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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<sup>1</sup> (Ref. CESR/03-497b);*
- *the explanatory notes and caveats attached to the Tables.*

*The Tables were produced by the Members of CESR<sup>1</sup> 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<sup>2</sup> and the CESR Standards for Alternative Trading Systems<sup>3</sup> 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).*

<sup>1</sup> 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.

<sup>2</sup> “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).

<sup>3</sup> Ref. CESR/02-086b, July 2002.

**Correspondence Table on Standards for Investor Protection**  
**(Ref. CESR/01-014d and CESR/02-098b)**

**FRANCE**

**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 <sup>4</sup>	Comments
<i>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.</i>	Parliament and AMF (COB+CMF) <sup>5</sup>	Article 533-4 of the Monetary and Financial Code (MFC) and article 3-1-1 of the General Regulation (GR) of the CMF Articles 2 and 13 of Regulation 96-03 of the COB <sup>6</sup>	We have retained the current wording of the ISD both in the legislative Code and in the CMF provisions. The COB provisions relate to portfolio management and also reflect the wording of the ISD but emphasise “impartiality” in addition to diligence, honesty and fairness. In addition to this COB regulation, the French association of asset management companies has developed an influential set of conduct of business rules for retail client relationships <sup>7</sup> .
<i>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.</i>	Parliament and banking authorities	Article 533-4 of the MFC and CRBF <sup>8</sup> Regulation 97-02 (banking regulation).	CRBF 97-02 applies both to investment firms and credit institutions.

<sup>4</sup> Any derogation to the application of the implementing measures should be mentioned.

<sup>5</sup> The Financial Security Act n° 2003-706 of August 1<sup>st</sup> 2003 provides for the merger of the COB and the CMF. This law has been codified into the MFC.

<sup>6</sup> The main texts mentioned under “Implementing measures” are hereafter enclosed in a non official English translation.

<sup>7</sup> The main text in this regard is “Mandated individualised Portfolio Management Professional Ethics” (adopted by the AFG in 1997) hereafter included.

<sup>8</sup> Banking and financial regulation committee.

<p><b><i>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.</i></b></p>	<p>AMF</p>	<p>Art. L Prohibition to provide Investment services without agreement : penal sanction</p>	<p>It is a duty of an investment firm to verify the capacity of its counterparty.</p>
<p><b><i>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. <sup>9</sup>.</i></b></p>	<p>Parliament and banking authorities</p>	<p>Articles 6-3-8 and 6-3-9 of the GR of the CMF Article 1-15 of COB Instruction of 17 December 1996</p>	<p>Under general principles the “outsourcing firm” remains responsible .In addition there is specific regulations on “custody account-keepers” (custodians). The CMF provision states that where a custodian appoints a third party “to provide it with technical resources...it shall assess the resources and procedures employed and the risks incurred. This assessment shall be available for review by the CMF.” It also states that the liability of the custodian is not affected by any such appointment. The COB provision relates to delegation of the asset management function.</p>

<sup>9</sup> This standard is not intended to interfere with relevant provisions on civil liability, applicable at national level.

## 1.2. CONFLICTS OF INTEREST AND INDUCEMENTS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p><i>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.</i></p>	Parliament and AMF	Article 533-4 of the MFC, art 3-1-6 and article 3-1-7 of the GR of the CMF. Article 14 of COB Regulation 96-03 (relating to portfolio management) :	The main texts applicable regarding the conflict of interest issue set out the general principle of avoidance and proper management of conflicts of interests.
<p>7. Where conflicts of interest cannot be reasonably avoided or managed with the internal independence policy, an investment firm must not undertake business with or on behalf of a customer where it has directly or indirectly a conflicting interest, including any such interest arising from intra-group dealings, joint provision of more than one service or other business dealings of the investment firm or any affiliated entity, unless it has previously disclosed to the customer the nature and extent of its interest, either in writing or by telephone and recorded by the firm and the customer has expressly agreed to engage in such business with the investment firm. Where possible, this disclosure must be given at the beginning of the customer relationship; otherwise it must be given prior to the customer entering into any relevant transaction.</p>	AMF	No specific implementing measure identified. However, this rule should nevertheless be deemed to be implemented, as explained in the comments.	This has not been implemented per se because we require the conflict to be prevented or managed in all cases, in principle. In addition, conflicts of interests must be disclosed in certain cases: fee return agreements (in the very limited circumstances where these are allowed) must be disclosed to the customer further to article 3-3-11 of the GR of the CMF, conflicts must be disclosed to the customer to whom a portfolio management service is provided further to article 3 of COB Regulation 96-03 (as amended in November 2003), and conflicts related to the production of investment research must be disclosed in the research report further to Decision 2002-01 of the CMF.

<p><i>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.</i></p>	<p>AMF</p>	<p>Articles 3-2-8, 3-3-11 and 3-3-12 of the GR of the CMF Articles 8 quarter and 8 septies of COB Regulation 96-03</p>	<p>These provisions do not implement the standards as such, rather they prohibit fee return agreements in most circumstances, limit the possibility of soft commissions to goods and services useful to the firm and require firms to supervise and limit gifts, etc. received by staff. With respect to portfolio management, the COB provision prohibits fee return agreements (unless the rebates are credited exclusively to the account of the customer), subjects soft commission agreements to strict rules (they must not affect best execution, must be directly useful for the customer, must be sent to the compliance department and the estimated amounts included in the annual accounts), and requires detailed disclosure of soft commission agreements in the annual management report if their total value exceeds 1% of portfolio management fees earned by the firm.</p>
<p>8. Where inducements are permitted an investment firm must act in the best interest of the customer and inform the customer at the beginning of the relationship, which may give rise to conflicts of interest between itself and its customers, about the investment firm's policy on inducements and at least once a year in writing of the relevant details of such inducements.</p>	<p>AMF</p>	<p>Article 3-3-11 of the GR of the CMF Regulation COB 96-03</p>	<p>This provision requires annual disclosure to the client of the amounts related to fee return agreements where these are allowed, i.e. where the firm is not the client's account-holder (custodian).. COB regulation subjects soft commission agreements to strict rules (they must not affect best execution, must be directly useful for the customer, must be sent to the compliance department and the estimated amounts included in the annual accounts), and requires detailed disclosure of soft commission agreements in the annual management report if their total value exceeds 1% of portfolio management fees earned by the firm.</p>

**1.3 COMPLIANCE AND CODE OF CONDUCT**

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p><i>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.</i></p>	AMF	<p>Articles 3-1-1, 3-1-3 and 3-1-4 of the GR of the CMF  Articles 11 and 12 of COB Regulation 96-03 (on portfolio management)</p>	<p>The texts provide explicitly for the obligation for the investment firm to have an internal compliance code and compliance officer responsible for its enforcement.</p>
<p>11. The persons responsible for the compliance function must have the necessary expertise, resources, authority and must have full access to all relevant information enabling them to perform their duties. They must perform their monitoring duties independently of all persons and activities subject to their monitoring.</p>	AMF and CRBF	<p>Articles 2-4-16, 2-4-17, 3-1-4 and 3-1-5 of the GR of the CMF  COB Instruction of 17 December 1996 following COB Regulation 96-02 establishes a model application form for authorisation which requires the applicant to describe its internal control procedures (Annex 1, III, 5, a); article 11 of COB Regulation 96-03 defines internal control as including compliance.</p>	<p>The rule is implemented through the GR of the CMF. Similar requirements are contained in the banking regulation on internal control (97-02), and they apply both to banks and investment firms.</p>
<p>12. A summary of the results of the monitoring must be reported to the senior management of the investment firm and to the internal or external auditors. The investment firm must report these results, together with remedies adopted, to the competent authority at least once a year.</p>	AMF and CRBF	<p>Articles 2-4-17 and 3-1-4 of the GR of the CMF</p>	<p>These CMF provisions do not provide for the communication of the report to the auditors. CRBF regulation 97-02 however requires that the internal control report be sent to the Banking Commission, to the board of the firm and to the external auditors.</p>
<p>13. An investment firm must ensure that the competent authority is informed, without undue delay, of serious breaches of the conduct of business rules. In assessing whether the breaches are serious, an investment firm must take into account the impact on regulatory goals and on the capacity to provide services, their frequency, the damages suffered by customers.</p>	AMF	<p>No specific implementing measure identified</p>	<p>This has not been implemented but we expect firms to inform us quickly of serious breaches.</p>

<p>14. The compliance function must:</p> <ul style="list-style-type: none"> <li>- regularly verify the adequacy of policies and procedures to ensure compliance with the regulations on investment services;</li> <li>- provide advisory assistance and support to the various business areas of the investment firm on problems concerning compliance with the regulations on investment services.</li> </ul>	AMF	Article 3-1-3 of the RG of the CMF	The first indent has not been explicitly implemented, this results however implicitly but quite clearly from the requirement to report annually to the AMF on compliance. In addition, the banking regulation CRBF 97-02 explicitly requires (article 6) the regular verification of the adequacy of internal control policies and procedures, and this regulation applies to both credit institutions and investment firms.
<p><b><i>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.</i></b></p>	AMF	GR of the CMF (chapter II)	<p>CMF regulation makes compulsory for an investment services providers to have in place all procedures and means that give the capacity to comply with the regulation</p> <p>The AMF can sanction failure to comply with its regulations but the AMF must demonstrate this failure.</p>
<p>15. An investment firm must keep records relevant for the purpose of demonstrating compliance with the conduct of business rules, for a period of five years in order to enable the competent authority to verify compliance with these rules. Tape recording of orders must be kept for a period of one year.</p>	AMF	Article 7-1-7 of the RG of the CMF and implementing Decisions 99-05 and 99-06	These Decisions provide for keeping of records for either five years (trades) or six months (orders, and specific type of telephone conversations).
<p>16. An investment firm must keep a register of customer complaints related to the provision of the investment services and the measures taken for their resolution and must regularly verify whether complaints are adequately processed.</p>	AMF		This is not an explicit requirement.
<p>17. An investment firm must establish a code of conduct for members of the board, directors, partners, employees and tied-agents. The code of conduct must contain:</p> <ul style="list-style-type: none"> <li>a) the rules and procedure to meet the obligation to protect data of a confidential nature;</li> <li>b) the rules and procedures for carrying out personal transactions involving financial instruments;</li> <li>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;</li> <li>d) the investment firm's policy on conflicts of interest and inducements.</li> </ul>	AMF	Articles 533-4 and 533-6 of the MFC, Articles 3-1-1, 3-1-3, 3-1-6, 3-1-7, 3-2-2 and following of the GR of the CMF	The items listed are provided for mainly in the GR of the CMF. In addition similar rules for certain items can also be found in the banking regulations

#### 1.4. COLD CALLING <sup>10</sup>

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<b><i>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.</i></b>			
19. Cold calls may only be made by persons employed by, or appointed as tied-agent <sup>11</sup> by an investment firm. Responsibility for the competence and activities of such persons rests with the firm.	Parliament	Financial Security Act of July 2003, articles 50 to 57 codified under MFC Articles L.341-3 and L.341-4.	This new law, besides merging the CMF and the COB, also completely reforms the law on “solicitation” which is broader than “cold calling”. Implementing legislation for the new statutory provisions is awaited.
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/AMF	Civil code Article 9 on the respect of privacy	This has not been implemented specifically in financial law
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.	Parliament/AMF	FMC Article 341-8 and 341.16	Art 341-8 requires the professional license to be presented to the solicited person in certain circumstance. Art 341-16 provides for a 14 day withdrawal period for the solicited customer.
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.	Parliament/AMF	Civil Code article 9 on the respect of privacy	
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.	Parliament/AMF	.Art 341-16 FMC	This has not been implemented as such. However, Article 341-16 prohibits taking order for 48hour period after customer has been solicited It would be legally difficult to allow or require investment firms to record telephone conversations with their clients for the purposes of demonstrating that solicitation did not involve undue pressure.
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.	Parliament/AMF		The implementation of this rule is in process within transposition of the DMD

<sup>10</sup> 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.

<sup>11</sup> This is without prejudice to the applicability of professional requirements, imposed at national level.



## 2. INFORMATION TO BE PROVIDED TO CUSTOMERS

### 2.1) BASIC REQUIREMENTS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<i>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.</i>	Parliament, AMF	Article 533-4 of the FMC, Articles 3-3-3 and 3-3-5 of the GR of the CMF Articles 19 and 24 of COB Regulation 96-03 (on portfolio management)	The legislative Code uses the current wording of the ISD. The CMF provisions require information to be adapted to the customer profile.
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.	AMF	Articles 19 and 24 of COB Regulation 96-03 (on portfolio management) and Article 3-3-5 of the GR of the CMF (on adaptation to professional competency of the customer). The courts have also awarded damages to customers in the circumstances mentioned in this rule.	The AMF requires that customer information meets this standard. In addition ,the AMF is empowered to require investment firms to submit all marketing documents prior to their publication and have them modified if they are considered unsuitable.
<i>26. An investment firm must supply its customers on a timely basis with the information that enables them to make informed investment decisions.</i>	AMF	Article 6-3-4 of the GR of the CMF	This provision requires custodians to inform their clients “as soon as possible” of corporate actions requiring a response from the holder (eg rights issue, takeover bid), other events affecting the client’s rights and the execution of trades or other movements in the financial instruments or cash held in the name of the client. This appears to be a reasonable interpretation of the scope of this standard.
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.	AMF	Article6-3-4 of the General regulation of CMF	This explanation of “timely” has not been implemented but article 6-3-4 requires that customers receive “as soon as possible” the relevant information

### 2.2.) MARKETING COMMUNICATIONS <sup>12</sup>

<sup>12</sup> This is without prejudice of EU or national provision requiring authorisation and/or other requirements affecting the provision of marketing services.

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<b>29. If an investment firm provides information in a marketing communication it must be fair, clear and not misleading.</b>	Parliament/AMF	Misleading Advertising Act Article 24 of COB Regulation 96-03 on portfolio management Article 341-11 of the MCF.	This Act applies to all forms of advertising, including the marketing of financial services and investment services. . The new statutory provisions on solicitation include however a standard on the quality of information provided to the potential customer (article 50 of the Financial Security Act of 1 August 2003, consolidated into article 341-11 of the MFC). The COB provision requires advertising and all documentation given to the customer relating to portfolio management to be “consistent with the service proposed” and to mention in particular the risks associated with the service.
<b>30. The promotional purpose of marketing communications issued by an investment firm must not be disguised.</b>	Parliament/AMF	Article 24 of COB Regulation 96-03	See above.
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.	Parliament/AMF	Article 24 of COB Regulation 96-03	See above.
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.	Parliament/AMF	MFC Article L.531.11	As regards the first part of this rule, article L.531-11 clearly forbids the investment firm to create any confusion about its identity or authorisation. As regards the second part of this rule, no specific provision addresses this issue.
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/AMF	Mention of the Authority cannot go beyond the fact that authorisation was granted.	

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/AMF	MFC Article 341-12 (on solicitation)	
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**2.3) INFORMATION ABOUT THE INVESTMENT FIRM**

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<i>35. Before providing investment services an investment firm must supply adequate information about itself and the services it provides.</i>	Parliament, AMF	Article 533-4 of the MFC	This legislative provision uses the current wording of the ISD.
<p>36. An investment firm must provide customers with the following information prior to the commencement of provision of investment services:</p> <ul style="list-style-type: none"> <li>a) the identity of the investment firm, the (financial) group to which the investment firm belongs, its postal address and telephone number;</li> <li>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;</li> <li>c) the functions that the investment firm performs so that the customer is able to assess the scope of the firm's responsibilities;</li> <li>d) the relevant compensation scheme(s);</li> <li>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;</li> <li>f) an outline of the firm's policies in relation to conflicts of interest and inducements;</li> <li>g) the languages in which the customer can communicate with the investment firm.</li> </ul>	Parliament, AMF	Article 533-13 of the MFC CMF Decision 98-28 on the mandatory clauses of the customer agreement	This legislative provision only requires information on the relevant compensation scheme. Some other items of information are only required to be in the customer agreement, or are required under the provisions on solicitation. There is no requirement to state the name of the regulator or the languages accepted, or to describe the out-of-court mechanism.

#### 2.4) INFORMATION ON FINANCIAL INSTRUMENTS AND INVESTMENT SERVICES

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<b><i>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.</i></b>	Parliament	Article 533-4 of the MFC, articles 3-3-3 and 3-3-5 of the GR of the CMF	The legislative provision uses the wording of the current ISD. The regulatory provisions on the other hand refer to services and instruments.
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 <sup>13</sup> 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.	AMF	Articles 3-3-3, 3-3-5 , 3-3-6 and 3-3-7 of the GR of the CMF Article 11 of COB Regulation 96-02 (on investment firms whose principal activity is portfolio management) Art 341-12-6 (on cancellation rights)	The CMF provisions require in particular information on financial instruments, order transmission and execution, and fees, as well as additional information where the transaction envisaged is unusual for the client. The COB provision relates to the content of the customer agreement. The statutory provision applies in the context of solicitation.
<b><i>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.</i></b>	AMF	Article 3-3-3 of the GR of the CMF Article 8 to _8 septies of the COB regulation 96-03	The AMF requires precise information on fees and charges,;
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.	AMF	CMF Decision 98-28 COB regulation 89-02 and 96-03 and in addition Instruction on prospectus of November 2003	This CMF decision require the customer agreement to detail all charges and fees Moreover the Contact Committee is in charge of establishing a document on fees and charges

<sup>13</sup> 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.	AMF	In the prospectus for product negotiated on a regulated market risk shall be presented with such a requirement. For UCITS or specific bond with formula see below	
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.	AMF	COB regulation implementing the UCIT directive within the COB regulation 89-02 modified in October 2003 and the instruction attached of November 2003	
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.	AMF	Decree 89-623 modified in 2003 Ch I SecIII	This regulation obliged any guarantee are guaranteed by a legally enforceable arrangement given by a credit institution from the OECD area
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.	AMF	COB regulation 96-03 contains information on tax treatment.	This has not been implemented as such for financial advisor. However, tax information must of course be accurate and are part of the advice given in asset management.
<b><i>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.</i></b>	AMF	COB regulation 89-02 and AFG code of Conduct	. Only past performance is allowed. Forecast is forbidden by the current regulation. It is compulsory to warn the customer on the indicative character of past performance. COB doctrine and the Code on performance of the French Association of Asset Management (AFG) frame the exercise and impose the period of reference, the obligation to give three scenarii if past performances are rebuilt from estimated data.. This scenarii must be given on a form of a graph.
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.	AMF	COB regulation 89-02 and AFG code of Conduct	Warning the customer on the indicative character of past performance is compulsory

<p>47. The use of simulated returns is prohibited. If the information refers to actual returns based on past performance:</p> <ul style="list-style-type: none"> <li>a) the reference period must be stated and must not be less than one year;</li> <li>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;</li> <li>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;</li> <li>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;</li> <li>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;</li> <li>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.</li> </ul>	AMF	Decree 89-623 COB regulation 89-02	<p>The French regulation does not provide for five years in c) but a specific reference period is adapted for each type of formula.</p> <ul style="list-style-type: none"> <li>e) return figure have to be denominated in local currency for all funds where subscription is in local currency.</li> <li>f) net performance is mandatory</li> </ul>
<p>48. The relevant provisions on actual returns shall apply to the method of calculating and presenting any future returns. Information on estimated future returns must state that these future returns are forecasts. Such forecasts must in turn be based on objective, realistic assumptions of investment returns.</p>	AMF	Actual return is forbidden	
<p>49. Any estimate, forecast or promise contained in the information on financial instruments and investment services must be clearly expressed, must state the assumptions on which it is based, must be relevant and must not mislead the customer.</p>	AMF	estimated forecast are forbidden	
<p>50. If information provided contains comparisons, the requirement of being fair, clear and not misleading means that the comparisons must:</p> <ul style="list-style-type: none"> <li>a) be based either on data from attributed sources or disclosed assumptions;</li> <li>b) be presented in a fair and balanced way;</li> <li>c) take reasonable steps not to omit any fact that is material to the comparison.</li> </ul>	AMF	See regulation on benchmark in funds with formula.	

**2.5) RISK WARNINGS**

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p><i>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.</i></p>	AMF	<p>Article 3-3-5 of the GR of the CMF  Article 20 of COB Regulation 96-03 (on portfolio management)</p>	<p>According to the CMF provision information must be provided on “particular risks” and is adapted according to the investor’s competence.  The COB provision states that “the duty of information and advice includes warning against risks incurred”.</p>
<p>53. An investment firm must provide its customers with risk warnings as appropriate. Instances where the type of instrument or transaction envisaged makes specific risk warnings necessary include:</p> <ul style="list-style-type: none"> <li>- financial instruments not traded on a regulated market;</li> <li>- transactions in illiquid financial instruments;</li> <li>- leveraged transactions;</li> <li>- financial instruments subject to high volatility in normal market conditions;</li> <li>- securities repurchase agreements or securities lending agreements;</li> <li>- transactions which involve credit, margin payments or the deposit of collateral;</li> <li>- transactions involving foreign exchange risk.</li> </ul>	AMF	<p>RG CMF Art 3-3-5  COB regulation 96-03</p>	

<p>53. The investment firm must also, where necessary, inform the customer of risks associated with:</p> <ul style="list-style-type: none"> <li>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);</li> <li>b) suspension of trading or listing (e.g. that under certain trading conditions it may be impossible to liquidate a position);</li> <li>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).</li> </ul>	AMF	RG CMF Art 3-3-5 COB regulation 96-03	Not all the detailed list has been implemented
<p><i>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.</i></p>	AMF	The due prominence of risk warning is monitored by the AMF in its application of regulations regarding the fair, clear and not misleading information.	
<p>54. Risk warnings about derivatives must disclose that the instrument can be subject to sudden and sharp falls in value. Where the investor may not only lose his entire investment but may also be required to pay more later, he must also be warned about this fact and the possible obligation to provide extra funding.</p>	AMF	COB Regulation 99-04	A standardised brochure must be sent to customers who envisage trading in certain derivatives.

**2.6. CUSTOMER REPORTING**

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
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<p><b>55. An investment firm must ensure that a customer is provided promptly with the essential information concerning the execution of his order.</b></p>	AMF	Article 3-3-8 of the GR of the CMF and article 3 of Decision 98-28 of the CMF	The first provision requires the custodian to inform the client of all transactions effected; the second requires the customer agreement to provide that the information will be sent to him in less than 24 hours
<p>58. No later than the first business day following the execution of the transaction or receipt of confirmation of execution by a third party, an investment firm must send to the customer<sup>14</sup>, by fax, mail or electronic means (provided the firm reasonably believes that the customer can store it on a permanent medium), a contract note or confirmation notice which includes the following information:</p> <ul style="list-style-type: none"> <li>a) the name of the firm;</li> <li>b) the name of the customer account;</li> <li>c) the time of execution, if available, or a statement that the time of execution will be supplied on request;</li> <li>d) date of execution;</li> <li>e) the type of transaction; e.g. buy, sell, subscription etc.;</li> <li>f) the market on which the transaction was carried out or the fact that it was carried out off-market;</li> <li>g) the financial instrument and the quantities involved in the transaction;</li> <li>h) the unit price applied and the total consideration;</li> <li>i) whether the customer's counterparty was the investment firm itself or any related party;</li> <li>j) the commissions and expenses charged;</li> <li>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.</li> </ul> <p>If a transaction is not executed within one business day of receipt of the customer order, an investment firm must send a written confirmation of the order to the customer. The confirmation notice must include customer order details, date and time of reception and, where applicable, date and time of transmission.</p>	AMF	Article 3-3-8 of the GR of the CMF, Decision 98-28 of the CMF	<p>Not all of these detailed items are required by the regulations.</p> <p>This article of the GR of the CMF provides that the time period for transaction reporting is defined by the customer agreement. The CMF Decision relates to customer agreements and sets the maximum time for sending the information at 24 hours; where the firm has transmitted the order to another firm, the information must be sent within 24 hours of the time at which the firm transmitting the order is informed of the terms of the transaction by the firm executing the transaction (interpreted as meaning before the close of business the following day).</p> <p>The CMF Decision requires at least the following information: the instrument involved, the amount of the transaction (the gross being broken down into component parts including fees), the date and price of execution, and the market on which the transaction was executed.</p> <p>The article of the GR of the CMF also requires the contract note to indicate whether the firm was the investor's counterparty in any transaction involving an instrument traded on a regulated market.</p> <p>There is no requirement to confirm receipt of an unexecuted order.</p>

<sup>14</sup> The reference to "send to the customer" includes to a tied-agent, other than the firm, nominated by the customer in writing.

<p>59. The investment firm must notify the customer immediately if it refuses to accept or transmit an order. The firm must inform customers as soon as possible if it is unable to transmit their orders.</p>	<p>AMF</p>	<p>Decision 98-28 of the CMF</p>	<p>This Decision partially implement this rule in that it requires the customer agreement to specify how the customer is informed where the order has not been successfully transmitted.</p>
<p><b><i>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.</i></b></p>	<p>AMF</p>	<p>Article 6-3-4 of the GR of the CMF</p>	<p>This provision requires custodians to issue to any account holder upon request an attestation specifying the nature and number of financial instruments held in his account, and to send to all account holders such a statement at least on a yearly basis.</p>
<p>60. An investment firm must send to its customer at least once a year or as often as agreed with the customer a statement of all assets held in custody on behalf of each customer. The statement must also:</p> <ul style="list-style-type: none"> <li>a) identify assets which have been pledged to the firm or any third parties as collateral;</li> <li>b) identify assets which have been lent;</li> <li>c) clearly and consistently show movement of assets based on either trade date or settlement date.</li> </ul>	<p>AMF</p>	<p>Article 6-3-4 of the GR of the CMF</p>	<p>This provision requires custodians to inform account holders as soon as possible of all trades and on a yearly basis of the financial instruments held (see above). Accounts must be credited on the trade date. It does not require yearly notice of pledges or loans but these transactions can of course be undertaken only with the client's consent.</p>

<p><b><i>57. An investment firm that operates customer accounts, which include uncovered open positions, must provide regular statements of such positions.</i></b></p>	<p>AMF</p>	<p>Article 23 of COB Regulation 96-03 (on portfolio management)</p>	<p>This COB provision requires a monthly report where the client portfolio contains “open leveraged positions” but these are not defined in the same way as in the CESR paper. No such provision exists where the client himself decides to take the open positions. We are not sure we understand this concept as defined by CESR.</p>
<p>61. Where an account includes uncovered open positions<sup>15</sup>, an investment firm must send to its customer a monthly statement, which includes the following:</p> <ul style="list-style-type: none"> <li>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;</li> <li>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;</li> <li>c) the resulting profit or loss arising from positions closed during the period.</li> </ul>	<p>AMF</p>	<p>Article 23 of COB Regulation 96-03 and article 2-4 of COB Instruction of 17 December 1996</p>	<p>The COB provisions require “an assessment of the risks incurred through the open positions” in addition to the information required in the standard quarterly report, as well as a valuation of each open position and the result of positions closed out during the period. We would suggest a review of the content of the monthly report recommended by CESR, and consideration of the distinction to be made between portfolios managed by the client himself and portfolios managed by the firm.</p>

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

#### **3.1 INFORMATION FROM THE CUSTOMER**

<sup>15</sup> Examples of uncovered open positions include:

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

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p><i>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.</i></p> <p><i>In addition, prior to providing any investment service the investment firm must seek to obtain from the customer information enabling an investment firm</i></p> <p><i>a. to determine whether the investment services envisaged are appropriate for the customer<sup>16</sup> and</i></p> <p><i>b. to meet any duties owing to the customer in respect of the services to be provided.</i></p>	Parliament, AMF	Article 533-4 of the MFC and articles 3-3-2 and 3-3-5 of the GR of the CMF Article 19 of COB Regulation 96-03	<p>The wording of the both the law and the CMF provisions largely reflect the current wording of the ISD but the CMF provisions require in addition verification of the identity and capacity of the client as well as verification of the identity and capacity of the client’s representatives.</p> <p>The CMF also requires verification of the identity of the person on whose behalf the client acts “where relevant”.</p> <p>The COB regulations also use ISD wording, adding however that “the services provided must be adapted to the situation of the client”.</p>
<p>63. The “know-your-customer” standard applies to each investment firm having a direct business relationship with the customer with respect to investment services. However, where two or more investment firms are involved in providing an investment service and each has a direct relationship with the customer, an investment firm may rely on the information received from another of such investment firms.</p>	AMF	No specific implementing measure identified for the second sentence	The principle is implemented.
<p>64. An investment firm must obtain evidence of the identity of its customers in accordance with national laws and regulations implementing the provisions of Council Directive 91/308 on the prevention of the use of the financial system for the purpose of money laundering. Until such evidence is obtained, an investment firm must not provide any investment services to the customer concerned.</p>	AMF	Article 3-3-2 of the GR of the CMF Article 18 of COB Regulation 96-03 (on portfolio management)	Article 6-3-1 of the GR of the CMF also requires verification of the identity and capacity of the client prior to the opening of a financial-instrument account (custody service).
<p>65. An investment firm must seek to obtain information on the customer’s knowledge and experience<sup>17</sup> in the investment field, his investment objectives and risk profile,<sup>18</sup> his financial situation/capacity and any trading restrictions applicable to the customer. The extent of the information required will vary according to the standards laid down in paragraph 62, second subparagraph.</p>	Parliament, AMF	Article 533-4 of the MFC and article 3-3-5 of the GR of the CMF Article 19 of COB Regulation 96-03	<p>The CMF provision does not say “seek to obtain” and does not refer to trading restrictions.</p> <p>Like the CMF provision, the wording of the COB provision is similar to that of the current ISD.</p>

<sup>16</sup> This is not considered to be investment advice according to the definition of the paper.

<sup>17</sup> 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.

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.	AMF	No specific implementing measure identified but existing general principle applicable	This is not explicitly implemented but is a reasonable interpretation of the existing rule.
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.	AMF	Article 3-3-6 of the GR of the CMF	The CMF provision explicitly requires the regular updating only of information on the client's financial situation, his capacity and that of his representatives.
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.	AMF	No specific implementing measure identified. However see above on customer identification and profile.	See above for records on customer identification and profile. Records on customer contact data have not been required by regulation.
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.	AMF	No specific implementing measure identified.	This has not been implemented.
70. The customer should not be invited not to provide information.		It is forbidden to open an account without providing information.	

### **3.2 THE INVESTMENT FIRM'S DUTY TO CARE FOR THE CUSTOMER**<sup>19</sup>

<sup>18</sup> 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.

<sup>19</sup> 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.

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p><i>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.</i></p>	Parliament, AMF	No specific implementing measure identified. However see above on existing general principle applicable.	This has not been implemented, inter alia, because advice is not (yet) a core investment service in France. Financial Security Act 2003-706 however directly regulates financial advisers for the first time and France and imposes similar requirements. Article 19 of COB Regulation 96-03 on portfolio management requires the service to be “suitable” for the client, as pointed out above.
<p><i>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.</i></p>	AMF	Article 3-3-7 of the GR of the CMF	This provision requires the firm to “question” the client when he transmits an order that is “unusual” for him, and to execute the order only after the client has confirmed the order (“explained the objectives of the transaction” through any available medium) and the firm has supplied the necessary additional information.
<p>75. Where an investment firm receives an order regarding a transaction that it considers – in the light of the information disclosed to it by the customer and the information available to it, including the information arising from the customer relationship – not suitable<sup>20</sup> for the customer, it must advise the customer accordingly and provide appropriate information on the transaction, including any necessary risk warning. The investment firm may transmit or execute the order only if the customer nonetheless confirms his intention to proceed with the transaction in writing or by telephone and recorded, and provided that such confirmation contains an explicit reference to the warning received.</p>	AMF	Article 3-3-7 of the GR of the CMF	See above (73).

<sup>20</sup> 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.

<p><b>74. An investment firm must take reasonable care to verify that the customer has sufficient financial resources to settle the proposed transaction.</b></p>	<p>AMF</p>	<p>Article 4-1-35 and 4-1-35-1 of the GR of the CMF</p>	<p>This has not been implemented as a general principle. The CMF provisions only apply to trades in cash financial instruments admitted to a regulated market and provide that where settlement is deferred beyond the normal date for payment and delivery a minimum margin amount must be deposited by the client before the order can be accepted by the firm. Clearing house rules will apply in the case of orders for derivative instruments.</p>
<p>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.</p>	<p>AMF or banking authorities</p>	<p>No specific implementing measure identified.</p>	<p>This has not been explicitly implemented; see above.</p>
<p>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.</p>	<p>Parliament, AMF</p>	<p>No specific implementing measure identified.</p>	<p>There is no explicit execution-only service in France, which is not considered compliant with the law transposing the ISD in France</p>

#### 4. CUSTOMER AGREEMENTS

##### 4.1) BASIC CUSTOMER AGREEMENT

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<i>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.</i>	Parliament, AMF	Article 533-10 of the MFC, Articles 2-4-12 and 2-4-13 of the RG of the CMF Article 11 of COB Regulation 96-02 (on portfolio management)	The statutory provision relates to portfolio management. The CMF provisions relate to other investment services (transmission/reception and execution of orders) as well as custody. Where the client is another regulated institution no written agreement is required for transmission/reception and execution of orders. The COB provision determines the minimum contents of the portfolio management agreement.
<i>79. The customer agreement must be clear and easily understandable by the customer.</i>	AMF	General principle make compulsory to apply CMF and COB specific regulation on agreement through a clear and easily understandable document.	



<p>80. The customer agreement must contain the following items as a minimum:</p> <ul style="list-style-type: none"> <li>a) the identity, postal address and telephone number of each of the parties;</li> <li>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;</li> <li>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</li> <li>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;</li> <li>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;</li> <li>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;</li> <li>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;</li> <li>h) the name of the competent authority which has authorised the investment firm;</li> <li>i) the law applicable to the contract, as ascertained to the best of the knowledge of the firm or as agreed between the parties;</li> <li>j) the duration of the agreement and the procedures for amending, renewing, terminating or withdrawing from it;</li> <li>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;</li> <li>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;</li> <li>m) the languages in which the customer can communicate with the investment firm.</li> </ul>	<p>AMF</p>	<p>CMF Decision 98-28</p>	<p>Most but not all of these items are required by the CMF Decision. The following items are mandatory: identity of the parties, identity of any representative of the client, the services and instruments covered, the types of orders to be addressed to the firm and how they are to be sent, the content of trade confirmations and how they are to be sent to the client, details of fees and charges, the period of validity of the agreement.</p> <p>This Decision also requires the agreement to mention the time period for challenging the terms of execution of a trade, and the name of the third-party custodian where applicable.</p> <p>Where the agreement covers clearing services, it must specify the terms and conditions for depositing and calling margin as well as the situations and conditions in which the firm can liquidate positions and sell financial instruments deposited as margin.</p>
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81. Rather than containing all the above items itself, the contract may refer to other documents containing certain of them, e.g. the general terms of business, the types of investment services offered, the types of orders and information to be sent by the parties and the fee schedule, provided that all the contractual documents so referred to are provided to the customer prior to the signing of the contract.	AMF	CMF provisions	The CMF provisions are understood in this way.
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.	AMF	Decision 98-28 of the CMF	Where the agreement covers custody, it must specify how information on client assets and movements in those assets will be supplied to the client. CMF provisions do not explicitly require information on the exercise of voting rights in the customer agreement. Article 6-3-3 of the GR of the CMF states however that “the custody account-keeper shall...do its utmost to facilitate the exercise of rights pertaining to financial instruments in its custody”, which goes beyond but necessarily includes information rights.
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.	AMF	No specific implementing measure identified.	This has not been implemented.
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.	AMF	No specific implementing measure identified <sup>21</sup> .	This has not been implemented in financial regulations but the application of general contract law would cause firms to keep contracts for more than five years.

<sup>21</sup> This should nevertheless be considered as fully implemented, as explained in the comments section.

#### 4.2) CUSTOMER AGREEMENT INVOLVING TRADING IN DERIVATIVES

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p><i>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.</i></p>	AMF	CMF Decision 98-28 COB decision 99-04 on trading in derivative in regulated market law 1885.	No specific content requirements are established for agreements involving the trading of derivatives. See above for CMF Decision 98-28 which also applies here.
<p>86. In addition to the relevant items of the basic customer agreement, where the firm provides services involving derivatives, the customer agreement must contain:</p> <ul style="list-style-type: none"> <li>- the type(s) of instruments and transactions envisaged,</li> <li>- the obligations of the investment firm with respect to the transactions envisaged, in particular its reporting and notice obligations to the customer,</li> <li>- 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,</li> <li>- an appropriate warning calling to the customer's attention the risks involved in the transactions envisaged.</li> </ul>	AMF	CMF Decision 98-28	Decision 98-28 provides that, where the client will be trading in futures and options, the customer agreement must specify: <ul style="list-style-type: none"> <li>- the procedures for calling initial margin and maintenance margin,</li> <li>- the situations and conditions in which the firm can liquidate positions and sell financial instruments deposited as margin by the client.</li> </ul>
<p>87. The contract must mention the types of transactions envisaged, in particular whether the customer intends to undertake transactions giving rise to contingent liabilities, the types of instruments envisaged, in particular whether they are traded on a regulated market or not, and it must refer to the documentation on such instruments provided by the investment firm to the customer for information purposes.</p>	AMF	CMF Decision 98-28	See above. As pointed out above in the section on risk warnings, standardised brochure must be sent to customers who envisage trading in derivatives.
<p>88. The contract must provide for the immediate confirmation of derivatives transactions and the immediate notice to the customer of his payment obligations as they arise, as well as the procedures to be used for such confirmation and notice.</p>	AMF	CMF Decision 98-28	See above, and the section on customer reporting.

<p>89. The contract, or the documentation referred to in the contract, must provide adequate information on any margin requirements or similar obligations, regardless of the source of such rules and requirements, e.g. an exchange or clearing house, or the investment firm itself. This document must indicate how margin will be calculated and charged, the assets (cash, securities, etc.) accepted as margin, the frequency of margin calls and the timetable for the delivery or payment of margin by the customer to the investment firm. The contract must require immediate notification to the customer of any change in margin rules.</p>	<p>AMF</p>	<p>CMF Decision 98-28</p>	<p>See above.</p>
<p>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.</p>	<p>AMF</p>	<p>Article 3-3-5 of the GR of the CMF</p>	<p>As pointed out above in the section on risk warnings, standardised brochure must be sent to customers who envisage trading in derivatives.</p>

## 5.- DEALING REQUIREMENTS

### 5.1) RECEPTION AND TRANSMISSION OF CUSTOMER ORDERS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<i>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.</i>	AMF	Article 3-3-1 of the GR of the CMF	This provision requires order execution to be performed in such a way as to ensure best execution and the respect of client requests. The general obligation is also implicit in the more specific obligations discussed below.
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.	AMF	Article 3-3-10 of the GR of the CMF	This provision explicitly requires only that the firm receiving and transmitting orders be able to prove that the order was issued by the customer (not by the firm) and to provide evidence of the times at which the order was received and transmitted. The provision does not require the other information listed in the CESR rule. This other information will naturally be contained in the order, but the definition of the detailed content of orders is left to the customer agreement.
94. An investment firm must record orders immediately, documenting and verifying all relevant items of proper execution.	AMF	Article 3-4-4 of the GR of the CMF	
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.	AMF	Article 3-4-3 of the RG of the CMF	This provision requires taping of telephone conversations only of traders and other staff "who participate in the commercial relationship with customers, if the compliance officer considers it necessary in view of the amounts or risks involved", this second category including staff who receive client orders.

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.	AMF	Article 3-4-12 of the GR of the CMF Article 16 of COB Regulation 96-03 (on portfolio management)	
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.	AMF	Article 3-4-4 of the GR of the CMF	
<b><i>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.</i></b>	AMF	Articles 3-4-8 and 3-2-1 of the GR of the CMF	Though the wording of the first provision mentioned is very different, the general meaning is the same. This provision only refers explicitly to the firm itself, and to transmitting orders "to the market", but article 3-1-1 states that all of the provisions of Title 3 of the GR apply to the firm and to all persons working for the firm. The second provision mentioned requires the firm to remind employees that the misuse of confidential information is illegal.
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").	AMF	Article 3-4-8 of the GR of the CMF	Front running is sanctioned under the market abuse regulation in France. We would suggest a review of the wording of the CESR rule.
99. An investment firm, which aggregates orders, must pre-assign such orders prior to transmitting them.	AMF	Article 3-4-12 of the GR of the CMF	
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.	AMF	No specific implementing measure identified.	No rule exists covering this specific situation. Nonetheless, the best execution obligation applies in all cases.
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.	AMF	No specific implementing measure identified.	No such rule applies to investment firms, it is the issuer which is responsible for making the prospectus available. However, issuer are obliged to publish through the press a resume of the prospectus

## 5.2) EXECUTION OF ORDERS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<i>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.</i>	AMF	Article 3-3-1 of the GR of the CMF	This provision contains the general “best execution” rule which is stated much more simply than the CESR standard. The current rule of concentration of order on the regulated market do not allow such a choice between trading venues.
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.	AMF	Article 3-3-8 of the GR of the CMF	This provision requires the firm to inform the client after the fact where it has acted as counterparty to the trade, not before the trade., which would appear to be difficult to implement. However the investment firms must be in a position to justify true price.
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”).	AMF	Article 3-4-8 of the GR of the CMF	Front running is subject to sanction as a market abuse..
<i>103. An investment firm must ensure that orders are executed in accordance with the instructions from the customer.</i>	AMF	No explicit implementing measure identified, but this is clearly required of the first step of compliance with the best execution principle..	This is not an explicit requirement, but it is clearly required.
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.	AMF	Article 3-4-4 of the GR of the CMF	This provision does not say “promptly” but this is understood.
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.	AMF	No specific implementing measure identified but best execution is always required.	In France only a limited form of internal matching (cross-trades) is currently allowed in any event.
108. If an investment firm aggregates orders, it must pre-assign such orders prior to executing them.	AMF	Article 3-4-12 of the GR of the CMF	The provision refers to “transmitting an aggregated order” but this includes execution via transmission to the market.

109. The price received or paid by the customer shall be identified separately from the fees and costs to the customer.	AMF	Decision 98-28 of the CMF (article 3)	Detailed information on all charges and costs is required; see the remarks above in the “customer reporting” section.
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.	AMF	No specific implementing measure identified.	This is not an explicit requirement.

### 5.3) POST- EXECUTION OF ORDERS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<i>111. An investment firm must ensure the proper and speedy recording, allocation and distribution of executed transactions.</i>	AMF	Articles 3-4-4 and 6-3-5 of the GR of the CMF	These provisions refer respectively to the recording and allocation (which also covers “distribution”) of executed transactions.
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.	AMF	Article 3-4-4 of the GR of the CMF	This provision covers all orders including those issued by the firm.
114. An investment firm must ensure that once a transaction is executed it is promptly allocated to the account of the relevant customer(s).	AMF	Article 6-3-5 of the GR of the CMF	
<i>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.</i>	AMF	No specific implementing measure identified, but the general principle of fair treatment of clients is always mandatory.	As noted above no rule exists for this specific situation. It would however be a breach to allocate in a way that would be detrimental to a customer.



<p>115. Where an order has been executed in several tranches, the investment firm must inform the customer about the price of execution of each tranche, unless the customer requests an average price. If customer orders have been aggregated and such an aggregated order has been partially executed, the investment firm must allocate the related trade on a proportional basis, unless the firm has a different allocation policy and the customers involved have been informed accordingly prior to the execution. An investment firm must have procedures in place to prevent that reallocation of principal transactions executed along with customers transactions on an aggregated basis give unfair preference to the investment firm or to any of its customers for whom it deals.</p>	<p>AMF</p>	<p>No specific implementing measure identified.</p>	<p>No specific provision covers these particular situations.</p>
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## 6. INDIVIDUAL DISCRETIONARY PORTFOLIO MANAGEMENT

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

### 6.1. CUSTOMER AGREEMENTS FOR DISCRETIONARY PORTFOLIO MANAGEMENT

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<i>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.</i>	Parliament, AMF	Article 533-10 of the MFC and article 21 of COB Regulation 96-03	A customer agreement is mandatory.
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.	AMF	Article 11 of COB Regulation 96-02 (on portfolio management)	The following items are not required by the COB provision: the benchmark, the basis of valuation.
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).	AMF	Article 11 of COB Regulation 96-02 Master agreement are elaborated by the French Association of Assets management. They contain an indication on the type of management chosen by the client regarding the risk.	This provision requires the express agreement of the client for leveraged transactions. No other "particular constraints" are mentioned.

<p>120. If an investment firm is mandated to invest in any of the following types of instruments or to undertake any of the following types of transactions, the contract must state so explicitly and provide adequate information on the scope of the investment firm's discretionary authority regarding these instruments and transactions:</p> <ul style="list-style-type: none"> <li>- financial instruments not traded on a regulated market,</li> <li>- illiquid or highly volatile financial instruments,</li> <li>- leveraged transactions,</li> <li>- securities repurchase agreements or securities lending agreements,</li> <li>- transactions involving credit, margin payments or deposit of collateral,</li> <li>- transactions involving foreign exchange risk.</li> </ul>	AMF	Article 11 of COB Regulation 96-02	Not all of these instruments and transactions are mentioned in the COB provision: illiquid or highly volatile instruments, repos or lending agreements, transactions involving forex risk.
<p>121. For information purposes with respect to the customer, the contract must indicate an appropriate benchmark, based on financial indicators produced by third parties and in common use, that is consistent with management objectives and against which the future results are to be compared. Where it is not feasible to establish such a benchmark in view of specific customer objectives, this must be stated clearly in the contract and an alternative measure of performance must be indicated.</p>	AMF		This has not been implemented.
<p>122. The contract must state whether the financial instruments are to be valued at bid/ask or offer or mid-market price, including any relevant currency exchange rates, and, where relevant, by reference to indicators such as yield curves or other pricing models or the methodology to be used to value unlisted equities.</p>	AMF		This has not been implemented.
<p>123. The contract must define a specific reporting requirement in the event of losses, defined as a marked-to-market decrease in the value of the portfolio as compared to the value of the portfolio as stated in the most recent periodic report (after neutralisation of any contributions or withdrawals). The contract must set a percentage threshold and a time period to warn the customer accordingly.</p>	AMF	Article 2-4 of the COB Instruction of 17 December 1996	This provision does not state that losses are necessarily calculated with respect to the most recent periodic report. Where the defined level of losses is reached, the client must be informed "without delay" A regular reporting is mandatory.
<p>124. If the contract provides for a variable management fee based on the performance of the management service, the method of calculation must be clearly defined in the contract.</p>	AMF	Articles 11 and 22 of COB Regulation 96-03	These provisions do not specifically address performance-based fees. A working group is currently implementing this provision.

<p>125. The contract must provide:</p> <ul style="list-style-type: none"> <li>- 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;</li> <li>- 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.</li> </ul> <p>In both cases, the termination must take place on terms that are fair and reasonable for both parties.</p>	AMF	Article 12 of COB Regulation 96-03	
<p><b><i>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.</i></b></p>	AMF	Article 1-15 of the COB Instruction	Delegator remains responsible
<p>126. If an investment firm is mandated to delegate management of any or all of the customer's assets, this must be stated in the contract and adequate information must be supplied in this regard, both to the customer and to the competent authority. The contract must also provide that the customer will be informed prior to any significant change regarding delegation of portfolio management.</p>	AMF	Article 11 of COB Regulation 96-02 and article 1-15 of the COB Instruction	Prior agreement of the customer is required. The regulator is informed.
<p>127. An investment firm may delegate the portfolio management function to another investment firm only if such delegatee firm is authorised in its home country to provide portfolio management services on an individual basis and is qualified and capable of undertaking the function in question. The mandate shall not prevent the effectiveness of supervision over the delegator, and in particular, it must not prevent the delegator from acting in the best interests of its customers. In no case the investment firm may delegate its functions to the extent that it becomes a letter box entity. Furthermore, it may so delegate to a non-EEA investment firm so authorised in its home country only if an appropriate formal arrangement between regulators enables them to exchange material information concerning both cross-border delegations and the delegatee.</p>	AMF	Article 1-15 of the COB Instruction	This provisions allows delegation to a non-EEA firm where no MOU on information sharing exists provided that the delegatee accepts in the delegation agreement to be audited.

<p>128. The delegation agreement, in writing:</p> <ul style="list-style-type: none"> <li>a) must be revocable with immediate effect by the delegator;</li> <li>b) must provide for sufficient notice to be given to the delegator by the delegatee of termination of the agreement;</li> <li>c) must be in conformity with the indications contained in the customer agreement with the delegator;</li> <li>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;</li> <li>e) must be formulated so as to avoid conflicts of interest between the delegator and the delegatee;</li> <li>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.</li> </ul>	<p>AMF</p>	<p>Article 1-15 of the COB Instruction</p>	<p>This provision requires fundamentally the same arrangements as those stated in the CESR rule. This provision is currently in a process of being fully implemented</p>
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## 6.2 PERIODIC INFORMATION

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<i>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.</i>	AMF	Article 23 of COB Regulation 96-03	See following items
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.	AMF	Article 23 of COB Regulation 96-03 and article 2-4 of the COB Instruction	These provisions require quarterly statements and half-yearly management reports. They do not address the issue of fees and charges in detail, nor do they mention remuneration received from a third party, but the COB working party mentioned published a report on these issues in October 2002.
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.	AMF	No specific implementing measure identified.	This is not explicitly required.
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.	AMF	No specific implementing measure identified.	This is not mentioned in the relevant provisions, but see the above remark on the COB working party.
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.	AMF	No specific implementing measure identified.	There is no requirement to report every transaction to the customer. The periodic statement is quarterly but it is not required to include every transaction; the client may however require this information according to article 2-4 of the COB Instruction.
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.	AMF	Article 23 of COB Regulation 96-03 and article 2-4 of the COB Instruction	Cf. the remarks made in the “customer reporting” section above.

## 6.3. MANAGEMENT REQUIREMENTS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<i>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.</i>	Parliament, AMF	Article 533-11 of the MFC Articles 2 and 3 of COB Regulation 96-03	The legislative provision refers to the shareholders and senior management of the investment firm; it does not refer to the separation of functions. The COB provisions require the separation of functions and business lines.
138. The structure of the investment firm, its policies and procedures must seek to ensure the independence of the portfolio management function.	Parliament, AMF	Article 533-11 of the MFC Article 3 of COB Regulation 96-03	The legislative provision requires the “autonomy of decision” of the portfolio management function but it does not refer to “structure, policies and procedures”. The COB provision requires the structural separation of functions and business lines.
<i>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.</i>	AMF	No specific implementing measure identified.	This is not explicitly required except for private equity portfolios (article 1-14 of the COB Instruction).
139. The investment firm must maintain records of its investment strategies, as well as the analyses and forecasts underlying them.	AMF	No specific implementing measure identified.	This is not explicitly required.
<i>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.</i>	AMF	Article 2 of COB Regulation 96-03	

<p>140. The investment firm must ensure that its orders are executed as efficiently as possible and in particular that:</p> <ul style="list-style-type: none"> <li>a) orders issued are immediately recorded by the firm;</li> <li>b) transactions executed are recorded and the portfolios affected are adjusted as quickly as possible;</li> <li>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.</li> </ul>	<p>AMF</p>	<p>No specific implementing measure identified.</p>	<p>These requirements are implicit in the content of the programme of operations of the firm (cf. article 1-14 of the COB Instruction).</p>
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## B. CONDUCT OF BUSINESS RULES FOR THE “PROFESSIONAL REGIME”

### 1. STANDARDS OF GENERAL APPLICATION

#### 1.1 GENERAL

Standard	Implementing authority(ies)	Implementing measure	Comments
<i>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.</i>	AMF/Parliament		As a general warning it has to be said that there is not a specific code of conduct for professional. However provision on information and duty to care are applicable due to the professional nature of the client. Moreover, professional clients are eligible to specific funds and product whose sell does not require a prospectus.
<i>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.</i>	Parliament and banking authorities	Article 533-4 of the MFC and CRBF <sup>22</sup> Regulation 97-02 (banking regulation).	
<i>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.</i>	AMF	Art. L Prohibition to provide Investment services without agreement : penal sanction	
<i>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.<sup>23</sup></i>	Parliament and banking authorities	Articles 6-3-8 and 6-3-9 of the GR of the CMF Article 1-15 of COB Instruction of 17 December 1996	

#### 1.2. CONFLICTS OF INTEREST AND INDUCEMENTS

<sup>22</sup> Banking and financial regulation committee.

<sup>23</sup> This standard is not intended to interfere with relevant provisions on civil liability, applicable at national level.

Standard	Implementing authority(ies)	Implementing measure	Comments
<p><i>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.</i></p>	Parliament and AMF	<p>Article 533-4 of the MFC, art 3-1-6 and article 3-1-7 of the GR of the CMF. Article 14 of COB Regulation 96-03 (relating to portfolio management) :</p>	<p>The main texts applicable regarding the conflict of interest issue set out the general principle of avoidance and proper management of conflicts of interests.</p>
<p><i>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.</i></p>	AMF	<p>Articles 3-2-8, 3-3-11 and 3-3-12 of the GR of the CMF Articles 8 quarter and 8 septies of COB Regulation 96-03</p>	<p>These provisions do not implement the standards as such, rather they prohibit fee return agreements in most circumstances, limit the possibility of soft commissions to goods and services useful to the firm and require firms to supervise and limit gifts, etc. received by staff.</p> <p>With respect to portfolio management, the COB provision prohibits fee return agreements (unless the rebates are credited exclusively to the account of the customer), subjects soft commission agreements to strict rules (they must not affect best execution, must be directly useful for the customer, must be sent to the compliance department and the estimated amounts included in the annual accounts), and requires detailed disclosure of soft commission agreements in the annual management report if their total value exceeds 1% of portfolio management fees earned by the firm.</p>

**1.3 COMPLIANCE AND CODE OF CONDUCT**

Standard	Implementing authority(ies)	Implementing measure	Comments
<p><i>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..</i></p>	AMF	<p>Articles 3-1-1, 3-1-3 and 3-1-4 of the GR of the CMF Articles 11 and 12 of COB Regulation 96-03 (on portfolio management)</p>	<p>The texts provide explicitly for the obligation for the investment firm to have an internal compliance code and compliance officer responsible for its enforcement.</p>
<p><i>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.</i></p>	AMF	GR of the CMF (chapter II)	<p>CMF regulation makes compulsory for an investment services providers to have in place all procedures and means that give the capacity to comply with the regulation</p> <p>The AMF can sanction failure to comply with its regulations but the AMF must demonstrate this failure.</p>
<p><i>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.</i></p>	AMF and CRBF	<p>Articles 2-4-16, 2-4-17, 3-1-4 and 3-1-5 of the GR of the CMF COB Instruction of 17 December 1996 following COB Regulation 96-02 establishes a model application form for authorisation which requires the applicant to describe its internal control procedures (Annex 1, III, 5, a); article 11 of COB Regulation 96-03 defines internal control as including compliance.</p>	<p>The rule is implemented through the GR of the CMF. Similar requirements are contained in the banking regulation on internal control (97-02), and they apply both to banks and investment firms.</p>
<p><i>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.</i></p>	AMF	No specific implementing measure identified	<p>This has not been implemented as such. The AMF can sanction failure to comply with its regulations but the AMF must demonstrate this failure.</p>
<p><i>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.</i></p>	AMF	No specific implementing measure identified	<p>This has not been implemented but we expect firms to inform us quickly of serious breaches.</p>

<p><b>12. The compliance function must:</b>  - regularly verify the adequacy of policies and procedures to ensure compliance with the regulations on investment services;  - provide advisory assistance and support to the various business areas of the investment firm on problems concerning compliance with the regulations on investment services.</p>	AMF	Article 3-1-3 of the RG of the CMF	The first indent has not been explicitly implemented, this results however implicitly but quite clearly from the requirement to report annually to the AMF on compliance. In addition, the banking regulation CRBF 97-02 explicitly requires (article 6) the regular verification of the adequacy of internal control policies and procedures, and this regulation applies to both credit institutions and investment firms.
<p><b>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.</b></p>	AMF	Article 7-1-7 of the RG of the CMF and implementing Decisions 99-05 and 99-06	These Decisions provide for keeping of records for either five years (trades) or six months (orders, and specific type of telephone conversations).
<p><b>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.</b></p>	AMF	Article 3-1-3 of the RG of the CMF	The first indent has not been explicitly implemented, this results however implicitly but quite clearly from the requirement to report annually to the AMF on compliance. In addition, the banking regulation CRBF 97-02 explicitly requires (article 6) the regular verification of the adequacy of internal control policies and procedures, and this regulation applies to both credit institutions and investment firms.
<p><b>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:</b>  a) The rules and procedure to meet the obligation to protect data of a confidential nature;  b) the rules and procedures for carrying out personal transactions involving financial instruments;  c) the rules and procedures governing the business relationship with customers in order to ensure that the persons referred to above, in particular where a conflict of interest may arise, always act in the best interests of customers, and that such persons do not take advantage of any confidential information;  d) the investment firm's policy on conflicts of interest and inducements.</p>	AMF	Articles 533-4 and 533-6 of the MFC, Articles 3-1-1, 3-1-3, 3-1-6, 3-1-7, 3-2-2 and following of the GR of the CMF	The items listed are provided for mainly in the GR of the CMF. In addition similar rules for certain items can also be found in the banking regulations

**2. INFORMATION TO BE PROVIDED TO CUSTOMERS**

Standard	Implementing authority(ies)	Implementing measure	Comments
<i>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.</i>	Parliament, AMF	Article 533-4 of the FMC, Articles 3-3-3 and 3-3-5 of the GR of the CMF Articles 19 and 24 of COB Regulation 96-03 (on portfolio management)	The legislative Code uses the current wording of the ISD. The CMF provisions require information to be adapted to the customer profile. Regarding information due to customer although the professional nature of the client has to be taken into account, there is not a specific code of conduct for professional. However it is understood that a customer that have a
<i>17. If an investment firm provides information in a marketing communications it must be fair, clear and not misleading.</i>	Parliament/AMF	Misleading Advertising Act Article 24 of COB Regulation 96-03 on portfolio management Article 341-11 of the	This Act applies to all forms of advertising, including the marketing of financial services and investment services. We have not implemented specific rules for financial advertising in general. The new statutory provisions on solicitation include however a standard on the quality of information provided to the potential customer (article 50 of the Financial Security Act of 1 August 2003, consolidated into article 341-11 of the MFC).
<i>18. An investment firm must ensure that a customer is provided promptly with the essential information concerning the execution of his order.</i>	AMF	Article 3-3-8 of the GR of the CMF and article 3 of Decision 98-28 of the CMF	The first provision requires the custodian to inform the client of all transactions effected; the second requires the customer agreement to provide that the information will be sent to him in less than 24 hours
<i>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.</i>	AMF	Article 6-3-4 of the GR of the CMF	This provision requires custodians to issue to any account holder upon request an attestation specifying the nature and number of financial instruments held in his account, and to send to all account holders such a statement at least on a yearly basis.

<p><i>20. An investment firm that operates customer accounts, which include uncovered open positions, must provide regular statements of such positions.</i></p>	<p>AMF</p>	<p>Article 23 of COB Regulation 96-03 (on portfolio management)</p>	<p>This COB provision requires a monthly report where the client portfolio contains “open leveraged positions” but these are not defined in the same way as in the CESR paper. No such provision exists where the client himself decides to take the open positions. We are not sure we understand this concept as defined by CESR.</p>
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### 3. THE “KNOW-YOUR-CUSTOMER STANDARD” AND THE DUTY TO CARE

Standard	Implementing authority(ies)	Implementing measure	Comments
<p><i>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.</i></p>	<p>Parliament, AMF</p>	<p>Article 533-4 of the MFC and articles 3-3-2 and 3-3-5 of the GR of the CMF Article 19 of COB Regulation 96-03</p>	<p>The wording of the both the law and the CMF provisions largely reflect the current wording of the ISD but the CMF provisions require in addition verification of the identity and capacity of the client as well as verification of the identity and capacity of the client’s representatives. The CMF also requires verification of the identity of the person on whose behalf the client acts “where relevant”. The COB regulations also use ISD wording, adding however that “the services provided must be adapted to the situation of the client”.</p>
<p><i>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.</i></p>			

### 4. CUSTOMER AGREEMENTS

Standard	Implementing authority(ies)	Implementing measure	Comments
<i>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.</i>	AMF	Article 533-10 of the MCF Article 2-4-12 and 2-4-13 of the RG of the CMF. Article 11 of COB Regulation.	Those articles do not established a distinction according to the professional quality of the client. However, financial institutions are not obliged to conclude a written contract.

## 5.- DEALING REQUIREMENTS

### 5.1) RECEPTION AND TRANSMISSION OF CUSTOMER ORDERS

Standard	Implementing authority(ies)	Implementing measure	Comments
<i>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.</i>	AMF	Article 3-3-1 of the GR of the CMF	This provision requires order execution to be performed in such a way as to ensure best execution and the respect of client requests. The general obligation is also implicit in the more specific obligations discussed below.
<i>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.</i>	AMF	Articles 3-4-8 and 3-2-1 of the GR of the CMF	Though the wording of the first provision mentioned is very different, the general meaning is the same. This provision only refers explicitly to the firm itself, and to transmitting orders "to the market", but article 3-1-1 states that all of the provisions of Title 3 of the GR apply to the firm and to all persons working for the firm. The second provision mentioned requires the firm to remind employees that the misuse of confidential information is illegal.
<i>26. An investment firm must record orders immediately, documenting and verifying all relevant items of proper execution.</i>	AMF	Article 3-4-4 of the GR of the CMF	

<p><i>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.</i></p>	<p>AMF</p>	<p>Article 3-4-3 of the RG of the CMF</p>	<p>This provision requires taping of telephone conversations only of traders and other staff “who participate in the commercial relationship with customers, if the compliance officer considers it necessary in view of the amounts or risks involved”, this second category including staff who receive client orders.</p>
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## 5.2) EXECUTION OF ORDERS

Standard	Implementing authority(ies)	Implementing measure	Comments
<p><i>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.</i></p>	<p>AMF</p>	<p>Article 3-3-1 of the GR of the CMF</p>	<p>This provision contains the general “best execution” rule which is stated much more simply than the CESR standard.</p> <p>Above a certain thresholds set up in the CMF general regulation concentration of order rule does not apply</p>
<p><i>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.</i></p>	<p>AMF</p>	<p>Article 3-3-8 of the GR of the CMF</p>	<p>This provision requires the firm to inform the client after the fact where it has acted as counterparty to the trade, not before the trade., which would appear to be difficult to implement</p>
<p><i>30. An investment firm must ensure that orders are executed in accordance with the instructions from the customer.</i></p>	<p>AMF</p>	<p>No explicit implementing measure identified, but this is clearly required of the step of compliance with the best execution principle..</p>	<p>This is not an explicit requirement, but it is clearly required.</p>
<p><i>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”).</i></p>	<p>AMF</p>	<p>Article 3-4-8 of the GR of the CMF</p>	<p>Moreover, front running is subject to market abuse sanction.</p>

## 5.3) POST- EXECUTION OF ORDERS



Standard	Implementing authority(ies)	Implementing measure	Comments
<i>32. An investment firm must ensure the proper and speedy recording, allocation and distribution of executed transactions.</i>	AMF	Articles 3-4-4 and 6-3-5 of the GR of the CMF	These provisions refer respectively to the recording and allocation (which also covers “distribution”) of executed transactions.
<i>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.</i>	AMF	No specific implementing measure identified, but the general principle of fair treatment of clients is always mandatory.	As noted above no rule exists for this specific situation. It would however be a breach to allocate in a way that would be detrimental to a customer.

## **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
<i>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.</i>	Parliament, AMF	Article 533-10 of the MFC and article 21 of COB Regulation 96-03	
<i>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.</i>	Parliament, AMF	Article 533-11 of the MFC Articles 2 and 3 of COB Regulation 96-03	The legislative provision refers to the shareholders and senior management of the investment firm; it does not refer to the separation of functions. The COB provisions require the separation of functions and business lines.
<i>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.</i>		Article 23 of COB Regulation 96-03	

<p><b>37. The investment firm must ensure that its orders are executed as efficiently as possible and in particular that:</b></p> <ul style="list-style-type: none"> <li><i>a) orders issued are immediately recorded by the firm;</i></li> <li><i>b) transactions executed are recorded and the portfolios affected are adjusted as quickly as possible;</i></li> <li><i>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.</i></li> </ul>	AMF	No specific implementing measure identified.	These requirements are implicit in the content of the programme of operations of the firm (cf. article 1-14 of the COB Instruction).
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**C. CORE STANDARDS FOR THE “COUNTERPARTY RELATIONSHIP”**

**1. The “counterparty relationship”**

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

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

Standard	Implementing authority(ies)	Implementing measure	Comments
<i>The firm must at all times act honestly, fairly and professionally in accordance with the integrity of the market.</i>			
<i>The firm must have and must employ effectively the resources and procedures that are necessary for the proper performance of its business activities.</i>			
<i>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.</i>			
<i>Executive directors/senior management must take reasonable measures to ensure that the firm establishes and implements adequate compliance policies and procedures.</i>			
<i>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.</i>			
<i>The firm must keep records of all transactions executed for a period of five years.</i>			
<i>The firm must keep record of telephone conversations concerning the transactions executed on a counterparty relationship.</i>			
<i>The firm must adopt and take all reasonable steps to ensure compliance with an appropriate internal code of conduct.</i>			

*The information provided in a marketing communications must be clear and not misleading.*

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#### D. CRITERIA FOR DEFINING PROFESSIONAL INVESTORS

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

##### 1. Categories of investors who are considered to be professionals

Standard	Implementing authority(ies)	Implementing measure	Comments
<p>10. a) Entities which are required to be authorised or regulated to operate in the financial markets. The list below should be understood as including all authorised entities carrying out the characteristic activities of the entities mentioned: entities authorised by a Member State under a European Directive, entities authorised or regulated by a Member State without reference to a European Directive, and entities authorised or regulated by a non-Member State:</p> <ul style="list-style-type: none"><li>• Credit institutions</li><li>• Investment firms</li><li>• Other authorised or regulated financial institutions</li><li>• Insurance companies</li><li>• Collective investment schemes and management companies of such schemes</li><li>• Pension funds and management companies of such funds</li></ul> <p>Commodity dealers.</p>	Decree of government	Decree 98-880 du 19 October 1998 on qualified investor. CMF regulator mentions this Decree as the definition of professional investor. This Decree will be modified in order to implement the Prospectus directive.	<p>Qualified investor by nature on the same than in CESR Standard except the last two items.</p> <p>The implementation of this categorisation is in process through the transposition of the prospectus directive.</p>
<p>b) Large companies <sup>(24)</sup> and other institutional investors:</p> <ul style="list-style-type: none"><li>• large companies and partnerships meeting two of the following size requirements on a company basis:<ul style="list-style-type: none"><li>• balance sheet total : EUR 20.000.000,</li><li>• net turnover : EUR 40.000.000,</li><li>• own funds: EUR 2.000.000.</li></ul></li><li>• Other institutional investors whose corporate purpose is to invest in financial instruments.</li></ul>		Decree 98-880 on qualified investor	The Decree authorises some private Companies to become qualified investor but with different thresholds.

<sup>(24)</sup> 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.

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.			
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.		Not implemented	
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.		Not implemented	
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.		Not implemented	

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

**2.1. Identification criteria**

Standard	Implementing authority(ies)	Implementing measure	Comments
<p>14. The members of CESR consider that investors other than those mentioned in § 10, including public sector bodies <sup>(25)</sup> and private individual investors, may also be allowed to waive some of the protections afforded by the conduct of business rules. Investment firms should therefore be allowed to treat any of the above investors as professionals provided the relevant criteria and procedure mentioned below are fulfilled. These investors should not, however, be presumed to possess market knowledge and experience comparable to that of the categories listed in §10.</p>		Not implemented	The law implementing the ISD does not authorises such
<p>15. Any such waiver of the protection afforded by the standard conduct of business regime shall be considered valid only if an adequate assessment of the expertise, experience and knowledge of the client, undertaken by the investment firm, gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making his own investment decisions and understanding the risks involved.</p> <p>The fitness test applied to managers and directors of entities licensed under European Directives in the financial field could be regarded as an example of the assessment of expertise and knowledge. In the case of small entities, the person subject to the above assessment should be the person authorised to carry out transactions on behalf of the entity.</p>		Not implemented	
<p>16. In the course of the above assessment, as a minimum, two of the following criteria should be satisfied:</p> <ul style="list-style-type: none"> <li>• 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;</li> <li>• The size of the investor's financial instrument portfolio, defined as including cash deposits and financial instruments exceeds 0,5 million Euro;</li> </ul> <p>The investor works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.</p>		Not implemented	

## 2.2. *Procedure*

<sup>(25)</sup> 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.



Standard	Implementing authority(ies)	Implementing measure	Comments
<p>17. The investors defined above may waive the benefit of the detailed rules of conduct only where the following procedure is followed:</p> <p>a) they must state in writing to the investment firm that they wish to be treated as a professional investor, either generally or in respect of a particular investment service or transaction, or type of transaction or product;</p> <p>b) the investment firm must give them a clear written warning of the protections and investor compensation rights they may lose;</p> <p>c) they must state in writing, in a separate document from the contract, that they are aware of the consequences of losing such protections.</p>		Not implemented	
<p>18. Before deciding to accept any request for waiver, investment firms must be required to take all reasonable steps to ensure that the client requesting to be treated as a professional investor meets the relevant requirements stated in Section II.1 above.</p> <p>However, if investors have already been categorised as professionals under parameters and procedures similar to those above, it is not intended that their relationships with investment firms should be affected by any new rules adopted pursuant to this paper.</p>		Not implemented	
<p>19. Firms must implement appropriate written internal policies and procedures to categorise investors.</p> <p>Professional investors are responsible for keeping the firm informed about any change, which could affect their current categorisation. Should the investment firm become aware however that the investor no longer fulfils the initial conditions, which made him eligible for a professional treatment, the investment firm must take appropriate action.</p>		Not implemented	