FINALLY AT THIS STAGE.

1. STANDARDS OF GENERAL APPLICATION

1.1 GENERAL

Standard	Implementing authority(ies)	Implementing measure	Comments
1. An investment firm must at all times act honestly, fairly and professionally in accordance with the best interests of its customers and the integrity of the market.			
2. An investment firm must have and must employ effectively the resources and procedures that are necessary for the proper performance of its business activities, including back-up procedures and systems so as to reasonably ensure that investment services can be provided without interruption.			
3. An investment firm must ensure that any persons or entities with which it is undertaking authorisable investment business are authorised to conduct that business by the relevant regulator.			
4. Investment firm that outsources functions retains full responsibility for the outsourced activity and must ensure that the providers of such outsourcing are able to perform these functions reliably, professionally and in the best interests of its customers.¹⁷			

1.2. CONFLICTS OF INTEREST AND INDUCEMENTS

¹⁷ This standard is not intended to interfere with relevant provisions on civil liability, applicable at national level.

Standard	Implementing authority(ies)	Implementing measure	Comments
5. An investment firm must take all reasonable steps to ensure that conflicts of interest between itself and its customers and between one customer and another are identified and then prevented or managed in such a way that the interests of customers are not adversely affected. For these purposes the investment firm must establish an internal independence policy, including Chinese walls as appropriate. Where conflicts of interest cannot be reasonably avoided or managed with the internal independence policy, the conflict of interest must be disclosed to the customer.			
6. An investment firm, its members of the board, directors, partners, employees and tied-agents may offer or receive inducements only if they can reasonably assist the firm in the provision of services to its customers. Where inducements are received disclosure of such inducements must be made to the customer on his request.			

1.3 COMPLIANCE AND CODE OF CONDUCT

Standard	Implementing authority(ies)	Implementing measure	Comments
7. An investment firm must take all reasonable measures to ensure that the firm and its members of the board, directors, partners, employees and tied-agents at all time act in accordance with the best interests of its customers and the integrity of the market by establishing and implementing adequate compliance policies and procedures, including an independent compliance function and an internal code of conduct..			
8. An investment firm must be able to demonstrate that it has not acted in breach of the conduct of business rules and the internal code of conduct and that its organization, policies and procedures facilitate such compliance.			

<p>9. The persons responsible for the compliance function must have the necessary expertise, resources, authority and must have full access to all relevant information enabling them to perform their duties. They must perform their monitoring duties independently of all persons and activities subject to their monitoring.</p>			
<p>10. A summary of the results of the monitoring must be reported to the senior management of the investment firm and to the internal or external auditors. The investment firm must report these results, together with remedies adopted, to the competent authority at least once a year.</p>			
<p>11. An investment firm must ensure that the competent authority is informed, without undue delay, of serious breaches of the conduct of business rules. In assessing whether the breaches are serious, an investment firm must take into account the impact on regulatory goals and on the capacity to provide services, their frequency, the damages suffered by customers.</p>			
<p>12. The compliance function must:</p> <ul style="list-style-type: none"> - regularly verify the adequacy of policies and procedures to ensure compliance with the regulations on investment services; - provide advisory assistance and support to the various business areas of the investment firm on problems concerning compliance with the regulations on investment services. 			
<p>13. An investment firm must keep records relevant for the purpose of demonstrating compliance with the conduct of business rules, for a period of five years in order to enable the competent authority to verify compliance with these rules. Tape recording of orders must be kept for a period of one year.</p>			
<p>14. An investment firm must keep a register of customer complaints related to the provision of the investment services and the measures taken for their resolution and must regularly verify whether complaints are adequately processed.</p>			
<p>15. An investment firm must establish a code of conduct for members of the board, directors, partners, employees and tied-agents. The code of conduct must contain:</p> <ul style="list-style-type: none"> a) The rules and procedure to meet the obligation to protect data of a confidential nature; b) the rules and procedures for carrying out personal transactions involving financial instruments; c) the rules and procedures governing the business relationship with customers in order to ensure that the persons referred to above, in particular where a conflict of interest may arise, always act in the best interests of customers, and that such persons do not take advantage of any confidential information; d) the investment firm's policy on conflicts of interest and inducements. 			

2. INFORMATION TO BE PROVIDED TO CUSTOMERS

Standard	Implementing authority(ies)	Implementing measure	Comments
16. An investment firm must pay due regard to the information needs of its customers and communicate information to them that is fair, clear, and not misleading.			
17. If an investment firm provides information in a marketing communications it must be fair, clear and not misleading.			
18. An investment firm must ensure that a customer is provided promptly with the essential information concerning the execution of his order.			
19. Where an investment firm has control of, or is holding assets belonging to a customer, it must arrange for proper identification and regular confirmation of such assets to the customer.			
20. An investment firm that operates customer accounts, which include uncovered open positions, must provide regular statements of such positions.			

3. THE “KNOW-YOUR-CUSTOMER STANDARD” AND THE DUTY TO CARE

Standard	Implementing authority(ies)	Implementing measure	Comments
21. Prior to providing any investment service to a customer for the first time and throughout the business relationship, an investment firm must be in possession of adequate documentation of the identity of the customer, as well as the identity and legal capacity of any representative of the customer. In addition, prior to providing any investment service the investment firm must seek to obtain from the customer information enabling an investment firm a) to determine whether the investment services envisaged are appropriate for the customer and b) to meet any duties owing to the customer in respect of the services to be provided.			

22. When an investment firm provides investment advice to the customer, it must have reasonable grounds to believe, in light of the information disclosed to it by the customer and the information available to it, including the information from the customer relationship, that this investment advice is suitable for him.			
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4. CUSTOMER AGREEMENTS

Standard	Implementing authority(ies)	Implementing measure	Comments
23. Prior to providing any investment service, an investment firm must enter into a signed written agreement with the customer setting out the rights and obligations of the parties.			

5.- DEALING REQUIREMENTS

5.1) RECEPTION AND TRANSMISSION OF CUSTOMER ORDERS

Standard	Implementing authority(ies)	Implementing measure	Comments
24. An investment firm must record and process customer orders in accordance with the customer's instructions and in such a way as to facilitate best execution.			
25. An investment firm must ensure that the firm and its members of the board, directors, partners, employees and tied-agents do not use the information they possess on customers orders to the disadvantage of customers' interest.			
26. An investment firm must record orders immediately, documenting and verifying all relevant items of proper execution.			
27. An investment firm must keep a record of telephone orders on magnetic tape or an equivalent medium. Investment firms must duly inform the customer that the conversation will be recorded.			

5.2) EXECUTION OF ORDERS

Standard	Implementing authority(ies)	Implementing measure	Comments
28. An investment firm must take all care to obtain the best possible result for the customer with reference to price, costs born by the customer, size, nature of the transactions, time of reception of order, speed and likelihood of execution and trading venue taking into account the state of the relevant market(s). The relevant market(s) shall be deemed to be the market(s) offering the most favourable trading conditions also in terms of transparency, liquidity and clearing and settlement arrangements in connection with the envisaged transaction. If the investment firm executes in another trading venue, it must be able to demonstrate to the customer that this was done in accordance with his best interest.			
29. An investment firm acting as principal in relation to a customer order must inform the customer accordingly beforehand and must be in a position to justify the price at which the transaction is executed, with reference to the prices and volumes in the relevant market(s), where appropriate, or the presumed value determined on the basis of objective elements, e.g. mark-to-market.			
30. An investment firm must ensure that orders are executed in accordance with the instructions from the customer.			
31. An investment firm takes reasonable steps to refrain from executing orders for its own account or the account of its members of the board, directors, partners, employees and tied-agents before those of customers in identical or better conditions than the latter (“front running”).			

5.3) POST- EXECUTION OF ORDERS

Standard	Implementing authority(ies)	Implementing measure	Comments
32. An investment firm must ensure the proper and speedy recording, allocation and distribution of executed transactions.			
33. Where orders for own and customers accounts have been aggregated, the investment firm must not allocate the related trades in any way that is detrimental to any customer. If such an aggregated order is only partially executed, allocation to customers must take priority over allocation to the investment firm.			

6. INDIVIDUAL DISCRETIONARY PORTFOLIO MANAGEMENT

In addition to the foregoing standards and rules, additional provisions apply to the service of individual portfolio management.

Standard	Implementing authority(ies)	Implementing measure	Comments
34. Prior to the provision of any discretionary portfolio management service, a customer agreement containing the relevant provisions of the basic customer agreement mentioned above, as well as certain additional provisions specific to portfolio management must be signed between the parties.			
35. An investment firm must take all reasonable steps necessary to ensure the independence of the portfolio management function and mitigate the risk of customers' interests being harmed by any conflict of interest, in particular by providing for the strict separation of functions within the investment firm and its group.			
36. An investment firm must send periodic statements to its portfolio management customers so as to enable them to assess the performance of the service.			
37. The investment firm must ensure that its orders are executed as efficiently as possible and in particular that: <ul style="list-style-type: none"> a) orders issued are immediately recorded by the firm; b) transactions executed are recorded and the portfolios affected are adjusted as quickly as possible; c) the portfolios affected and the relevant amounts are determined, or objectively determinable, no later than the time at which the order is issued and cannot be changed, except for the purposes of rectifying an error, after the execution of the order, regardless of whether the order relates to one or more accounts. 			

C. CORE STANDARDS FOR THE “COUNTERPARTY RELATIONSHIP”

1. The “counterparty relationship”

Standard	Implementing authority(ies)	Implementing measure	Comments
<p>A « counterparty relationship » is typical of trading between investment firms and banks within themselves or with other entities which are not holding themselves out as providers of investment services but are market participants directly active in the financial market for proprietary trading. It is characterised by the absence of a “client relationship” (i.e. without any provision of service). In particular, it covers the following situations:</p> <ul style="list-style-type: none"> - transactions executed in regulated markets or other trading venues (which do not give rise to any provision of investment service to the customer) between any member admitted to trade in these markets; - transactions executed directly (over-the-counter) between investment firms or credit institutions, authorised to provide the service of dealing, and dealing either as principal or as agent; - transactions executed directly (over-the-counter) between investment firms or credit institutions and other authorised or regulated financial intermediaries, including non-ISD firms, such as commodity dealers, insurance companies, but not including collective investment schemes and management companies of such schemes, pension funds and management companies of such funds. 			
<p>CESR Members are free to allow companies to be treated as “counterparties” and to define the appropriate quantitative thresholds. In case of cross-border business, if the company is located in a jurisdiction where the “counterparty regime” is not applicable to companies, the professional regime will apply to that relationship.</p>			
<p>Transactions entered into by these entities and effected through the offices of an authorised intermediary would be, by default, subject to the « professional regime ». Only those transactions undertaken by these entities for which they are direct “counterparties” and for which a specific choice to enter into a “counterparty relationship” has been made, are liable to operate subject to such a regime.</p>			

The entities meeting one of the above mentioned criteria and willing to enter into a « counterparty relationship » have to reciprocally confirm in the contract that the transaction is executed under a « counterparty relationship ». This confirmation may be given in master agreements, where applicable to a series of transactions of the same nature.			
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1. The “counterparty regime”

Standard	Implementing authority(ies)	Implementing measure	Comments
The firm must at all times act honestly, fairly and professionally in accordance with the integrity of the market.			
The firm must have and must employ effectively the resources and procedures that are necessary for the proper performance of its business activities.			
The firm must establish an independent compliance function, aimed at ensuring that its directors, partners, employees and agents behave in accordance with the integrity of the market.			
Executive directors/senior management must take reasonable measures to ensure that the firm establishes and implements adequate compliance policies and procedures.			
The firm must be able to demonstrate that it has not acted in breach of standards of market integrity and that its organisation, policies and procedures facilitate such compliance.			
The firm must keep records of all transactions executed for a period of five years.			
The firm must keep record of telephone conversations concerning the transactions executed on a counterparty relationship.			
The firm must adopt and take all reasonable steps to ensure compliance with an appropriate internal code of conduct.			
The information provided in a marketing communications must be clear and not misleading.			

D. CRITERIA FOR DEFINING PROFESSIONAL INVESTORS

Professional investors are those who may be deemed to possess the experience, knowledge and expertise to make their own investment decisions and properly assess the risks they incur.

1. Categories of investors who are considered to be professionals

Standard	Implementing authority(ies)	Implementing measure	Comments
<p>10. a) Entities which are required to be authorised or regulated to operate in the financial markets. The list below should be understood as including all authorised entities carrying out the characteristic activities of the entities mentioned: entities authorised by a Member State under a European Directive, entities authorised or regulated by a Member State without reference to a European Directive, and entities authorised or regulated by a non-Member State:</p> <ul style="list-style-type: none"> • Credit institutions • Investment firms • Other authorised or regulated financial institutions • Insurance companies • Collective investment schemes and management companies of such schemes • Pension funds and management companies of such funds <p>Commodity dealers.</p>	AFEC	Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998)	These entities deemed to be professional in the understanding of the ASSA.
<p>b) Large companies ⁽¹⁸⁾ and other institutional investors:</p> <ul style="list-style-type: none"> • large companies and partnerships meeting two of the following size requirements on a company basis: <ul style="list-style-type: none"> • balance sheet total : EUR 20.000.000, • net turnover : EUR 40.000.000, • own funds: EUR 2.000.000. • Other institutional investors whose corporate purpose is to invest in financial instruments. 			The size requirements in b) don't fit in the structure of Austrian economic and there are only a few companies which fulfil the size requirements.
National and regional governments, Central Banks, international and supranational institutions such as the World Bank, the IMF, the ECB, the EIB and other similar international organisations.			

⁽¹⁸⁾ Whilst CESR acknowledges that issuers of listed financial instruments, i.e. entities whose securities (equity instruments or other) are traded on a regulated market (within the meaning of article 1.13 of the ISD), should be treated as professional investors, Members are free to implement the categorisation of these issuers in line with the thresholds applicable to large companies and partnerships.

<p>11. The entities mentioned in §10 are considered to be professionals. They must however be allowed to request non-professional treatment and investment firms may agree to provide a higher level of protection. Where the customer of an investment firm is a company or a partnership referred to in §10, the investment firm must inform it prior to any provision of services that, on the basis of the information available to the firm, the customer is deemed to be professional investor, and will be treated as such unless the firm and the customer agree otherwise. The firm must also inform the customer that he can request a variation of the terms of the agreement in order to secure a higher degree of protection.</p>			
<p>12. It is the responsibility of the client considered to be a professional investor to ask for a higher level of protection when it deems it is unable to properly assess or manage the risks involved.</p>			
<p>13. This higher level of protection will be provided when an investor who is considered to be a professional enters into a written agreement with the investment firm to the effect that it shall not be treated as a professional for the purposes of the applicable conduct of business regime. Such agreement should specify whether this applies to one or more particular services or transactions, or to one or more types of product or transaction.</p>			

2. Categories of investors who may be treated as professionals on request

2.1. Identification criteria

Standard	Implementing authority(ies)	Implementing measure	Comments
<p>14. The members of CESR consider that investors other than those mentioned in § 10, including public sector bodies ⁽¹⁹⁾ and private individual investors, may also be allowed to waive some of the protections afforded by the conduct of business rules. Investment firms should therefore be allowed to treat any of the above investors as professionals provided the relevant criteria and procedure mentioned below are fulfilled. These investors should not, however, be presumed to possess market knowledge and experience comparable to that of the categories listed in §10.</p>	AFEC	1. Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998)	The ASSA lays down that the obligation to request information from their customers is only required to the extent necessary to safeguard the interests of the customers and in the light of the nature and scope of the contemplated transactions. Point 1 of the GL interpreted this as a restriction for the field of application of the ASSA for professional market participants, which means the request of information is not necessary and advised only on request of the professional market participant.
<p>15. Any such waiver of the protection afforded by the standard conduct of business regime shall be considered valid only if an adequate assessment of the expertise, experience and knowledge of the client, undertaken by the investment firm, gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making his own investment decisions and understanding the risks involved.</p> <p>The fitness test applied to managers and directors of entities licensed under European Directives in the financial field could be regarded as an example of the assessment of expertise and knowledge. In the case of small entities, the person subject to the above assessment should be the person authorised to carry out transactions on behalf of the entity.</p>	AFEC	Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998)	At the beginning of a business relation ship the investment firm has to classify a customer as a professional market participant, which only works out if the investment firm request information about expertise, experience and knowledge of the client.

⁽¹⁹⁾ It should be noted that public sector bodies are subject to specific regulations that might prevent them from entering into certain types of transactions or opting for the professional conduct of business regime.

<p>16. In the course of the above assessment, as a minimum, two of the following criteria should be satisfied:</p> <ul style="list-style-type: none"> • The investor has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters; • The size of the investor's financial instrument portfolio, defined as including cash deposits and financial instruments exceeds 0,5 million Euro; <p>The investor works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.</p>	<p>AFEC</p> <p>AFEC</p>	<p>Guideline for implementation the conduct of business rules laid down in the ASSA (17.3.1998)</p>	<p>At the beginning of a business relation ship the investment firm has to classify a customer as a professional market participant, which only works out if the investment firm request information about expertise, experience and knowledge of the client.</p> <p>The concrete detail of 16 will be implemented as market standard.</p>
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2.2. Procedure

Standard	Implementing authority(ies)	Implementing measure	Comments
<p>17. The investors defined above may waive the benefit of the detailed rules of conduct only where the following procedure is followed:</p> <p>a) they must state in writing to the investment firm that they wish to be treated as a professional investor, either generally or in respect of a particular investment service or transaction, or type of transaction or product;</p> <p>b) the investment firm must give them a clear written warning of the protections and investor compensation rights they may lose;</p> <p>c) they must state in writing, in a separate document from the contract, that they are aware of the consequences of losing such protections.</p>	<p>AFEC</p>		<p>The concrete procedure process will be implemented as market standard.</p>
<p>18. Before deciding to accept any request for waiver, investment firms must be required to take all reasonable steps to ensure that the client requesting to be treated as a professional investor meets the relevant requirements stated in Section II. I above.</p> <p>However, if investors have already been categorised as professionals under parameters and procedures similar to those above, it is not intended that their relationships with investment firms should be affected by any new rules adopted pursuant to this paper.</p>			
<p>19. Firms must implement appropriate written internal policies and procedures to categorise investors.</p> <p>Professional investors are responsible for keeping the firm informed about any change, which could affect their current categorisation. Should the investment firm become aware however that the investor no longer fulfils the initial conditions, which made him eligible for a professional treatment, the investment firm must take appropriate action.</p>			

