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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)****IRELAND****A CONDUCT OF BUSINESS RULES FOR THE “RETAIL REGIME”****1. STANDARDS AND RULES OF GENERAL APPLICATION****1.1 GENERAL**

**Abbreviations used:**  
 Code of Conduct: COC  
 General Supervisory and Reporting Requirements: GS&RR  
 Books and Records Requirements: B&RR  
 Advertising Requirements: AR  
 Handbook for Investment & Stockbroking Firms: HISF

	<b>Implementing authority(ies)</b>	<b>Implementing measure<sup>4</sup></b>	<b>Comments</b>
<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>	Irish Financial Services Regulatory Authority (“IFSRA”) <sup>5</sup>	Code of Conduct (“COC”), Sections 1.1, 1.2 A firm shall ensure ... that it: 1.1 acts honestly and fairly in conducting its business activities in the best interests of its clients and the integrity of the market; 1.2 acts with due skill, care and diligence in the best interests of its clients and the integrity of the market.	

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

<sup>5</sup> Please note that all references to “the Bank” in this document should be construed as being references to IFSRA.

<p><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></p>	<p>IFSRA</p>	<p><u>General Supervisory &amp; Reporting Requirements (“GS&amp;RR”), Sections 2.1, 2.2, 2.3</u></p> <p>Firms are required to have adequate Management Resources to conduct business effectively</p> <p><u>COC, Section 1.3</u></p> <p>General Principals</p>	<p>See HISF, GS&amp;RR, page 3</p> <p>See HISF, COC page 3</p>
<p><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></p>	<p>IFSRA</p>	<p><u>Investment Intermediaries Act 1995</u></p> <p>Investment Intermediaries Act, 1995, ("IIA"), Section 17 Register of Business Firms</p>	<p>IFSRA's ongoing supervisory practice is to ensure that all investment intermediaries with which a firm does business are authorised under the IIA, and are included on Registers maintained by IFSRA</p>
<p><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>6</sup></i></p>	<p>IFSRA</p>	<p><u>GS&amp;RR, Section 2.3</u></p> <p>As at 2 above.</p> <p>Additional specific conditions imposed on a firm by firm basis</p>	

## 1.2. CONFLICTS OF INTEREST AND INDUCEMENTS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments

<sup>6</sup> This standard is not intended to interfere with relevant provisions on civil liability, applicable at national level.

<p><b>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.</b></p>	<p>IFSRA</p>	<p><u>COC Section 1.6</u></p> <p>A firm shall ensure .... that it makes a reasonable effort to avoid conflicts of interest and when, they cannot be avoided, ensures that its clients are fairly treated.</p> <p><u>COC, Section 22</u></p> <p>A firm must take reasonable steps to ensure that neither it nor any of its officers nor employees:</p> <p>(a) offers or gives; or</p> <p>(b) solicits or accepts</p> <p>any inducement which is likely to conflict significantly with any duties of the recipient or the recipient's employer.</p> <p><u>COC, Section 23</u></p> <p>A firm shall ensure that there are effective Chinese Walls in place between the different business areas of the firm...</p>	
<p>7. Where conflicts of interest cannot be reasonably avoided or managed with the internal independence policy, an investment firm must not undertake business with or on behalf of a customer where it has directly or indirectly a conflicting interest, including any such interest arising from intra-group dealings, joint provision of more than one service or other business dealings of the investment firm or any affiliated entity, unless it has previously disclosed to the customer the nature and extent of its interest, either in writing or by telephone and recorded by the firm and the customer has expressly agreed to engage in such business with the investment firm. Where possible, this disclosure must be given at the beginning of the customer relationship; otherwise it must be given prior to the customer entering into any relevant transaction.</p>	<p>IFSRA</p>	<p><u>COC Section 2.2</u></p> <p>Terms of Business or Investment Management Agreements ... shall include at least .... (f) an outline of the firm's policies in relation to conflicts of interest, including that in relation to the taking of principal positions.</p> <p><u>COC, Section 13.1</u></p> <p>A firm is required to make adequate disclosure of relevant material information in its dealings with clients, including but not limited to, the disclosure to a client of material interests or conflicts of interests, when recommending a transaction to a client or executing a transaction for a client.</p>	
<p><b>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.</b></p>	<p>IFSRA</p>	<p><u>COC, Section 22</u></p> <p>As at 5 above.</p> <p><u>COC, Section 2.3 (f)</u></p> <p>Investment management agreements should also contain a statement giving... details of remuneration from another person in connection with client transactions</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>IFSRA</p>	<p>As at 6 above.</p> <p><u>COC, Sections 1.5, 1.6</u></p> <p>A firm shall ensure ... that it makes adequate disclosure to clients of relevant material information, including charges/commissions, and...makes a reasonable effort to avoid conflicts of interests and, when they cannot be avoided, ensures that its clients are fairly treated;</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>	IFSRA	<p><u>GS&amp;RR, Section 2.5</u></p> <p>The firm is required to identify...a compliance officer at management level with the necessary access to systems and records with responsibility for compliance with all legal and regulatory requirements and for co-operation and liaison with the relevant regulatory authorities, and who has the freedom to report to the Board of the firm (or equivalent in the case of a partnership) at all times ...</p> <p><u>COC, Sections 1.1, 1.2</u></p> <p>As at 1 above.</p>	Full text in HISF, GS&RR, page 4
<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>	IFSRA	<p><u>GS&amp;RR, Section 2.5</u></p> <p>As at 9 above.</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>	IFSRA	To be implemented shortly	Under new regulations to be imposed on stockbrokers, compliance officers must prepare and submit to a compliance committee on a monthly basis a report detailing any issues that have arisen concerning the firm's legal and regulatory requirements as well as the firm's own internal policies and procedures.

<p>13. An investment firm must ensure that the competent authority is informed, without undue delay, of serious breaches of the conduct of business rules. In assessing whether the breaches are serious, an investment firm must take into account the impact on regulatory goals and on the capacity to provide services, their frequency, the damages suffered by customers.</p>	<p>IFSRA</p>	<p><u>GS&amp;RR, Section 1.2</u></p> <p>The firm is required to be open and co-operative in its dealings with the Bank and with all other relevant supervisory authorities. This includes, but is not limited to, an obligation on the firm to notify the Bank, as soon as it becomes aware of -any breaches by the firm of, inter alia, the Investment Intermediaries Act, 1995 or the Stock Exchange Act, 1995, or of any breaches of any of the Bank's requirements.</p>	<p>See HISF, GS&amp;RR, page 2</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>	<p>IFSRA</p>	<p><u>GS&amp;RR, Section 2.5</u></p> <p>As at 9 above.</p>	
<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>	<p>IFSRA</p>	<p><u>GS&amp;RR, Section 2.3</u></p> <p>As at 2 above.</p> <p><u>COC, Section 1.7</u></p> <p>A firm shall ensure ... that it complies with the letter and spirit of all regulatory requirements applicable to the conduct of its business activities</p>	
<p>15. An investment firm must keep records relevant for the purpose of demonstrating compliance with the conduct of business rules, for a period of five years in order to enable the competent authority to verify compliance with these rules. Tape recording of orders must be kept for a period of one year.</p>	<p>IFSRA</p>	<p><u>Books &amp; Records Requirements ("B&amp;RR"), Section 1</u></p> <p>A firm shall retain, in a readily accessible form, for a period of at least six years, a full record of each transaction entered into by it (whether on its own behalf or on behalf of clients), of all investment advice given to clients and all records required to demonstrate compliance with the provisions of this Handbook.</p> <p><u>B&amp;RR Section 5.3</u></p> <p>In any case where a firm records a telephone conversation it shall maintain such tape recording for a period of at least six months</p>	<p>See HISF, B&amp;RR, page 2</p> <p>The next revision of the Handbook's B&amp;RR will extend the period to 1 year</p>
<p>16. An investment firm must keep a register of customer complaints related to the provision of the investment services and the measures taken for their resolution and must regularly verify whether complaints are adequately processed.</p>	<p>IFSRA</p>	<p><u>COC, Section 19.1</u></p> <p>A firm shall be required to maintain a file of all written complaints received against it, including a record of their response and the action, if any, taken as a result of the complaint.</p>	
<p>17. An investment firm must establish a code of conduct for members of the board, directors, partners, employees and tied-agents. The code of conduct must contain:</p>	<p>IFSRA</p>	<p><u>B&amp;RR Section 1.3</u></p> <p>A firm must have adequate procedures for the maintenance, security, privacy and preservations of records, working</p>	<p>See HISF, B&amp;RR, page 2</p>

<p>a) the rules and procedure to meet the obligation to protect data of a confidential nature;</p> <p>b) the rules and procedures for carrying out personal transactions involving financial instruments;</p> <p>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;</p> <p>d) the investment firm's policy on conflicts of interest and inducements.</p>		<p>papers and other documents of title belonging to the firm or its clients so that they are reasonably safeguarded against loss, unauthorised access, alteration or destruction.</p> <p><u>COC, Section 1.7</u></p> <p>As at 10 above.</p> <p><u>COC, Section 20.1 &amp;20.2</u></p> <p><u>COC, Section 14.1, 14.2, 14.3, 14.4, 14.5</u></p> <p><u>COC, Section 1.6</u></p> <p>As at 8 above.</p>	<p>See HISF, COC, page 23</p> <p>And COC Section 14, page 16</p>
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#### 1.4. COLD CALLING <sup>7</sup>

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p><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></p>	<p>IFSRA</p>	<p><u>COC, Section 4.2</u></p> <p>A firm shall not, and shall ensure that no officer or employee of the firm shall, exert undue pressure or undue influence on a client in order to induce him :</p> <p>(a) to exercise, or refrain from exercising, any right conferred by an investment instrument; or</p> <p>(b) otherwise enter into a transaction of any kind.</p>	
<p>19. Cold calls may only be made by persons employed by, or appointed as tied-agent<sup>8</sup> by an investment firm. Responsibility for the competence and activities of such persons rests with the firm.</p>	<p>IFSRA</p>	<p><u>Advertising Requirements (“AR”), Section 21.4</u></p> <p>The caller must immediately identify himself by name and the firm on whose behalf he is calling; disclose to the potential <i>private client</i> the source of the business lead supporting the call; and establish if the existing or potential <i>private client</i> wishes the call to proceed</p>	<p>See HISF, AR, page 12</p>

<sup>7</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>8</sup> This is without prejudice to the applicability of professional requirements, imposed at national level.

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.	IFSRA	<u>AR, Section 21.3</u> Such permitted calls may only be made between 9.00 a.m. and 9.00 p.m. Monday to Friday (excluding Bank Holidays), unless requested by the existing or potential private client.	
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.	IFSRA	<u>AR, Section 21.4 (a)</u> As at 19 above.	
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.	IFSRA	<u>AR, Section 21.4(c)</u> As at 19 above.	
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.	IFSRA	<u>COC, Section 4.2</u> As at 18 above.	
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.	IFSRA		

## 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>	IFSRA	<u>COC, Section 4.1</u> A firm must not recklessly, negligently or deliberately mislead a client as to any perceived advantages or disadvantages of a contemplated transaction.	



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.	IFSRA	<u>COC, Section 4.1</u> As at 25 above.	
<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>	IFSRA	<u>COC, Section 11</u> Contract Notes & Confirmation Notes, Section 11.1 to 11.8 <u>COC, Section 17 and Relevant Tables</u> Periodic Information, Section 17.1 to 17.8 <u>COC, Section 2</u> Client Documentation, Section 2.1 to 2.7 COC, Section 13 Additional Disclosure Requirements	See HISF, COC, page 12  See HISF, COC, page 18  See HISF, COC, page 4 A firm is required to make adequate disclosure of relevant material information in its dealings with clients...when recommending a transaction to a client...
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.	IFSRA	<u>COC, Section 11</u> <u>COC, Section 17</u> <u>COC, Section 2</u> As at 26 above	

**2.2.) MARKETING COMMUNICATIONS <sup>9</sup>**

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
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<sup>9</sup> This is without prejudice of EU or national provision requiring authorisation and/or other requirements affecting the provision of marketing services.

<p><i>29. If an investment firm provides information in a marketing communication it must be fair, clear and not misleading.</i></p>	<p>IFSRA</p>	<p><u>AR, Section 1.3</u> Firms are obliged to ensure that the advertisement: (a) is fair and not misleading and (b) where applicable, includes the disclosures set out in these Advertising Requirements.</p>	
<p><i>30. The promotional purpose of marketing communications issued by an investment firm must not be disguised.</i></p>	<p>IFSRA</p>	<p><u>AR, Section 1.7, 1.8</u> 1.7 The design and presentation of an advertisement should allow it to be easily and clearly understood. Where footnotes are used they should be of sufficient size and prominence to be easily legible; where appropriate they should be linked to the relevant part of the main copy. 1.8 An advertisement should always be designed and presented so that any person who looks at it can see immediately that it is an advertisement.</p>	
<p>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.</p>	<p>IFSRA</p>	<p><u>AR, Section 1.4</u> The advertisement must not give any false or misleading indications</p>	<p>See HISF, AR, page 3</p>
<p>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.</p>	<p>IFSRA</p>	<p><u>AR, Sections 1.2, 1.14</u> The name of the firm must be clearly shown in the advertisement, and the firm must refer to its regulatory status</p>	<p>See HISF, AR, pages 3&amp; 5</p>
<p>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.</p>	<p>IFSRA</p>	<p><u>AR, Section 1.14</u> As at 32 above.</p>	<p>Format of Reference to Regulator Prescribed by IFSRA</p>
<p>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.</p>	<p>IFSRA</p>	<p><u>AR, Section 9 concerning Risks</u> <u>AR, Section 10 concerning Fluctuations</u> <u>AR, Section 13 concerning Investment Income</u> <u>AR, Section 15 concerning Realisability</u> <u>AR, Section 18 concerning Cancellation</u></p>	<p>See HISF, AR, pages 8 to 11</p>

**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>	IFSRA	<u>COC, Section 2.2 (a) &amp; (b)</u> As at 26 above.	
<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>	IFSRA	<u>COC, Section 2.2</u> As at 26 above. <u>Investor Compensation Act 1998</u> Section 38 provides that the supervisory authority may prescribe the information concerning the investor compensation scheme which shall be made available to actual and intending clients. IFSRA has prescribed a disclosure statement.	

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

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments

<p><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></p>	<p>IFSRA</p>	<p><u>COC, Section 2</u> As at 26 above.</p>	
<p>40. The information provided to customers can be delivered using standard documentation but must include the following as a minimum:</p> <ul style="list-style-type: none"> <li>a) a description of the main characteristics <sup>10</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;</li> <li>b) price, including commissions, fees and other charges, relating to the transaction, the instrument or service;</li> <li>c) arrangements for payment and performance;</li> <li>d) details on any cancellation rights or rights of reflection that may apply.</li> </ul>	<p>IFSRA</p>	<p><u>COC, Section 2</u> As at 26 above. <u>COC, Section 11</u> As at 26 above. <u>COC, Section 1.5</u> As at 8 above.</p>	
<p><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></p>	<p>IFSRA</p>	<p><u>COC, Section 1.5</u> As at 8 above. <u>COC, Section 2</u> As at 26 above. <u>COC, Section 17</u> As at 26 above.</p>	
<p>41. The information to be disclosed to customers on commissions, charges and fees must contain:</p> <ul style="list-style-type: none"> <li>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;</li> <li>b) if various investment firms are to be involved in a transaction or service, an estimate of the other fees that will be payable.</li> </ul>	<p>IFSRA</p>	<p><u>COC, Section 11</u> <u>COC, Section 2.3(f)</u> As at 26 above.</p>	

<sup>10</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).

<p>42. In order to give a fair and adequate description of the investment service or financial instrument, an investment firm must avoid accentuating the potential benefits of an investment service or financial instrument without also giving a fair indication of the risks.</p>	<p>IFSRA</p>	<p><u>COC Section 4.1</u>  A firm must not recklessly, negligently or deliberately mislead a client as to any perceived advantages or disadvantages of a contemplated transaction.  <u>COC, Section 1.1 to 1.7</u>  <u>AR Section 1.4</u>  An advertisement must not give any false or misleading indications in relation to .... the product or services the firms intends to provide, past performance or possible future performance of the product or service.....</p>	<p>See HISF, COC page 3</p>
<p>43. The fair and adequate description of a compound product must contain all the relevant characteristics of the composite instruments including, for example, the different services involved, the duration of the product, whether the instrument involves credit, the interest due, etc.</p>	<p>IFSRA</p>	<p>See 42 above</p>	
<p>44. The information on financial instruments and investment services must not state or imply that the performance of services or of the investment is guaranteed unless there is a legally enforceable arrangement to meet in full an investor's claim under the guarantee. Sufficient detail about the guarantor and the guarantee must be provided to enable the investor to make a fair assessment of the guarantee.</p>	<p>IFSRA</p>	<p><u>AR, Section 2</u>  The advertisement must not unconditionally describe an investment as guaranteed or partially guaranteed</p>	<p>See HISF, AR page 5</p>
<p>45. When information provided refers to a particular tax treatment the investment firm must advise the customer that the tax treatment depends on his personal situation and is subject to change and that he may wish to obtain independent tax advice.</p>	<p>IFSRA</p>	<p><u>AR, Section 8</u>  If the advertisement contains any reference to the impact of taxation, it must meet the conditions specified</p>	<p>See HISF, AR, page 7</p>
<p><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></p>	<p>IFSRA</p>	<p><u>AR, Section 6</u>  Any information about past performance must meet the conditions specified  <u>AR, Section 19</u>  Advertisement containing any forecast or projections must meet the conditions specified</p>	<p>See HISF, AR, page 6   See HISF, AR, page 11</p>
<p>46. If a reference to historical performance of investment services or financial instruments is made, it must be clearly expressed that the figures refer to the past, and that they may not constitute reliable guidance as to the performance of these services and instruments in the future.</p>	<p>IFSRA</p>	<p><u>AR Section 6.2</u>  As at 39 above.</p>	

<p>47. The use of simulated returns is prohibited. If the information refers to actual returns based on past performance:</p> <ul style="list-style-type: none"> <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>	<p>IFSRA</p>	<p><u>AR Section 6.2</u> As at 39 above.</p>	
<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>	<p>IFSRA</p>	<p><u>AR, Section 6.2 and 19</u> As at 39 above.</p>	
<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>	<p>IFSRA</p>	<p><u>AR, Section 1.3</u> As at 29 above. <u>AR, Section 19</u> As at 39 above.</p>	

<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>	<p>IFSRA</p>	<p><u>AR, Section 4</u></p> <p>Comparisons or contrasts must:</p> <ul style="list-style-type: none"> <li>(a) be based either on facts verified by the firm, which should be held on file and available for examination, or on assumptions stated within the advertisement;</li> <li>(b) not mislead;</li> <li>(c) be presented in a fair and balanced way; and</li> <li>(d) not omit anything material to the comparison or contrast.</li> </ul>	
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**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>	<p>IFSRA</p>	<p><u>COC Section 2.4</u></p> <p>A firm shall not be entitled to recommend to, or undertake for, a private client any margined transaction and/or any such other transactions as the Bank shall stipulate from time to time, unless the private client has previously signed a statement acknowledging that he/she has read and understood the contexts of the Risk Disclosure Statement (prescribed by Bank)</p> <p><u>AR</u></p> <p>Disclosure Statements prescribed in Advertising Requirements</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>	<p>IFSRA</p>	<p><u>AR, Section 11 concerns High Volatility products</u>  <u>AR, Section 12 concerns Contingent Liabilities</u>  <u>AR, Section 14 concerns Foreign Currency</u>  <u>AR, Section 15 concerns illiquid investments</u></p> <p>As at 34 above.  <u>COC, Section 2.4</u>  As at 26 above.</p>	<p>See HISF, AR, pages 8&amp;9</p>
<p>53. The investment firm must also, where necessary, inform the customer of risks associated with:</p> <ol 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> </ol>	<p>IFSRA</p>	<p><u>AR, Section 2.1(b)</u>  As at 44 above  <u>COC Section 2.2 (i)</u>  Terms of business or investment management agreements must include .... (i) details of the remedies, if any, available to the client in the event of default by the firm</p>	
<p><b><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></b></p>	<p>IFSRA</p>	<p><u>COC, Section 4.1,</u>  As at 25 above.  <u>AR, Section 1.9</u>  Any statements made or risk warnings given in an advertisement must not be obscured or disguised in any way by the content, design or format of the advertisement.</p>	



<p>54. Risk warnings about derivatives must disclose that the instrument can be subject to sudden and sharp falls in value. Where the investor may not only lose his entire investment but may also be required to pay more later, he must also be warned about this fact and the possible obligation to provide extra funding.</p>	<p>IFSRA</p>	<p><u>COC, Section 2.4</u></p> <p>A firm's client must sign a statement acknowledging that he/she has read and understood the contents of the Risk Disclosure Statement....prior to any margined or other similar transaction</p> <p><u>AR Section 12</u></p> <p>Where an advertisement relates to a product in which the investor may not only lose all of the amount originally invested or deposited, but may also have to pay more later, the advertisement must warn of this fact in a prominent position.</p>	<p>See HISF, COC, page 6</p>
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**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>	<p>IFSRA</p>	<p><u>COC, Section 11</u> As at 26 above.</p>	
<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>11</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>	<p>IFSRA</p>	<p><u>COC, Section 11</u> As at 26 above</p>	<p>Except where client has confirmed in writing that they do not wish to receive such contract notes</p>
<p>59. The investment firm must notify the customer immediately if it refuses to accept or transmit an order. The firm must inform customers as soon as possible if it is unable to transmit their orders.</p>	<p>IFSRA</p>	<p><u>COC, Section 4.1 and Section 11</u> See 25 and 26 above</p>	

<sup>11</sup> The reference to "send to the customer" includes to a tied-agent, other than the firm, nominated by the customer in writing.

<p><b>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.</b></p>	<p>IFSRA</p>	<p><u>COC, Section 17</u> As at 26 above.</p>	<p>Operational practice requires that the client be told immediately by a dealer whether or not an instruction is accepted</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>IFSRA</p>	<p><u>COC, Section 17</u> As at 26 above</p>	<p>Not less than six monthly</p>
<p><b>57. An investment firm that operates customer accounts, which include uncovered open positions, must provide regular statements of such positions.</b></p>	<p>IFSRA</p>	<p><u>COC, Section 17</u> As at 26 above.</p>	<p>As above</p>
<p>61. Where an account includes uncovered open positions<sup>12</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>IFSRA</p>	<p>As at 26 above.</p>	<p>As above</p>

<sup>12</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.

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

#### 3.1 INFORMATION FROM THE CUSTOMER

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<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>13</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>	IFSRA	<p><u>Criminal Justice Act 1994 (including Ministerial Regulations and Guidance Notes)</u></p> <p>Obligations to establish the identity of clients is enshrined in this legislation.</p> <p><u>COC, Section 5</u></p> <p>Knowing the Client obligations</p>	See HISF, COC, page 8
<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>	IFSRA	<p><u>Money Laundering Guidance Notes</u></p> <p><u>COC, Section 5</u></p> <p>As at 62 above.</p>	

<sup>13</sup> This is not considered to be investment advice according to the definition of the paper.

<p>64. An investment firm must obtain evidence of the identity of its customers in accordance with national laws and regulations implementing the provisions of Council Directive 91/308 on the prevention of the use of the financial system for the purpose of money laundering. Until such evidence is obtained, an investment firm must not provide any investment services to the customer concerned.</p>	<p>IFSRA</p>	<p><u>CJA 1994</u> <u>Ministerial Regulations</u> <u>Guidance Notes</u></p>	<p>Obligation is enshrined in primary legislation. IFSRA has not introduced similar provisions in order to avoid possible double jeopardy.</p>
<p>65. An investment firm must seek to obtain information on the customer's knowledge and experience<sup>14</sup> in the investment field, his investment objectives and risk profile,<sup>15</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>	<p>IFSRA</p>	<p><u>COC, Section 5.3, 5.4 and 5.5</u> As at 62 above. <u>COC, Section 1.4</u> A firm shall ensure in all transactions that it: 1.4 seeks from its clients, other than execution only clients, information regarding their financial situations, investment experience and objectives as regards the services requested.</p>	<p>Not applicable to execution-only business other than a margined transaction where firm can clearly demonstrate that the client was warned that investments can fall as well as rise, and client has confirmed that he/she still wishes to proceed</p>
<p>66. An investment firm shall be entitled to rely on the information provided by the customer, unless it is manifestly inaccurate or incomplete or the firm is aware that the information is inaccurate or incomplete. In this case paragraph 69 applies.</p>	<p>IFSRA</p>	<p><u>COC, Section 5</u> As at 62 above.</p>	
<p>67. An investment firm must take reasonable care to keep the customer profile under review, also taking into consideration the development of the relationship between the investment firm and the customer. The customer must be advised that he should inform the investment firm of any major changes affecting his investment objectives, risk profile, financial situation/capacity, trading restrictions, or the identity or capacity of his representative. Should the firm become aware of a major change in the situation previously described by the customer, it must request additional information.</p>	<p>IFSRA</p>	<p><u>COC, Section 5</u> As at 62 above.</p>	
<p>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.</p>	<p>IFSRA</p>	<p><u>GS&amp;RR, Section 2.3</u> As at 2 above.</p>	

<sup>14</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.

<sup>15</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.

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.	IFSRA	<u>COC, Section 5.5</u> As at 62 above.	Firm can only provide execution-only services if private client is unwilling or unable to provide firm with details
70. The customer should not be invited not to provide information.	IFSRA	<u>COC, Section 5.3</u> As at 62 above.	A firm must use all reasonable efforts to obtain the information

### 3.2 THE INVESTMENT FIRM'S DUTY TO CARE FOR THE CUSTOMER <sup>16</sup>

Standard / Rule	Implementing authority(ies)	Implementing measure	Comments
<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>	IFSRA	<u>COC Section 6.1</u> Having regard to (a) the relevant investment management agreement, or terms of business, (b) any relevant facts disclosed by the client and or (c) other relevant facts about the client of which the firm is or ought reasonably to be aware, a firm must take all reasonable steps to ensure that it does not give advice ... unless that advice is suitable to the client.	Suitability statement imposed on retail only intermediaries

<sup>16</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.

<p><b><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></b></p>	<p>IFSRA</p>	<p><u>COC, Section 6</u> Sections 6.1 to 6.3 deal with Suitability</p>	<p>See HISF, COC, page9</p>
<p>75. Where an investment firm receives an order regarding a transaction that it considers – in the light of the information disclosed to it by the customer and the information available to it, including the information arising from the customer relationship – not suitable<sup>17</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>	<p>IFSRA</p>	<p><u>COC, Risk disclosure requirement</u> <u>COC, Section 6</u> As at 73 above.</p>	
<p><b><i>74. An investment firm must take reasonable care to verify that the customer has sufficient financial resources to settle the proposed transaction.</i></b></p>	<p>IFSRA</p>	<p><u>GS&amp;RR, Section 2.4 &amp; Section 4</u> Section 2.4 deals with Client Credit Risk, and Section 4 deals with Customer Borrowing</p>	<p>See HISF, GS&amp;RR, pages 4 &amp; 5</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>IFSRA</p>	<p><u>GS&amp;RR, Section 2.4 and 4</u> As at 74 above.</p>	

<sup>17</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>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>IFSRA</p>	<p><u>COC, Section 2.2</u> As at 26 above</p>	
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#### 4. CUSTOMER AGREEMENTS

##### 4.1) BASIC CUSTOMER AGREEMENT

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p><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></p>	<p>IFSRA</p>	<p><u>COC, Section 2</u> As at 26 above.</p>	<p>Terms of business &amp; Investment Agreement</p>
<p><i>79. The customer agreement must be clear and easily understandable by the customer.</i></p>	<p>IFSRA</p>	<p><u>COC, Section 2</u> As at 26 above.</p>	





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.	IFSRA	<u>COC, Section 2</u> As at 26 above.	
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.	IFSRA	<u>COC, Section 2.3</u> As at 26 above.	
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.	IFSRA	<u>COC, Section 2.5</u> As at 26 above.	
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.	IFSRA	<u>B&amp;RR, Section 5</u> <u>Sections 5.1 &amp; 5.2 deal with Client Records</u>	Six years is prescribed in HISF, B&RR, page 6

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

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
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<p><b>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.</b></p>	<p>IFSRA</p>	<p><u>COC, Section 2.4</u> As at 26 above; Risk Disclosure Req</p>	
<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>	<p>IFSRA</p>	<p><u>COC, Section 2.3(b), (g), (j) and 2.4</u> As at 26 above; Risk Disclosure Requirement</p>	
<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>	<p>IFSRA</p>	<p><u>COC, Section 2.3(d), (e), (j)</u> As at 26 above. <u>COC, Section 11.1, 11.2</u> As at 26 above.</p>	
<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>	<p>IFSRA</p>	<p><u>COC Section 11.8</u> Firms shall ensure that .... confirmation notes are issued to clients immediately at the address notified, and in any case no later than two business days following the date of execution of the transaction.</p>	
<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>IFSRA</p>	<p><u>COC Section 2.3 (e) (g)</u> Investment management agreements must contain ....</p> <ul style="list-style-type: none"> <li>(a) a statement of the basis on which the client will incur any contingent liability, including margin requirements, such as rights to fund margin calls and maximum limits placed on such funding</li> <li>(g) where margined transactions are to be entered into, the maximum account or percentage to be so invested.</li> </ul>	

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.	IFSRA	<u>COC, Section 2.4</u> As at 26 above; Risk Disclosure Req	
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## 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>	IFSRA	<u>COC, Section 7</u> Sections 7.1 to 7.4 concern transaction requirements <u>COC, Section 14</u> As at 17 above.	See HISF, COC, page 10
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.	IFSRA	<u>GS &amp;RR Section 2</u> The firm is required to satisfy the Bank on a continuing basis, that it has adequate management resources to conduct its activities effectively.	

94. An investment firm must record orders immediately, documenting and verifying all relevant items of proper execution.	IFSRA	<u>B&amp;RR Section 4.1</u> Section 4.1 concerns Minimum Content of Records <u>COC, Section 11</u> As at 26 above.	See HISF, B&RR, page 4
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.	IFSRA	<u>B&amp;RR, Section 5.3</u> As at 84 above.	
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.	IFSRA	<u>COC, Section 7.4</u> As at 91 above.	
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.	IFSRA	<u>COC, Sections 15.1 &amp; 15.2</u> Section 15.1 deals with Timely Execution, & Section 15.2 deals with Allocation <u>COC, Section 7.1</u> As at 91 above.	See HISF, COC, page 17
<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>	IFSRA	<u>COC, Section 7.1</u> As at 91 above.	
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").	IFSRA	<u>COC, Section 14</u> As at 17 above.	
99. An investment firm, which aggregates orders, must pre-assign such orders prior to transmitting them.	IFSRA	<u>COC, Section 7.4</u> As at 91 above.	
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.	IFSRA	<u>COC, Section 7.1 and 7.4</u> As at 91 above.	

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.	IFSRA	<u>COC, Section 2.3</u> As at 26 above.	
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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>	IFSRA	<u>COC, Section 7.1, 7.2</u> As at 91 above.	
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.	IFSRA	<u>COC, Section 2.2</u> As at 26 above.	
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”).	IFSRA	<u>COC, Section 14</u> As at 17 above.	

<i>103. An investment firm must ensure that orders are executed in accordance with the instructions from the customer.</i>	IFSRA	<u>COC Section 2.6</u> Where a client accepts an instruction from a client which is subject to any condition imposed by the client, it shall maintain a written record of the condition to which the instruction is subject.	
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.	IFSRA	<u>COC, Section 14</u> As at 17 above.	
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.	IFSRA	<u>COC, Section 7.1</u> As at 91 above.	
108. If an investment firm aggregates orders, it must pre-assign such orders prior to executing them.	IFSRA	<u>COC, Section 7.4</u> As at 91 above.	
109. The price received or paid by the customer shall be identified separately from the fees and costs to the customer.	IFSRA	<u>COC, Section 11</u> As at 26 above.	
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.	IFSRA	<u>COC, Section 7.1 &amp; 7.2</u> Deals with Client Best Advantage and other aspects of the transactions	See HISF, COC, page 10

### 5.3) POST- EXECUTION OF ORDERS

<b>Standard /Rule</b>	<b>Implementing authority(ies)</b>	<b>Implementing measure</b>	<b>Comments</b>
<i>111. An investment firm must ensure the proper and speedy recording, allocation and distribution of executed transactions.</i>	IFSRA	<u>COC, Section 15.1, 15.2</u> As at 97 above.	

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.	IFSRA	<u>B&amp;RR Section 4</u> A firm shall ensure that it records.... details of all purchases and sales of investment instruments by the firm distinguishing those which are made by the firm on its own account and those which are made on behalf of clients.	
114. An investment firm must ensure that once a transaction is executed it is promptly allocated to the account of the relevant customer(s).	IFSRA	<u>COC, Section 15</u> As at 97 above.	
<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>	IFSRA	<u>COC, Section 15.1, 15.2</u> As at 97 above. <u>COC, Section 12.1 to 12.2</u> Sections 12.1 & 12.2 deal with Averaging of Prices <u>COC, Section 7.4</u> As at 91 above.	See HISF, COC, Page 15
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.	IFSRA	<u>COC, Section 12</u> As at 112 above. <u>COC, Section 7.4</u> As at 91 above.	

## **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
<p><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></p>	IFSRA	<p><u>COC, Section 2.2, 2.3</u> As at 26 above.</p>	
<p>118. Instead of the items referred to in paragraph 80.e) , the customer agreement must contain:</p> <ul style="list-style-type: none"> <li>a) the management objective(s) and any specific constraints on discretionary management,</li> <li>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.</li> </ul> <p>In addition to the above, the customer agreement must contain:</p> <ul style="list-style-type: none"> <li>c) without prejudice of paragraph 121, the benchmark against which performance will be compared,</li> <li>d) the basis on which the instruments are to be assessed at the date of valuation,</li> <li>e) details regarding the delegation of the management function where this is permitted.</li> </ul>	IFSRA	<p><u>COC, Section 2.2, 2.3</u> As at 26 above.</p>	
<p>119. The contract must indicate the objectives and the level of risk agreed upon, and any particular constraints on discretionary management resulting from the customer’s personal circumstances as referred to in paragraph 62 or his request to exclude certain types of investments (certain business sectors for example).</p>	IFSRA	<p><u>COC, Section 2.2, 2.3</u> As at 26 above.</p>	
<p>120. If an investment firm is mandated to invest in any of the following types of instruments or to undertake any of the following types of transactions, the contract must state so explicitly and provide adequate information on the scope of the investment firm’s discretionary authority regarding these instruments and transactions:</p> <ul style="list-style-type: none"> <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>	IFSRA	<p><u>COC, Section 2.2, 2.3</u> As at 26 above.</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.	IFSRA	<i>Not Implemented</i>	IFSRA is reviewing this Standard
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.	IFSRA	<u>COC, Section 17</u> Table 2 of Section 17, paragraph 4, column B describes the valuation basis	See HISF, COC, pages 18 to 20
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.	IFSRA	<i>Not Implemented</i>	IFSRA is reviewing this Standard
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.	IFSRA	<u>COC, Section 2.2</u> As at 26 above.	
125. The contract must provide: - that the customer may terminate the agreement with immediate effect, subject only to the completion of all transactions already commenced and the time necessary to liquidate the portfolio where this is required by the customer; - that the investment firm may terminate the agreement subject to a two-week notice, provided however that where the portfolio cannot be liquidated (where required by the customer) within this timeframe, the agreement may be extended for the necessary additional period, and provided that where the customer so agrees after being informed of the firm's intention to terminate, the agreement may be terminated in the timeframe agreed between the parties.  In both cases, the termination must take place on terms that are fair and reasonable for both parties.	IFSRA	COC, Section 2.7, page 7	IFSRA is reviewing this Standard
<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>	IFSRA	Specific Requirement Imposed on Firms	These set out the minimum requirements imposed. IFSRA has the power to impose additional specific requirements as necessary on a case by case basis

<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>	<p>IFSRA</p>	<p><u>COC, Section 2.2, 2.3</u> As at 26 above.</p>	
<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>	<p>IFSRA</p>	<p>Specific Requirement Imposed on Firms</p>	

<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>IFSRA</p>	<p>Specific Requirement Imposed on Firms</p>	<p>These set out the minimum requirements imposed. IFSRA has the power to impose additional specific requirements as necessary on a case by case basis</p>
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**6.2 PERIODIC INFORMATION**

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p><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></p>	<p>IFSRA</p>	<p><u>COC, Section 17</u> As at 26 above.</p>	

<p>130. Periodic statements for portfolio management customers must contain:</p> <ul style="list-style-type: none"> <li>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;</li> <li>b) a management report on the strategy implemented (to be provided at least yearly);</li> <li>c) the total amount of fees and charges incurred during the period and an indication of their nature;</li> <li>d) information on any remuneration received from a third party and details of its calculation basis;</li> <li>e) the total amount of dividends, interest and other payments received during the period.</li> </ul>	<p>IFSRA</p>	<p><u>COC, Section 17</u> As at 26 above.</p>	
<p>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.</p>	<p>IFSRA</p>	<p><u>COC, Section 17</u> As at 26 above.</p>	
<p>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.</p>	<p>IFSRA</p>	<p><u>COC, Section 17</u> As at 26 above.</p>	
<p>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.</p>	<p>IFSRA</p>	<p><u>COC, Section 17</u> As at 26 above.</p>	
<p>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.</p>			

### 6.3. MANAGEMENT REQUIREMENTS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
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<p><b>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.</b></p>	<p>IFSRA</p>	<p><u>GS&amp;RR, Sections 2.1 to 2.7</u> Section 2 deals with Management of the Business</p>	<p>See HISF, GS&amp;RR, page 3</p>
<p>138. The structure of the investment firm, its policies and procedures must seek to ensure the independence of the portfolio management function.</p>	<p>IFSRA</p>	<p><u>GS&amp;RR, Section 2</u> As at 135 above.</p>	
<p><b>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.</b></p>	<p>IFSRA</p>	<p><u>GS&amp;RR, Section 2</u> As at 135 above.</p>	
<p>139. The investment firm must maintain records of its investment strategies, as well as the analyses and forecasts underlying them.</p>	<p>IFSRA</p>	<p><u>B&amp;RR General Principles 1.1</u> A firm shall retain ..... A full record of all transactions entered into by it (whether on its own behalf or on behalf of clients), of all investment advice and all records required to demonstrate compliance with the provisions of this Handbook.</p>	
<p><b>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.</b></p>	<p>IFSRA</p>	<p><u>COC, Section 7</u> As at 91 above. <u>COC Section 6</u> As at 73 above</p>	
<p>140. The investment firm must ensure that its orders are executed as efficiently as possible and in particular that:</p> <ul style="list-style-type: none"> <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>IFSRA</p>	<p><u>COC, Section 7</u> As at 91 above. <u>COC, Section 15</u> As at 97 above. <u>B&amp;RR General Principles 1.1</u> As at 139 above</p>	

**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>	IFSRA	COC, Section 1 As at 1, Part A above.	
<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>	IFSRA	GS&RR, Section 2 As at 2, Part A above.	
<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>	IFSRA	Investment Intermediaries Act, 1995, ("IIA"), Section 17 Register of Business Firms	
<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>18</sup></i>	IFSRA	GS&RR, Section 2 As at 2, Part A above.	

**1.2. CONFLICTS OF INTEREST AND INDUCEMENTS**

Standard	Implementing authority(ies)	Implementing measure	Comments

<sup>18</sup> This standard is not intended to interfere with relevant provisions on civil liability, applicable at national level.

<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>	<p>IFSRA</p>	<p><u>COC, Section 23</u> As at 5, Part A above. <u>COC Section 13.1</u> A firm is required to make adequate disclosure of relevant material information in its dealings with clients, including but not limited to the disclosure to a client of material interests or conflicts of interests, when recommending a transaction to a client or executing a transaction for a client.</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>	<p>IFSRA</p>	<p><u>COC, Section 22</u> As at 5, Part A above. <u>COC, Section 2.3(f)</u> As at 6, Part A above.</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>	<p>IFSRA</p>	<p><u>GS&amp;RR, Section 2.5</u> As at 9, Part A above.</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>	<p>IFSRA</p>	<p><u>GS&amp;RR, Section 2.3</u> As at 2, Part A above. <u>COC Section 1.7</u> As at 10, Part A above</p>	



<p><b>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.</b></p>	<p>IFSRA</p>	<p><u>GS&amp;RR, Section 2.5</u> As at 9, Part A above.</p>	
<p><b>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.</b></p>	<p>IFSRA</p>	<p>As at 12 Part A above.</p>	
<p><b>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.</b></p>	<p>IFSRA</p>	<p><u>GS&amp;RR, Section 1.2</u> The firm is required to be open and co-operative in its dealings with the Bank and with all other relevant supervisory authorities..., including , but not limited to, an obligation on the firm to notify the Bank, as soon as it becomes aware of, inter alia—any breaches of Conduct of Business Rules, and other governing legislation (</p>	<p>See HISF, GS&amp;RR, page 2</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>	<p>IFSRA</p>	<p><u>GS&amp;RR, Section 2.5</u> As at 9, Part A above.</p>	
<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>	<p>IFSRA</p>	<p><u>COC, Section 1.7</u> As at 10, Part A above.</p>	
<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>	<p>IFSRA</p>	<p><u>COC, Section 19.1, 19.2, 19.3</u> Section deals with Complaints Procedure Requirements</p>	<p>See HISF, COC, page 22</p>

<p>15. An investment firm must establish a code of conduct for members of the board, directors, partners, employees and tied-agents. The code of conduct must contain:</p> <p>a) The rules and procedure to meet the obligation to protect data of a confidential nature;</p> <p>b) the rules and procedures for carrying out personal transactions involving financial instruments;</p> <p>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;</p> <p>d) the investment firm's policy on conflicts of interest and inducements.</p>	IFSRA	<p><u>COC, Sections 14, 16, 17, 20</u></p> <p>As at 17 &amp; 26, Part A above.</p>	
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**2. INFORMATION TO BE PROVIDED TO CUSTOMERS**

Standard	Implementing authority(ies)	Implementing measure	Comments
<p>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.</p>	IFSRA	<p><u>COC, Section 4.1</u></p> <p>As at 25, Part A above.</p>	
<p>17. If an investment firm provides information in a marketing communications it must be fair, clear and not misleading.</p>	IFSRA	<p><u>AR, Section 1.3</u></p> <p>As at 29, Part A above.</p>	
<p>18. An investment firm must ensure that a customer is provided promptly with the essential information concerning the execution of his order.</p>	IFSRA	<p><u>COC, Section 11</u></p> <p>As at 26, Part A above.</p>	
<p>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.</p>	IFSRA	<p>Client Money Requirements imposed under Section 52 of the Investment Intermediaries Act, 1995 and the Stock Exchange Act, 1995.</p>	
<p>20. An investment firm that operates customer accounts, which include uncovered open positions, must provide regular statements of such positions.</p>	IFSRA	<p><u>COC, Section 2</u></p> <p>As at 26, Part A above.</p>	

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

Standard	Implementing authority(ies)	Implementing measure	Comments
<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>	IFSRA	<u>COC, Section 5</u> As at 62, Part A above.	
<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>	IFSRA	<u>COC, Section 6</u> As at 73, Part A above.	

### 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>	IFSRA	<u>COC, Section 2</u> As at 26, Part A above.	

### 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>	IFSRA	<u>COC, Section 15</u> As at 97, Part A above.	
<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>	IFSRA	<u>COC, Section 14</u> As at 17, Part A above.	
<i>26. An investment firm must record orders immediately, documenting and verifying all relevant items of proper execution.</i>	IFSRA	<u>COC, Section 7.3</u> As at 91, Part A above.	
<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>	IFSRA	<u>COC, Section 7.3</u> As at 91, Part A above. <u>B&amp;RR Section 5.3</u> In any case where a firm tapes records a telephone conversation, it shall maintain such a tape recording for a period of at least six months and if its has reasonable grounds for believe the tape recording is or might be relevant to a complaint, disciplinary action or investigation it shall retain such tape recording unit it ceases to be of relevance to such complaint, disciplinary action or investigation.	

5.2) EXECUTION OF ORDERS

Standard	Implementing authority(ies)	Implementing measure	Comments
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<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>IFSRA</p>	<p><u>COC, Section 7.1 and 7.2</u> As at 91, Part A above.</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>IFSRA</p>	<p><u>COC, Section 2.2</u> As at 26, Part A above.</p>	
<p><i>30. An investment firm must ensure that orders are executed in accordance with the instructions from the customer.</i></p>	<p>IFSRA</p>	<p><u>COC, Section 2</u> As at 26, Part A above.</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>IFSRA</p>	<p><u>COC, Section 14.1</u> As at 17, Part A above.</p>	

**5.3) POST- EXECUTION OF ORDERS**

Standard	Implementing authority(ies)	Implementing measure	Comments
<p><i>32. An investment firm must ensure the proper and speedy recording, allocation and distribution of executed transactions.</i></p>	<p>IFSRA</p>	<p><u>COC, Section 15.2</u> As at 97, Part A above.</p>	

<p><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></p>	<p>IFSRA</p>	<p><u>COC, Section 15.2</u> As at 97, Part A above. <u>COC Section 12</u> As at 112, Part A above <u>COC Section 7.4</u> As at 91 Part A above.</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.

Standard	Implementing authority(ies)	Implementing measure	Comments
<p><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></p>	<p>IFSRA</p>	<p><u>COC, Section 2</u> As at 26, Part A above.</p>	
<p><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></p>	<p>IFSRA</p>	<p><u>GS&amp;RR Section 2</u> As at 135, Part A above.</p>	
<p><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></p>	<p>IFSRA</p>	<p><u>COC, Section 17.1</u> As at 26, Part A above.</p>	
<p><i>37. The investment firm must ensure that its orders are executed as efficiently as possible and in particular that:</i></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>	<p>IFSRA</p>	<p><u>COC, Section 7.3</u> As at 91, Part A above. <u>COC, Section 15</u> As at 97, Part A above. <u>B&amp;RR General Principles</u> As at 140 Part A above.</p>	

**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 funds.</li> </ul>	IFSRA	Professional Regime Applies, approved on a case-by-case basis	
<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>	IFSRA	Professional Regime Applies, approved on a case-by-case basis	
<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>	IFSRA	Professional Regime Applies, approved on a case-by-case basis	

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.	IFSRA	Professional Regime Applies, approved on a case-by-case ba	
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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>	IFSRA	<u>COC, Section 1</u> As at 1, Part A above.	
<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>	IFSRA	<u>GS&amp;RR, Section 2</u> As at 2, Part A above.	
<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>	IFSRA	<u>GS&amp;RR, Section 2.5</u> As at 9, Part A above.	
<i>Executive directors/senior management must take reasonable measures to ensure that the firm establishes and implements adequate compliance policies and procedures.</i>	IFSRA	<u>GS&amp;RR, Section 2.5</u> As at 9, Part A above.	
<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>	IFSRA	<u>GS&amp;RR, Section 2.3</u> As at 2, Part A above.	
<i>The firm must keep records of all transactions executed for a period of five years.</i>	IFSRA	<u>B&amp;RR General Principles 1.1</u> A firm shall retain ..... for a period of at least six years.... A full record of each transaction entered into by it .....	
<i>The firm must keep record of telephone conversations concerning the transactions executed on a counterparty relationship.</i>	IFSRA	<u>B&amp;RR Section 5.3</u> As at 62 Part A above	



<i>The firm must adopt and take all reasonable steps to ensure compliance with an appropriate internal code of conduct.</i>	IFSRA	<u>GS &amp;RR Section 2.3</u> As at 2 Part A above.	
<i>The information provided in a marketing communications must be clear and not misleading.</i>	IFSRA	<u>AR, Section 1.3</u> As at 29, Part A above.	

#### D. CRITERIA FOR DEFINING PROFESSIONAL INVESTORS

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

##### 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.</p> <p>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>	IFSRA	The Handbook for Investment Firms uses the FESCO criteria as at March 2000 for classification of professional clients for the purpose of all IFSRA imposed requirements.	

Commodity dealers.			
<p>b) Large companies <sup>(19)</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>			
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.			
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.			

<sup>(19)</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.

<p>13. This higher level of protection will be provided when an investor who is considered to be a professional enters into a written agreement with the investment firm to the effect that it shall not be treated as a professional for the purposes of the applicable conduct of business regime. Such agreement should specify whether this applies to one or more particular services or transactions, or to one or more types of product or transaction.</p>			
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**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>(20)</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>			
<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>			

<sup>(20)</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.

<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>			
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**2.2. Procedure**

<b>Standard</b>	<b>Implementing authority(ies)</b>	<b>Implementing measure</b>	<b>Comments</b>
<p>17. The investors defined above may waive the benefit of the detailed rules of conduct only where the following procedure is followed:</p> <p>a) they must state in writing to the investment firm that they wish to be treated as a professional investor, either generally or in respect of a particular investment service or transaction, or type of transaction or product;</p> <p>b) the investment firm must give them a clear written warning of the protections and investor compensation rights they may lose;</p> <p>c) they must state in writing, in a separate document from the contract, that they are aware of the consequences of losing such protections.</p>			

<p>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>			
<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>			