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

IMPORTANT NOTICE

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

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

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

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

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

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

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

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

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

³ Ref. CESR/02-086b, July 2002.

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

NORWAY

A CONDUCT OF BUSINESS RULES FOR THE “RETAIL REGIME”

1. STANDARDS AND RULES OF GENERAL APPLICATION

1.1 GENERAL

Kredittilsynet has established a working group that will follow up the implementation of the new ISD-directives, their implementing measures and the CESR standard, covering the issue of investor protection.

The Association of Norwegian Stockbroking Companies (ANSC) has laid down rules and standard commercial terms of business. In case of breach of the rules laid down in this recommendation the firm can be subject to sanctions from the organisation, such as warning, fine or exclusion.

Standard /Rule	Implementing authority(ies)	Implementing measure ⁴	Comments
<i>1. An investment firm must at all times act honestly, fairly and professionally in accordance with the best interests of its customers and the integrity of the market.</i>	Parliament	STA, section 9-2	

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

<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>	Parliament	STA, section 9-1 and section 9-2	
<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>	Parliament	<p>STA, section 9-1 and 9-2</p> <p>This rule is not implemented word by word, but STA section 9-1 par 1 requires investment firms to establish sound internal controls and administrative routines. Such systems should include assessment of counterparties.</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.⁵</i></p>	Ministry of Finance	<p>Regulation 2003/289 on outsourcing Section 2. According to this provision the investment firm retains full responsibility for the outsourced activity and must ensure that the providers of such outsourcing are able to perform these functions satisfactory.</p>	

1.2. CONFLICTS OF INTEREST AND INDUCEMENTS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments

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

<p>5. An investment firm must take all reasonable steps to ensure that conflicts of interest between itself and its customers and between one customer and another are identified and then prevented or managed in such a way that the interests of customers are not adversely affected. For these purposes the investment firm must establish an internal independence policy, including Chinese walls as appropriate.</p>	<p>Parliament Kredittilsynet</p>	<p>STA, section 9-1 and 9-2. According to STA section 9-1 par 1 subpar 5 investment firms shall be structured and organised in such a way as to minimise the risk of clients' interests being prejudiced by conflicts of interests between the firm and its clients or between the firms' clients. STA section 9-2 par 6 states that investment firms shall endeavour to avoid conflicts of interest i.a. by ensuring that the customer's interests rank above the firm's interests, and that customers are treated fairly. Circular letter 1995/39 issued by Kredittilsynet regarding "Chinese Walls".</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>Parliament Kredittilsynet</p>	<p>STA, section 9-1 and 9-2 STA section 9-2 par 5 explicitly requires disclosure of any conflict of interest prior to an assignment or providing of investment service.</p>	<p>The customer's expressly acceptance is not required by this provision. However, Kredittilsynet may issue a circular stating that expressly acceptance by the customer should be documented by the investment firm as a part of the internal routines.</p>
<p>6. An investment firm, its members of the board, directors, partners, employees and tied-agents may offer or receive inducements only if they can reasonably assist the firm in the provision of services to its customers. Where inducements are received disclosure of such inducements must be made to the customer.</p>	<p>Parliament Kredittilsynet</p>	<p>STA, section 9-2 Generally inducements are considered breach of good business conduct. This is i.a. stated in circular letter 4/2000 and 10/2002, issued by Kredittilsynet.</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>Parliament</p>	<p>Not permitted</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>	<p>Parliament Kredittilsynet</p>	<p>STA, Section 9-1 par 1 subpar 2 and 5 Regulation 1997/1057 on internal controls etc.</p>	
<p>11. The persons responsible for the compliance function must have the necessary expertise, resources, authority and must have full access to all relevant information enabling them to perform their duties. They must perform their monitoring duties independently of all persons and activities subject to their monitoring.</p>	<p>Parliament</p>	<p>STA, section 9-1 par 1 subpar 2, 4 and 5 Regulation 1997/1057, which requires investment firms to establish internal control systems. The systems shall be independently revised at least annually.</p>	<p>Although not expressly stated, the compliance function must be established with sufficient competence and independence in order to meet the requirements laid down in STA section 9-1 regarding internal routines etc and the regulation on internal controls.</p>
<p>12. A summary of the results of the monitoring must be reported to the senior management of the investment firm and to the internal or external auditors. The investment firm must report these results, together with remedies adopted, to the competent authority at least once a year.</p>	<p>Kredittilsynet</p>	<p>Regulation 1997/1057, section 3-2 and 5-1 According to the Regulation, investment firms shall evaluate and possibly revise the internal controls accordingly at least annually. The evaluation shall be verified by an external auditor.</p>	<p>The investment firm is not required to report these findings to Kredittilsynet, but have to keep them for minimum three years and on request dispatch them to Kredittilsynet.</p>
<p>13. An investment firm must ensure that the competent authority is informed, without undue delay, of serious breaches of the conduct of business rules. In assessing whether the breaches are serious, an investment firm must take into account the impact on regulatory goals and on the capacity to provide services, their frequency, the damages suffered by customers.</p>	<p>Parliament</p>	<p>STA, section 12-2 par 2, which states that investment firms shall notify Kredittilsynet immediately on circumstances arise which may entail substantial risk for the operation of the firm.</p>	<p>Further clarifications needed.</p>

<p>14. The compliance function must:</p> <ul style="list-style-type: none"> - regularly verify the adequacy of policies and procedures to ensure compliance with the regulations on investment services; - provide advisory assistance and support to the various business areas of the investment firm on problems concerning compliance with the regulations on investment services. 	<p>Parliament Kredittilsynet</p>	<p>STA, section 9-1 and Regulation 1997/1057 on internal controls etc.</p>	
<p><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></p>	<p>Parliament Kredittilsynet</p>	<p>STA, section 9-1(1) nr. 2 and 5 Regulation 1997/1057, section 3-1</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>Parliament Kredittilsynet</p>	<p>STA, section 9-7 Regulation 1996/948, 1996/950 and 1997/1057 which all lay down reporting and recordkeeping obligations.</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>Parliament</p>	<p>No such obligation</p>	
<p>17. An investment firm must establish a code of conduct for members of the board, directors, partners, employees and tied-agents. The code of conduct must contain:</p> <ul style="list-style-type: none"> a) the rules and procedure to meet the obligation to protect data of a confidential nature; b) the rules and procedures for carrying out personal transactions involving financial instruments; c) the rules and procedures governing the business relationship with customers in order to ensure that the persons referred to above, in particular where a conflict of interest may arise, always act in the best interests of customers, and that such persons do not take advantage of any confidential information; d) the investment firm's policy on conflicts of interest and inducements. 	<p>Parliament</p>	<p>STA, section 9-1 and 9-2</p>	

1.4. COLD CALLING ⁶

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

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<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>	Parliament Ministry of Finance/ Kredittilsynet	Rule 18 may be implemented as an additional provision in the general rule of conduct in the STA, section 9-2.	Act of 14 April 2000 No 31 relating to the processing of personal data, section 26, the King may prescribe regulations regarding a central marketing exclusion register with further rules governing the register. Such a register is established.
19. Cold calls may only be made by persons employed by, or appointed as tied-agent ⁷ by an investment firm. Responsibility for the competence and activities of such persons rests with the firm.	Ministry of Finance/ Kredittilsynet	Cold calling concerning financial instruments is considered activities that require license according to the STA, cf STA section 7-1. Thus may only licensed investment firms and their cooperating entities conduct cold calling.	The definition of cooperating entities, cf STA section 7-1 par 3 subpar 3 which implements the corresponding rule in ISD, may encompass more than “tied-agent”.
20. An investment firm cold calling customers may do so only between the hours of 9.00 a.m. and 9.00 p.m. Monday to Saturday (local time for the customer) and excluding local national holidays.	Parliament/Ministry of Finance	No such rule	Rule 20 may be implemented in a regulation provided that the legal is established, see our comments to rule 18.
21. The identity of the person making the cold call, the investment firm on whose behalf the person is acting, and the commercial purpose of the cold call must be explicitly identified at the beginning of any conversation with the consumer. The caller must also make reference to the frozen period (see par. 24) during which orders may not be executed.	Ministry of Finance/ Kredittilsynet	No such rule	Rule 20 may be implemented in a regulation provided that the legal is established, see our comments to rule 18.
22. The person making the cold call is also required to establish whether the potential customer wishes the cold call to proceed or not. An investment firm must abide by a request from the customer either to end the cold call and/or not to cold call again.	Ministry of Finance/ Kredittilsynet	No such rule	Rule 20 may be implemented in a regulation provided that the legal is established, see our comments to rule 18.
23. An investment firm must not exert undue pressure on a potential customer during the course of a cold call and must be able to demonstrate that this is not the case, for example, by recording any such telephone calls.	Ministry of Finance/ Kredittilsynet	No such rule	Rule 20 may be implemented in a regulation provided that the legal is established, see our comments to rule 18.
24. During the period for which the customer benefits from a right of withdrawal from the contract (as determined by Article 4.a of the Distance Marketing Directive), an investment firm shall not execute any customer orders in respect of financial instruments under the contract.	Ministry of Finance/ Kredittilsynet	No such rule	Rule 20 may be implemented in a regulation provided that the legal is established, see our comments to rule 18.

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

2. INFORMATION TO BE PROVIDED TO CUSTOMERS

2.1) BASIC REQUIREMENTS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<i>25. An investment firm must pay due regard to the information needs of its customers and communicate information to them that is fair, clear, and not misleading.</i>	Parliament	STA, section 9-2, which explicitly states that investment firms shall make adequate disclosure of relevant information in dealing with its clients.	
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.	Parliament	According to STA section 9-2 par 1 subpar 1, 2 and 5 the investment firm shall act in an orderly and correct manner in the performance of its activities and execute received assignments with due care and dispatch, and in its conduct display the necessary competence, care and interest. In addition the investment firm shall make adequate disclosure of relevant information in dealing with its clients.	If the investment firm do not fulfil the conditions in rule 27, Kredittilsynet might conclude that it is a breach of the abovementioned provision and for instance issue a corrective order according to STA section 12-4.
<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>	Parliament	STA, section 9-2 According to STA section 9-2 par 1 subpar 5 the investment firm shall make adequate disclosure of relevant information in dealing with its clients.	If the investment firm do not supply its customers on a timely basis with the information that enables them to make informed investment decisions, Kredittilsynet will consider it to be a breach of section 9-2 and for instance issue a corrective order according to STA section 12-4.

<p>28. In supplying information on a timely basis the investment firm must take into consideration: a) the urgency of the situation and b) the time necessary for a customer to absorb and react to the information provided and c) the terms of business agreed with the customer.</p>	<p>Parliament</p>	<p>The introductory terms in STA section 9-2 states that the investment firm shall carry on its activities in accordance with rules of good business conduct. To promote the best interests of clients and the integrity of the market the firm shall according to par 1 subpar 1 act in an orderly and correct manner in the performance of its activities and execute received assignments with due care and dispatch, and in its conduct display the necessary competence, care and interest. Section 9-2 par 2 states that when executing orders the investment firm shall, in applying the first paragraph subparagraphs 1-6 adapt to the investor's level of professionalism.</p>	<p>If the investment firm do not 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 Kredittilsynet will consider it to be a breach of section 9-2 and for instance issue a corrective order according to STA section 12-4.</p>
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2.2.) MARKETING COMMUNICATIONS ⁸

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p><i>29. If an investment firm provides information in a marketing communication it must be fair, clear and not misleading.</i></p>	<p>Parliament</p>	<p>STA section 9-2</p> <p><i>Marketing Control Act section 2 explicitly prohibits in the conduct of business to use an incorrect or otherwise misleading representation which is likely to influence the demand for or supply of goods, services or other performances. The Act applies to investment firms.</i></p>	

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

30. The promotional purpose of marketing communications issued by an investment firm must not be disguised.	Parliament	STA, section 9-2 <i>Marketing control Act section 1 explicitly states that all marketing shall be designed and presented in such a way that it clearly appears as marketing.</i>	
31. The information provided by an investment firm in a marketing communication must be consistent with the information it provides to its customers in the course of the provision of the investment services.	Parliament	Awaiting authority in law to provide further regulations	
32. Any marketing communication must contain at least the information about the investment firm defined in points a) and b) of paragraph 36. In case of a cross border marketing communication, the information provided must in addition state that information about the firm can also be obtained from or through the competent authority of the Member State where the customer resides.	Parliament	Awaiting authority in law to provide further regulations	
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.	Kredittilsynet	Awaiting authority in law to provide further regulations	
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.	Kredittilsynet	Awaiting authority in law to provide further regulations	

2.3) INFORMATION ABOUT THE INVESTMENT FIRM

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments

<p>35. Before providing investment services an investment firm must supply adequate information about itself and the services it provides.</p>	<p>ANSC</p>	<p>STA section 11-2 par 2 states that when a business relationship is established the firm's commercial terms shall be submitted to the client. The same applies in the event of subsequent changes in the term.</p> <p>The General Business Terms Article 1-1 and 1-2 states that before providing investment services an investment firm must supply adequate information about itself and the services it provides.</p>	<p>During the authorisation process (STA section 7-3), Kredittilsynet will evaluate the firms' commercial terms. If these terms have no information about the firm and the services it is planning to provide, Kredittilsynet will require this information implemented in the commercial terms before granting the authorisation.</p>
<p>36. An investment firm must provide customers with the following information prior to the commencement of provision of investment services:</p> <ul style="list-style-type: none"> a) the identity of the investment firm, the (financial) group to which the investment firm belongs, its postal address and telephone number; b) the fact that the investment firm is authorised and/or registered and the name of the competent authority that has authorised and/or registered it; c) the functions that the investment firm performs so that the customer is able to assess the scope of the firm's responsibilities; d) the relevant compensation scheme(s); e) where such a procedure exists, a description of the mechanism(s) for settling disputes between the parties such as an out-of-court complaint and redress mechanism; f) an outline of the firm's policies in relation to conflicts of interest and inducements; g) the languages in which the customer can communicate with the investment firm. 	<p>Parliament</p> <p>ANSC</p>	<p>STA, section 9-2 par 1 subpar 5 and section 11-2</p> <p>Standard commercial terms art 1, 22 and 29</p> <p>Section 11-2 requires investment firms to submit to the customer its commercial terms. The minimum requirements laid down in section 11-2 are less detailed compared to those of rule 36. However, the particulars of rule 36 are found in the general commercial terms recommended by ANSC, except rule 36 litra f and g.</p> <p>Regulation 1996/983 on compensation schemes, par 7 requires investment firms to provide information on the investor compensation scheme, including coverage and scope.</p>	

2.4) INFORMATION ON FINANCIAL INSTRUMENTS AND INVESTMENT SERVICES

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
37. An investment firm must inform customers of the key features of investment services and financial instruments envisaged, according to the nature of such instruments and services.	Parliament	STA, section 9-2 (1) nr. 5	
40. The information provided to customers can be delivered using standard documentation but must include the following as a minimum: a) a description of the main characteristics ⁹ of the instrument/service, including the nature of the financial commitment, whether the instruments involved are traded on a regulated market or not and the risks involved; b) price, including commissions, fees and other charges, relating to the transaction, the instrument or service; c) arrangements for payment and performance; d) details on any cancellation rights or rights of reflection that may apply.	Parliament	STA section 11-2. Rule 40 litra a is partly implemented by STA section 9-2 according to which investment firms shall provide the customer with information corresponding to the customer's professionalism. However, a more explicit legal basis could be adopted.	
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.	Parliament	STA, section 11-2 par 1 subpar 4, which explicitly states that the commercial terms shall include information on the investment firm's remuneration, including how the remuneration is calculated.	
41. The information to be disclosed to customers on commissions, charges and fees must contain: a) the basis or amount of the charges for transactions, products or services, detailing, where appropriate, the percentage or rate applicable, the frequency with which it is applied, any maximum or fixed minimum fees and, where the commission or fee must be paid in foreign currency, the currency involved; b) if various investment firms are to be involved in a transaction or service, an estimate of the other fees that will be payable.	Parliament	STA, section 11-2 par 1 subpar 4	
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.	Parliament		Not expressly stated in the law. However, Kredittilsynet may issue a circular stating that information as mentioned in rule 42 must be given to investors in order to comply with the rules on good business conduct.

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

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.	Parliament Kreditilsynet	STA section 9-2	A circular concerning information requirements on compound products is currently being prepared by Kreditilsynet.
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.	ANSC	Gen. Business Terms Article 5(4) Ethical Norms, article 4-2 par 3, which explicitly states that care shall be taken when giving advice, particularly advice on future development and no guarantee shall be given regarding a definite outcome of an investment.	A circular concerning information requirements on compound products is currently being prepared by Kreditilsynet.
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.	Parliament	Partly implemented by STA section 9-2. However, the duty to advise especially related to tax treatment should be clarified in the relevant provision or regulation to this provision.	
<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>	Parliament ANSC	STA, section 9-2 Ethical Norms, article 4-2(3)	
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.	Parliament ANSC	STA section 9-2 Ethical norms article 4-2 par 4 states that as far as possible, a broker shall indicate the general and special risks that may be linked to concrete transactions. Investments with latent obligations of partly unknown extent, margins, options and futures, forward transactions and other transactions which include an element of borrowing call for special guidance for the non-professional investor with regard to the special risks that are inherent in this type of trading. Gen. Business Terms Article 5(2)	Kreditilsynet has in particular cases stated that the general rule of good business conduct should be construed in a way as described in rule 46.

<p>47. The use of simulated returns is prohibited. If the information refers to actual returns based on past performance:</p> <ul style="list-style-type: none"> a) the reference period must be stated and must not be less than one year; b) where returns relate to more than one year, they must either be reduced to a compound annual rate or stated separately as annual returns; c) where a compound annual return is presented for more than one year, a reference period of five years must be used provided the relevant data are available. If the relevant data are not available over a reference period of five years (e.g. because the financial instrument or the investment portfolio has not existed for such a period), the returns may be measured from the issue date or the date on which the portfolio was established; d) where a benchmark is used to compare returns, it must be identified and its reference period must be relevant, clear and sufficient to provide a fair and balanced indication of performance of the investment service or financial instrument being promoted; e) if the return figures are not denominated in local currency, the currency used must be stated and reference shall be made to the currency risk for the return in local currency; f) the information for the comparison should be based on net performances or if it is based on gross performances commissions, fees or other charges have to be disclosed. 	Parliament	Not expressly regulated. Details concerning information referring to actual returns may be regulated in a circular letter issued by Kredittilsynet.	
<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>	Parliament	Not expressly regulated. Details concerning information referring to actual returns may be regulated in a circular letter issued by Kredittilsynet.	
<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>	Parliament	STA, section 9-2	Implemented. However, the obligation to state assumptions on which information is based, is not expressly stated.
<p>50. If information provided contains comparisons, the requirement of being fair, clear and not misleading means that the comparisons must:</p> <ul style="list-style-type: none"> a) be based either on data from attributed sources or disclosed assumptions; b) be presented in a fair and balanced way; c) take reasonable steps not to omit any fact that is material to the comparison. 	Parliament	Awaiting authority in law to provide further regulations	

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>	ANSC	<p>Gen. Business Terms Article 3 par 1, and 5 par 2</p> <p>Ethical Norms, article 4-2 par 4</p>	
<p>53. An investment firm must provide its customers with risk warnings as appropriate. Instances where the type of instrument or transaction envisaged makes specific risk warnings necessary include:</p> <ul style="list-style-type: none"> - financial instruments not traded on a regulated market; - transactions in illiquid financial instruments; - leveraged transactions; - financial instruments subject to high volatility in normal market conditions; - securities repurchase agreements or securities lending agreements; - transactions which involve credit, margin payments or the deposit of collateral; - transactions involving foreign exchange risk. 	ANSC	<p>Gen. Business Terms Article 12</p> <p>Ethical Norms, articles 4-2 and 4-4</p>	
<p>53. The investment firm must also, where necessary, inform the customer of risks associated with:</p> <ol style="list-style-type: none"> a) clearing house protections (e.g. that although the performance of a transaction is sometimes 'guaranteed' by the exchange or clearing house this guarantee will not necessarily protect the customer in the event of default by the investment firm or another counterparty); b) suspension of trading or listing (e.g. that under certain trading conditions it may be impossible to liquidate a position); c) insolvency (e.g. that in the event of default of an investment firm involved with the customer's transaction, positions may be liquidated automatically and actual assets lodged as collateral may be irrecoverable). 	<p>Parliament</p> <p>Ministry of Finance/ Kreditilsynet</p>	<p>Partly implemented by STA, section 9-2 on the duty to make adequate disclosure of relevant information in dealing with its clients.</p>	<p>Should be further clarified</p>

<i>52. Risk warnings must be given due prominence. They must not be concealed or masked in any way by the wording, design or format of the information provided.</i>	Parliament	No such rule. Details may be given in a circular letter issued by Kredittilsynet.	
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.	ANSC	Ethical Norms article 4-2 par 4	

2.6. CUSTOMER REPORTING

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
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<p>55. An investment firm must ensure that a customer is provided promptly with the essential information concerning the execution of his order.</p>	Parliament	STA section 11-4, which expressly states that executed assignments shall be confirmed by contract note	
<p>58. No later than the first business day following the execution of the transaction or receipt of confirmation of execution by a third party, an investment firm must send to the customer¹⁰, by fax, mail or electronic means (provided the firm reasonably believes that the customer can store it on a permanent medium), a contract note or confirmation notice which includes the following information:</p> <ul style="list-style-type: none"> a) the name of the firm; b) the name of the customer account; c) the time of execution, if available, or a statement that the time of execution will be supplied on request; d) date of execution; e) the type of transaction; e.g. buy, sell, subscription etc.; f) the market on which the transaction was carried out or the fact that it was carried out off-market; g) the financial instrument and the quantities involved in the transaction; h) the unit price applied and the total consideration; i) whether the customer's counterparty was the investment firm itself or any related party; j) the commissions and expenses charged; k) the time limit and procedure for the settlement of the transaction, e.g. details (name and number) of the bank account and securities account. <p>If a transaction is not executed within one business day of receipt of the customer order, an investment firm must send a written confirmation of the order to the customer. The confirmation notice must include customer order details, date and time of reception and, where applicable, date and time of transmission.</p>	Parliament	STA section 11-4 states that the contract note shall be submitted immediately after execution of the assignment. The provision does not set out details of the content of the contract note.	Kredittilsynet has legal power to lay down regulations concerning the content of the contract note.

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

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.	Parliament Ministry of Finance ANSC	The STA section 9-2 par 1 sub 1 states that the investment firm shall act in an orderly and correct manner in the performance of its activity and execute received assignments with due care and dispatch.	This may be interpreted as a duty to notify the customer immediately if it refuses to accept or transmit the order and a duty to inform customers as soon as possible if it is unable to transmit their orders. Non-compliance with these rules may be considered as a breach of the rules of good conduct.
56. Where an investment firm has control of, or is holding assets belonging to a customer, it must arrange for proper identification and regular confirmation of such assets to the customer.	Parliament	STA section 9-1 par 1 subpar. 3	
60. An investment firm must send to its customer at least once a year or as often as agreed with the customer a statement of all assets held in custody on behalf of each customer. The statement must also: a) identify assets which have been pledged to the firm or any third parties as collateral; b) identify assets which have been lent; c) clearly and consistently show movement of assets based on either trade date or settlement date.	Parliament Ministry of Finance/ Kredittilsynet	Awaiting authority in law to provide further regulations	
57. An investment firm that operates customer accounts, which include uncovered open positions, must provide regular statements of such positions.	Parliament Ministry of Finance/ Kredittilsynet	Awaiting authority in law to provide further regulations	
61. Where an account includes uncovered open positions ¹¹ , an investment firm must send to its customer a monthly statement, which includes the following: a) information about the options contract, e.g. market price, date of exercise, exercise price, as well as any incidental costs connected with the exercise; b) each payment made by the customer as a result of the margin requirements in respect of the open positions and the amount of the unrealised profit or loss attributable to open positions; c) the resulting profit or loss arising from positions closed during the period.	Parliament Ministry of Finance/ Kredittilsynet	Awaiting authority in law to provide further regulations	

¹¹ Examples of uncovered open positions include:

- (1) short positions on cash instruments;
- (2) selling a call option on an investment not held in the portfolio;

3. 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 customer¹² and</i></p> <p><i>b. to meet any duties owing to the customer in respect of the services to be provided.</i></p>	<p>Parliament</p> <p>Ministry of Finance</p> <p>ANSC</p>	<p>STA, section 9-2 (1) nr. 4 and Regulation 1994/118 regarding action against money laundering.</p> <p>Gen. Business Terms Article 3, 4 and 24</p> <p>Ethical Norms, article 1-1(4), 4-1(3) and 3-1(2)</p>	
<p>63. The “know-your-customer” standard applies to each investment firm having a direct business relationship with the customer with respect to investment services. However, where two or more investment firms are involved in providing an investment service and each has a direct relationship with the customer, an investment firm may rely on the information received from another of such investment firms.</p>	<p>Parliament</p> <p>Ministry of Finance/ Kreditilsynet</p>	<p>Any investment firm with a direct business relationship with a customer must observe STA section 9-2 par 1 subpar 4. As regards money laundering provisions, a investment firm may rely on information provided by another investment firm, cf regulation 1994/118 section 5 par 3.</p>	

(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.

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

<p>64. An investment firm must obtain evidence of the identity of its customers in accordance with national laws and regulations implementing the provisions of Council Directive 91/308 on the prevention of the use of the financial system for the purpose of money laundering. Until such evidence is obtained, an investment firm must not provide any investment services to the customer concerned.</p>	<p>Parliament</p>	<p>Regulation 1994/118 regarding action against money laundering.</p>	
<p>65. An investment firm must seek to obtain information on the customer's knowledge and experience¹³ in the investment field, his investment objectives and risk profile,¹⁴ his financial situation/capacity and any trading restrictions applicable to the customer. The extent of the information required will vary according to the standards laid down in paragraph 62, second subparagraph.</p>	<p>Parliament ANSC</p>	<p>STA section 9-2 par 1 sub 4 states that the investment firm shall ensure that it obtains necessary information on the clients' identity, financial situation and the investment experience. According to Ethical norms article 1-1 par 2 sub 4 a member company shall make sure of obtaining such information on its clients' financial status, investment experience and objectives as is relevant for the services requested. According to Ethical norms article 3-1 sub 2 brokers shall make themselves acquainted with the legislation and regulations that apply at any time to trading in financial instruments, and shall be capable of informing the client of significant regulations that apply to trading in financial instruments. Further, General business terms article 4 states among others that the client shall provide adequate and correct information on his own financial status, investment experience and objectives that are relevant to the services requested.</p>	<p>In one specific case Kredittilsynet has stated that an investment firm providing active management services to a pension fund, should know about any trading restrictions in force. (In this case – restrictions related to trading in derivatives according to a regulation.) The lack of knowledge about those trading restrictions was one of the reasons for revoking the investment firms' licence.</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>Parliament</p>	<p>Although not expressly stated, STA section 9-2 par 1 subpar 4 is construed this way by Kredittilsynet. Could be clarified by circular letter.</p>	

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

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

<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>Ministry of Finance</p>	<p>STA section 9-2 par 1 subpar 4 is construed as a continuous obligation.</p> <p>Regulation 1994/118 regarding action against money laundering.</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>Ministry of Finance</p>	<p>STA section 9-1 par 1 subpar 1 and Regulation 1994/118 regarding action against money laundering.</p>	
<p>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.</p>	<p>Parliament</p>	<p>Not implemented</p>	
<p>70. The customer should not be invited not to provide information.</p>	<p>Parliament</p>	<p>The STA section 9-2 states in general that the investment firm shall carry on its activities in accordance with the rules of good business conduct. If the customer is invited by the investment firm not to provide information, Kredittilsynet would consider it as an obvious breach of the general rule of good business conduct.</p>	

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

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

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p><i>72. When an investment firm provides investment advice to the customer, it must have reasonable grounds to believe, in light of the information disclosed to it by the customer and the information available to it, including the information arising from the customer relationship, that this investment advice is suitable for him. The investment firm must communicate the reasons why the advice is considered to be in the best interest of the customers at the time the advice is given.</i></p>	<p>Parliament ANSC</p>	<p>STA, section 9-2 Gen. Business Terms Article 5 and 6 Ethical Norms, article 1-1 and 4-1</p>	
<p><i>73. Before accepting an order an investment firm must take reasonable care to verify that the order is suitable for the customer in light of the information disclosed to it by the customer and the information available to it, including the information arising from the customer relationship.</i></p>	<p>Parliament</p>	<p>STA section 9-2 par 1 sub 2 states that the investment firm shall in its conduct display the necessary competence, care and interest. Sub 4 states that the investment firm shall ensure that it obtains necessary information on the clients' identity, financial situation and investment experience. Sub 5 states that the investment firm shall make adequate disclosure of relevant information in dealing with its clients. Event though rule 73 is not implemented word by word, we are of the opinion that the duties in rule 73 could be construed by the abovementioned provisions of section 9-2.STA section 9-2 par 1 subpar 2, 4, and 5.</p>	<p>Event though rule 73 is not implemented word by word, we are of the opinion that the duties in rule 73 could be construed by the mentioned provisions of section 9-2.</p>

<p>75. Where an investment firm receives an order regarding a transaction that it considers – in the light of the information disclosed to it by the customer and the information available to it, including the information arising from the customer relationship – not suitable¹⁶ for the customer, it must advise the customer accordingly and provide appropriate information on the transaction, including any necessary risk warning. The investment firm may transmit or execute the order only if the customer nonetheless confirms his intention to proceed with the transaction in writing or by telephone and recorded, and provided that such confirmation contains an explicit reference to the warning received.</p>	<p>Parliament ANSC</p>	<p>STA section 9-2 par 1 subpar 1 and 2, which states that investment firms shall in their conduct display the necessary competence, care and interest, and execute received assignments with due care.</p> <p>Ethical Norms articles 4-2 and 5-1</p>	
<p><i>74. An investment firm must take reasonable care to verify that the customer has sufficient financial resources to settle the proposed transaction.</i></p>	<p>Parliament ANSC</p>	<p>STA, section 9-2 (1) nr. 4 Ethical Norms, article 5-1(2)</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>Parliament Kredittilsynet</p>	<p>In addition to STA section 9-2, we should mention section 8-7 which states that “an investment firm may only mediate the sale of financial instruments not owned by the client provided the client has access to the financial instruments and the firm is assured of punctual delivery in the agreed date”.</p>	<p>This provision should be construed as a duty to verify the immediate availability of the funds necessary for carrying out the related purchase (sale).</p>

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

<p>77. Where the service to be provided is the pure transmission or execution of orders (either through a special distribution channel, in individual cases or generally) the customer must be made aware of this fact prior to the transaction taking place for the first time. On the basis of the information obtained from the customer on opening the account, the investment firm will define an appropriate service including investment parameters, i.e. types of instruments, types of transactions and types of orders, and inform the customer accordingly. Where the investment firm receives an order regarding a transaction, which is not in line with the defined investment parameters, it must warn the customer accordingly and provide appropriate information on the transaction, including any necessary risk warning(s). The investment firm may transmit or execute the order only if the customer nonetheless confirms his intention to proceed with the transaction in writing or by telephone and recorded, and provided that such confirmation contains an explicit reference to the warning received.</p>	<p>Parliament</p>	<p>No such provision.</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>Parliament</p>	<p>STA, section 11-2 Investment firms are required to provide the customer with commercial terms in connection with the establishment of a business relationship. The commercial terms shall at least regulate the matters listed in the section.</p>	<p>A signed agreement is not required.</p>
<p><i>79. The customer agreement must be clear and easily understandable by the customer.</i></p>	<p>Parliament</p>	<p>STA section 11-2 cf section 9-2 par 1 subpar 5, implies that all information shall be clear and easily understood by the customer.</p>	

<p>80. The customer agreement must contain the following items as a minimum:</p> <ul style="list-style-type: none"> a) the identity, postal address and telephone number of each of the parties; b) the names of any persons authorised to represent the customer for the purposes of the agreement, in particular the names of the natural persons authorised to represent the customer who is a legal entity; c) the investment firm's general terms of business for investment services and any particular terms agreed between the parties concerning, e.g. margin requirements or potential obligations where securities may be purchased on credit d) a general description of the investment services, including custody, offered by the investment firm and the types of financial instruments to which such services relate; e) the types of orders and instructions that the customer may place with the investment firm, the medium/media for sending them (e.g. by telephone, E-mail or post) and the alternative medium to be used when normal media are unavailable; f) the information to be given by the investment firm to the customer regarding the performance of services including the medium/media for sending the information and the type, frequency and rapidity of the information to be given e.g. regarding order execution or portfolio evaluation; g) details of the investment firm's fees and prices for investment services, including information on how they are to be calculated, the frequency with which they are to be charged and the manner of payment; h) the name of the competent authority which has authorised the investment firm; i) the law applicable to the contract, as ascertained to the best of the knowledge of the firm or as agreed between the parties; j) the duration of the agreement and the procedures for amending, renewing, terminating or withdrawing from it; k) where such a procedure exists, a description of the mechanism for settling disputes between the parties such as an out-of-court complaint and redress mechanism; l) the actions that the investment firm shall or may take in the event the customer does not honour his obligations (e. g. payment of money due to the investment firm), in particular whether the investment firm is allowed to dispose of any of the customer's assets, the timeframe for doing so and the information to be given to the customer in such circumstances; m) the languages in which the customer can communicate with the investment firm. 	<p>Parliament</p>	<p>STA, section 11-2.</p> <p>The section lays down minimum requirements regarding the business terms of the investment firm. The recommendation of ANSC is however more detailed, and covers all but letter h of rule 80.</p>	
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81. Rather than containing all the above items itself, the contract may refer to other documents containing certain of them, e.g. the general terms of business, the types of investment services offered, the types of orders and information to be sent by the parties and the fee schedule, provided that all the contractual documents so referred to are provided to the customer prior to the signing of the contract.			A contract signed by both parties is not required, consequently there is no provision in law covering this matter.
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.	ANSC	According to Gen. business terms art 16, separate contracts should be entered into if custody services are to be provided. There is no standard recommendation on this issue.	
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.	Parliament	STA, section 11-2 Any changes to the commercial terms have to be presented to the customer.	According un-codified contract law, which also applies to this type of agreements, changes of contractual terms may only be done with the prior consent of the counterparty.
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.	Parliament Kredittilsynet	STA, section 11-2 and Regulation 1996/950 regarding investment firms obligation to keep information regarding executed orders (10 years) A copy of the commercial terms has to be given to the customer or made available on the Internet. The investment firms are obliged to keep records of their orders, and have to keep the records for at least 10 years.	

4.2) CUSTOMER AGREEMENT INVOLVING TRADING IN DERIVATIVES

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
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<p>85. Prior to providing the services of reception/transmission and/or execution of orders involving derivatives, a customer agreement containing the relevant provisions of the basic customer agreement as well as certain additional provisions specific to trading in derivatives must be signed between the parties.</p>	Parliament	STA, section 11-2	No particular rules concerning the contents of agreements concerning derivatives.
<p>86. In addition to the relevant items of the basic customer agreement, where the firm provides services involving derivatives, the customer agreement must contain:</p> <ul style="list-style-type: none"> - the type(s) of instruments and transactions envisaged, - the obligations of the investment firm with respect to the transactions envisaged, in particular its reporting and notice obligations to the customer, - the obligations of the customer with respect to the transactions envisaged, in particular his financial commitments toward the investment firm and the time allowed for honouring such commitments, - an appropriate warning calling to the customer's attention the risks involved in the transactions envisaged. 	Parliament	<p>STA, section 11-2</p> <p>According to recommendation to commercial terms issued by ANSC, separate agreements should be entered into for assignments concerning derivatives.</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>		Kredittilsynet could deem a lack of written agreements with retail customers' trading in derivatives as a breach of good business conduct, cj STA section 9-2.	
<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>		No such rule	
<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>		No rule governing this issue	

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.		No rule governing this issue	
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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>	Parliament Kreditilsynet ANSC	STA section 9-1 and 9-2 Regulation 1996/950 Ethical Norms article 1-1 Obligation laid down by law, word by word. Legal obligation to keep records. The details are laid down in the regulation. The obligation to ensure best execution is also underpinned by the ANSC's ethical norms	

<p>93. An investment firm must ensure that, prior to their transmission for execution, orders given by customers are clear and precise and include the following:</p> <ul style="list-style-type: none"> a) the name of the customer and of any person acting on his behalf, b) the date and time of the order, c) the financial instrument to be traded, d) the size of the order, e) the nature of the order, e.g., subscription, buy, sell, exercise etc., f) any other relevant details and particular instructions from the customer for the order to be properly transmitted and executed, e.g. limit orders, validity period and market of execution; g) the account for which the order has to be executed. 	<p>Parliament Kredittilsynet</p>	<p>STA, section 11-2 and 9-7. Regulation 1996/950, which has its legal basis in STA section 9-7. Details concerning the identify of the customer, the order and recordkeeping are laid down in the regulation. STA section 9-2 obliges investment firms to ensure best execution.</p>	
<p>94. An investment firm must record orders immediately, documenting and verifying all relevant items of proper execution.</p>	<p>Parliament</p>	<p>STA, section 9-7 According to the 1996/950, the information shall be recorded automatically</p>	
<p>95. An investment firm must keep a record of telephone orders on magnetic tape or an equivalent medium. Investment firms must duly inform the customer that the conversation will be recorded.</p>	<p>Parliament Kredittilsynet ANSC</p>	<p>STA, section 9-7 and Regulation 1996/950 Gen. Business Terms, article 7-1(2)</p>	<p>The Ministry of Finance is currently in process of issuing a regulation on the recording of telephone orders. The legal basis for that regulation was adopted this summer.</p>
<p>96. Before transmitting orders on behalf of several beneficiaries on an aggregated basis, an investment firm must pre-assign such orders in order to ensure that they can identify and match the orders with the relevant customer at any time.</p>		<p>STA section 9-2 Kredittilsynet has stated several times in the final conclusions following on-site inspections that this is a requirement in order to fulfil good business conduct.</p>	
<p>97. An investment firm must transmit orders promptly and sequentially and must take all reasonable care to transmit orders in a way to facilitate their best execution, taking into account all relevant details of the process of transmission, e.g. the size and characteristics of the order.</p>	<p>Parliament</p>	<p>STA section 9-2, according to which investment firms shall act in an orderly and correct manner in the performance of its activity and execute received assignment with due care and dispatch</p>	<p>At least in one case, Kredittilsynet has revoked licence partly because of failing related to the obligations mentioned in rule 97. In this specific case, Kredittilsynet stated that the obligation could be deduced from the rules of good conduct in STA section 9-2.</p>

<p><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></p>	<p>Parliament</p>	<p>STA section 9-2 par 1 subpar 6 requires investment firms to endeavour to avoid conflicts of interest i.a. by ensuring that the customer's interests rank above the firm's interests. This includes any interest of the board members, employees and others acting on behalf of the firm.</p> <p>STA section 9-3 par 1 explicitly bans investment firms from trading on own account (as a part of the firm's ordinary asset management) in financial instruments in which a client order has been placed and where no specific price is stated in the order.</p> <p>STA section 2-2 par 3 explicitly bans employees from trading for their own account in financial instruments in which a customer has presented an assignment.</p>	
<p>98. An investment firm must take all reasonable steps to refrain from transmitting orders for its own account or the account of its members of the board, directors, partners, employees and tied-agents before those of customers in identical or better conditions than the latter ("front running").</p>	<p>Parliament ANSC</p>	<p>According to STA section 9-2 par 1 sub 6 the investment firm shall endeavour to avoid conflicts of interest inter alia by ensuring that the customer's interests rank above the firm's interests and that the interests of certain customers are not unfairly favoured at the expense of other customers. According to STA section 2a-2 par 3 employees may not purchase, sell or subscribe financial instruments when the employer undertaking has made a decision regarding purchase, sale or subscription of the instruments concerned, or when a customer order has been placed for the instruments concerned. According to STA section 9-3 par 1 an investment firm may not engage in own-account trading as mentioned in STA section 8-5 first par sub 2 in financial instruments for which a client order has been place and where no specific price is stated in the order.</p> <p>Ethical Norms, article 5-2(2)</p>	<p>Kredittilsynet has revoked investment firm's license because of front running.</p>

99. An investment firm, which aggregates orders, must pre-assign such orders prior to transmitting them.		STA section 9-2 Kredittilsynet has stated several times in the final conclusions following on-site inspections that this is a requirement in order to fulfil good business conduct.	
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.	Parliament	STA, section 9-2 and 9-3	
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.	Parliament	STA section 9-2 par 1 subpar 5, according to which investment firms are obliged to provide the customer with necessary information. This requirement would include providing the customer with the prospectus or inform the customer where it is available.	

5.2) EXECUTION OF ORDERS

Standard / Rule	Implementing authority(ies)	Implementing measure	Comments
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<p>102. <i>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>Parliament ANSC</p>	<p>STA section 9-2</p> <p>According to STA section 9-2 par 1 sub 1 an investment firm shall act in an orderly and correct manner in the performance of its activity and execute received assignments with due care and dispatch.</p> <p>Section 9-2 par 4 explicitly states that the customer shall be given the best price that the firm consider it can obtain in the light of available price information, unless the client demands that the firm quote a particular price or accepts a particular price when making the assignment.</p> <p>Gen. Business Terms, article 7-3</p> <p>Ethical Norms, article 4-1(1)</p>	<p>If Kredittilsynet discover that an investment firm has not executed orders in accordance with the instructions from customer, we would most certainly conclude that it would have been a breach of section 9-2 par 2 sub 1.</p>
<p>104. An investment firm acting as principal in relation to a customer order must inform the customer accordingly beforehand and must be in a position to justify the price at which the transaction is executed, with reference to the prices and volumes in the relevant market(s), where appropriate, or the presumed value determined on the basis of objective elements, e.g. mark-to-market.</p>	<p>Parliament</p>	<p>STA section 9-2 par 3 and 4, section 9-3 par 3 and section 9-4.</p> <p>Section 9-2 par 3 states that when a specific price is not stated in an assignment, the assignment shall be executed at a price that is reasonable in relation to the market situation.</p> <p>If the investment firms has entered into the agreement as a counter-party, the client shall be informed thereof.</p> <p>Section 9-4 obliges the investment firm to trade quoted financial instruments on the stock exchange. The customer may thus verify the conditions under which his assignment was concluded.</p>	
<p>105. An investment firm must take all reasonable steps to refrain from executing orders for its own account or the account of its members of the board, directors, partners, employees and tied-agents before those of customers in identical or better conditions than the latter (“front running”).</p>	<p>Parliament</p>	<p>STA section 2a-2, section 9-2 par 1 subpar 6 and section 9-3</p>	

103. An investment firm must ensure that orders are executed in accordance with the instructions from the customer.	Parliament	STA, section 9-2	
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.	Parliament ANSC	STA section 9-2 par 1 subpar 1 Ethical Norms, article 1-1	
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.	Parliament	STA section 9-2 and section 11-3	
108. If an investment firm aggregates orders, it must pre-assign such orders prior to executing them.		STA section 9-2	
109. The price received or paid by the customer shall be identified separately from the fees and costs to the customer.	Parliament	STA section 11-2 par 4	
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.	Parliament	STA section 9-2 par 1 subpar 5	

5.3) POST- EXECUTION OF ORDERS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
111. An investment firm must ensure the proper and speedy recording, allocation and distribution of executed transactions.	Parliament ANSC	STA, section 9-2 Ethical Norms, article 1-1(3)	
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.	Parliament	STA, section 9-7 Regulation 1996/950	

<p>114. An investment firm must ensure that once a transaction is executed it is promptly allocated to the account of the relevant customer(s).</p>	<p>Parliament ANSC</p>	<p>STA section 9-6 and section 9-7 We also refer to STA section 9-1 par 1 sub 3 which states that the investment firm shall keep financial instruments and funds belonging to the investors separate from the firm's own funds and otherwise take adequate measures to protect the investors' rights and prevent the investment firm's using investors' funds for its own account. Regulation 1996/950 Ethical Norms, article 5-2(2) and 7-1</p>	
<p><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></p>	<p>Parliament ANSC</p>	<p>STA, section 9-2 It would constitute a breach of rules on good business conduct if the investment firm allocated trades in a way that is detrimental to a customer. Ethical Norms, article 5-2(2) and 7-1</p>	
<p>115. Where an order has been executed in several tranches, the investment firm must inform the customer about the price of execution of each tranche, unless the customer requests an average price. If customer orders have been aggregated and such an aggregated order has been partially executed, the investment firm must allocate the related trade on a proportional basis, unless the firm has a different allocation policy and the customers involved have been informed accordingly prior to the execution. An investment firm must have procedures in place to prevent that reallocation of principal transactions executed along with customers transactions on an aggregated basis give unfair preference to the investment firm or to any of its customers for whom it deals.</p>	<p>Parliament</p>	<p>STA section 9-1 and 9-2 It is construed that STA section 9-2 provides for information about the price of each tranche.</p>	

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>	<p>Parliament ANSC</p>	<p>Ethical Norms article 4-4</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"> a) the management objective(s) and any specific constraints on discretionary management, b) the types of financial instruments that may be included within the portfolio and the types of transactions that may be carried out in such instruments, including any related limits. <p>In addition to the above, the customer agreement must contain:</p> <ul style="list-style-type: none"> c) without prejudice of paragraph 121, the benchmark against which performance will be compared, d) the basis on which the instruments are to be assessed at the date of valuation, e) details regarding the delegation of the management function where this is permitted. 	<p>Parliament ANSC</p>	<p>STA section 11-2 Ethical Norms article 4-4</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>	<p>ANSC</p>	<p>Ethical Norms, article 4-4</p>	
<p>120. If an investment firm is mandated to invest in any of the following types of instruments or to undertake any of the following types of transactions, the contract must state so explicitly and provide adequate information on the scope of the investment firm’s discretionary authority regarding these instruments and transactions:</p> <ul style="list-style-type: none"> - financial instruments not traded on a regulated market, - illiquid or highly volatile financial instruments, - leveraged transactions, - securities repurchase agreements or securities lending agreements, - transactions involving credit, margin payments or deposit of collateral, - transactions involving foreign exchange risk. 		<p>No particular rules governing this issue</p>	

<p>121. For information purposes with respect to the customer, the contract must indicate an appropriate benchmark, based on financial indicators produced by third parties and in common use, that is consistent with management objectives and against which the future results are to be compared. Where it is not feasible to establish such a benchmark in view of specific customer objectives, this must be stated clearly in the contract and an alternative measure of performance must be indicated.</p>	ANSC	Ethical Norms, article 4-4	
<p>122. The contract must state whether the financial instruments are to be valued at bid/ask or offer or mid-market price, including any relevant currency exchange rates, and, where relevant, by reference to indicators such as yield curves or other pricing models or the methodology to be used to value unlisted equities.</p>		No particular rules governing this issue	
<p>123. The contract must define a specific reporting requirement in the event of losses, defined as a marked-to-market decrease in the value of the portfolio as compared to the value of the portfolio as stated in the most recent periodic report (after neutralisation of any contributions or withdrawals). The contract must set a percentage threshold and a time period to warn the customer accordingly.</p>	Parliament	STA section 9-2	
<p>124. If the contract provides for a variable management fee based on the performance of the management service, the method of calculation must be clearly defined in the contract.</p>	Parliament	STA section 11-2 (1) nr.4	
<p>125. The contract must provide:</p> <ul style="list-style-type: none"> - that the customer may terminate the agreement with immediate effect, subject only to the completion of all transactions already commenced and the time necessary to liquidate the portfolio where this is required by the customer; - that the investment firm may terminate the agreement subject to a two-week notice, provided however that where the portfolio cannot be liquidated (where required by the customer) within this timeframe, the agreement may be extended for the necessary additional period, and provided that where the customer so agrees after being informed of the firm's intention to terminate, the agreement may be terminated in the timeframe agreed between the parties. <p>In both cases, the termination must take place on terms that are fair and reasonable for both parties.</p>	Parliament	STA section 11-2	

<p><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></p>	<p>Parliament</p>	<p>Regulation 2003/289 on out-sourcing of tasks from investment firms.</p> <p>The regulation governs the out-sourcing of tasks from investment firms. Investment firms are required to have written contracts governing the out-sourcing, and have also to notify its customers. It is clearly stated in the regulation that the responsibility rests with the investment firm, and the investment firms are also required to include this in the contract governing the out-sourcing.</p>	
<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>Regulation 2003/289.</p> <p>Both customers and Kredittilsynet shall be notified prior to any delegation of tasks.</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>Parliament</p>	<p>Regulation 2003/289 section 6 par 1, which explicitly states that the delegate must be authorised to provide portfolio management services.</p>	

<p>128. The delegation agreement, in writing:</p> <ul style="list-style-type: none"> a) must be revocable with immediate effect by the delegator; b) must provide for sufficient notice to be given to the delegator by the delegatee of termination of the agreement; c) must be in conformity with the indications contained in the customer agreement with the delegator; d) must require, where the execution of transactions is not subject to the prior consent of the delegator, the delegatee to observe the investment guidelines, including investment allocation criteria, laid down from time to time by the delegator; e) must be formulated so as to avoid conflicts of interest between the delegator and the delegatee; f) must provide for the delegator to receive a continuous flow of information on the transactions carried out by the delegatee permitting it to monitor effectively at any time the activity of the delegatee and to reconstruct the assets under management belonging to each customer of the delegator. 	Parliament	Regulation 2003/289 section 7, which has the same content as rule 128.	
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6.2 PERIODIC INFORMATION

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<i>129. An investment firm must send periodic statements to its portfolio management customers so as to enable them to assess the performance of the service.</i>	Parliament	No rules governing this issue	

<p>130. Periodic statements for portfolio management customers must contain:</p> <ul style="list-style-type: none"> a) a statement of the contents and valuation of the portfolio, including details of each investment held, its market value and the performance of the portfolio and the cash balance, at the beginning and at the end of the reporting period; b) a management report on the strategy implemented (to be provided at least yearly); c) the total amount of fees and charges incurred during the period and an indication of their nature; d) information on any remuneration received from a third party and details of its calculation basis; e) the total amount of dividends, interest and other payments received during the period. 		No rules governing this issue	
<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>		No rules governing this issue	
<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>		No rules governing this issue	
<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>		No rules governing this issue	
<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>		No rules governing this issue	

6.3. MANAGEMENT REQUIREMENTS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
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<p>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.</p>	<p>Parliament</p>	<p>In addition to the general provision in STA section 9-1 and 9-2 the circular letter 1995/39 on "Chinese walls" states the duty to ensure the independence of the portfolio management function, especially related to physical partition and professional secrecy. The organisation of activities in general, including policies and procedures must seek to ensure the independence of the portfolio management function.</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>In addition to the general provision in STA section 9-1 and 9-2 the circular letter 1995/39 on "Chinese walls" states the duty to ensure the independence of the portfolio management function, especially related to physical partition and professional secrecy. The organisation of activities in general, including policies and procedures must seek to ensure the independence of the portfolio management function.</p>	
<p>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.</p>		<p>STA section 9-1</p>	
<p>139. The investment firm must maintain records of its investment strategies, as well as the analyses and forecasts underlying them.</p>		<p>No particular rule</p>	
<p>137. The transactions carried out by the portfolio manager, both individually and as a whole, must be exclusively motivated by the interests of the customer and in accordance with agreed management objectives.</p>		<p>STA section 9-2, according to which investment firms shall promote the best interest of the clients.</p>	<p>In our legislation this duty will be interpreted as the same duty as the wording of standard 137. In other words: if an investment firm do not carry out transactions, both individually and as a whole, just exclusively motivated by the interests of the customer and in accordance with agreed management objectives, Kredittilsynet will consider it as a breach of STA section 9-2.</p>

<p>140. The investment firm must ensure that its orders are executed as efficiently as possible and in particular that:</p> <ul style="list-style-type: none"> a) orders issued are immediately recorded by the firm; b) transactions executed are recorded and the portfolios affected are adjusted as quickly as possible; c) the portfolios affected and the relevant amounts are determined, or objectively determinable, no later than the time at which the order is issued and cannot be changed, except for the purposes of rectifying an error, after the execution of the order, regardless of whether the order relates to one or more accounts. 		<p>STA section 9-2</p>	
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1.2. CONFLICTS OF INTEREST AND INDUCEMENTS 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>	Parliament	STA, section 9-2 para 1.	
<i>2. An investment firm must have and must employ effectively the resources and procedures that are necessary for the proper performance of its business activities, including back-up procedures and systems so as to reasonably ensure that investment services can be provided without interruption.</i>	Parliament	STA, section 9-2 para 1 nr.1,2 and 3	
<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>	Parliament	STA, section 9-1 para 1 No. 1. (This provision does not expressly require the investment firm to ensure that counter parties have the necessary licenses, but it is implied that that the internal routines of the firm should cover this issue. Kredittilsynet may clarify this in a circular letter).	
<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.¹⁷.</i>	Parliament	STA, section 9-1 and Regulation 2003/289 regarding outsourcing of functions section 2 para 4.	

1.2. CONFLICTS OF INTEREST AND INDUCEMENTS

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

Standard	Implementing authority(ies)	Implementing measure	Comments
<p><i>5. An investment firm must take all reasonable steps to ensure that conflicts of interest between itself and its customers and between one customer and another are identified and then prevented or managed in such a way that the interests of customers are not adversely affected. For these purposes the investment firm must establish an internal independence policy, including Chinese walls as appropriate. Where conflicts of interest cannot be reasonably avoided or managed with the internal independence policy, the conflict of interest must be disclosed to the customer.</i></p>	Parliament	STA, section 9-1 par 1 No. 5 and 9-2 par 1 No. 5 and 5.	
<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>		Inducements are not permitted	

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>	Parliament	STA, section 9-1 para 1 No. 5 and 9-2 para 1 No. 6	

<p>8. An investment firm must be able to demonstrate that it has not acted in breach of the conduct of business rules and the internal code of conduct and that its organization, policies and procedures facilitate such compliance.</p>	Parliament	<p>STA, section 9-7 and Regulation 1996/950 (on record keeping). Section 9-1 para 1 No. 1 (internal routines etc.) and section 7-3 para 2 (requires the firm to demonstrate that it has the routines required by section 9-1 in order to obtain and retain a license).</p>	
<p>9. The persons responsible for the compliance function must have the necessary expertise, resources, authority and must have full access to all relevant information enabling them to perform their duties. They must perform their monitoring duties independently of all persons and activities subject to their monitoring.</p>	Parliament	<p>STA, section 9-1 para 1 No. 2 (satisfactory internal control). The requirements set out in rule 9 must be met in order to have an internal control that is deemed "satisfactory" by Kredittilsynet.</p>	
<p>10. A summary of the results of the monitoring must be reported to the senior management of the investment firm and to the internal or external auditors. The investment firm must report these results, together with remedies adopted, to the competent authority at least once a year.</p>	Ministry of Finance	<p>Regulation 1997/1057 section 3-2. The regulation only requires that a summary be reported to the senior management (including the board of directors). It is not required that the summary be reported to the competent authority.</p>	
<p>11. An investment firm must ensure that the competent authority is informed, without undue delay, of serious breaches of the conduct of business rules. In assessing whether the breaches are serious, an investment firm must take into account the impact on regulatory goals and on the capacity to provide services, their frequency, the damages suffered by customers.</p>	Parliament ANSC	<p>STA section 12-2 para 2 (The investment firm must inform Kredittilsynet of all circumstances that poses a serious risk to the firm, including risk of damage of the firms reputation)</p>	
<p>12. The compliance function must: - regularly verify the adequacy of policies and procedures to ensure compliance with the regulations on investment services; - provide advisory assistance and support to the various business areas of the investment firm on problems concerning compliance with the regulations on investment services.</p>	Parliament	<p>STA, section 9-1 para 1 No. 2 (satisfactory intern control). For the internal control to be satisfactory, the compliance function must cover the aspects mentioned in rule 12. This may be clarified in a circular letter.</p>	
<p>13. An investment firm must keep records relevant for the purpose of demonstrating compliance with the conduct of business rules, for a period of five years in order to enable the competent authority to verify compliance with these rules. Tape recording of orders must be kept for a period of one year.</p>	Parliament Ministry of Finance	<p>STA, section 9-1 (4) and Regulation 1996/950 regarding Investment firms compliance with record-keeping.</p> <p>The Ministry of Finance is currently working on a proposal from Kredittilsynet to introduce mandatory tape recording of orders.</p>	

<i>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.</i>		No such provisions	
<i>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:</i> <i>a) The rules and procedure to meet the obligation to protect data of a confidential nature;</i> <i>b) the rules and procedures for carrying out personal transactions involving financial instruments;</i> <i>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;</i> <i>d) the investment firm's policy on conflicts of interest and inducements.</i>	Parliament	STA, section 9-1 para 1 No. 2 and 5, and para 4.	

2. INFORMATION TO BE PROVIDED TO CUSTOMERS

Standard	Implementing authority(ies)	Implementing measure	Comments
<i>16. An investment firm must pay due regard to the information needs of its customers and communicate information to them that is fair, clear, and not misleading.</i>	Parliament	STA, section 9-2 para 1 No. 5	
<i>17. If an investment firm provides information in a marketing communications it must be fair, clear and not misleading.</i>	Parliament	The Marketing Control Act section 2	
<i>18. An investment firm must ensure that a customer is provided promptly with the essential information concerning the execution of his order.</i>	Parliament ANSC	STA, section 11-4 (obligation to send contract note) Gen. Business Terms Article 9	
<i>19. Where an investment firm has control of, or is holding assets belonging to a customer, it must arrange for proper identification and regular confirmation of such assets to the customer.</i>	Parliament	STA, section 9-1(3)	

<i>20. An investment firm that operates customer accounts, which include uncovered open positions, must provide regular statements of such positions.</i>	Parliament	No such provision	
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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>	Parliament ANSC	STA, section 9-2 para 1 No. 2 and 4. Ethical Norms, article 4-1	
<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>	Parliament	STA, section 9-2	

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>	Parliament	STA section 11-2 (minimum requirements regarding the firm's commercial terms). It is sufficient that the commercial terms are sent to the customer, it is not required that the commercial terms are signed by both parties to the contract.	

5.- DEALING REQUIREMENTS

5.1) RECEPTION AND TRANSMISSION OF CUSTOMER ORDERS

Standard	Implementing authority(ies)	Implementing measure	Comments
<i>24. An investment firm must record and process customer orders in accordance with the customer's instructions and in such a way as to facilitate best execution.</i>	Parliament	STA, section 9-2 para 1 No. 4 (execute orders with due care and dispatch) and section 9-2 para 4 (the customer is to be given the best price given the market data available to the firm)	
<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>	Parliament	STA, section 9-8 (duty of confidentiality) section 2a-a para 3 and section 9-3 para 1 (prohibition on front-running).	
<i>26. An investment firm must record orders immediately, documenting and verifying all relevant items of proper execution.</i>	Parliament	According to STA section 9-7 the investment firms are obliged to keep records of accepted and executed assignments giving a complete overview of its business. Kredittilsynet may lay down regulations on investment firm's obligation to keep records. According to the duties in regulation 1996/950 the investment firm must record orders immediately, documenting and verifying relevant items of proper execution, such as exact time for execution, number of contract note, identifying financial instruments, name of the seller and buyer, date of settlement, turnover, brokerage or spread, return commission, interest if commercial paper, other expenses, proper reference to accountancy.	

<p><i>27. An investment firm must keep a record of telephone orders on magnetic tape or an equivalent medium. Investment firms must duly inform the customer that the conversation will be recorded.</i></p>	<p>Ministry of Finance</p>	<p>The Ministry of Finance is currently working on a proposal by Kredittilsynet to introduce mandatory tape recording of telephone orders. Rule 27 will most likely be implemented in a regulation.</p>	<p>Currently not implemented</p>
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5.2) EXECUTION OF ORDERS

Standard	Implementing authority(ies)	Implementing measure	Comments
<p><i>28. An investment firm must take all care to obtain the best possible result for the customer with reference to price, costs born by the customer, size, nature of the transactions, time of reception of order, speed and likelihood of execution and trading venue taking into account the state of the relevant market(s). The relevant market(s) shall be deemed to be the market(s) offering the most favourable trading conditions also in terms of transparency, liquidity and clearing and settlement arrangements in connection with the envisaged transaction. If the investment firm executes in another trading venue, it must be able to demonstrate to the customer that this was done in accordance with his best interest.</i></p>	<p>Parliament</p>	<p>STA, section 9-2 para 1 No. 1 (obligation to execute orders with due care and dispatch), para 4 (best execution)</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>Parliament</p>	<p>STA, section 9-3 para 2 Duty to inform the customer that the investment firm has acted as principal, but it is sufficient that notification is given post fact. The investment firm may only act as principal if better conditions for the customer can not be obtained in the market.</p>	<p>Partly implemented</p>
<p><i>30. An investment firm must ensure that orders are executed in accordance with the instructions from the customer.</i></p>	<p>Parliament</p>	<p>According to STA section 9-2 par 1 sub 1 an investment firm shall act in an orderly and correct manner in the performance of its activity and execute received assignments with due care and dispatch.</p>	<p>If Kredittilsynet discover that an investment firm has not executed orders in accordance with the instructions from customer, we would most certainly conclude that it would have been a breach of section 9-2 par 2 sub 1.</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>Parliament</p>	<p>According to STA section 9-2 par 1 sub 6 the investment firm shall endeavour to avoid conflicts of interest inter alia by ensuring that the customer's interests rank above the firm's interests and that the interests of certain customers are not unfairly favoured at the expense of other customers. According to STA section 2a-2 par 3 employees may not purchase, sell or subscribe financial instruments when the employer undertaking has made a decision regarding purchase, sale or subscription of the instruments concerned, or when a customer order has been placed for the instruments concerned. According to STA section 9-3 par 1 an investment firm may not engage in own-account trading as mentioned in STA section 8-5 first par sub 2 in financial instruments for which a client order has been place and where no specific price is stated in the order.</p> <p>Ethical Norms, article 5-2(2)</p>	
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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>Parliament</p>	<p>STA, section 9-2 para 1. The provisions of rule 32 must be observed in order to observe "good market practice" as required by section 9-2.</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>Parliament ANSC</p>	<p>STA, section 9-2 para 1 No. 6 (duty to put the interests of the customers above own interests). STA section 9-3 para 1 (prohibition on front running, the firm may not trade in instruments in which customers have placed orders that have not yet been executed.)</p> <p>Ethical Norms, article 1-1(2) nr. 6</p>	

6. INDIVIDUAL DISCRETIONARY PORTFOLIO MANAGEMENT

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

Standard	Implementing authority(ies)	Implementing measure	Comments
<i>34. Prior to the provision of any discretionary portfolio management service, a customer agreement containing the relevant provisions of the basic customer agreement mentioned above, as well as certain additional provisions specific to portfolio management must be signed between the parties.</i>	Parliament	STA, section 11-2. Not required that both parties to the contract sign the commercial terms.	Partly implemented
<i>35. An investment firm must take all reasonable steps necessary to ensure the independence of the portfolio management function and mitigate the risk of customers' interests being harmed by any conflict of interest, in particular by providing for the strict separation of functions within the investment firm and its group.</i>	Parliament	STA, section 9-1 para 1 No. 5 (An investment firm must be organised in such a way that the risk of conflicts of interests are minimised)	
<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>	Parliament	No such provision	Not implemented
<i>37. The investment firm must ensure that its orders are executed as efficiently as possible and in particular that:</i> <i>a) orders issued are immediately recorded by the firm;</i> <i>b) transactions executed are recorded and the portfolios affected are adjusted as quickly as possible;</i> <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>	Parliament	STA, section 9-1, para 1 No. 1 (firms are required to have satisfactory routines for administration, accounting and control) and No. 4. (firms must record all transactions). STA section 9-2 para 1 No. 1 orders must be executed with due care and dispatch). STA section 9-2 para 1 first sentence (good market practice must be observed).	

C. CORE STANDARDS FOR THE “COUNTERPARTY RELATIONSHIP” –

1. The “counterparty relationship”

Standard	Implementing authority(ies)	Implementing measure	Comments
<p>A « counterparty relationship » is typical of trading between investment firms and banks within themselves or with other entities which are not holding themselves out as providers of investment services but are market participants directly active in the financial market for proprietary trading. It is characterised by the absence of a “client relationship” (i.e. without any provision of service). In particular, it covers the following situations:</p> <ul style="list-style-type: none"> - transactions executed in regulated markets or other trading venues (which do not give rise to any provision of investment service to the customer) between any member admitted to trade in these markets; - transactions executed directly (over-the-counter) between investment firms or credit institutions, authorised to provide the service of dealing, and dealing either as principal or as agent; - transactions executed directly (over-the-counter) between investment firms or credit institutions and other authorised or regulated financial intermediaries, including non-ISD firms, such as commodity dealers, insurance companies, but not including collective investment schemes and management companies of such schemes, pension funds and management companies of such funds. 	Parliament	No such provisions	The same rules and regulations that apply for the retail- and professional regime also apply to the “counterparty relationship”.
<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>	Parliament	No such provisions	

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.	Parliament	No such provisions	
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.	Parliament	No such provisions	

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>	Parliament	STA, section 9-2 para 1	
<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>	Parliament	STA, section 9-2 para 1 No. 3 (word-by-word implementing of the standard)	
<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>	Parliament	STA, section 9-1 para 1 No. 1 and 2	
<i>Executive directors/senior management must take reasonable measures to ensure that the firm establishes and implements adequate compliance policies and procedures.</i>	Parliament	STA, section 9-1 para 1 No. 1 and 2	

<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>	Parliament	STA, section 9-1 It is a continuous obligation to have policies and procedures that facilitate compliance with standards of market integrity, and this is a prerequisite for maintaining the license.	
<i>The firm must keep records of all transactions executed for a period of five years.</i>	Parliament	STA, section 9-7 and Regulation 1996/950 regarding investment firms compliance with record-keeping (10 years)	
<i>The firm must keep record of telephone conversations concerning the transactions executed on a counterparty relationship.</i>	Ministry of Finance	The ministry of Finance is currently working on a proposal by Kredittilsynet to introduce mandatory tape recording of telephone orders	
<i>The firm must adopt and take all reasonable steps to ensure compliance with an appropriate internal code of conduct.</i>	Parliament ANSC	STA, section 9-1 para 1 Ethical Norms, article 1-1	
<i>The information provided in a marketing communications must be clear and not misleading.</i>	Parliament	The marketing Control Act section 2 para 1	

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
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<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"> • Credit institutions • Investment firms • Other authorised or regulated financial institutions • Insurance companies • Collective investment schemes and management companies of such schemes • Pension funds and management companies of such funds <p>Commodity dealers.</p>	<p>Parliament ANSC</p>	<p>STA, section 9-2 (para 2 (the fiduciary duties the firm owes to the customer varies depending on the level of professionalism of the customer))</p> <p>Ethical Norms, article 2-1 (all firms supervised by Kredittilsynet are considered professional investors, as well as investors who trade for large amounts, conduct may trades and have their own investment strategies or indicate that they do not want investment advice)</p> <p>and</p> <p>Gen. Business Terms Article 3</p>	<p>STA section 9-2 para 2 may be clarified in a circular letter.</p>
<p>b) Large companies ⁽¹⁸⁾ and other institutional investors:</p> <ul style="list-style-type: none"> • large companies and partnerships meeting two of the following size requirements on a company basis: <ul style="list-style-type: none"> • balance sheet total : EUR 20.000.000, • net turnover : EUR 40.000.000, • own funds: EUR 2.000.000. • Other institutional investors whose corporate purpose is to invest in financial instruments. 			
<p>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.</p>			

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

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

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

2.1. Identification criteria

Standard	Implementing authority(ies)	Implementing measure	Comments
<p>14. The members of CESR consider that investors other than those mentioned in § 10, including public sector bodies ⁽¹⁹⁾ and private individual investors, may also be allowed to waive some of the protections afforded by the conduct of business rules. Investment firms should therefore be allowed to treat any of the above investors as professionals provided the relevant criteria and procedure mentioned below are fulfilled. These investors should not, however, be presumed to possess market knowledge and experience comparable to that of the categories listed in §10.</p>			
<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>			
<p>16. In the course of the above assessment, as a minimum, two of the following criteria should be satisfied:</p> <ul style="list-style-type: none"> • The investor has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters; • The size of the investor's financial instrument portfolio, defined as including cash deposits and financial instruments exceeds 0,5 million Euro; <p>The investor works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.</p>			

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

2.2. Procedure

Standard	Implementing authority(ies)	Implementing measure	Comments
<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>			