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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 States[1] (Ref. CESR/03-497b);*
- *the explanatory notes and caveats attached to the Tables.*

The Tables were produced by the Members of CESR[1] 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 Protection[2] and the CESR Standards for Alternative Trading Systems[3] 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).

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[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)

BELGIUM

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

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

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.	Parliament and Royal Decrees proposed by the Minster of Finance General note: within the areas of its competence, the CBFA may lay down regulations to supplement the legal provisions in respect of technical aspects. These regulations of the CBFA shall come into force only after their approval by the King (Art. 64 L. 2 August 2002). The CBFA may also lay down in circulars or recommendations all measures to be taken with a view to clarifying the application of legal provisions (Art. 49, § 3, L. 2 August 2002)	Art. 36, § 1, 1°, 2° and 3° L. 6 April 1995.	Art. 26, 1°, L. 2 August 2002 (to come into force later) General note: at the entry into force of the provisions of Art. 26, 27 and 28 of the L. of 2 August 2002, the corresponding provision(s) in the Law of 6 April 1995 will be repealed. *General note on the entry into force of the conduct of business rules provided for in the Law of 2 August 2002.* *Article 28, § 2 of the Law of 2 Augustus 2002 provides that when the King determines the date of the entry into force of the conduct of business rules contained in Articles 26 and 27 or takes steps for the implementation of those provisions, He takes account of the status of harmonization of the rules of conduct concerned within the European Community*
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.	Parliament and Royal Decrees proposed by the Minster of Finance CBFA circulars	Art. 36, § 1, 7°, L. 6 April 1995 Art. 62, L. 6 April 1995 Art. 20, L. 22 March 1993	Ongoing policy work within CBFA on sound practices for business continuity (draft circular to financial institutions) Work on business continuity planned in the framework of the Financial Stability Committee (see Art. 117 L. 2 August 2002)

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.	Idem	Partly covered by KYC-rules (L. 11 January 1993) and prudential requirements (Laws of 22 March 1993 and 6 April 1995) relating to reputational risk. See also the uniform letter to credit institutions of 5 February 2003 relating to the compliance function	Further measures can be taken by RD on the basis of Art. 26, 17°, L. 2 August 2002 (on the timing: see general note above)
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].	Parliament CBFA circulars	Art. 36, § 1, 7°, L. 6 April 1995 Art. 62, L. 6 April 1995 Art. 20, L. 22 March 1993 See also: CBFA circular of 10 July 2002 to securities houses on clearing on Euronext	Ongoing policy work within CBFA on sound practices for outsourcing (draft CBFA regulation and/or circular to financial institutions)

1.2. CONFLICTS OF INTEREST AND INDUCEMENTS

Standard /Rule	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.	Parliament and Royal Decrees proposed by the Minster of Finance CBFA circulars	Art. 36, § 1, 6° L. 6 April 1995 Art. 62, L. 6 April 1995 Art. 79 and 127 L. 6 April 1995 Art. 20 Royal Decree 5 August 1991 on portfolio management Circular 92/4 of 14 August 1992 to banks on portfolio management	To come into effect later: Art. 26, 4° and 27 § 1, 1° and 2°, L. 2 August 2002. Further implementing measures can be taken by RD on the basis of Art. 28, § 1, 5° , L. 2 August 2002 CBFA Consultation document on revised rules for portfolio management (2003)

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

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.	Parliament and Royal Decrees proposed by the Minster of Finance	Art. 36, § 1, 6° L. 6 April 1995 Art. 62, L. 6 April 1995 Art. 79 and 127 L. 6 April 1995	To come into effect later: Art. 26, 4° and 27 § 1, L. 2 August 2002. Further measures can be taken by Royal Decree on the basis of Art. 28, § 1, 5° L. 2 August 2002. Art. 146 L. 2 August 2002 also enables the King to take measures to implement binding international acts.
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.	Parliament and Royal Decrees proposed by the Minster of Finance CBFA circulars	Art. 36, § 1, 6° L. 6 April 1995 Art. 81 L. 6 April 1995 Art. 3 and 16 Royal Decree of 5 August 1991 on portfolio management Circular 92/4 of 14 August 1992 to banks on portfolio management	To come into effect later: Art. 26, 5° L. 2 August 2002 CBFA Consultation document on revised rules for portfolio management New rules can be enacted by the King on the basis of Art. 26, 17°, L. 2 August 2002 See also: Art. 146 L. 2 August 2002
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.	Idem	Art. 36, § 1, 6° L. 6 April 1995 Art. 3 and 16 Royal Decree of 5 August 1991 on portfolio management Circular 92/4 of 14 August 1992 to banks on portfolio management	To come into effect later : Art. 26, 5° L. 2 August 2002 CBFA Consultation document on revised rules for portfolio management

1.3 COMPLIANCE AND CODE OF CONDUCT

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments

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.	Idem	Art. 36, § 1, 7° L. 6 April 1995 Art. 62, L. 6 April 1995 Art. 20, L. 22 March 1993 CBFA circulars with instructions to the credit institutions and investment firms on the role of the compliance function (circular to the credit institutions of 18 December 2001 and circular to the investment firms of 14 November 2000) See also the uniform letter to credit institutions of 5 February 2003 relating to the compliance function	To come into effect later: Art. 27, § 1 and § 2, L. 2 August 2002. Further implementing measures can be taken on the basis of Art. 28, § 1, 5° , L. 2 August 2002 General note on tied agents: The CBFA circular of 21 October 1993 specifies the regime for agents ("agents independents") that work exclusively for one firm; further measure for agents may be taken by RD on the basis of Art. 90 L. 22 March 1993 (for banks) and of Art. 118 L. 6 April 1995 (for investment firms. Please note that the CBFA envisages a reform of the financial intermediation (see the consultation document of 15.10.2002 on the CBFA's website)
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.	Idem	Idem. See especially: nrs 5, 8 and 9 of the CBFA circulars on the compliance function.	Idem See especially: Art. 27, § 2, L. 2 August 2002 (to come into effect later)
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.	Idem	Idem. See especially: nr. 4 of the CBFA circulars	To come into effect later: Art. 27, § 1 and § 2, L. 2 August 2002. Further implementing measures can be taken on the basis of Art. 28, § 1, 5° , L. 2 August 2002 CBFA may obtain such information during on site inspections and on request. The external auditor yearly reports to the CBFA on the functioning of the compliance function.
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.	Parliament and Royal Decrees proposed by the Minster of Finance	Art. 101, 4°, L. 6 April 1995 (external auditors) Art. 74, § 2 L. 22 March 1993 (external auditors) Art. 36 Market Regulation of 27 December 1995 of the off-exchange market in linear bonds (Securities regulation fund)	To come into effect later: Art. 27, § 1 and § 2, L. 2 August 2002. Further implementing measures can be taken on the basis of Art. 26, 17° and 28, § 1, 5° , L. 2 August 2002 Information to the CBFA is indirect via external auditors

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.	Parliament and Royal Decrees proposed by the Minster of Finance CBFA circulars	Art. 36, § 1, 7° L. 6 April 1995 Art. 62, L. 6 April 1995 Art. 20, L. 22 March 1993 CBFA circulars on the function of compliance: definition of compliance in the CBFA circulars and nrs 1, 2, 3, 6 7	Idem
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.	Parliament and Royal Decrees proposed by the Minster of Finance	Art. 36, § 1, 7° and 62, L. 6 April 1995	New rules can be enacted on the basis of Art. 26, 17°, L. 2 August 2002. See also: Art. 146 L. 2 August 2002
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.	Parliament and Royal Decrees proposed by the Minster of Finance CBFA circulars	Art. 28-29 Royal Decree of 31 March 2003 on the reporting of transactions in financial instruments and on the keeping of relevant data. Art. 7 Law of 11 January 1993 on the prevention of money laundering Circular to the financial institutions of the CBFA on the prevention of money laundering (3 May 1999) Euronext Rule Book (rule B9203 on voice recording) j° Art. 36, § 1, 3°, L. 6 April 1995	Additional rules may be adopted by Royal Decree on the basis of Art. 26, 17° and 146 L. 2 August 2002 See also: Art. 26, 10°, L. 2 August 2002 (to come into effect later)
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.	Parliament and Royal Decrees proposed by the Minster of Finance	See R. 14	Obligation on complaints register is contained in Art. 27, § 2, 4° L. 2 August 2002 (to come into force later)
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: 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.	Idem	Art. 36, § 1, 7° L. 6 April 1995 Art. 62 L. 2 August 2002	To come into effect later: Art. 27, § 1 L 2 August 2002 Further implementing measures can be taken on the basis of Art. 28, § 1, 5° , L. 2 August 2002

1.4. COLD CALLING [6]

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.	Parliament	The RD n° 71 of 30 November 1939 and the MD of 15 April 1953 forbid door-to-door selling of financial instruments and UCITS (art. 22, §2, RD 4 March 1991). Prudential policy recommends intermediaries also to abstain from other cold calling techniques (e.g. CBFA Circular 1/93 regarding the promotion of UCITS).	The transposition of the Distance Marketing Directive into Belgian law will offer an opportunity to update (door-to-door selling) or complete (other types of cold calling) the Belgian regulation in this respect. Planned implementation of the Distance Marketing Directive: October 2004
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.	Parliament	See under 18: door-to-door selling is forbidden; prudential policy recommends intermediaries also to abstain from other cold calling techniques (e.g. CBFA Circular 1/93 regarding the promotion of UCITS). Moreover, general principles of civil and commercial law and the CBFA-circular 93/5 (tied agents) provide that a firm is responsible for the activities of their tied agents	To be updated and completed when transposing the Distance Marketing Directive. Please note that the CBFA and the Insurance Supervisory Board (OCA) envisage a reform of the financial intermediation (see the consultation document of 15.10.2002 on the CBFA's website)
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.	Parliament	See under 18: door-to-door selling is forbidden; prudential policy recommends intermediaries also to abstain from other cold calling techniques.	To be updated and completed when transposing the Distance Marketing Directive
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.	Idem	See under 18: door-to-door selling is forbidden; prudential policy recommends intermediaries also to abstain from other cold calling techniques.	To be updated and completed when transposing the Distance Marketing Directive.

[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.

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.	Idem	See under 18: door-to-door selling is forbidden; prudential policy recommends intermediaries also to abstain from other cold calling techniques.	To be updated and completed when transposing the Distance Marketing Directive
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.	Idem	See under 18: door-to-door selling is forbidden; prudential policy recommends intermediaries also to abstain from other cold calling techniques.	To be updated and completed when transposing the Distance Marketing Directive
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.	Idem	See under 18: door-to-door selling is forbidden; prudential policy recommends intermediaries also to abstain from other cold calling techniques.	To be updated and completed when transposing the Distance Marketing Directive

2. INFORMATION TO BE PROVIDED TO CUSTOMERS

2.1) BASIC REQUIREMENTS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
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.	Parliament and Royal Decrees	Art. 36, § 1, 5°, L. 6 April 1995 RD 5 December 2000 (application of Law on Fair Trading Practices to securities) Those (conduct of business) rules are complementary to the general civil law duty of a party to a contract to provide information to the other party prior to the conclusion of a contract	To come into effect later : Art. 26, 3° L. 2 August 2002 Additional rules may be adopted by Royal Decree on the basis of Art. 26, 17° and 146 L. 2 August 2002
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.	Idem	Idem	Idem

26. An investment firm must supply its customers on a timely basis with the information that enables them to make informed investment decisions.	Idem	Idem	Idem
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.	Idem	Idem	Idem

2.2.) MARKETING COMMUNICATIONS [8]

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
29. If an investment firm provides information in a marketing communication it must be fair, clear and not misleading.	Idem	- Art. 36, § 1, 5°, L. 6 April 1995 - Art. 18, § 4, L. 22 April 2003 on public offerings - Art. 18 and 19 RD of 5 August 1991 on portfolio management - RD 5 December 2000 (application of Law on Fair Trading Practices to securities and financial instruments) - Art. 22, § 1 RD of 4 March 1991 on certain undertakings for collective investment and CBFA circular ICB/1/93 of 20 July 1993 - Art. 5, 6 and 9 of the Market Regulation of the off-exchange regulated market in government bonds	To come into effect later : Art. 26, 3° L. 2 August 2002 Changes in legislation possible when implementing the Distance Marketing Directive, the UCITS-directives and the ISD2. Further implementing measures of the Law on Fair Trading Practices on minimum requirements for advertisements for financial products planned.

[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.	Idem	Idem See especially Art. 23,5° Law of 14 July 1991 on Fair Trading Practices	Idem
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.	Idem	See nr 29	See nr 29
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.	Idem	Article 67 of the Banking Law (22 March 1993) and Article 6 of the Royal Decree of 20 December 1996 on foreign investment firms. These provisions provide that credit institutions and investment firms using the European passport must mention their home Member State alongside their name, when carrying on their activities in Belgium Partly implemented	See nr 29
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.	Parliament and Royal Decrees	Art. 16 L. 22 April 2003 on public issue of securities According to Article 78 of the Law of 2 August 2002 can be sanctioned those who knowingly, through declarations or otherwise, intimate or allow it to be believed that the operation or operations that they carry out or intend to carry out are conducted under the conditions stipulated by the laws and regulations whose application is supervised by the CBFA, whereas those laws and regulations either do not apply to them or have not been respected by them.	Additional rules may be adopted by Royal Decree on the basis of Art. 26, 17° and 146 L. 2 August 2002
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.	Parliament and Royal Decrees	Rules on publicity in the law of Fair trading practices (applicable to financial instruments on the basis of the RD of 5 December 2002)	Art. 26, 3°, L. 2 August 2002 (to come into force later) Additional rules may be adopted by Royal Decree on the basis of Art. 26, 17° and 146 L. 2 August 2002 Further implementing measures of the Law on Fair Trading Practices on minimum requirements for advertisements for financial products planned

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.	Idem	- Art. 36, § 1, 5°, L. 6 April 1995 - RD 5 December 2000 (application of the Law on Fair Trading Practices to securities) - Art. 6 Market regulation of the regulated market for government bonds - RD 5 August 1991 on portfolio management (Art. 17) Those (conduct of business) rules are complementary to the general civil law duty of a party to a contract to provide information to the other party prior to the conclusion of a contract	To come into effect later : Art. 26, 3° L. 2 August 2002 Additional rules may be adopted by Royal Decree on the basis of Art. 26, 17°, L. 2 August 2002 See also: Art. 146 L. 2 August 2002

36. An investment firm must provide customers with the following information prior to the commencement of provision of investment services: 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.	Idem	d) Art. 82, L. 6 April 1995	To come into effect later : Art. 26, 3° L. 2 August 2002 Additional rules may be adopted on the basis of Art. 26, 17° and 146 L. 2 August 2002

2.4) INFORMATION ON FINANCIAL INSTRUMENTS AND INVESTMENT SERVICES

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments

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.	Idem	- Art. 36, § 1, 5°, L. 6 April 1995 - RD 5 December 2000 (application of the Law on Fair Trading Practices to securities) - Art. 36, § 1, 3° and Euronext Rule Book, rules B-1.1. and B-9.2 (derivatives) - Art. 8 R.D. 5 August 1991 on portfolio management and investment advice Those (conduct of business) rules are complementary to the general civil law duty of a party to a contract to provide information to the other party prior to the conclusion of a contract	To come into effect later : Art. 26, 3° L. 2 August 2002 Additional rules may be adopted on the basis of Art. 26, 17° and 146, L. 2 August 2002.
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.	Idem	Idem	Idem
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.	Idem	Idem	Idem
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.	Idem	Idem	Idem

[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).

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.	See St. 25	See St. 25	See St. 25
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.	Idem	Idem	Idem
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.	Idem	Idem	Idem
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.	Royal Decree	No specific rules	Additional rules may be adopted on the basis of Art. 26, 17° and 146 L. 2 August 2002
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.	Royal Decree CBFA circulars	Partly covered by Circular ICB/1/93 of 20 July 1993 on the trading in Belgium of units issued by undertakings for collective investment	Additional rules may be adopted by Royal Decree on the basis of Art. 26, 17° and 146 L. 2 August 2002
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.	Royal Decree CBFA circulars	Partly covered by Circular ICB/1/93 of 20 July 1993 on the trading in Belgium of units issued by undertakings for collective investment	Idem

47. The use of simulated returns is prohibited. If the information refers to actual returns based on past performance: 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.	Idem	Idem	Idem
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.	Idem	Idem	Idem
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.	Idem	Idem	Idem
50. If information provided contains comparisons, the requirement of being fair, clear and not misleading means that the comparisons must: 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.	Royal Decree	RD 5 December 2000 (application of the Law on Fair Trading Practices to securities)	Idem

2.5) RISK WARNINGS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
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.	Parliament and Royal Decrees	See nr 37	See nr 37
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: - 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.	Idem CBFA circulars	Idem (partly implemented) See especially: the risk disclosure statement for derivatives contracts (Information memorandum provided for in the Euronext Rule Book, rules B-1.1. and B-9.2 j° Art. 36, § 1, 3 L. 6 April 1995) See also the CBFA circular to financial institutions of 5 May 2000 on prudential requirements for internet financial services (nr 26)	Idem

53. The investment firm must also, where necessary, inform the customer of risks associated with: 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).	Idem	Idem	Idem
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.	Idem	Idem	Idem
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.	Idem	Idem	Idem

2.6. CUSTOMER REPORTING

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments

55. An investment firm must ensure that a customer is provided promptly with the essential information concerning the execution of his order.	Parliament and Royal Decrees proposed by the Minster of Finance	Art. 36, § 1, 2° and 5° and Art. 38, paragraph 3, L. 6 April 1995 (partly implemented) Art. 9, § 2, Market regulations regulated market for government bonds	Art. 26, 10° and 13°, L. 2 August 2002 (to come into force later) Additional rules may be adopted on the basis of Art. 26, 17° and 146 L. 2 August 2002
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 customer[10], 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: 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. 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.	Idem	Idem No specific rules on order confirmation	Order confirmation: Art. 26, 10°, L. 2 August 2002 (to come into force later) Transaction statement: Art. 26, 13°, L. 2 August 2002 (to come into force later)
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.	Royal Decree	No specific rules	Additional rules may be adopted by Royal Decree on the basis of Art. 26, 17° and 146 L. 2 August 2002

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

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.	Parliament and Royal Decrees proposed by the Minster of Finance CBFA circulars	Prudential rules (Laws of 22 March 1993 and 6 April 1995) (see CBFA circulars of 18 December 1991 to the securities houses on securities accounting, of 30 January 2001 on supervision of deposits by securities houses and of 10 July 2002 on clearing on Euronext) RD 23 January 1991 on government debt securities	Idem
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: 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.	Parliament and Royal Decrees proposed by the Minster of Finance CBFA circulars	RD 5 August 1991 on portfolio management and CBFA circular to financial institutions of 14 August 1992 See also: Art. 3.4.2.4. Clearnet Rule Book (contractual provisions applicable to Belgian clearing members of Clearnet)	Idem
57. An investment firm that operates customer accounts, which include uncovered open positions, must provide regular statements of such positions.	Parliament and Royal Decrees proposed by the Minster of Finance	Idem	Idem
61. Where an account includes uncovered open positions[11], an investment firm must send to its customer a monthly statement, which includes the following: 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.	Idem	Idem	Idem

[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.

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

3.1 INFORMATION FROM THE CUSTOMER

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
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* *a. to determine whether the investment services envisaged are appropriate for the customer[12] and* *b. to meet any duties owing to the customer in respect of the services to be provided.*	Parliament and Royal Decrees proposed by the Minster of Finance CBFA circulars	Law of 11 January 1993 on the prevention of money laundering Circular to the financial institutions of the CBFA on the prevention of money laundering (3 May 1999) and the uniform letter to credit institutions of 5 February 2003 relating to the compliance function See also the CBFA circular to financial institutions of 5 May 2000 on prudential requirements for internet financial services (nr 23) Art. 36, § 1, 4°, L. 6 April 1995 Art. 19 RD 5 August 1991 on portfolio management Civil law requirements for professional intermediaries	Changes in law of 11.1.93 planned to implement the Basle KYC-paper, the revised FATF Recommendations and the second Money Laundering Directive Art. 26, 2°, L. 2 August 2002 (to come into force later) See also CBFA Consultation document on revised rules for portfolio management General note: the King may determine different rules for the application of the provisions of Art. 26 according as the investment services provided are limited to a simple transmission or execution of orders or not (art. 28, 2°, L. 2 August 2002) (to come into force later)
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.	Parliament and Royal Decrees proposed by the Minster of Finance	No specific rules that allow firms to rely on another firm (see case law of the CBFA relating to introducing brokers, *Annual report CBFA 1999-2000,* p. 52-53)	Idem

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

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.	Parliament and Royal Decrees proposed by the Minster of Finance CBFA circulars	Law of 11 January 1993 on the prevention of money laundering Circular to the financial institutions of the CBFA on the prevention of money laundering (3 May 1999) and the uniform letter to credit institutions of 5 February 2003 relating to the compliance function	Changes in legislation planned to implement the Basle KYC-paper, the revised FATF Recommendations and the second Money Laundering Directive
65. An investment firm must seek to obtain information on the customer's knowledge and experience[13] 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.	Idem	See St. 62	See St. 62
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.	Idem	Idem	Idem
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.	Idem	See St. 62	Idem
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.	Idem	Idem See also Art. 36, § 1, 7°, L. 6 April 1995	Idem

[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.

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.	Idem	No specific rules	New rules can be enacted on the basis of Art. 26, 17°, L. 2 August 2002 See also: Art. 146 L. 2 August 2002
70. The customer should not be invited not to provide information.	Idem	No specific rules	New rules can be enacted on the basis of Art. 26, 17° L. 2 August 2002 See also: Art. 146, L. 2 August 2002

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

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
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.	Parliament and Royal Decrees proposed by the Minster of Finance	Art. 36, § 1, 2° , 79 and 127, L. 6 April 1995	CBFA Consultation document on revised rules for portfolio management New rules can be enacted on the basis of Art. 146 L. 2 August 2002 and Art. 132, L. 6 April 1995

[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.

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.	Idem	Art. 36, § 1, 2° and 79	Art. 26, 1°, L. 2 August 2002 (to come into force later) CBFA Consultation document on revised rules for portfolio management New rules can be enacted on the basis of Art. 26, 17° and 146 L. 2 August 2002
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 suitable[16] 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.	Idem	Idem	Idem
74. An investment firm must take reasonable care to verify that the customer has sufficient financial resources to settle the proposed transaction.	Idem	Art. 36, § 1, 4°, L. 6 April 1995 KYC-rule (part of prudential credit risk management principles)	Idem
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.	Royal Decree	No specific rules	New rules can be enacted on the basis of Art. 26, 17° and 146 L. 2 August 2002

[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.

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.	Parliament and Royal Decrees proposed by the Minster of Finance	Art. 36, § 1, 4° and 5°, L. 6 April 1995 are limited to clients that were given advice by the firm Art. 36, § 1, 2° (duty to care), L. 6 April 1995 See also: the CBFA circular to financial institutions of 5 May 2000 on prudential requirements for internet financial services (nr 25): a firm needs to satisfy itself – when entering into business relationship – that the internet remote services offered (all or some of them) are consistent with the client's profile (e.g. knowledge of and experience with the investment business, financial background, objectives pursued)	Art. 26, 1°, L. 2 August 2002 (to come into force later) New rules can be enacted on the basis of Art. 26, 17° and 146 L. 2 August 2002 General note: the King may determine different rules for the application of the provisions of Art. 26 according as the investment services provided are limited to a simple transmission or execution of orders or not (art. 28, 2°, L. 2 August 2002) (to come into force later)

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.	Parliament and Royal Decrees proposed by the Minster of Finance	RD of 5.8. 1991 on portfolio management and investment advice and CBFA circular of 14 August 1992 to banks and investment firms on portfolio management See also: nrs 116, 118 and 119 RD 25 November 1991 on foreign exchange and deposit broking (art. 7)	CBFA Consultation document on revised rules for portfolio management Further measures can be taken on the basis of Art. 26, 17° ,L. 2 August 2002 See also: Art. 146 L. 2 August 2002
79. The customer agreement must be clear and easily understandable by the customer.	Idem	Idem	Idem

80. The customer agreement must contain the following items as a minimum: 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.	Idem	Idem	Idem

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.	Idem	Idem	Idem
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.	Idem	Idem	Idem
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.	Idem	Idem	Idem
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.	Idem	Idem	Idem

4.2) CUSTOMER AGREEMENT INVOLVING TRADING IN DERIVATIVES

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments

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.	Idem	Idem See also: the obligation to conclude a written agreement for derivatives contracts provided for in the Euronext Rule Book, rule B-9202 j° Art. 36, § 1, 3°, L. 6 April 1995 The rules of the clearing house of Euronext Brussels also impose on clearing members clearing Euronext Brussels derivatives to conclude a written agreement with their clients (Clearnet rule 3.4.2.3. of title III)	Idem
86. In addition to the relevant items of the basic customer agreement, where the firm provides services involving derivatives, the customer agreement must contain: - 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.	Idem	See nr 85	Idem
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.	Idem	See nr 85	Idem
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.	Idem	Idem	Idem

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.	Idem	Idem	Idem
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.	Idem	Idem See also: the risk disclosure memorandum for derivatives contracts (Information memorandum drafted by Euronext and approved by the CBFA) (Euronext Rule Book, B-9.2 j° Art. 36, § 1, 3° L. 6 April 1995)	Idem

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.	Idem	Art. 36, § 1, 2° and § 3, Art. 37, 38 and 62 L. 6 April 1995 Art. 6 Market regulation of the regulated market for government bonds (27.12.1995 as modified)	Art. 26, 1°, 8° and 10°, and 27, § 1, 4° , L. 2 August 2002 (to come into force later) Further measures can be taken on the basis of Art. 26, 17° , Art. 28, § 1, 5° and 146 L. 2 August 2002

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: 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.	Idem	Idem	Idem
94. An investment firm must record orders immediately, documenting and verifying all relevant items of proper execution.	Idem	Idem, especially art. 6 of the market regulations of the regulated market for government bonds	Idem
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.	Idem	Idem See also: the obligation of voice recording for derivatives contracts provided for in the Euronext Rule Book, rule B-9204 j° Art. 36, § 1, 3°, L. 6 April 1995	Idem
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.	Idem	Idem	Art. 26, 9°, L. 2 August 2002.(to come into force later) Further measures can be taken on the basis of Art. 26, 17° and 146 L. 2 August 2002
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.	Idem	Idem	Art. 26, 1°, 8° and art. 27, § 1, 4°, L. 2 August 2002 (to come into force later) Further measures can be taken on the basis of Art. 26, 17° , 28, § 1, 5° and 146 L. 2 August 2002
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.	Idem	Art. 36, § 1, 2° and 6°, L. 6 April 1995 See also: the prohibition of front running provided for in the Euronext Rule Book, rule B-2301 j° Art. 36, § 1, 3°, L. 6 April 1995	Art. 26, 1° and 4° and 27, § 1, 1° L 2 August 2002 (to come into force later) Further measures can be taken on the basis of Art. 26, 17°, 27, § 1, 5° , and 146 L. 2 August 2002

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").	Idem	Art. 36, § 1, 1° , 2° and 6°, L. 6 April 1995 See also: the prohibition of front running provided for in the Euronext Rule Book, rule B-2301 j° Art. 36, § 1, 3°, L. 6 April 1995	Art. 26, 1° and 27, § 1, L 2 August 2002 (to come into force later) Further measures can be taken on the basis of Art. 26, 17°, Art. 27, § 1, 5° , and 146 L. 2 August 2002
99. An investment firm, which aggregates orders, must pre-assign such orders prior to transmitting them.	Idem	See nr 96	See nr 96
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.	Idem	Art. 36, § 1, 2° and 6° L. 6 April 1995	Art. 26, 4°, 8° and 9°, L. 2 August 2002 (to come into effect later) Further measures can be taken on the basis of Art. 26, §, 17°, and 146 L. 2 August 2002
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.	Idem	Art. 36, § 1, 2° and 5° L. 6 April 1995	Art. 26, 3°, L. 2 August 2002 (to come into effect later) Further measures can be taken on the basis of Art. 26, §, 17°, and 146 L. 2 August 2002

5.2) EXECUTION OF ORDERS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments

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.	Idem	Art. 36, § 1, 2° and § 3, L. 6 April 1995 Art. 37 L. 6 April 1995 and RD of 13 May 1996 (centralisation principle and possibility of opt out for investors) Art. 38, L. 6 April 1995 For transactions in financial instruments listed on a stock exchange or traded on another regulated market the intermediary is presumed to have satisfied the obligation referred to in Art. 36, § 1, 2°, if he carries out the transaction on a regulated market in accordance with the rules applicable to this market, unless he has received other instructions from his client (Art. 36, § 3 L. 6 April 1995).	Art. 11, 26, 1° and 8° and 27, § 1, 4° , L. 2 August 2002 (to come into force later) Further measures can be taken on the basis of Art. 26, 17° , Art. 28, § 1, 5° and 146 L. 2 August 2002
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.	Idem	Art. 37 and 38, 1st paragraph, L. 6 April 1995	Art. 26, 8° and 11°, L. 2 August 2002 (to come into force later) Further measures can be taken on the basis of Art. 26, 17° and 146 L. 2 August 2002
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").	Idem	See St 98	See St. 98
103. An investment firm must ensure that orders are executed in accordance with the instructions from the customer.	Idem	See St. 102	See St. 102
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.	Idem	See St. 102	See St. 102
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.	Idem	Art. 36, § 1, 2° and art. 37 and 38, 2nd paragraph, L. 6 April 1995 (centralisation principle with possibility of opt out; "off setting" is normally not permitted)	Art. 26, 12° (to come into force later) Further measures can be taken on the basis of Art. 26, 12° b), 17° and 146 L. 2 August 2002
108. If an investment firm aggregates orders, it must pre-assign such orders prior to executing them.	Idem	See St. 96	See St. 96

109. The price received or paid by the customer shall be identified separately from the fees and costs to the customer.	Idem	No specific rules	Further measures can be taken on the basis of Art. 26, 17° and 146 L. 2 August 2002
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.	Idem	No specific rules	Further measures can be taken on the basis of Art. 26, 17° and 146 L. 2 August 2002

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.	Idem	Art. 36, § 1, 7° and 62 L 6 April 199 and prudential requirements	Art. 26, 8°, L. 2 August 2002 (to come into force later) New rules can be enacted by RD on the basis of Art. 26, 17, L. 2 August 2002
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.	Idem	RD 31 March 2003 on declaration of financial transactions and on record keeping	Idem
114. An investment firm must ensure that once a transaction is executed it is promptly allocated to the account of the relevant customer(s).	Idem	Prudential requirements (art. 62 L 6 April 1995)	Idem
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.	Idem	Art. 36, § 1, 5°, L. 6 April 1995	Art. 26, 4° and 9°, L. 2 August 2002 (to come into force) New rules can be enacted by RD on the basis of Art. 26, 17°, L. 2 August 2002

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.	Idem	Idem	Idem

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
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.	Parliament and Royal Decrees proposed by the Minster of Finance CBFA circulars	Art. 8, RD 5 August 1991 Circular 92/4 of 14 August 1992 to banks and investment firms on portfolio management	

118. Instead of the items referred to in paragraph 80.e) , the customer agreement must contain: 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. In addition to the above, the customer agreement must contain: 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.	Idem	Art. 8, 19 (customer due diligence) and 26 (delegation), RD 5 August 1991 Circular 92/4 of 14 August 1992 to banks and investment firms on portfolio management	For 118.(c) benchmark : CBFA Consultation document on revised rules for portfolio management.
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).	Idem	Art. 8, 19, RD 5 August 1991 Circular 92/4 of 14 August 1992 to banks and investment firms on portfolio management	To come into effect later: Art. 26, 2° and 3°, L. 2 August 2002
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: - 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.	Idem	Art. 8, §1, 3°, and §1, second indent, RD 5 August 1991 (explicit statement and information) Art. 22, RD 5 August 1991 (express authorization for credit) Art. 23, RD 5 August 1991 (interdiction lending) Art. 25, RD 5 August 1991 (interdiction on transactions with respect of distressed equity) Circular 92/4 of 14 August 1992 to banks and investment firms on portfolio management	To come into effect later: Art. 26, 14° (reporting on derivatives positions), L. 2 August 2002 Consolidated approach in CBFA Consultation document on revised rules for portfolio management.
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.	Idem	No specific rules	CBFA Consultation document on revised rules for portfolio management: proposal to transpose CESR rule.

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.	Idem	Art. 8, 7° and 16, RD 5 August 1991 Circular 92/4 of 14 August 1992 to banks and investment firms on portfolio management	CBFA Consultation document on revised rules for portfolio management.
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.	Idem	Art. 8, 7°, RD 5 August 1991, (on request client only)	To come into effect later: Art. 26, 14°, L. 2 August 2002 CBFA Consultation document on revised rules for portfolio management.
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.	Idem	Art. 8, 10°, and Art. 15, RD 5 August 1991	CBFA Consultation document on revised rules for portfolio management
125. The contract must provide: - 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. In both cases, the termination must take place on terms that are fair and reasonable for both parties.	Idem	Art. 9, 1°, RD 5 August 1991 (customer – immediate effect) Art. 9, 2°, RD 5 August 1991 (investment firm – 7 days notice) Circular 92/4 of 14 August 1992 to banks and investment firms on portfolio management	CBFA Consultation document on revised rules for portfolio management
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.	Idem	No specific rule	CBFA Consultation document on revised rules for portfolio management
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.	Idem	Art. 26 RD 5 August 1991 (prior authorization of the customer) Circular 92/4 of 14 August 1992 to banks and investment firms on portfolio management	CBFA Consultation document on revised rules for portfolio management

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.	Idem	Art. 26 RD 5 August 1991 (delegatee must be authorized) Circular 92/4 of 14 August 1992 to banks and investment firms on portfolio management	CBFA Consultation document on revised rules for portfolio management (proposal to transpose CESR rules) Ongoing policy work within CBFA on sound practices for relying on third parties (draft regulation and/or circular to financial institutions).
128. The delegation agreement, in writing: 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.	Idem	According to the RD of 5 August 1992 a specific agreement needs to specify the respective rights and obligations in case of delegation	Ongoing policy work within CBFA on sound practices for relying on third parties (draft regulation and/or circular to financial institutions). CBFA Consultation document on revised rules for portfolio management (proposal to transpose CESR rule 128)

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.	Idem	Art. 8, 8° and 16 RD 5 August 1991 Circular 92/4 of 14 August 1992 to banks and investment firms on portfolio management	CBFA Consultation document on revised rules for portfolio management
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.	Idem	Art. 8 and 16 RD 5 August 1991 Circular 92/4 of 14 August 1992 to banks and investment firms on portfolio management	CBFA Consultation document on revised rules for portfolio management (especially annual management report; details of calculation of incentives (hard and soft commissions) received by the firm)
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.	Idem	Art. 8, 8° and 16 RD 5 August 1991 Circular 92/4 of 14 August 1992 to banks and investment firms on portfolio management	CBFA Consultation document on revised rules for portfolio management
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.	Idem	Art. 8, 10° and 16, 5° RD 5 August 1991 Circular 92/4 of 14 August 1992 to banks and investment firms on portfolio management	CBFA Consultation document on revised rules for portfolio management
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.	Idem	Art. 16 and 13, 1° RD 5 August 1991 (6 months – regulation does not provide a derogation concerning the transaction statements) Circular 92/4 of 14 August 1992 to banks and investment firms on portfolio management	To come into effect later: Art. 26, 13°, (transaction statements) L. 2 August 2002 CBFA Consultation document on revised rules for portfolio management (proposes reporting frequency of 3 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.	Idem	Circular 92/4 of 14 August 1992 to banks and investment firms on portfolio management : recommends in such case a reporting frequency of at least 3 months frequency instead of general rule of 6 months	CBFA Consultation document on revised rules for portfolio management : proposes at least monthly reporting

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.	Idem	Art. 36, §1, 6°; 62 and 79, §1, L 6 April 1995 Art. 20 RD 5 August 1991 Circular 92/4 of 14 August 1992 to banks and investment firms on portfolio management	To come into effect later: Art. 26, 1°and 4°, and Art 27, § 1, 2°, L 2 August 2002 New rules can be implemented on the basis of Art. 28, § 1, 5° L. 2 August 2002 CBFA Consultation document on revised rules for portfolio management
138. The structure of the investment firm, its policies and procedures must seek to ensure the independence of the portfolio management function.	Idem	Art. 36, § 1, 7° , Art. 62 and 79, §1, L 6 April 1995 Circular 92/4 of 14 August 1992 to banks and investment firms on portfolio management	Idem
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.	Idem	Art. 36, §1, 2°, L 6 April 1995 Circular 92/4 of 14 August 1992 to banks and investment firms on portfolio management	CBFA Consultation document on revised rules for portfolio management
139. The investment firm must maintain records of its investment strategies, as well as the analyses and forecasts underlying them.	Idem	No specific rule	CBFA Consultation document on revised rules for portfolio management (proposal to transpose this CESR rule)
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.	Idem	Art. 36 and 79, §1, L 6 April 1995 Circular 92/4 of 14 August 1992 to banks and investment firms on portfolio management	To come into effect later: Art. 26, 1°, L 2 August 2002 CBFA Consultation document on revised rules for portfolio management

140. The investment firm must ensure that its orders are executed as efficiently as possible and in particular that: 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.	Idem	Art. 62 L 6 April 1995 Circular 92/4 of 14 August 1992 to banks and investment firms on portfolio management	To come into effect later: Art. 26, 9° (aggregated orders), Art. 26, 10° (record keeping orders), Art. 26, 13° (transaction statements) L 2 August 2002 CBFA Consultation document on revised rules for portfolio management

B. CONDUCT OF BUSINESS RULES FOR THE "PROFESSIONAL REGIME"

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.	Parliament and Royal Decrees proposed by the Minster of Finance	Art. 36, § 1, 1°, 2° and 3° L. 6 April 1995	Art. 26, 1°, L. 2 August 2002 (to come into force later) Note that when entering into force the provisions of Art. 26, 27 and 28 of the L. of 2 August 2002 will replace Art. 36 of the Law of 6 April 1995 According to Art. 28, § 1, 1°, of the L. of 2 August 2002 the King may determine different rules for the application of the provisions of Article 26, according as the investment services are provided to professional investors or to other investors.
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.	Parliament and Royal Decrees proposed by the Minster of Finance CBFA circulars	Art. 36, § 1, 7°, L. 6 April 1995 Art. 62, L. 6 April 1995 Art. 20, L. 22 March 1993	Ongoing policy work within CBFA on sound practices for business continuity (draft circular to financial institutions) Work on business continuity planned in the framework of the Financial Stability Committee

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.	Idem	Partly covered by KYC-rules (L. 11 January 1993) and prudential requirements (Laws of 22 March 1993 and 6 April 1995) relating to reputational risk. See also the uniform letter to credit institutions of 5 February 2003 relating to the compliance function	Further measures can be taken by RD on the basis of Art. 26, 17° L 2 August 2002
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].	Parliament and Royal Decrees proposed by the Minster of Finance CBFA circulars	Art. 36, § 1, 7°, L. 6 April 1995 Art. 62, L. 6 April 1995 Art. 20, L. 22 March 1993 See also: CBFA circular of 10 July 2002 to securities houses on clearing on Euronext	Ongoing policy work within CBFA on sound practices for outsourcing (draft regulation and/or circular to financial institutions)

1.2. CONFLICTS OF INTEREST AND INDUCEMENTS

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.	Idem	Art. 36, § 1, 6° L. 6 April 1995 Art. 62, L. 6 April 1995 Art. 79 and 127 L. 6 April 1995 Art. 20 Royal Decree 5 August 1991 on portfolio management Circular 92/4 of 14 August 1992 to banks on portfolio management	To come into effect later: Art. 26, 4° and 27 § 1, 1° and 2°, L. 2 August 2002. Further implementing measures can be taken on the basis of Art. 28, § 1, 5° , L. 2 August 2002 According to Art. 28, § 1, 1°, of the L. of 2 August 2002 the King may determine different rules for the application of the provisions of Article 26, according as the investment services are provided to professional investors or to other investors. CBFA Consultation document on revised rules for portfolio management (2003

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

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.	Idem	Art. 36, § 1, 6° L. 6 April 1995 Art. 81 L. 6 April 1995 Art. 3 and 16 Royal Decree of 5 August 1991 on portfolio management Circular 92/4 of 14 August 1992 to banks on portfolio management	To come into effect later : Art. 26, 5° L. 2 August 2002 CBFA Consultation document on revised rules for portfolio management New rules can be enacted on the basis of Art. 26, 17° , L. 2 August 2002. See also: Art. 146 L. 2 August 2002 Please note that according to Art. 28, § 1, 1°, of the L. of 2 August 2002 the King may determine different rules for the application of the provisions of Article 26, according as the investment services are provided to professional investors or to other investors.

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..	Idem	Art. 36, § 1, 7° L. 6 April 1995 Art. 62, L. 6 April 1995 Art. 20, L. 22 March 1993 CBFA circulars with instructions to the credit institutions and investment firms on the role of the compliance function (circular to the credit institutions of 18 December 2001 and circular to the investment firms of 14 November 2002) See also the uniform letter to credit institutions of 5 February 2003 relating to the compliance function	To come into effect later: Art. 27, § 1 and § 2, L. 2 August 2002. Further implementing measures can be taken on the basis of Art. 28, § 1, 5° , L. 2 August 2002

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.	Idem	Art. 36, § 1, 7° and 62 L. 6 April 1995	New rules can be enacted on the basis of Art. 26, 17° , L. 2 August 2002 See also: Art. 146 L. 2 August 2002
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.	Idem	Idem. See especially: nrs 5, 8 and 9 of the CBFA circulars on the compliance function	See nr 7 (professional regime) See especially Art. 27, § 2, L. 2 August 2002
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.	Idem	Idem. See especially: nr. 4 of the CBFA circulars	To come into effect later: Art. 27, § 1 and § 2, L. 2 August 2002. Further implementing measures can be taken on the basis of Art. 28, § 1, 5° , L. 2 August 2002 CBFA may obtain such information during on site inspections and on request. The external auditor yearly reports on the functioning of the compliance function
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.	Parliament and Royal Decrees proposed by the Minster of Finance	Art. 101, 4°, L. 6 April 1995 Art. 74, § 2 L. 22 March 1993 Art. 36 Market Regulation of 27 December 1995 of the off-exchange market in linear bonds (Securities regulation fund)	To come into effect later: Art. 27, § 1 and § 2, L. 2 August 2002. Further implementing measures can be taken on the basis of Art. 28, § 1, 5° , L. 2 August 2002 Information to the CBFA is indirect via external auditors
12. 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.*	Parliament and Royal Decrees proposed by the Minster of Finance CBFA circulars	Art. 36, § 1, 7° L. 6 April 1995 Art. 62, L. 6 April 1995 Art. 20, L. 22 March 1993 CBFA circulars on the function of compliance: definition of compliance in the CBFA circulars and nrs 1, 2, 3, 6 7	Idem

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.	Idem	Art. 28-29 Royal Decree on the reporting of transactions in financial instruments and on the keeping of relevant data. Art. 7 Law of 11 January 1993 on the prevention of money laundering Circular to the financial institutions of the CBFA on the prevention of money laundering (3 May 1999) Euronext Rule Book (rule B9203 on voice recording) j° Art. 36, § 1, 3°, L. 6 April 1995	Additional rules may be adopted by Royal Decree on the basis of Art. 26, 17° and 146 L. 2 August 2002 See also: Art. 26, 10°, L. 2 August 2002 (to come into effect later)
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.	Parliament and Royal Decrees proposed by the Minster of Finance	See St. 7 (professional regime)	Obligation on complaints register is contained in Art. 27, § 2, 4° L. 2 August 2002 (to come into force later)
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: *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.*	Idem	Art. 36, § 1, 7° L. 6 April 1995 Art. 62 L. 2 August 2002	To come into effect later: Art. 27, § 1 L 2 August 2002 Further implementing measures can be taken on the basis of Art. 28, § 1, 5° , L. 2 August 2002

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.	Parliament and Royal Decrees	Art. 36, § 1, 5°, L. 6 April 1995 Those (conduct of business) rules are complementary to the general civil law duty of a party to a contract to provide information to the other party prior to the conclusion of a contract	To come into effect later : Art. 26, 3° L. 2 August 2002 Additional rules may be adopted by Royal Decree on the basis of Art. 26, 17° and 146 L. 2 August 2002 According to Art. 28, § 1, 1°, of the L. of 2 August 2002 the King may determine different rules for the application of the provisions of Article 26, according as the investment services are provided to professional investors or to other investors.
17. If an investment firm provides information in a marketing communications it must be fair, clear and not misleading.	Idem	- Art. 36, § 1, 5°, L. 6 April 1995 - Art. 18, § 4, L. 22 April 2003 on public offerings - Art. 18 and 19 RD of 5 August 1991 on portfolio management - Art. 22, § 1 RD of 4 March 1991 on certain undertakings for collective investment and circular ICB/1/93 of 20 July 1993 - Art. 5, 6 and 9 of the Market Regulation of the off-exchange regulated market in government bonds	To come into effect later : Art. 26, 3° L. 2 August 2002 Changes in legislation possible when implementing the Distance Marketing Directive, the UCITS-directives and the ISD2.
18. An investment firm must ensure that a customer is provided promptly with the essential information concerning the execution of his order.	Idem	Art. 36, § 1, 2° and 38, paragraph 3, L. 6 April 1995 Art. 9, § 2, Market regulations regulated market for government bonds	Art. 26, 10° and 13°, L. 2 August 2002 (to come into force later) According to Art. 28, § 1, 1°, of the L. of 2 August 2002 the King may determine different rules for the application of the provisions of Article 26, according as the investment services are provided to professional investors or to other investors.

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.	Parliament and Royal Decrees proposed by the Minster of Finance CBFA circulars	Prudential rules (Laws of 22 March 1993 and 6 April 1995) (see CBFA circulars of 18 December 1991 to the securities houses on securities accounting, of 30 January 2001 on supervision of deposits by securities houses and of 10 July 2002 on clearing on Euronext) RD 23 January 1991 on government debt securities	Additional rules may be adopted by Royal Decree on the basis of Art. 26, 17° and 146 L. 2 August 2002 According to Art. 28, § 1, 1°, of the L. of 2 August 2002 the King may determine different rules for the application of the provisions of Article 26, according as the investment services are provided to professional investors or to other investors. Note that the present powers of the Securities Regulation Fund in respect of holders of account holders of dematerialised debt instruments will be shifted to the CBFA)
20. An investment firm that operates customer accounts, which include uncovered open positions, must provide regular statements of such positions.	Parliament and Royal Decrees proposed by the Minster of Finance	RD 5 August 1991 on portfolio management and CBFA circular to financial institutions of 14 August 1992 See also: Art. 3.4.2.4. Clearnet Rule Book (contractual provisions applicable to Belgian clearing members of Clearnet)	Idem

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.	Parliament and Royal Decrees proposed by the Minster of Finance CBFA circulars	Law of 11 January 1993 on the prevention of money laundering Circular to the financial institutions of the CBFA on the prevention of money laundering (3 May 1999) and the uniform letter to credit institutions of 5 February 2003 relating to the compliance function See also the CBFA circular to financial institutions of 5 May 2000 on prudential requirements for internet financial services (nr 23) Art. 36, § 1, 4°, L. 6 April 1995 Civil law requirements for professional intermediaries	Changes in law of 11.1.93 planned to implement the Basle KYC-paper, the revised FATF Recommendations and the second Money Laundering Directive Art. 26, 2°, L. 2 August 2002 (to come into force later) See also CBFA Consultation document on revised rules for portfolio management
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.	Parliament and Royal Decrees proposed by the Minster of Finance	Art. 36, § 1, 2° and 79, L. 6 April 1995	CBFA Consultation document on revised rules for portfolio management New rules can be enacted on the basis of Art. 146 L. 2 August 2002

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.	Idem	RD 25 November 1991 on foreign exchange and deposit broking (art. 7)	Further measures can be taken on the basis of Art. 26, 17° and 146 L. 2 August 2002 According to Art. 28, § 1, 1°, of the L. of 2 August 2002 the King may determine different rules for the application of the provisions of Article 26, according as the investment services are provided to professional investors or to other investors

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.	Idem	Art. 36, § 1, 2° and § 3 and Art. 37 , 38 and 62, L. 6 April 1995 Art. 6 Market regulation of the regulated market for government bonds	Art. 26, 1°, 8° and 10°, and 27, § 1, 4° , L. 2 August 2002 (to come into force later) Further measures can be taken on the basis of Art. 26, 17° , Art. 28, § 1, 5° and 146 L. 2 August 2002 According to Art. 28, § 1, 1°, of the L. of 2 August 2002 the King may determine different rules for the application of the provisions of Article 26, according as the investment services are provided to professional investors or to other investors
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.	Idem	Art. 36, § 1, 2° and 6°, L. 6 April 1995 See also: the prohibition of front running provided for in the Euronext Rule Book, rule B-2301 j° Art. 36, § 1, 3°, L. 6 April 1995	Art. 26, 1° and 4° and 27, § 1, 1° L 2 August 2002 (to come into force later) Further measures can be taken on the basis of Art. 26, 17°, 27, § 1, 5° , and 146 L. 2 August 2002
26. An investment firm must record orders immediately, documenting and verifying all relevant items of proper execution.	Idem	See St. 24 (professional regime)	See St. 24 (professional regime)
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.	Idem	Idem See also: the obligation of voice recording for derivatives contracts provided for in the Euronext Rule Book, rule B-9204 j° Art. 36, § 1, 3°, L. 6 April 1995	Idem

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.	Idem	Art. 36, § 1, 2° L. 6 April 1995 Art. 37 L. 6 April 1995 and RD of 13 May 1996 (centralisation principle and possibility of opt out for investors) The RD provides in a flexible opt out for professional investors Art. 38, L. 6 April 1995 For transactions in financial instruments listed on a stock exchange or traded on another regulated market, the intermediary is presumed to have satisfied the obligation referred to in Art. 36, § 1, 2°, if he carries out the transaction on a regulated market in accordance with the rules applicable to this market, unless he has received other instructions from his client (Art. 36, § 3 L. 6 April 1995	Art. 11, 26, 1° and 8° and 27, § 1, 4° , L. 2 August 2002 (to come into force later) Further measures can be taken on the basis of Art. 26, 17° , Art. 28, § 1, 5° and 146 L. 2 August 2002
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.	Idem	Art. 37 and 38, 1st paragraph, L. 6 April 1995	Art. 26, 8° and 11° (to come into force later) Further measures can be taken on the basis of Art. 26, 17° and 146 L. 2 August 2002
30. An investment firm must ensure that orders are executed in accordance with the instructions from the customer.	Idem	See nr 28 (professional regime)	See nr 28 (professional regime)
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").	Idem	Art. 36, § 1, 1° , 2° and 6°, L. 6 April 1995 See also: the prohibition of front running provided for in the Euronext Rule Book, rule B-2301 j° Art. 36, § 1, 3°, L. 6 April 1995	Art. 26, 1° and 27, § 1, L 2 August 2002 .(to come into force later) Further measures can be taken on the basis of Art. 26, 17°, Art. 27, § 1, 5° , and 146 L. 2 August 2002

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.	Idem	Art. 36, § 1, 7° and 62 L 6 April 1995 and prudential requirements	Art. 26, 8°, L. 2 August 2002 (to come into force later) New rules can be enacted by RD on the basis of Art. 26, 17, L. 2 August 2002
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.	Idem	Art. 36, § 1, 5°, L. 6 April 1995	Art. 26, 4° and 9°, L. 2 August 2002 (to come into force) New rules can be enacted by RD on the basis of Art. 26, 17, L. 2 August 2002

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.	Parliament and Royal Decrees proposed by the Minster of Finance CBFA circulars	Prudential policy of the CBFA recommends to have a written agreement containing essential aspects of the relationship (objectives, type of transactions and instruments, reporting, fees,…)	To come into effect later: Article 28, 1°, L. 2 August 2002 provides that the secondary regulations implementing the high level conduct of business rules as referred to in the Law can be differentiated depending on the categorization as a professional investor or not. CBFA Consultation Document aims at transposing the CESR-principles and rules as referred to in the professional regime.

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.	Idem	Art. 36, § 1, 6° L. 6 April 1995 Art. 62, L 6 April 1995 Art. 79 L 6 April 1995 Art. 20 Royal Decree 5 August 1991 on portfolio management Circular 92/4 of 14 August 1992 to banks on portfolio management	To come into effect later: Art. 26, 4° and 27 § 1, L. 2 August 2002. Further implementing measures can be taken on the basis of Art. 26, 17°, 28, § 1, 5° and 146, L. 2 August 2002. See also Article 28, 1°, L. 2 August 2002 which provides that the secondary regulations implementing the high level conduct of business rules as referred to in the Law can be differentiated depending on the categorization as a professional investor or not. CBFA Consultation Document aims at transposing the CESR-principles and rules as referred to in the professional regime.
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.	Idem	Prudential policy of the CBFA recommends to send periodic statements.	CBFA Consultation Document aims at transposing the CESR-principles and rules as referred to in the professional regime.
37. The investment firm must ensure that its orders are executed as efficiently as possible and in particular that: *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.*	Idem	Art. 62, L 6 April 1995 (general principle of adequate organisation). Circular 92/4 of 14 August 1992 to banks on portfolio management	To come into effect later; Art. 26, 8°, 9° and 10° (enabling extensive secondary regulation). See also Article 28, 1°, L. 2 August 2002 which provides that the secondary regulations implementing the high level conduct of business rules as referred to in the Law can be differentiated depending on the categorization as a professional investor or not. CBFA Consultation Document aims at transposing the CESR-principles and rules as referred to in the professional regime.

C. CORE STANDARDS FOR THE "COUNTERPARTY RELATIONSHIP"

1. The "counterparty relationship"

Standard	Implementing authority(ies)	Implementing measure	Comments
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: - 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.			*At present, no "counterparty relationship" regime is applicable in Belgium. .* *However, Article 28, § 1, 4° of the Law of 2 August 2002 (to come into force later) enables the King to determine to what extent the conduct of business rules provided for in Articles 26 and 27 of this law apply to qualified intermediaries that trade financial instruments for own account with professional counterparties designated by the King. The explanatory memorandum of the government relating to this legal provision makes it clear that the introduction of the concept "counterparty" echoes the CESR Investor Protection standards.* *No Royal Decree on the basis of the new legal provision has yet been taken.* *In this respect, one must note that Article 28, § 2 of the Law of 2 Augustus 2002 provides that when the King determines the date of the entry into force of the provisions of Articles 26 and 27 or takes steps for the implementation of those provisions, He takes account of the status of harmonization of the rules of conduct concerned within the European Community*

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.			
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.			
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.			

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.		See comments above	
The firm must have and must employ effectively the resources and procedures that are necessary for the proper performance of its business activities.		See comments above	
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.		See comments above	
Executive directors/senior management must take reasonable measures to ensure that the firm establishes and implements adequate compliance policies and procedures.		See comments above	

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.		See comments above	
The firm must keep records of all transactions executed for a period of five years.		See comments above	
The firm must keep record of telephone conversations concerning the transactions executed on a counterparty relationship.		See comments above	
The firm must adopt and take all reasonable steps to ensure compliance with an appropriate internal code of conduct.		See comments above	
The information provided in a marketing communications must be clear and not misleading.		See comments above	

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.

The Law of 2 August 2002 defines a professional investor as follows:

"any person belonging to one of the categories of person designated by the King, upon the recommendation of the CBFA, as having the necessary knowledge and experience in terms of investments in financial instruments in order for him to take his own investment decisions and assess the attendant risks". No such decree has however been taken.

Some other specific legal provisions (see the answers to the professional regime) make a reference to professional investors without providing for a definition.

Other legal texts specify that the intermediary must take into account the professional knowledge of its clients.

In some regulations, a definition of professional clients is given that applies for the scope of these regulations. In this respect one may refer to the Royal Decree of 7 July 1999 on the public character of financial transactions. As an example, one may mention the rules on investment advice (Articles 119 and following, Law of 6 April 1995 and RD of 5 August 1991) that only apply to services for non-professional investors. For the scope of the regulations on investment advice are to be considered as professional investors :

a) the State, the "Régions/Gewesten" (Regions) and the "Communautés/Gemeenschappen" (Communities);

b) the European Central Bank, the National Bank of Belgium, the "Fonds des Rentes/Rentenfonds" (Securities Regulation Fund), the "Fonds de protection des dépôts et des instruments financiers/Beschermingsfonds voor deposito's en financiële instrumenten" (Protection Fund for Deposits and Financial Instruments) and the "Caisse des Dépôts et Consignations/Deposito- en Consignatiekas" (Deposit and Consignment Office);

c) the Belgian and foreign credit institutions referred to in Article 1, paragraph 2, of the Law of 22 March 1993 on the legal status and supervision of credit institutions;

d) the Belgian and foreign investment firms whose usual activity consists of professionally providing investment services within the meaning of Article 46, 1°, of the Law of 6 April 1995 on secondary markets, on the legal status and supervision of investment firms, on intermediaries and investment advisers;

e) the undertakings for collective investment referred to in Book III of the Law of 4 December 1990 on financial transactions and financial markets, and some other foreign undertakings for collective investment;

f) - the insurance companies referred to in Article 2, §§ 1 and 3, of the Law of 9 July 1975 on the supervision of insurance companies;

- the foreign insurance companies and pension funds which are not active in Belgium, and

- the Belgian and foreign re-insurance companies;

g) the capitalization companies referred to in Royal Decree nr. 43 of 15 December 1934 on the supervision of capitalization companies ;

h) the holding companies referred to in Royal Decree nr. 64 of 10 November 1967 organizing the legal status of holding companies, and some other companies of which the main business is actually aimed at acquiring securities representing the capital of other companies or securities giving the right to or resulting in the commitment to subscribe to, to acquire of to convert into such securities ;

i) the co-ordination centres referred to in Royal Decree nr. 187 of 30 December 1982 on the establishment of co-ordination centres ;

j) the companies of which the financial instruments are admitted to trading on a regulated market within the meaning of Article 1, § 3, of the above-mentioned Law of 6 April 1995, or on any other foreign market which operates regularly, is recognized and is open to the public and of which the consolidated own funds amount to at least EUR 25,000,000.

Finally, one may note that in the CBFA Consultation document on portfolio management it is proposed to fully implement the CESR classification of investors.

1. Categories of investors who are considered to be professionals

Standard	Implementing authority(ies)	Implementing measure	Comments

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: • 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 Commodity dealers.		. See comments above	
b) Large companies ([18]) and other institutional investors: • large companies and partnerships meeting two of the following size requirements on a company basis: • 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.		See comments above	
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.		See comments above	

([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.

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.		See comments above	
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.		See comments above	
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.		See comments above	

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

2.1. Identification criteria

Standard	Implementing authority(ies)	Implementing measure	Comments
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.		See comments above	
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. 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.		See comments above	
16. In the course of the above assessment, as a minimum, two of the following criteria should be satisfied: • 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; 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.		See comments above	

[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.

2.2. Procedure

Standard	Implementing authority(ies)	Implementing measure	Comments
17. The investors defined above may waive the benefit of the detailed rules of conduct only where the following procedure is followed: 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; b) the investment firm must give them a clear written warning of the protections and investor compensation rights they may lose; c) they must state in writing, in a separate document from the contract, that they are aware of the consequences of losing such protections.		See comments above	
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.1 above. 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.		See comments above	
19. Firms must implement appropriate written internal policies and procedures to categorise investors. 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.		See comments above	