

**ORDINANCE No. 38 OF 25 JULY, 2007 ON THE REQUIREMENTS TO THE  
ACTIVITIES OF INVESTMENT INTERMEDIARIES**

In effect as of 1<sup>st</sup> November, 2007, issued by the Financial Supervision Commission  
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**Chapter One**

**GENERAL PROVISIONS**

**Art. 1.** This Ordinance governs the requirements to the investment intermediaries under Art. 5 of the Markets in Financial Instruments Act (MFIA) for the purpose of protecting the interests of their clients and ensuring transparency and stability on the financial instruments market, including the requirements related to concluding and executing contracts with clients, to demanding information from clients, keeping of records and safeguarding information, to the internal organization and to the conditions and procedure for submission of information.

**Chapter Two**

**RELATIONSHIPS WITH CLIENTS**

**Art. 2.** (1) When performing investment services and investment activities for client account, the investment intermediary shall act in a honest, fair and efficient manner and as a professional in accordance with the best interests of its clients.

(2) An investment intermediary shall treat its clients equally.

(3) An investment intermediary shall conclude transactions in financial instruments for client account on the best possible conditions and where making efforts to achieve the best possible performance according the order submitted by the client. When executing an order given by a non-professional client, the best possible performance of such order shall be determined by the total amount of the transaction, including the price of the financial instrument and the expenses related to the performance. The expenses related to the performance shall include all expenses that are directly related to the execution of the order, including fees for the execution venue, clearing and settlement fees, as well as other fees and remunerations payable to third parties, bound with the execution of the order.

(4) To achieve best possible performance, in the cases where there is more than one competitive execution venues of an order in relation to financial instruments and in making assessment and comparison of the results that may be achieved for a non-professional client where executing the order on each of the execution venues, specified under the intermediary's policy for performance of orders which are suitable for its execution, the intermediary's commission fees and the expenses incurred in connection with the execution of the order on each of the possible venues shall be taken into consideration.

(5) An investment intermediary shall not have the right to specify and collect commission fees in ways which obviously divide unfairly the different execution venues.

(6) In compliance with its obligation of achieving best result for the client, an investment intermediary shall execute its clients' orders at its earliest convenience, unless this would obviously be to the clients' disadvantage.

**Art. 3.** (1) When an investment intermediary manages a portfolio, it shall comply with the obligation to act in accordance with the client's best interest when it gives orders for execution to another person or taken by the intermediary decisions for trade with financial instruments for the account of its clients.

(2) When the investment intermediary carries out the activity under Art. 5 para 2 item 1 of the Markets in Financial Instruments Act (MFIA) and transmits to other persons orders of its clients for execution, it shall act according the client's best interest.

(3) For the fulfillment of the obligations under para 1 and 2 the investment intermediary shall:

1. make all reasonable efforts to achieve the best result for its clients, accounting for the factors according Art. 30 para 1 of the MFIA; the relevant significance of any of these factors shall be determined according the criteria under Art. 5, and for the non-professional clients – also according the requirements of Art. 2 para 3 and 4; the investment intermediary will have fulfilled its obligation under para 1 and 2 and shall not be obligated to meet the requirement under sentence one, when it follows special instructions of the client in the fulfillment of the order or transmits the order for execution to another person;
2. adopt and apply policy which ensures compliance with the requirements under item 1; the policy must indicate in relation to every class of financial instruments the persons to whom the investment intermediary gives the orders or to whom it transmits the orders for execution; the persons to whom the investment intermediary gives or transmits an order for execution must have the necessary arrangement and mechanisms, which are to ensure that the investment intermediary shall fulfill its obligations under this article, giving or transmitting client orders for execution to these persons;
3. provide to the clients appropriate information about the pursued by it policy under item 2;
4. continuously monitor for the efficiency of the policy under item 2, including also for the quality of performance by the persons under item 2 and where necessary, take actions for removal of the established irregularities;
5. make inspection of the policy under item 2 once yearly, as well as upon any substantial change which may affect the intermediary's ability to ensure best results for its clients.

(4) Paragraphs 1 – 3 shall not apply when the investment intermediary manages client portfolio and/or receives and transmits orders and simultaneously executes the received orders or the decisions for conclusion of transactions in the portfolio management. In these cases Art. 30 of the MFIA shall apply.

**Art. 4.** The investment intermediary shall once yearly perform an inspection of the policy for execution of orders of customers under Art. 30 para 2 of the MFIA and the arrangements for order execution.

(2) The inspection under para 1 shall be conducted also upon any substantial change that may interfere with the intermediary's ability continuously to provide the best possible results for the execution of client orders when using the execution venues which have been included in the order execution policy.

(3) The investment intermediary shall submit to its non-professional clients within an appropriate term, prior to commencing to perform services, including execution of orders for their account, the following information on the order execution policy:

1. description of the relevant significance of the factors for execution under Art. 30 of the MFIA, determined by the investment intermediary in consistence with the criteria under Art. 5 para 1, or the method by which the investment intermediary defines the relevant significance of these factors;
2. a list of the execution venues, on which the intermediary largely relies for achievement of best execution of client orders;
3. a clear and explicit warning stating that all specific instructions of the client may prevent the intermediary to take the necessary actions for achieving the best possible result in client orders execution, where pursuing the policy of order execution, for that part of the order to which the specific instructions relate;

(4) The information under para. 3 shall be provided to the client on a durable medium. The information under para 3 may also be provided by means of the web site, when it does not satisfy the requirements for a durable medium, if the conditions under Art. 15 para 2 have been met.

**Art. 5.** (1) In the execution of client orders, the investment intermediary shall take into account the relevant significance of the factors for execution under Art. 30 para 1 of the MFIA according to the following criteria:

1. the characteristics of the client, including whether it has been defined as a non-professional or professional client;
2. the characteristics of the client order;
3. the characteristics of the financial instruments subject of the order;
4. the characteristics of the execution venues, to which the order may be directed for execution.

(2) An investment intermediary will have fulfilled its obligation to act for the achievement of the best result for its clients, if it has fulfilled the order or a specific aspect of the order, following special instructions by the client.

**Art. 6** An investment intermediary which provides investment advice to a client or manages a portfolio, shall conclude a contract with an investment advisor.

**Art. 7.** (1) The information which the investment intermediary provides to its clients, including in its advertising materials and public statements of the intermediary's members of the management and the control bodies and of the persons working under a contract for it, shall be understandable, accurate, clear and not to be misleading.

(2) An investment intermediary shall ensure that the information under para 1 which it provides to non-professional clients or potential non-professional clients or disseminated in a way whereby it may reach such clients shall satisfy the following conditions:

1. it contains indication of the investment intermediary's business name;
2. it is accurate and does not underline potential benefits of a given investment service or financial instrument, without simultaneously indicating clearly and at a prominent place the relevant risks;
3. it is sufficient and presented in a understandable way for the customary members of the group to which it has been addressed or is likely to reach;
4. it does not conceal, omit or undervalue important messages, statements or warnings.

(3) Where the information under para 2 contains a comparison between investment or ancillary services, financial instruments or persons providing investment or ancillary services, it shall meet the following terms and conditions:

1. the comparison has to be purposeful and presented in a fair and balanced manner;
2. to indicate the sources of information used for the comparison;
3. to include the main facts and assumptions used to prepare the comparison.

(4) Where the information under para 2 contains indication of previous profitability of a financial instrument, financial index or investment service, such information shall meet the following terms and conditions:

1. the indication of the previous profitability may not constitute the most essential part of the information;
2. the information shall include appropriate data about the profitability over the preceding 5 years; when the period during which the financial instrument has been offered, or the financial index has been formed, or the investment service has been offered is longer or shorter than 5 years,

shall be presented data on the profitability of that period; in any case the data on the profitability shall be based on a full period of 12 months;

3. to specify the period, to which the information relates, and its source;

4. to contain an explicit warning that the data relate to a past period and these are not a reliable indicator for future performance;

5. in the cases where the indication contains data and values in a currency other than the currency of the Member State where the client's seat or place of residence is located, the currency shall be clearly indicated and it shall have an express warning that the profitability may be decreased or increased as a result of change in the exchange rates;

6. where profitability is specified as a total, shall be specified the amount of the commissions, fees and other expenses for the client.

(5) Where the information under para 2 contains or relates to simulated past profitability, it shall meet the following requirements:

1. to relate to financial instrument or financial index;

2. the simulated past profitability to be based on actual past profitability of one or more financial instruments or indices which are the same or which are underlying asset for the financial instruments for which profitability has been simulated;

3. for the actual past profitability under item 2, the requirements under para. 4, items 1-3, 5 and 6 to have been complied with;

4. to contain an explicit warning that the data are based on simulated profitability and that the information is not a certain index of future profitability.

(6) Where the information under para 2 contains information on future profitability, it shall meet the following requirements:

1. not be based or refer to simulated previous profitability;

2. to be based on well-grounded assumptions, supported by objective data and facts;

3. where profitability is specified as a total, the amount of the commissions, fees and other expenses for clients shall be specified;

4. to contain an explicit warning that these forecasts are not a certain index of future profitability.

(7) Where the information under para 2 relates to levying of certain type of tax, it shall contain the specification that the taxation depends on the concrete circumstances, related to the client and may be changed in the future.

(8) The information under para 2 may not include the name of the Commission or of another competent authority in order to be explicitly stated or otherwise indicated that the authority has confirmed or approved the products or the services offered by the investment intermediary.

(9) The provided to the clients information, advertising materials and public statements by the persons working under a contract for the investment intermediary are to be preliminarily approved by a person with the Internal Control Department.

(10) The Commission may request from the investment intermediary to submit evidence of the authenticity of the facts contained in the information provided to clients, the advertising materials and public statements of the members of the management and control bodies of the intermediary and of the persons working under a contract for it.

**Art. 8.** (1) An investment intermediary shall provide in due time, before a non-professional client or potential non-professional client to be bound by virtue of a contract with the investment intermediary for the provision of investment or ancillary services, the following information:

1. the conditions of the relevant contract;
2. information under Art. 9, having bearing to the contract or to the investment or ancillary service provided.

(2) Within an appropriate term before the beginning of the provision of investment or ancillary service to a non-professional client, the investment intermediary shall provide the client, or the potential client with the information under Art. 9, 10, 18 and 32.

(3) In an appropriate term prior to providing an investment or ancillary service to a professional client, the investment intermediary shall provide the client with the information under Art. 32 paras. 3 and 4.

(4) The information under paras. 1-3 shall be provided to the client on a durable medium or on the investment intermediary's web site, where this does not constitute a durable medium, while observing the requirements under Art. 15, para. 2.

(5) An investment intermediary shall ensure the conformity of the information which is contained in its advertising materials and the public statements of the members of the intermediary's management and control bodies and of the persons working under a contract for it, to the information which it provides to the clients when performing investment and ancillary services.

(6) The investment intermediary shall notify in due time the client of any substantial change in the circumstances under Art. 9, 10, 18 and 32 which have bearing on the offered service to the client. The notification shall be done on durable medium, if the information to which it relates, has been provided on a durable medium to the client.

(7) Where advertising materials or public statements by the members of the investment intermediary's management and control bodies or by the persons working under a contract for it contain an offer or an invitation indicated in para 8, and specify the method of reply or the form, in which the reply of the client is to be provided, they have to contain such part of the information under Art. 9, 10, 18 and 34 which is proportionate to the offer or the invitation.

(8) Paragraph 7 shall apply to advertising materials or public statements by the members of the investment intermediary's management and control bodies or by persons working under a contract for it, which contain proposals and invitations of the following type:

1. an offer for conclusion of a contract, with the subject of financial instrument or an investment or ancillary service with any person who replies to the notification;
2. an invitation to each person who replies to the notification to make a proposal for conclusion of a contract, with the subject of financial instrument or an investment or ancillary service.

(9) In cases where a potential non-professional client must acquaint himself with documents containing the information under Art. 9, 10, 18 and 32, in order to reply to the proposal or invitation contained in the advertising materials or the public statements, para 7 shall not apply.

**Art. 9.** (1) An investment intermediary shall provide non-professional clients and potential non-professional clients with the following general information, if applicable:

1. the business name and address of the investment intermediary, as well as telephone and/or other information for contact with the investment intermediary;
2. the languages in which the client may communicate and keep correspondence with the investment intermediary and to receive documents and other information by the intermediary;
3. the ways of communication which are used between the investment intermediary and its clients, including where applicable, the ways of forwarding and acceptance of orders;
4. explicit indication that the investment intermediary is licensed, as well as indication of the name and address of the authority who has issued the license;
5. the type, the periodicity and the deadline for submitting the reports and the confirmations to a client in connection with the investment services and activities performed;
6. a concise description of the steps that the intermediary undertakes in order to guarantee the client financial instruments or cash, in the cases where the intermediary holds such for the client, including a concise description of any relevant investor compensation or deposit guarantee schemes in which the investment intermediary participates in relation to its operation in a Member State;
7. a description, which may also be in a summarized form, of the policy for handling conflicts of interest under Art. 75 para 1 item 4 applied by the investment intermediary;
8. additional detailed information on the handling of conflicts of interest policy; the information shall be provided upon request by the client on a durable medium, or on the investment intermediary's website where this does not constitute providing on a durable medium, while observing the requirements set under Art. 15, para. 2.

(2) In the cases where the investment intermediary manages an individual portfolio of a client, the intermediary shall apply an appropriate method for assessment and comparison as a generally accepted benchmark, based on the client's investment purposes and the types of financial instruments included in the client portfolio, in such a manner that the client making use of the service may assess the performance of the service by the investment intermediary.

(3) In the cases where the investment intermediary offers to a non-professional client, or to a potential non-professional client, the service of portfolio management, the intermediary shall, apart from the information under para. 1, provide the client also with the following information where applicable:

1. information about the method and periodicity of assessing the financial instruments in the client portfolio;
2. details of each delegation of the management of all or a part of the financial instruments and/or money in a client portfolio;
3. characteristics and information on each benchmark by which the portfolio management results shall be assessed;

4. the types of financial instruments which may be included in a client portfolio and the types of transactions which may be concluded with them, any restrictions inclusive;

5. the management objectives, the risk level contained in the assessment of the person managing the portfolio, as well as all specific restrictions of that assessment.

**Art. 10.** (1) The investment intermediary shall provide the client and the potential client with a general description of the financial instruments and the associated with them risks. The description has to be conformed to the client's type (professional and non-professional) and shall meet the following requirements:

1. to contain detailed description of the type and the characteristics of the specific financial instrument and of the specific risks associated with it;
2. the information under item 1 is to allow the client to take informed investment decision.

(2) The description of the risk shall include the following elements, insofar as applicable for the specific type of financial instrument, the status and level of knowledge of the client:

1. indication of the risks associated with the specific type of financial instruments, including explanation of the leverage and its consequences and the risk of losing the whole investment made;

2. the volatility of the financial instruments' price and all market restrictions pertaining to these instruments;

3. the circumstance that the investor may undertake as a result of transactions in financial instruments, financial and other additional liabilities, including unforeseen liabilities that are additional to the expenses for the instruments' acquisition;

4. all margin requirements or similar liabilities applicable to the instruments of this type.

(3) The Deputy Chairman in charge of Investment Activity Supervision Division, hereinafter referred to as "deputy chairman", may specify the contents of the risk description under para. 1 and 2.

(4) Where the financial instruments are subject of public offering carried out on the grounds of a published prospectus in compliance with the provisions of Directive 2003/71/EC of the European Parliament and of the Council on prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (Directive 2003/71/EC); the investment intermediary shall inform the non-professional client and the potential non-professional client of the place where the prospectus is accessible for the public..

(5) In the cases where the risks associated with a financial instrument consisting of two or more different financial instruments or services, are likely to be higher than the risks related to any of its components, the investment intermediary shall submit and adequate description of the financial instrument's components and of the way in which their interaction enhances the risks.

(6) In the cases where the financial instruments include a guarantee by a third person, the investment intermediary shall provide a non-professional client and a potential non-professional client with sufficient data on the guarantor and the guarantee, which shall allow the client to make an objective assessment of the guarantee.

**Art. 11.** The liabilities under Art. 10 shall not apply with regard to units and shares of collective investment schemes in the cases when the investment intermediary provides the information contained in the short-form prospectus according Art. 28 of Council Directive 85/611/EEC on the

coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (Directive 85/611/EEC).

**Art. 12.** (1) An investment intermediary shall notify all its clients of the conditions and criteria, according which the investment intermediary determines them as professional or non-professional, as well as of the circumstances under which they may be defined as an eligible counterparty. The clients shall be also notified on a durable medium of their right to request to be categorized in a different way, as well as of the restrictions imposed on their protection in the case of different categorization.

(2) The investment intermediary shall define a client to be professional, non-professional or an eligible counterparty in compliance with the criteria established in the Markets in Financial Instrument Act (MFIA).

(3) The investment intermediary on its own initiative or on the client's request may:

1. specify as professional or non-professional a client who in other cases would be defined as eligible counterparty within the sense of § 1 item 29 of the MFIA;
2. specify as non-professional a client, who is considered as a professional client within the meaning of Division I of the Appendix to the MFIA.

(4) Where a person defined as an eligible counterparty requests not to be treated as such and the investment intermediary consents, that person shall be treated as a professional client, unless the person has explicitly requested to be treated as a non-professional client.

(5) In the cases where an eligible counterparty expressly requests to be treated as a non-professional client, Art. 36 para 2 – 5 of the MFIA shall apply accordingly.

**Art. 13.** (1) The investment intermediary may not:

1. perform transactions for client's account in volume or with frequency, at prices or with given counterparty, for which according to the circumstances it may be assumed that they are performed exclusively in the investment intermediary's interest;
2. to buy for its own account financial instruments for which its client gave a purchase order, and to sell them to the client at a price higher than the price at which it bought them;
3. to perform for its own or for a third party's account activities with client's funds and financial instruments for which it has not been authorized by the client;
4. to sell for its own account or for a third party's account financial instruments which the investment intermediary or its client does not own, unless under the conditions and procedure established by an Ordinance;
5. to participate in the performance, including in the capacity of a registration agent, of concealed purchases or sales of financial instruments;
6. to receive a part or the whole benefit if the investment intermediary has concluded and executed the transaction under terms and conditions that are more favorable than those established by the client;
7. to perform activities otherwise which jeopardizes the interests of the intermediary's clients or the integrity of the market in financial instruments.

(2) The prohibition under para. 1, item 1 shall not apply to transactions, for the performance of which the client has given explicit instructions on his own initiative.

(3) The prohibition under para. 1, item 4 shall also relate to the members of the management and control bodies of the investment intermediary, to the persons who manage its operation, as well as for all persons who work for it under a contract, as well as to related persons.

**Art. 14.** (1) The investment intermediary shall not have the right in connection with the provision of investment or ancillary services to a client, to pay, respectively provide, and to receive remuneration, commission or non-monetary benefit, apart from:

1. remuneration, commission or non-monetary benefit paid or provided by or to the client or his representative;

2. remuneration, commission or non-monetary benefit paid or provided by or to a third person or his representative where the following conditions exist:

a) the existence, nature and amount of the remuneration, commission or the non-monetary benefit shall be indicated to the client clearly, in an accessible way, accurately and understandably prior to providing the relevant investment or ancillary service, and where the amount may not be established, the method of its calculation shall be indicated;

b) the payment, respectively the provision of the remuneration, commission or non-monetary benefit, shall be with a view to enhancing the quality of the service and does not violate the obligation of the investment intermediary to act in the best interest of the client;

3. relevant fees that provide or are necessary with a view to providing the investment services, such as expenses for trustee services, settlement and currency exchange fees, legal services fees and public fees, and which in their nature do not result in the arising of a conflict with the investment intermediary's obligation to act honestly, fairly and professionally to the best interest of the client.

(2) It shall be considered that the investment intermediary has fulfilled its obligation under para 1 item 2 letter "a" where it:

- a) presents the material conditions of the contracts concerning the remuneration, commission or the non-monetary benefit in a summarized form;
- b) provides detailed information about the remuneration, commission or the non-monetary benefit on the client's request; and
- c) the provision of the information according this paragraph is honest, fair and in the client's interest.

**Art. 15.** (1) In the cases where, pursuant to this Ordinance, information is required to be provided to the client on a durable medium, the investment intermediary shall provide information on paper medium or otherwise, while observing the following requirements:

1. the provision of the information in that way is appropriate with a view to the existing or future relations with the client;
2. the client has expressly preferred that way of information supply over its provision on paper.

(2) Where information is provided to clients through the intermediary's website and it is not addressed to a specific client, the information shall meet the following conditions:

1. the provision of the information in that manner is appropriate with a view to the existing or future relations with the client;
2. the client has expressly agreed with that manner of information provision;
3. the client has been notified via electronic means of the intermediary's website address and where exactly on it the information may be found;

4. the information is up-to-date;

5. the information to be continuously accessible by the client on the intermediary's website for a period of time that is usually necessary for the clients to acquaint themselves with it.

(3) The provision of information by electronic means of communication shall be treated as appropriate with a view to the existing or future relations with the client, if data exist that the client has a regular access to internet. It shall be considered that the client has a regular access to internet, if he provides an e-mail address for the needs of the established relations with the investment intermediary.

**Art. 16.** (1) The members of the investment intermediary's management and controlling bodies and the persons who manage the operation of the investment intermediary, as well as the members of the control body, where applicable, shall be responsible for the realization of the investment intermediary's operation in compliance with the requirements of the MFIA and its implementing instruments.

**Art. 17.** (1) An investment intermediary shall adopt, apply and maintain appropriate rules for the prevention of the performance of the following actions by a person who works under a contract for the investment intermediary and who participates in the performance of activities which may give rise to conflict of interests, or who due to the realized by such person activities for the investment intermediary has an access to inside information within the meaning of the Law on Measures against Market Abuse with Financial Instruments (LMMAFI), or to some other confidential information about clients or transactions with or for clients:

1. conclusion of a personal transaction which meets some of the following conditions:

- a) its execution by that person is prohibited by the LMMAFI;
- b) it is connected with abuse or unlawful disclosure of confidential information;
- c) its execution is in contradiction with, or may result in contradiction with an obligation of the investment intermediary according the MFIA or its implementing instruments;

2. the provision of advice or rendering of assistance, outside of the usually performed by a person activities for the investment intermediary, to another person to conclude a transaction with financial instruments, which if it were a personal transaction of the person who works under a contract for the investment intermediary, would be prohibited according to Art. 36 para 3 item 1 and Art. 42 para 3 item 1 and 2;

3. disclosure, outside of the usually performed by a person activity for the investment intermediary, of information or opinion to another person, provided that the person who works under a contract for the investment intermediary, knows or may reasonably be assumed to know that as a result of such disclosure the person will perform or is likely to perform some of the following activities:

a) to conclude a transaction in financial instruments, which, if it would be a personal transaction of the person who works under a contract for the investment intermediary, would be prohibited according Art. 36 para 3 item 1 and Art. 44 para 3 item 1 and 2;

b) to provide advice or to render assistance to another person in concluding a transaction under letter 'a'.

(2) The rules under para. 1 shall ensure that:

1. every person who works for the investment intermediary is acquainted with the restrictions in the conclusion of personal transactions and the measures adopted by the investment intermediary about the personal transactions and the disclosure of information according para 1;

2. the investment intermediary is informed in due time of any personal transaction concluded by the persons who work for the investment intermediary, by notification or otherwise, allowing the investment intermediary to establish the conclusion of such transactions;

3. records are kept of the personal transactions of which the investment intermediary has been informed or which have been established by it, including authorizations or prohibitions in relation to such transactions.

(3) In the cases where there is a contract concluded between the investment intermediary and a third person for the assignment of the performance of an activity to that third person, the contract must include an obligation of that person to keep a register of personal transactions, concluded by persons under para. 1, and to provide such information to the investment intermediary upon its request.

(4) The requirements under para 1 and 2 shall not apply to personal transactions that meet any of the following conditions:

1. personal transactions concluded when managing an individual portfolio, if there is no preceding the conclusion of the transaction exchange of information in relation to the transaction between the person carrying out the management, and the person who works under a contract for the investment intermediary, or another person for whose account the transaction is concluded;

2. personal transactions having as a subject units of undertakings for collective investment or units of undertakings for collective investment, which are subject to supervision according the legislation of a Member State, requiring level of risk spreading in their assets, equivalent to that with the collective investment schemes, if the person who works under a contract for the investment intermediary, or another person for whose account the transaction is concluded, does not participate in the management of that undertaking.

**Art. 18.** (1) The investment intermediary shall provide its non-professional clients and the potential non-professional clients, with the following information on the expenses and fees related to the transactions, so far as applicable:

1. the total price which shall be paid by the client in connection with the financial instrument or the investment or ancillary service provided, including all remunerations, commissions, fees and expenses, as well as all taxes payable through the investment intermediary; in case that the exact price may not be specified, the basis for its calculation shall be indicated in a way, where the client may check and confirm the latter;
2. in the case where any part of the total price under items 1 has to be paid in a foreign currency or the equivalence of that currency, the currency of payment, exchange rate and the currency conversion expenses shall be specified;
3. notification of the possibility other expenses to arise as well, including taxes, related to the transactions in financial instruments or investment services provided, which are not paid through the intermediary or have not been imposed by it.
4. the rules and methods of payment or some other fulfillment.

(2) The obligation under para. 1 shall not apply with regard to units and shares of collective investment schemes, if the investment intermediary provides the client with the information, contained in the short-form prospectus according Art. 28 of Directive 85/611/EEC.

## **Chapter Three**

### **ASSESSMENT OF SERVICE APPROPRIATENESS**

**Art. 19.** (1) Upon the provision of investment advice or carrying out of portfolio management, the investment intermediary shall demand from the client, or the potential client, information which it needs for the establishment of material facts about the client and which provides reasonable grounds to the intermediary to consider, while accounting for the nature and scope of the service rendered, that the transaction which will be recommended or concluded while managing a portfolio, shall meet the following criteria:

1. it meets the client's investment objectives;
2. the client has the financial possibility to undertake all related investment risks, that are compatible with his investment objectives;
3. the client has the required experience and knowledge in order to understand the risks associated with the transaction or with the management of his portfolio.

(2) Where providing an investment service under para 1 to a professional client, the investment intermediary may accept that with reference to the products, transactions and services for which the client has been defined as a professional client, the same has the required experience and knowledge for the purpose of para. 1 item 3.

(3) When providing investment advice to a professional client according Division I of the Appendix to the MFIA, an investment intermediary may accept for the purposes of para. 1, item 2, that the client has the financial possibility to undertake all related investment risks compatible with his investment purposes.

(4) The information regarding the financial situation of the client, or the potential client, shall include, where applicable, information on the sources and the amount of his regular incomes, his assets, including liquid assets, investments and real estate, as well as his due financial liabilities.

(5) The information regarding the investment objectives of the client, or the potential client, shall include, where applicable, information on the time period in which the client would like to hold the investment, his preferences with regard to the risk undertaken, his risk profile and the investment's objectives.

(6) Where upon provision of investment advice or portfolio management, the investment intermediary has not collected the information required under Art. 28, para. 1 of the Markets in Financial Instruments Act, the investment intermediary shall not have the right to recommend investment advice or financial instruments to the client or the potential client.

**Art. 20.** (1) Where an investment intermediary estimates whether an investment service other than investment advice and portfolio management, is suitable for the client, it must establish whether the client possesses the necessary experience and knowledge in order to understand the risks associated with the product or the investment service which is offered or requested.

(2) The investment intermediary may accept that the professional client possesses the required experience and knowledge in order to understand the risks associated with the specific investment service, transaction or product, for which the client has been specified as professional.

**Art. 21.** (1) The information which the investment intermediary shall require from a client, or a potential client, on his experience and knowledge in the sphere of the investment activities shall contain:

1. the types of services, transactions and financial instruments, with which the client is acquainted;
2. the nature, volume and frequency of the transactions in financial instruments for client account, as well as the period within which they will be concluded;
3. the education degree awarded, profession or relevant previous profession of the client or the professional client.

(2) The investment intermediary shall require such part of the information under para 1, that is appropriate with a view to the client's characteristics, the nature and range of services which will be provided, and the types of products or transactions which are anticipated, including their complexity and the associated risks.

(3) An investment intermediary may not encourage its clients or potential clients, not to provide the required information for the purposes of Art. 28 of the MFIA.

(4) The investment intermediary shall be guided by the information provided by its clients, or potential clients, unless it knows or should have known that the information is incorrect, incomplete or outdated.

## **Chapter Four**

### **PROVISION OF INVESTMENT SERVICES FOR CLIENT ACCOUNT**

#### **Section I**

##### **General Conditions for Provision of Services**

**Art. 22.** (1) An investment intermediary may conclude the contracts with its clients under general conditions.

(2) The investment intermediary shall announce in a tariff its standard commission remuneration on the different types of contracts with clients, as well as the type and amount of the expenses that are to be incurred by the clients in the case where they are not included in the remuneration.

(3) The general conditions and the tariff shall be displayed in a prominent and accessible place in the premises where the investment intermediary receives clients.

(4) Where providing investment services other than the provision of investment advice to a new non-professional client, the investment intermediary shall provide the client with the main rules and obligations of the client and the investment intermediary on paper or another durable medium, including by provision of the applied by the intermediary general terms.

**Art. 23.** (1) The content of the general conditions shall be defined depending on the services and activities for which a license has been granted, and they may contain the information which the investment intermediary must provide to non-professional clients according the requirements of this ordinance.

(2) The investment intermediary shall include in the general conditions or in the contract with the client, where it does not apply general conditions, information about the ways of reasonable and fair settlement of disputes.

(3) (New – SG, iss. 39 in 2009) The ways for settlement of the relations with a client after the termination of the contractual relations shall be also stated in the general conditions, or in the contract with the client, including the conditions for transfer of the client's financial instruments at a depository institution, in compliance with the rules of the depository institution, on a sub-account of other person indicated by the client preliminarily or after the termination of the contractual relations, within set in the general conditions or in the contract term, or on a personal account of the client, including by opening of a new account.

## **Section II**

### **Provision of Investment Services for Client's Account**

**Art. 24.** (1) An investment intermediary shall provide investment and ancillary services for client account on the basis of a written contract with the client.

(2) The client, or his representative, shall sign the contract under para. 1 in the presence of a person under Art. 39, para. 1, item 2, after the identity of the client or his representative has been verified.

(3) A person from the internal control department of the investment intermediary shall examine whether the contract under para. 1 conforms to the requirements under the Markets in Financial Instruments Act, its implementing instruments and the internal acts of the investment intermediary. In such case, the person from the internal control department shall, by the end of the business day, draw up a document verifying the performance of the examination.

(4) When executing the contract under para. 1 and in compliance with accounting legislation, the investment intermediary shall open analytical accounts for client financial instruments and cash.

(5) A copy of the client's identification document, or his representative, certified by the client and by the person under Art. 39 para 1, who concludes the contract for the investment intermediary. The certification shall be performed with the affixing of inscription "true to the original", date and signature of the person, making the certification.

(6) In the contract, according para. 1, shall be entered individualizing data about the persons concluding it, the capacity in which the person representing the investment intermediary acts, date and place of conclusion and the acting at the time of conclusion general conditions, if any, the main rights and obligations of the parties and indication of the information which the intermediary must submit to such person.

**Art. 25.** (1) The conclusion of the contract under Art. 24, para 1 through a proxy shall be admissible only provided a notarially attested power of attorney is submitted, which contains the representative power for performing managerial or disposal actions with financial instruments and a written statement by the proxy that he does not carry out by occupation transactions with financial instruments, as well as that he did not execute such for a one-year period prior to conclusion of the contract.

(2) The investment intermediary shall retain for its records the written statement and the original power of attorney under para 1, or a notarially attested transcript of it. If the power of attorney is with multiple use, the investment intermediary shall keep a copy of it, certified by the proxy and by a person from the Internal Control Department.

**Art. 26.** (1) The investment intermediary shall conclude the contract under Art. 24 para 1 and accept the documents under Art. 34 para 1 and 3, only at entered in the register under Art. 30 para 1 item 2 of the Financial Supervision Commission Act registered office, subsidiary or office.

(2) The premises under para 1 must have the required hardware and software, allowing the acceptance of orders, including orders, placed by remote means of communications, observance of the succession of the orders' receiving in their delivery for execution and the safekeeping of the information.

(3) An investment intermediary shall place at the entrance of each of its subsidiaries and offices under para 1, information on its business name and seat, working hours, the first and family name of the person, responsible for the relevant subsidiary or office.

(4) Investment intermediaries shall submit a certificate of anti-fire safety of the premises, in which they pursue business as of the time of filing the application for their entry in the register under Art. 30 para 1 item 2 of the Financial Supervision Commission Act.

**Art. 27.** (1) An investment intermediary may not conclude the contract under Art. 24 para 1, if the client or his representative has not submitted and signed all required documents under Art. 24 and 25, has presented documents with manifest irregularities, or the data therein are incomplete, have inaccuracies and discrepancies or some other circumstance exists which arouses suspicion for undue identification or representation. An investment intermediary may not conclude a contract under Art. 24 para 1 also if the counter party is represented by a proxy, who declares the execution by occupation of transactions with financial instruments.

**Art. 28.** (1) The investment intermediary shall open to the client a sub-account at a depository institution on the grounds of the written contract under Art. 24 para. 1 and in compliance with the conditions envisaged therein.

(2) An investment intermediary which opens an account for financial instruments of its client with a third person, must take due care for the client's interests when determining that person and the entrustment to the same of the client's financial instruments keeping, as well as periodically, but at least once annually, must review with the same care the election of that person and the conditions in which it keeps the client's financial instruments.

(3) In fulfillment of the duties under para 2 the investment intermediary shall take into account the professional qualities and market reputation of the third person, as well as the legal requirements and market practices, related to keeping of such financial instruments, which may prejudice the client rights.

(4) In case that the investment intermediary envisages the keeping of client's financial instruments with a third person in a state whose legislation provides for special regulation and supervision with regard to the keeping of financial instruments for other person's account, the investment intermediary may not provide the client's financial instruments for safekeeping with a person from that state, which is not subject to the envisaged by the local legislation regulation and supervision.

(5) The investment intermediary shall not have the right to keep client's financial instruments with a third person in a third country whose legislation does not regulate the safekeeping of financial instruments for a third person's account.

(6) The restriction under para 5 shall not apply if any of the following conditions exists:

1. the nature of the financial instruments or the investment services provided in relation to those instruments demands their keeping with a third person in a third state under para 5;

2. a professional client has requested in writing his financial instruments to be kept with a third person in a third state under para 5.

(7) The investment intermediary shall undertake the necessary actions to ensure that the keeping of financial instruments of its clients with a third person is done in a way which guarantees identification of the client's financial instruments separately from the financial instruments of the investment intermediary and of the third person, by the keeping of segregated accounts by that third person or by the applying of some other measures ensuring the same level of protection.

(8) In case that the applicable legislation to the operation of the third person does not allow compliance with the requirements under para 7, the investment intermediary must undertake appropriate actions for guaranteeing the client's rights in relation to the deposited with the third person financial instruments, including by opening accounts for clients' financial instruments other than its account, which the third person shall keep in the name of the investment intermediary, but for other's account.

**Art. 29.** (1) The investment intermediary shall deposit the cash provided by clients or obtained as a result of performed for their account investment services, with a person under Art. 34 para 3 of the MFIA latest by the end of the next business day. The requirement of sentence one shall not apply with regard to the credit institutions in relation to kept by them deposits.

(2) An investment intermediary which deposits the cash of its client in a person under Art. 34 para 3 item 2-4 of the MFIA, shall take due care for the client's interests in determining the person and the depositing of the client's cash therein, as well as periodically, but at least annually, review with the same care the election of that institution or collective investment scheme and the conditions in which it keeps the client's cash.

(3) In fulfillment of the obligations under para 2, the investment intermediary shall take account of the professional qualities and market reputation of the person with a view to guaranteeing the client's rights, as well as the statutory requirements and the market practices, related to the keeping of the cash, which may prejudice the rights of the client.

(4) An investment intermediary may not invest the client's moneys in a collective investment scheme, if the client opposes to such way of keeping the provided by him/her cash.

(5) The investment intermediary shall take the necessary actions, to ensure the deposited according para 1 client moneys to be held on individual client's accounts or an account, separate from the investment intermediary's moneys.

(6) In case that the legislation applicable to the operation of the person under Art. 34 para 3 of the MFIA does not allow compliance with the requirements under para 5, the investment intermediary shall take appropriate measures for guaranteeing the rights of the clients in relation to the deposited cash, including by opening an omnibus account for clients' cash, which such person will keep in the name of the investment intermediary but for another's account.

**Art.30.** (1) An investment intermediary shall not have the right to conclude transactions for securities financing with held by it financial instruments of clients or otherwise to use for its own account or for the account of another client such financial instruments, unless the client has given preliminarily his express consent for use of his financial instruments on certain conditions and the use of the financial instruments is accomplished in compliance with those conditions. The consent according the preceding sentence must be given in writing, if the client whose financial instruments are used is non-professional.

(2) An investment intermediary shall not have the right to conclude transactions for securities financing with financial instruments of clients, kept in an omnibus client account with a third person, or otherwise to use for its own account or for another client's account such client financial instruments. The prohibition under sentence one shall not apply if the requirements under para 1 have been complied with, as well as at least one of the following conditions:

1. all clients whose financial instruments are kept together in the omnibus account, have preliminarily given an express consent in consistence with para 1;

2. the investment intermediary has established procedures, guaranteeing the use only of financial instruments of clients, who have beforehand given an express consent for that in accordance with para 1, as well as control mechanisms for compliance with that requirement.

(3) In the cases under para 2, in the maintained by the investment intermediary records shall be included information on the client on whose order the financial instruments have been used, as well as on the number of the used financial instruments of every client, with a view to the correct allocation of eventual losses.

**Art. 31.** (1) An investment intermediary which holds client financial instruments and cash shall maintain records and shall keep accounts of the held client assets, in a way which allows it at any time immediately to differentiate the assets held for a client from the assets of the other clients of the investment intermediary and from its own assets.

(2) The records and the accounts under para 1 shall be maintained in a way, which ensures their accuracy and their consistence with the held for the clients financial instruments and cash.

(3) The investment intermediary shall regularly agree the records and the accounts under para 1, kept by it and those kept by third persons, with whom the client assets are safeguarded.

**Art. 32.** (1) An investment intermediary shall notify its non-professional clients, or the potential non-professional clients, of the third person by whom and where the cash and/or financial instruments provided to the intermediary may be kept. The notification under the first sentence shall also include indication of the investment intermediary's liability pursuant the national legislation about any action or inaction by the person that holds the client cash and/or financial instruments and the consequences for the client of such person's bankruptcy.

(2) The investment intermediary shall inform its non-professional clients, or potential non-professional clients, of the possibility his financial instruments to be kept on an omnibus account with a third person when the national legislation admits such a possibility. The investment intermediary shall inform its non-professional clients, or potential non-professional clients, of the cases where the national legislation does not allow the client's financial instruments, held by the third person, to be segregated from the financial instruments of that third person or of the investment intermediary. The notifications must also contain an explicit indication of the risks for the client, arising from the circumstance under the preceding sentences.

(3) The investment intermediary shall explicitly inform the client, where the accounts which contain its cash and financial instruments, are subject or will be subject to regulation of the law of a state, which is not a Member State. The notification must indicate that the client rights, related to the financial instruments or the cash may differ, due to the applicability of the third country's law.

(4) The investment intermediary shall explicitly inform the client of :

1. availability of possessory lien or retention right over the client cash or financial instruments for the investment intermediary and of the conditions on which such right arises or may arise;
2. availability of right to set-off over the client cash or financial instruments for the investment intermediary and the conditions on which such right arises or may arise;
3. the availability and the conditions on which the investment intermediary has or may have right to set-off in relation to client financial instruments or cash;
4. the possibility the depository institution to have possessory lien, right to retention or of set-off over the client financial instruments or cash, wherever applicable.

(5) Prior to the conclusion of a transaction for securities financing with subject financial instruments held for the account of a non-professional client, or before using in any whatever way these instruments for its own account or for the account of another client, the investment intermediary shall provide the non-professional client on a durable medium and within a reasonable time before the use of the financial instruments, with clear, complete and accurate information about the intermediary's obligations and liabilities in relation to the use of the financial instruments, including the conditions for their refunding and the existing risks.

**Art. 33.** The registered auditor of the investment intermediary shall include in his report, prepared in the audit of the investment intermediary's annual financial statement, information on compliance of the established and implemented by the investment intermediary organization in relation to the client assets keeping, with the requirements of Art. 28-31.

**Art. 34.** (1) For the execution of transactions with financial instruments, the clients of the investment intermediary shall give orders with the following minimum content:

1. the names (business name) and the unique client number of the client and of his representative, and if such numbers have not been assigned – the respective identification data under Art. 66;
2. type, issuer, ISIN code of the issue, or name of the instrument, respectively characteristics of the derivative financial instrument and number of financial instruments to which the order relates;
3. type of the order;
4. nature of the order (buy, sell, exchange, etc.);
5. unit price and total amount of the order;
6. the order's term of validity;
7. execution venue, on which the order is to be executed, if the client specifies such;
8. quantitative execution of the order (in part, in whole);
9. way of payment;
10. date, hour and place of giving the order;

11. other specific instructions by the client.

(2) Inscribed in the order shall be also its unique serial number.

(3) The giving of the orders under para 1 by a proxy shall be done only if the proxy submits notarially attested power of attorney, which contains representative authority for execution of actions of disposal with financial instruments and a declaration under Art. 25, para. 1 for a one-year period prior to giving the order. Article 24, para 5 and Art. 25 para 2 shall apply accordingly.

(4) An investment intermediary may accept orders for transactions with financial instruments, placed by clients over the telephone or by another remote means of communication. In such case the investment intermediary by the end of the working day shall draw up a document, containing the data under para 1 and the data – subject of the declarations under Art. 35, para 1, by which it attests the content of the remotely given order.

(5) Paragraph 4 shall not apply to an order, given by a representative who has not attested to the investment intermediary his representative authority, or by a proxy who failed to present in advance the documents under Art. 25 to the investment intermediary.

(6) Paragraph 4 shall not apply with regard to transfer of dematerialized financial instruments from a personal account under a client sub-account to the investment intermediary in the Central Depository.

(7) An investment intermediary may accept client orders under para 1 through an electronic trading system, which guarantees compliance with the requirements of this ordinance and ensures an access of the client to specific execution venue. The access to the system under the preceding sentence and the entry of orders by the client shall be accomplished by an electronic certificate, issued in his/her name.

(8) Upon the order acceptance, the person accepting it shall check the identity of the client, or of his representative.

(9) The investment intermediary shall provide to the client a signed copy of the accepted order under para 1, unless it is given according to para 4 and 7.

(10) The investment intermediary shall refuse to accept an order, which does not satisfy the requirements of para 1 or has been given by a proxy, without the requirements of para 3 to be complied with .

**Art. 35.** (1) Upon order acceptance, the investment intermediary shall require from the client, or from his representative, to declare if:

1. he possesses inside information about the financial instruments, to which the order relates, and about their issuer, if the financial instruments to which the order relates or on the basis of which the financial instruments – subject of the order are issued, are traded on a regulated market;

2. the financial instruments – subject of sell or exchange order, are blocked at the depository institution, in which they are safeguarded, whether there is a pledge set up on them or distraint levied;

3. the transaction – subject of the order, constitutes a concealed purchase or sale of financial instruments.

(2) The investment intermediary shall check with the depository institution if the financial instruments to which the order for sale relates are available on the client's sub-accounts, if they are blocked and whether there is a pledge set up or distraint levied over them.

(3) In case that the order is given according Art. 34, para 7, the check under para 2 shall not be made, if the electronic system does not allow the conclusion of transactions with blocked, distrained or pledged financial instruments or with financial instruments which are not available on the relevant account.

(4) The check under para 2 shall be made by the person, performing custody services with regard to the financial instruments, subject of the order, on its own initiative or on request of the investment intermediary, through which the transaction will be concluded.

(5) (New – SG, iss. 60 in 2008, in effect from 5 Sept., 2008) The check-up under para 2 shall not be carried out if the investment intermediary ensures otherwise that the financial instruments, subject of the sale, will be delivered on the date of the transaction's settlement as well as in other cases as laid down in an ordinance.

**Art. 36.** (1) The investment intermediary shall execute the client orders on the following conditions:

1. immediate and accurate registration and allocation of the orders for execution;
2. immediate execution in the sequence of their receiving of identical client orders, unless the characteristics of the order or the prevailing market conditions make this unrealizable, or the interests of the clients require otherwise;
3. the investment intermediary shall inform a non-professional client about the arisen objective difficulties, obstructing the exact execution of the orders, immediately upon coming to know of them.

(2) In the cases where the investment intermediary has committed itself to arrange or monitor for the settlement of executed by it order for client account, it shall perform the necessary actions to ensure that all client financial instruments or moneys, obtained in the settlement, are immediately and exactly transferred on accounts of the relevant client.

(3) An investment intermediary shall have no right to misuse of information for unexecuted client orders and must take all necessary actions for prevention of such misuse by any person working under a contract for the investment intermediary.

**Art. 37.** (1) An investment intermediary shall not have the right to execute client orders or transactions for its own account, in aggregation with another client order, unless the following conditions are met:

1. it must be unlikely that the aggregation of orders and transactions will work overall to the disadvantage to any client, whose order is to be aggregated;
2. the investment intermediary has disclosed to each client whose order is to be aggregated that the effect of aggregation may work to its disadvantage in relation to a particular order;
3. the investment intermediary has adopted and efficiently implements an order allocation policy, providing in sufficiently precise terms for the fair allocation of aggregated orders and transactions, including indicating how the volume and price of the orders determines allocations and the treatment of partial executions.

(2) In the cases when an investment intermediary aggregates a client's order with one or more other client's orders and the order thus aggregated has been partially executed, it shall allocate the aggregated transactions – result of the order execution, in accordance with the adopted by it policy for orders allocation.

(3) An investment intermediary, which aggregates an order for own account with one or more orders of its clients shall not have the right to allocate the concluded transactions in a way that is detrimental to the client.

(4) The investment intermediary shall apply a procedure for avoidance of repeated allocation of transactions for its own account, executed in aggregation with clients' orders, when that is detrimental to the client. The procedure of sentence one is a part of the orders allocation policy under para 1 item 3.

(5) In the cases where the investment intermediary aggregates a client's order with a transaction for its own account and the order thus aggregated has been partially executed, it shall allocate the transactions for the client's account with priority. If the investment intermediary can reasonably prove that without the aggregation it would not be able to execute the client order at such advantageous for him conditions, or could not execute it at all, it may allocate the concluded transaction proportionately between itself and the client according its policy under para 2.

**Art. 38.** (1) An investment intermediary shall not have the right to execute a client order, if the client, or his representative, refuses to file the declaration under Art. 35, para 1, it has been declared that he possesses inside information or he declares that the transaction – subject of the order, constitutes a concealed purchase or sale of financial instruments. The refusal under sentence one shall be certified by a separate document, signed by the client.

(2) An investment intermediary shall have no right to execute an order, if it has been declared or if the intermediary establishes that the securities – subject of an order for sale, are not available on the client's account or have been blocked in a depository institution, as well as if there is a pledge set up on them or distraint levied.

(3) The prohibition under para 2 in relation to pledged financial instruments shall not apply in the following cases:

1. the acquirer has been informed about the set up pledge and has stated express consent to acquire the pledged financial instruments, there is an explicit consent of the pledge creditor in the envisaged in the Registered Pledges Act cases;

2. the pledge was established on aggregation within the meaning of the Registered Pledges Act.

(4) (Am. – SG, iss. 60 in 2008, in effect from 5 Sept., 2008) The prohibition under para 2 in relation to an order for the sale of financial instruments which are not available on the client's account, shall not apply in the cases when the investment intermediary ensures otherwise that the financial instruments, subject of the sale, shall be delivered on the day of the transaction's settlement, as well as in other cases as laid down in an ordinance.

(5) An investment intermediary shall not have the right to execute a client's order for transactions with financial instruments, if that would result in violation of the Markets in Financial Instruments Act (MFIA), Law on Measures against Market Abuse with Financial Instruments (LMMAFI), the Act on Special Investment Purpose Companies (ASIPC) or some other acting statutory acts.

**Art. 39.** (1) An investment intermediary shall conclude contracts under Art. 24, para 1 and accept client orders only through natural persons who work under a contract for it and are:

1. brokers, or

2. persons, who satisfy the requirements under Art. 3, item 1 - 6 of Ordinance № 7 from year 2003 on the requirements, which must be met by natural persons, who directly, under a contract perform transactions in financial instruments and provide investment advise on financial instruments, as well as the procedure for obtaining and withdrawal of the right to pursue such activity (SG, iss. 101 in 2003) and have been entered in the register under Art. 30, para 1, item 2 of the Financial Supervision Commission Act, or

3. managers, executive members of the management body or procurators of the investment intermediary.

(2) The investment intermediary shall file an application with the Commission for entry in the register under Art. 30, para 1, item 2 of the Financial Supervision Act of the persons under para 1 item 2, to which it will enclose documents, attesting that they satisfy the requirements of the ordinance.

(3) The person shall be entered in the register under Art. 30, para 1, item 2 of the Financial Supervision Commission Act, if within one month after the filing of the application under para 2, the deputy chairman does not refuse filing.

(4) The head of the investment intermediary's internal control department shall arrange for professional instruction of the persons under para 1, item 2, necessary for the fulfillment of their obligations, upon the conclusion of a contract with the investment intermediary and regularly, by the 15<sup>th</sup> day of the month, following each quarter. In such case the person that has conducted the instruction, shall draw up a document, which shall verify the instruction's carrying out, contain general description of its subject and shall be signed by the person and the instructed individuals.

(5) An investment intermediary shall maintain at any time a updated list of the persons under para 1.

(6) The investment intermediary shall exercise an ongoing control for compliance of the actions of the persons under para 1 with the Markets in Financial Instruments Act (MFIA) and its implementing instruments.

**Art. 40.** (1) An investment intermediary shall demand from a client, who gives an order for the purchase of financial instruments, to provide to it the cash needed for the payment under the transaction – subject of the order, upon giving the order, except if the client attests that he will fulfill his liability for payment, as well as in other cases as laid down in an ordinance.

(2) If the rules of the execution venue on which the transaction will be concluded, allow the execution of a transaction where the payment for the financial instruments is not effected simultaneously with their transfer, the investment intermediary may not demand payment by the buyer, if there is express written consent of the seller for that. This shall apply accordingly also to other transfer transactions with financial instruments.

### **Section III**

#### **Conflict of Interests**

**Art. 41.** (1) Conflict of interests is a situation, which arises in relation to providing of investment and ancillary services by the investment intermediary, and may damage the interests of clients.

(2) In establishing the types of conflicts of interest which arise as a result of the provision of investment and/or ancillary services and whose existence may prejudice a client's interest, the investment intermediary takes account of, applying minimum of criteria, the circumstance whether it, a person, who works under a contract for it, or a person, directly or indirectly linked by control to the investment intermediary, falls within one of the following cases as a result of the provision of investment and/or ancillary services or otherwise:

1. is likely to make a financial gain, or avoid a financial loss at the expense of the client;
2. has an interest in the outcome of a service provided to the client or a transaction carried out on behalf of the client, which is distinct from the client's interest in that outcome;
3. has a financial or other incentive to favor the interest of another client or a group of clients over the interests of the client;
4. carries on the same business as the client;
5. receives or will receive from a person other than the client, benefits in connection with provided to the client service, in the form of cash, goods or services in violation of Art. 14, or other than the standard fee or commissions for that service.

**Art. 42.** (1) An investment intermediary shall apply efficient procedures and measures for handling of conflict of interests, set out in the rules under Art. 75.

(2) In the cases where an investment intermediary produces or arranges the production of investment researches, which are designated for dissemination or may subsequently be disseminated to the public or among the investment intermediary's clients, on the responsibility of the investment intermediary or a member of the group, to which it belongs, it shall apply all envisaged in Art. 75 para 3 measures of handling conflicts of interest with respect to the financial analyst, participating in the preparation of the research, and with respect to other working under a contract for the investment intermediary persons, whose responsibilities or business interests may come in conflict with the interests of the persons to whom the investment research is provided.

(3) In the cases under para 2, the investment intermediary must also ensure compliance with the following additional requirements:

1. the financial analyst, and the other working under a contract for the investment intermediary persons, may not conclude personal transactions or conclude transactions for the account of another person, the investment intermediary included, in financial instruments, to which the investment research relates, or in any related financial instruments, with knowledge of the likely timing or content of that investment research; sentence one shall be applied when the investment research is not publicly available or available to clients and cannot readily be inferred from information that is available to the public or the clients; the prohibition of sentence one shall be valid until the recipients of the investment research have had a reasonable opportunity to act on it; the prohibition of sentence one shall not apply to the market-makers who act in good faith and in the ordinary course of market making, as well as in the execution of an unsolicited client orders;
2. in circumstances not covered by item 1, the financial analyst and the other persons, who work under a contract for the investment intermediary and are involved in the production of investment research, must not undertake personal transactions in financial instruments, to which the investment

research relates, or in any related financial instruments, contrary to the current recommendations, except in exceptional circumstances and with the prior approval of a person of the investment intermediary's legal or internal control department;

3. the investment intermediary, financial analysts and other working under a contract for the investment intermediary persons involved in the production of the research must not receive undue according Art. 14 remunerations, commissions or non-pecuniary benefits, from persons with a material interest in relation to the subject of the investment research;

4. the investment intermediary, financial analyst and the other working under a contract for the investment intermediary persons involved in the production of the investment research, must not promise issuers, to which it relates, favorable research coverage;

5. issuers, all working under a contract for the investment intermediary persons, except the financial analyst, as well as all other persons, must not before the dissemination of investment research be permitted to review a draft of the investment research for the purpose of verifying the accuracy of the factual statements made in the research, or for any other purpose other than verifying compliance with the investment intermediary's legal obligations, if the research includes a recommendation or a target price;

(4) Related financial instrument for the purposes of para 3 means a financial instrument, the price of which is closely affected by price movements in another financial instrument which is the subject of investment research, including a derivative on that other financial instrument.

(5) The requirements under para 2 – 4 shall not apply to an investment intermediary, which disseminates to the public or among its clients investment research produced by a third person, provided the following conditions are met:

1. the investment research has been produced by a person, which is not a member of the group to which the investment intermediary belongs;

2. the investment intermediary does not alter substantially the recommendations, which the investment research contains;

3. the investment intermediary does not present the investment research as produced by it;

4. the investment intermediary verifies that the producer of the investment research is subject to the requirements envisaged in this ordinance in relation to the production of that research, or this person has established and follows a policy setting the same requirements.

(6) The investment research within the meaning of para 1 – 5 means research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or more financial instruments or the issuers of financial instruments, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public, in relation to which the following conditions are met:

1. the information is labeled or described as investment research or in another similar terms, or is otherwise presented as an objective or an independent explanation of the matters contained in the recommendation;

2. if the recommendation is provided by the investment intermediary to its client, it does not constitute the provision of investment advice.

(7) A recommendation within the meaning of the Law on Measures Against Market Abuse With Financial Instruments (LMMAFI) which relates to financial instruments within the meaning of Art. 3 of the Markets in Financial Instruments Act (MFIA) and which does not meet the conditions under para 6, shall be considered as advertising materials for the purposes of the MFIA and the investment intermediary which produces or disseminates this recommendation must clearly define it as such, as well as include in the recommendation a clear and express statement that it has not been produced in compliance with the statutory requirements, ensuring the independence of the investment research, and is not a subject of prohibition on conclusion of transactions before dissemination of the investment research.

**Art. 43.** In the cases under Art. 29 para 2 of the MFIA, an investment intermediary prior to performing for client account any action, in relation to which a conflict of interest exists, shall provide to the client on durable medium information about the conflict of interest, adequate according the characteristics of the client, so that the same may take informed decision about the investment or ancillary service, in relation to which conflict of interest arises.

**Art. 44.** An investment intermediary shall keep and up-date information on the types of investment and ancillary services or investment activities, performed by the investment intermediary or for its account, where in the course of carrying out of the service or activity, a conflict of interest arises or may arise, which results in substantial damage to the interests of the investment intermediary's client or clients.

#### **Section IV**

##### **Ongoing and Periodic Informing of Clients**

**Art. 45.** (1) In case of conclusion of a transaction for a non-professional client, other than in fulfillment of a contract for management of an individual portfolio, the investment intermediary shall, as soon as possible, but not later than the first business day, following execution of the transaction, send on a durable medium a confirmation for the concluded transaction. If the confirmation is received by the investment intermediary from a third party, the notifying of the client shall be made not later than the first business day, following the day in which the investment intermediary has received the confirmation from the third party.

(2) The confirmation under para 1 shall contain such part of the following information which is relevant to the specific transaction with corresponding application of Table 1 from Annex 1 to Regulation 1287/2006/EC;

1. identification of the investment intermediary which provides the information;
2. name/business name or other form of identification of the client;
3. date and time of the transaction's conclusion;
4. type of the given order;
5. nature of the order (buy, sell or other);
6. venue of the order execution;
7. identification of the financial instruments;
8. indicator buy/sell;

9. number;

10. unit price;

11. total amount of the transaction;

12. total sum of the commissions and expenses for the client's account, and on the client's request, also individual indication of each expense;

13. the client's responsibilities in relation to the settlement of the transaction, including the time limit for payment or delivery, as well as the details of the account to which the transfer is to be effected, when these details have not previously been notified to the client;

14. notification that the a counter party to the transaction with the client is the investment intermediary, another entity from the investment intermediary's group or another client of the investment intermediary, unless the order was executed through a trading system that facilitates anonymous trading.

(3) Where the order is executed in parts, the investment intermediary may provide, according para 2 item 9, the client with information about the price of every transaction or an average price. Where an average price is given, the investment intermediary, upon request, shall supply to the non-professional client information about the price of each transaction separately.

(4) Paragraph one shall not apply where the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the client by another person.

(5). Where the transaction under para 1 is concluded for the account of a professional client, the investment intermediary shall provide him, forthwith on a durable medium, with the substantial information on the concluded transaction.

(6) If the settlement is not carried out on the indicated date or some other change arises in the information, contained in the confirmation, the investment intermediary shall inform the client in an appropriate way by the end of the business day, in which the change has become known to the intermediary.

(7) An investment intermediary shall provide the client, on request, with information about the status of the order and its execution.

(8) Paragraphs 1 and 5 shall not apply to client orders with the subject of bonds funding mortgage loan agreements, a party to which these clients are, in which the confirmation for the transaction shall be made at the same time as the terms of the mortgage loan are communicated, but not later than one month after the execution of the order.

(9) The intermediary is entitled to supply the confirmations under para 2, using standard codes, provided it presents to the client explanations about the codes used.

(10) In the cases of given orders for a non-professional client with the subject of units or shares in collective investment undertakings which are executed periodically, the investment intermediary either shall take the actions specified in para 1, or shall provide the client, at least once in 6 months, with the information under para 2 in relation to these transactions.

(11) In the case under Art. 34 para 7, the confirmation under para 1, respectively the information under para 3-5, shall be provided to the client through the electronic system.

**Art. 46.** (1) An investment intermediary which provides to clients the service of portfolio management, shall submit on a durable medium to every client a periodic report on the performed for the client's account activities, related to portfolio management, unless such is provided to the client by a third person.

(2) In the case of non-professional clients, the report shall contain the following information, where applicable:

1. the name of the investment intermediary;
2. the name or other designation of the client's account;
3. data about the contents and the valuation of the portfolio, including details of each financial instrument held, its market value, or fair value, if market value is unavailable, and the cash balance at the beginning and at the end of the reporting period, as well as actions of the portfolio management during this period;
4. the total amount of fees and charges incurred during the reporting period, itemizing at least total management fees and total costs associated with the execution; in the cases where applicable, a statement shall be made that on request a more detailed report on the expenses will be presented;
5. a comparison of the actions of the portfolio management during the reviewed period to a benchmark, if any, indicated in agreement between the client and the investment intermediary;
6. total amount of dividends, interests and other payments received from the investment intermediary during the reporting period in relation to the client's portfolio management;
7. information on other corporate actions giving certain rights in relation to the financial instruments held in the portfolio;
8. for each transaction executed during the reporting period shall be provided the information referred to in Art. 45 para 2 item 3 – 11 where applicable; this requirement shall not apply where the client has elected to receive notifications after each concluded transaction according para 5.

(3) The investment intermediary shall provide a report under para 1 in every six months when it has concluded a contract with a non-professional client, except:

1. where a request was made by the client to receive a report on quarterly basis;
2. in the cases under para 5, the report shall be presented once in 12 months;
3. where leverage is admitted in the portfolio management in the contract between an investment intermediary and the client; in such case the report is presented at least once monthly.

(4) The investment intermediary shall expressly inform the non-professional client of the right under para 3 item 1. The exception of para 3 item 2 shall not apply to transactions with financial instruments under Art. 3 item 2 letters "c" – "i" and § 1, item 1, letter „c" of the MFIA.

(5) The client may elect to receive a report on any concluded transactions of its portfolio management after its conclusion. In the cases according sentence one, the investment intermediary shall provide the client with the material information on the transactions on a durable medium, immediately after their conclusion. In the cases where the client is non-professional, the investment intermediary shall send him a notice confirming the transaction and containing the information referred to in Art. 45 para 2, not later than the first business day, following the conclusion of the transaction or, if the confirmation is received by the intermediary from a third party, not later than the first business day following the receipt of the confirmation. Sentence three shall not apply where the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the client by another person.

(6) An investment intermediary shall inform a non-professional client for whose account it manages a portfolio, when there are uncovered open positions in a contingent liability transaction.

**Art. 47.** In the cases when an investment intermediary executes transactions in relation to portfolio management for the account of a non-professional client, or keeps accounts for such clients, that include uncovered open positions in a contingent liability transactions or transfers, the investment intermediary shall notify the non-professional client when the losses exceed the predetermined thresholds agreed with the client. The notification according sentence one shall be made no later than the end of the business day, in which the thresholds have been exceeded, or in case when that occurred on a non-business day, by the end of the next business day.

**Art. 48.** An investment intermediary shall inform its clients on conditions and under a procedure, laid down in the contract, where a liability under Art. 145 of the Law on Public Offering of Securities (LPOS) arises for the client as a result of executed for his account transactions with financial instruments, including in management of an individual portfolio of financial instruments and/or cash.

**Art. 49.** (1) An investment intermediary, which holds client moneys or financial instruments, shall provide to the client on a durable medium at least once yearly a report with the following content, unless the content of that report is reflected in another periodical report to the client:

1. details of the financial instruments or moneys held by the investment intermediary for the client's account at the end of the reporting period;
2. the extent to which any client financial instruments or moneys have been the subject of transaction for securities financing;
3. the amount of the obtained dividends or other payments to the client, by virtue of his participation in a transaction for securities financing, as well as the basis on which they have been fixed.

(2) In cases where the portfolio of a client includes the proceeds of one or more unsettled transactions, the information referred to in para 1 item 1 may be based either on the date of the transaction's conclusion, or on the settlement day, provided that the chosen approach is applied consistently by all such information in the statement under para 1.

(3) An investment intermediary which holds clients' financial instruments or cash and provides the service of portfolio management, may include the report according para 1 in the content of the report under Art. 46 para 1.

(4) The requirement under para 1 shall not apply to credit institutions regarding client deposits.

## **Chapter Five**

### **OUTSOURCING TO A THIRD PERSON**

**Art. 50.** (1) An investment intermediary may outsource the performance of critical operational functions or any investment services or activities to a third person. The outsourcing shall be realized on the grounds of a written contract between the investment intermediary and the third person, which exhaustively allocates the rights and obligations of the parties.

**Art. 51.** (1) The outsourcing of critical operational functions, as well as of investment services and activities must be done in a way which shall not result in exemption of the investment intermediary from its obligations according the Markets in Financial Instruments Act (MFIA) and its implementing instruments.

(2) The outsourcing under para 1 must not result in:

1. delegation of the responsibilities of the members of the investment intermediary's management body or of other persons who manage its operation;
2. change in the relationship of the investment intermediary with its clients or in its obligations towards them according the MFIA and its implementing instruments;
3. violation of the requirements of the MFIA and its implementing instruments, which the investment intermediary must satisfy to be granted a license and to pursue business;
4. dropping out or modification of some other condition, subject to which the license was granted.

**Art. 52.** (1) The investment intermediary must act with due care when entering into, executing or terminating a contract under Art. 50.

(2) The performance of critical operational functions or investment services and activities by a third person on the basis of outsourcing by the investment intermediary shall be realized in compliance with the following requirements:

1. the person, to whom the performance is outsourced, must have the capacity, resources and any authorizations required by law for reliable and professional performance of the outsourced to it functions;
2. the person under item 1 must perform the outsourced services effectively, for which the investment intermediary shall establish methods by which to assess the performance of the services by that person;
3. the person under item 1 must exercise due control over the carrying out of the outsourced functions and adequately manage the risk associated with such outsourcing;
4. the investment intermediary shall take appropriate actions, if it is apparent that the person under item 1 cannot perform the outsourced to it functions effectively and in compliance with the applicable statutory and regulatory requirements;
5. the investment intermediary shall maintain the necessary organization, resources and possibilities for exercising an efficient control over the outsourced to the third person functions and for management of the risks associated with that outsourcing, it shall control those functions and manage those risks;

6. the person under item 1 shall notify the investment intermediary of any change that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with the applicable statutory and regulatory requirements;
7. the investment intermediary may terminate, if needed, the contract for outsourcing, without detriment to the continuity and quality of its provision of services to the clients;
8. the person under item 1 must cooperate with the Commission and the deputy chairman in relation to the functions outsourced to it according Art. 50;
9. the investment intermediary, its auditors, the Commission, the deputy chairman and appointed by an order officials from the Commission must have effective access to the information related to the outsourced according Art. 50 activities, as well as to the premises of the person under item 1;
10. the person under item 1 shall ensure confidentiality of the received by it information, related to the investment intermediary and its clients;
11. the investment intermediary and the person under item 1 must prepare, implement and maintain a contingency plan for disaster recovery and periodic testing of backup facilities, where that is necessary having regard to the nature of the function, service or activity that has been outsourced according Art. 52.

(3) The investment intermediary shall take the necessary actions to guarantee compliance with the requirements under para 2.

**Art. 53.** (1) The investment intermediary shall outsource the performance of the services under Art. 5 para 2, item 4 of the MFIA, provided to a non-professional client, to a person established in a third country, if the following additional requirements have been satisfied:

1. the service provider has been authorized or registered for the provision of that service in its home country to provide that service and is subject to adequate supervision by that state;
2. there is a cooperation agreement concluded between the Commission and the competent authority of the third country, exercising supervision over the service provider, ensuring possibility the Commission at any time to conduct a check-up for compliance with the requirements of this Chapter, in the performance of outsourced activity by the third person.

(2) Where some of the conditions under para 1 are not satisfied, the investment intermediary may outsource investment services to a service provider located in a third country, if the investment intermediary notifies of it in writing the deputy chairman and the latter does not issue a prohibition within a one-month period of the notification, or of the submission of additional data and documents, if such have been demanded.

(3) The deputy chairman may issue a prohibition under para 2, if he/she establishes that the outsourcing under para 2 may result in violation of some of the requirements according to Art. 51 and 52, or the interests of the investment intermediary's clients have not been ensured.

(4) The deputy chairman shall publish an exemplary list of the conditions, with whose availability, it may be considered that the requirements under Art. 51 and 52 have been satisfied and the investment intermediary may conclude outsourcing arrangements with a third country service provider, for which some of the requirements under para 1 do not exist, as well as the arguments, by reason of which it may be considered that the requirements under Art. 51 and Art. 52 would be

complied with if the indicated in the list conditions are available. Irrespective of compliance with the conditions according the list of sentence one, the deputy chairman may issue a prohibition under para 3, if in any specific case it is established that the pre-conditions for that are available in accordance with para 3.

(5) The Commission shall publish a list of the competent authorities from third countries with whom it has concluded agreements, meeting the conditions of para 1, item 2.

(6) The provisions of this article do not limit the investment intermediary's liability for compliance with the requirements of Art. 51 and 52.

**Art. 54.** In case that the investment intermediary and the third person to whom the provision of services is outsourced according this Chapter, are members of the same group, with a view to complying with the requirements under this Chapter, the investment intermediary may take into account the extent to which it controls the third person or the extent to which it may exert influence on its actions.

**Art. 55.** On request by the Commission, the deputy chairman or appointed by an order officials from the Commission, the investment intermediary shall provide an access to the whole information necessary for the exercising of the supervisory functions of the Commission and of the deputy chairman, for compliance with the requirements of this Chapter with regard to performance by a third person of outsourced by the investment intermediary activity.

## **Chapter Six**

### **ACTIVITY OF REGISTRATION AGENT**

**Art. 56.** (1) An investment intermediary shall carry out activity of a registration agent, where, on the basis of a written contract with the client, it files with the relevant depository institutions data and documents for registration of:

1. transactions with financial instruments, preliminarily concluded directly between the parties;
2. transfer of dematerialized financial instruments in case of donation and succession;
3. change in data about the owners of dematerialized financial instruments, correction of wrong data, issue of duplicates of certification documents and other actions, provided for in the Rules of the relevant depository institution.

(2) In the cases under para 1 the persons, or their representatives, shall sign the required documents in the presence of a person under Art. 39, para 1, after their identity is checked.

(3) A person from the internal control department with the investment intermediary shall check whether the contract under para 1 complies with the provisions of the MFIA, its implementing instruments and with the investment intermediary's internal acts. In such case the person from the internal control department shall draw up by the end of the business day a document, whereby he/she shall verify the conducting of the check.

(4) A copy of the ID documents of the persons, or their representatives, certified by them and by the person under Art. 39 para 1, who concludes the contract for the investment intermediary according Art. 24, para 5, and in the cases under para 1 item 1 - a written statement by the parties to the transaction, or their proxies, that they do not execute and have not executed by occupation transactions with financial instruments in one-year period prior to the conclusion of the contract, and declaration under Art. 35 para 1, shall remain in the investment intermediary's records.

**Art. 57.** The transferor and the acquirer of financial instruments in the cases under Art. 56, para 1 may be represented before the investment intermediary, which pursues the business of a registration agent, by persons expressly authorized by a notarially attested power of attorney while complying with the requirements under Art. 25.

**Art. 58.** An investment intermediary, carrying out the activity of a registration agent, shall refuse to sign a contract with the client and to accept documents for making registrations under Art. 58, if:

1. not all required data and documents are available, the submitted documents contain apparent irregularities or there are inaccuracies and discrepancies in the data;
2. a party to the transaction has declared that it possesses inside information about the financial instruments – subject of the transaction, if they are traded on a regulated market or about their issuer;
3. a circumstance exists which arouses suspicion of undue identification or representation;
4. a party to the transaction, or its proxy, declares the carrying out by occupation of transactions with financial instruments in the cases under Art. 56 para 1 item 1;
5. a party to the transaction, or its proxy, declares that the transaction represents a concealed purchase or sale of financial instruments.

**Art. 59.** (1) For its activity under Art. 56 the investment intermediary shall collect fees according established by it tariff. The tariff shall be posted at a prominent and accessible place in the premise, in which the investment intermediary receives clients.

(2) On seller's request and with buyer's agreement, in case of sale trade of dematerialized financial instruments according Art. 56, para 1, item 1, the amount representing the sell price of the transaction shall be deposited with the investment intermediary – registration agent, until the transaction's registration at the Central Depository. The investment intermediary shall inform the parties to the transaction of that possibility.

(3) The investment intermediary shall disclose information on the transactions under Art. 56, para 1 item 1 according the procedure of making public concluded by it transactions, provided for in Regulation 1287/2006/EC.

**Art. 60.** Chapter Two, Three and Four shall not apply in regard to the persons who use the services of the investment intermediary only as a registration agent.

## **Chapter Seven**

### **RECORD-KEEPING**

**Art. 61.** (1) An investment intermediary shall keep on a daily basis the records under this Chapter on paper or magnetic (electronic) medium.

(2) The obligation for keeping the envisaged in this Chapter records shall be performed immediately upon occurrence of subject to recording circumstance.

(3) At the end of each working day the investment intermediary shall produce a printout of the entered during the day data under Art. 63, 64, 65, 67 and 68 with indication of the date and hour of printout, which shall be verified by the person who entered the data and by a person from the internal control office by affixing date and signature of the persons.

**Art. 62.** Upon loss of information in case of a technical failure, the investment intermediary shall immediately take actions for removal of the failure and restoration of the information in consistence with the internal rules and procedures of risk management and shall notify the Commission of the taken actions and the result.

**Art. 63.** An investment intermediary shall, in relation to every order received from a client, and in relation to every investment decision, taken in relation to portfolio management, enter in the register under Art. 33 para 1 of the MFIA at least the data under Art. 7 of Regulation 1287/2006/EC.

**Art. 64.** (1) An investment intermediary in relation to the execution of client orders and the transmission of orders to a third person for execution, immediately after the execution or the receiving of the confirmation that the order was executed, shall record in a special register the details under Art. 8 item 1 of Regulation 1287/2006/EC;

(2) An investment intermediary which transmits orders to a third person for execution, must enter in a relevant register immediately after the transmission the data under Art. 8 item 2 of Regulation 1287/2006/EC.

**Art. 65.** An investment intermediary which subscribes financial instruments from new issues for the account of its clients on their order, shall keep a register in which it shall enter the data under Art. 63 and the name of the underwriter of the issue, if any.

**Art. 66.** Where an investment intermediary assigns to its clients a unique number, it shall keep for them a register which will contain at least that number and the following data: the full name, Personal Identification Number, domicile and address, or business name, identification number BULSTAT, tax number, seat and address of the client, and if the client is a foreign person – analogous identification data. In the register according the previous sentence shall be also entered the relevant identification numbers for his representative or proxy, number and date of the power of attorney, and the investment intermediary may assign a unique number also to the representative or the proxy.

**Art. 67.** The requirements under Art. 63 and 64 shall apply accordingly also for the transactions, which the investment intermediary executes in the management of portfolios, as well as for its own account.

**Art. 68.** For its activity as a registration agent under Art. 56 para 1 item 1 and 2, the investment intermediary shall keep a separate register, in which at least the following data shall be entered:

1. date of filing and unique number of the request of the transferor and the acquirer for transfer of financial instruments;
2. unique number of the transferor and of his representative or proxy;
3. unique number of the acquirer and of his representative or proxy;
4. the type of transaction;
5. the type, issuer or ISIN code of the issue or name of the instrument, or characteristics of the derivative financial instrument and the number of the financial instruments – subject of the transfer;
6. the unit price and total amount of the transaction for purchase and sale and with other transactions for consideration (unit market price and total amount of the exchanged financial instruments);

7. the name of the person who has accepted the request for transfer and who has verified the data under item 1 - 6 with the original documents and has made the entry in the register;
8. date of registration of the financial instruments' transfer and the number of the transfer in the depository institution;
9. the name of the person who has verified the data under item 8 with the original documents and made the entry in the register.

**Art. 69.** An investment intermediary which executes contracts for repurchase of financial instruments (REPO transactions) shall keep records about them, containing at least the following data:

1. unique number of the seller to the contract and of his representative;
2. unique number of the buyer to the contract and his representative;
3. type, issuer or ISIN code of the issue or name of the instrument, or characteristics of the derivative financial instrument and number of the financial instruments – subject of the contract;
4. collateral under the contract;
5. term of the contract;
6. name of the person, who made the entry.

**Art. 70.** (1) The investment intermediary shall keep a register of the executed personal transactions by the members of the management and control bodies and by the persons who work under a contract for the investment intermediary, for which the investment intermediary has been informed or has otherwise learnt, as well as information on the authorization given and prohibitions imposed in relation to those transactions.

(2) The requirements under para 1 shall not apply to personal transactions, which meet the conditions according Art. 17 para 4.

**Art. 71.** An investment intermediary which realizes representation of owners of financial instruments before their issuer and representation at general meetings of the owners of financial instruments, shall keep records with the following minimum content:

1. issuer and type of the financial instruments;
2. unique number of the authorizers;
3. date of the general meeting of the financial instruments' owners or of performance of actions on behalf and for account of the represented before the issuer persons;
4. name of the person that made the entry.

**Art. 72.** An investment intermediary shall keep a register of the clients' complaints, in which shall be entered:

1. date of receiving and the unique number of the complaint with the investment intermediary;
2. unique number of the complainant;

3. the corresponding number of kept original documents in the investment intermediary's records, as well as other additional information;
4. the name and signature of the persons, who made the entry under item 1 - 3;
5. date of the complaint's review by the investment intermediary;
6. the actions taken in relation to the complaint;
7. the name of the person, who made the entry under item 5 and 6.

**Art. 73.** An investment intermediary shall maintain a system for keeping daily records about its balance sheet and off-balance sheet assets and liabilities, as well as about the income and expenses.

**Art. 74.** (1) The investment intermediary shall keep the whole documentation and information related to its activity on a magnetic (electronic) and/or paper medium, including such relating to:

1. the envisaged in the Ordinance registers, including the printouts under Art. 61 para 3 and other records;
2. the contracts concluded for own account or for the account of clients, the necessary declarations, written consents and powers of attorney or copies of powers of attorneys, copies of the ID documents of the clients and proxies, current data about the clients, the opened accounts and the information about the clients, the advises and notifications given to the clients of the risks associated with financial instruments, information on conflicts of interest, given orders, sent approvals, other notifications, reports and payment documents for the transactions with financial instruments, as well as any other information provided to the client or received by it according the MFIA and this Ordinance;
3. copies of the documents, related to the activity of the investment intermediary as a registration agent, including the concluded contracts, the required written statements, powers of attorney or copies of powers of attorneys, copies of the ID documents of the proxies;
4. the advertising materials and publications;
5. the acts about the internal organization of the investment intermediary, the clients' complaints and the internal investigations;
6. the internal and external outgoing and incoming correspondence;
7. recordings of the telephone conversations and the e-communications between the investment intermediary and its clients;
8. the general conditions and the tariff which the investment intermediary applies, including the period for which they are effective, and any amendment and supplement thereto;
9. the personnel schedule and the list of the other persons who work for the investment intermediary, as well as any amendment and supplement thereto, and the documents certifying that the persons satisfy the requirements of the statutory acts.

(2) Where copies of documents are provided, prepared on paper medium, they shall be certified by the persons who provide them and by the person in the investment intermediary who accepts them under Art 24 para 5.

(3) The investment intermediary on request of the deputy chairman, or of officials from the Commission's administration, in the conducting of inspection, shall ensure a translation, including by a sworn translator, of the documents under para 1, received in or issued by the investment intermediary in foreign language.

(4) An investment intermediary shall keep in the course of 5 years the documentation, as well as the information under para 1 in an accessible and suitable for use place and in a manner which ensures their backup storage on a second medium, or their restoration in case of loss due to technical reasons. Documents and information which establish rights and obligations of the investment intermediary or the client in relation to the provided services or the conditions on which the investment intermediary provides services to the clients shall be kept for the duration of the whole period of existence of relations with the client, but not less than 5 years.

(5) In exceptional circumstances the deputy chairman may obligate the investment intermediary to retain documents and information under para 1 for a longer period with a view to the nature of the instruments or the transactions, if that is needed for the exercising of its supervisory powers.

(6) The storage of the documentation and the information according para 1 shall be done in a way which allows:

1. the Commission, or the deputy chairman, to make check-ups, to have prompt access to it and to be able to receive information on any stage of the execution of any transactions;
2. amendments or supplements to be made, but the content of the documentation and the information before the amendments or the supplements to be easily established;
3. protection against any manipulations or counterfeits.

## **Chapter Eight**

### **INTERNAL ORGANISATION, INTERNAL CONTROL, RISK MANAGEMENT AND INTERNAL AUDIT**

#### **Section I**

##### **Internal Organization**

**Art. 75.** (1) The rules on the internal organisation of the investment intermediary under Art. 24, para. 2 of the Markets in Financial Instruments Act (MFIA) shall at least have the following contents:

1. in-depth description of the investment intermediary's organisational structure and of the official positions in the separate structural units, including clear allocation of the functions and responsibilities in connection with the services rendered and activities performed by the investment intermediary under Art. 5, paras. 2 and 3 of the Markets in Financial Instruments Act amongst these units and official positions, the relationships of co-ordination and subordination amongst them, as well as the procedures for adopting decisions in connection with the activities performed by the investment intermediary;

2. establishment of the requirements to occupy any of the official positions under item 1, guaranteeing the availability of the skills, knowledge and expertise necessary for the professional discharge of the respective functions;

3. establishment of unambiguous requirements with regard to the type, time period and manner of information provision, which information is to be exchanged amongst the different structural units within the investment intermediary for the purpose of ensuring the performance of the functions of these units and of the investment intermediary as a whole;

4. the investment intermediary's policy with regard to handling of conflicts of interest, in compliance with the investment intermediary's size and organizational structure, as well as the nature, scale and complexity of its business; the policy shall contain in relation to each specific service or activity, performed by or for the account of the investment intermediary, the circumstances constituting conflict of interest or which may lead to a conflict of interest, entailing a risk of damaging the interests of a client or clients of the investment intermediary, including such circumstances that are or must be known to the investment intermediary and which may lead to conflict of interest resulting from the structure of the group, a part of which the investment intermediary is, and the activities of the remaining members of the group, as well as the procedures and measures for handling such conflicts;

5. comprehensive and clear procedures for the manner of performance of the investment intermediary's obligations guaranteeing the duly and accurate performance of the obligations of the persons who work under a contract for it;

6. the conditions for consolidation and separation of client orders;

7. the conditions regarding performed by the investment intermediary holding of provided by clients financial instruments and cash;

8. the terms and conditions for book-keeping and safekeeping information;

9. efficient and transparent procedures for reasonable and timely review of the complaints received from non-professional clients or potential non-professional clients.

(2) The allocation of the functions and the responsibilities under para. 1, item 1 shall guarantee the professional performance of each of them. Holding more than one function by the persons working under a contract for the investment intermediary shall be allowed unless it jeopardizes and violates the normal, objective and professional performance of the separate functions.

(3) The procedures and measures for handling of a conflict of interest provided for according para. 1 item 4, are to guarantee that the persons who work under a contract for the investment intermediary perform the different activities including conflict of interest pursuant to para. 1 item 4 at a degree of independence of the performance, adequate to the size and the activities of the investment intermediary and the group it belongs to, as well as the nature of the risk of damage to the client's interests. The procedures and measures under para 1 item 4 shall include such part of the following which would be necessary to ensure the required degree of independence.

1. efficient procedures for prevention, respectively for exercise of control over the exchange of information among the persons, performing activities that include conflict of interest, where the exchange of such information may impair the interests of a client or clients of the investment intermediary;

2. independent control over the persons whose main functions include the performance of services on behalf of and/or for the account of clients or the provision of services to clients, where a conflict may arise among the clients' interests, or who in some other way represent different conflicting interests, among which a conflict may arise, including the investment intermediary's interest;

3. lack of direct interlink between the remuneration of the persons mainly performing one activity and the remuneration of the persons mainly performing different activity for the investment intermediary, or the incomes realized by the latter, if a conflict of interests may arise in connection with these activities;
  4. measures to prevent or restrict the possibility to exercise inappropriate influence on the part of any person over the manner in which a person performing activities for the investment intermediary renders services and performs the activities under Art. 5, paras. 2 and 3 of the Markets in Financial Instruments Act (MFIA);
  5. measures to prevent, or to exercise control over the simultaneous or successive participation of one person who works under a contract for the investment intermediary, in performing separate investment or ancillary services or activities, where such participation may damage the duly management of conflicts of interest;
  6. other necessary and appropriate measures and procedures, alternative or additional to those specified under item 1-5, if the latter cannot ensure the required degree of independence;
  7. measures and procedures with a view to guaranteeing the observance of the requirements under Art. 42 para. 3.
- (4) The terms and conditions under para. 1, item 7 shall ensure minimization of the risk of loss of or decrease in the client assets or the rights in connection with these assets as a result of abuse, fraud, bad management, lack of relevant accountability or negligence.
  - (5) The terms and conditions under para. 1, item 8 shall provide for the establishment, implementation and maintenance of systems and procedures which are to guarantee the safety, integrity and confidentiality of the information, relevant to the nature of the information kept.
  - (6) The rules under para. 1 shall ensure the performance of services and activities by the investment intermediary in compliance with the requirements of the Markets in Financial Instruments Act and its implementing instruments. The set up in the investment intermediary internal organization shall ensure the timely establishment of any risk from non-compliance of the investment intermediary's activity with the requirements of the MFIA and its implementing instruments.
  - (7) The rules under para. 1 are to ensure continuity of the activities performed by the investment intermediary for the purpose where in the case of temporary cease of the functioning of the systems and procedures established by the intermediary, the information and functions of the intermediary of primary importance, as well as the provision of the investment services and activities are to be preserved, and where this is impossible – to recover in due time the information and functions and resume performing investment services and activities.
  - (8) Upon assumption of office or upon starting activities, the members of the management and supervisory bodies of the investment intermediary and all other persons who work under a contract for the investment intermediary shall acquaint themselves with the rules under para. 1, which shall be verified in writing. The requirement under the preceding sentence shall also apply in the case of any subsequent amendment to the rules under para 1.
  - (9) The management body of the investment intermediary shall annually, by 31st of January, review and assess the conformability of the rules under para. 1 to the services and activities performed by the investment intermediary, where in the case of incompleteness and/or necessity to improve the

internal organization, it shall adopt amendments and supplements to the rules. Regardless of the requirement of the preceding sentence, the management body shall adopt amendments and supplements to the rules under para 1, when establishing a need for that.

## **Section II**

### **Internal Control**

**Art. 76.** (1) An investment intermediary shall have an internal control department, which operates independently and:

1. exercises an ongoing control over and assesses the adequacy and efficiency of the measures and procedures under Art. 75 para 1, as well as the actions taken for removal of the inconsistencies in the investment intermediary's operation with the requirements of the MFIA and its implementing instruments;

2. provides advice and assists the persons responsible for the performed by the investment intermediary services and activities, with the purpose of ensuring their realization in compliance with the requirements of the MFIA and its implementing instruments;

3. fulfills other functions, assigned to it pursuant to the Ordinance and the rules under Art. 80.

(2) The internal control shall be established and realized in accordance with the nature, scale and the complexity of the investment intermediary's activities, as well as with the type and scope of the performed investment services and activities.

(3) The officials from the internal control department must satisfy the requirements under Art. 3, item 1 - 6 from Ordinance № 7 in 2003 on the requirements which must be met by natural persons who directly execute transactions in securities and provide investment advice on securities under a contract and also the procedure for acquisition and revocation of the right to carry out such activities and to possess the required for the performance of the assigned to them functions skills, knowledge and experience.

(4) An official from the internal control department shall be present at the registered office and in any branch or office, in which contracts under Art. 24, para 1 are concluded and orders are accepted.

(5) The way of fixing the labor remuneration and all additional payments to the persons from the internal control department must not create preconditions for non-objective performance of the functions of those persons.

(6) The officials from the internal control department shall be entitled to full access to the whole needed information and to all documents, related to the exercising of the control under para 1.

(7) The members of the management and supervisory bodies of the investment intermediary and all other persons who work under a contract for the investment intermediary are under the obligation to assist the officials from the internal control department in the exercising of their functions.

(8) The head of the internal control department shall conduct an instruction of the officials from the department upon their appointment, as well as regularly, by the 15<sup>th</sup> day of the month, following every quarter. In such case the head of the internal control department shall draw up a document, whereby he/she shall verify the carrying out of the instruction.

**Art. 77.** (1) The head of the internal control department shall be appointed, report to and dismissed on conditions and under a procedure according the investment intermediary's basic instruments.

(2) The head of the internal control department must satisfy the requirements of Art. 3, item 1, 2, 4 - 6 of Ordinance № 7 in 2003 on the requirements which shall be met by the natural persons who under a contract, directly, execute transactions in securities and provide investment advice with regard to securities and also the procedure for acquisition and revocation of the right to carry out such activities, to have completed higher education and not less than 3 years of experience in the field of capital markets.

(3) The person in charge of the internal control department may not be a member of the management or supervisory bodies, a broker, investment adviser or some other person, to whom the operating management of the investment intermediary has been entrusted or who participates in the performance of activities or separate actions, over which control is exercised. The preceding sentence shall also apply to all officials from the internal control department.

**Art. 78.** (1) At the end of every business week the internal control department shall make an inspection of the accepted orders, documents, presented or drawn up in relation thereto, the confirmations to clients given under Art. 45 and the payments made, as well as of the transactions which the members of its management and supervisory bodies, and the persons working under a contract for the investment intermediary, have concluded for their own account through the investment intermediary, respectively of the provided information under Art. 17 para 2 item 2 during that week, for compliance with the provisions of the MFIA and its implementing instruments.

(2) At the end of every month the internal control department shall conduct an inspection of the operations under every managed by the investment intermediary portfolio, and the reports submitted to the clients, during the relevant month, for compliance with the provisions of the MFIA and its implementing instruments.

(3) The internal control department shall also carry out other inspections for compliance of the investment intermediary's operation with the provisions of the MFIA and its implementing instruments.

(4) In the conducting of inspections under para 1 - 3, a protocol shall be drawn up indicating the concrete contracts and orders, subject of inspection, as well as the established irregularities and the directions given according Art. 76 para 1 item 2.

(5) Within 3 business days after the inspection's carrying out, the protocol shall be submitted to the person in charge of the internal control department, who shall acquaint himself with the findings therein and approve it, or direct the performance of additional actions.

**Art. 79.** (1) The person in charge of the internal control department shall prepare and present to the management body, as well as to the supervisory body, if any, of the investment intermediary by the 3<sup>rd</sup> day of every month a report on the inspections carried out by the internal control department during the preceding month. To the report shall be attached the protocols of the inspections carried out.

(2) The report according to para 1 shall state the irregularities established and the measures taken for their elimination, and the adoption of new measures by the management body shall be proposed. The report shall also contain an assessment of the internal organization and internal control system

acting in the investment intermediary, including the rules under Art. 75 para 1 and Art. 80, with a view to their ability to ensure the investment intermediary's lawful operation and the timely establishment of execution of activity in violation of the statutory requirements, as well as proposals to the management body for the adoption of amendments to the rules under Art. 75 para 1 and Art. 80, in case that they do not ensure to a sufficient extent the fulfillment of these requirements.

(3) The investment intermediary shall inform within 3 business days of receiving the report under para 1, the Commission about the irregularities established by the internal control department, described therein, and about the measures undertaken in relation to them.

**Art. 80.** (1) The management body of the investment intermediary shall adopt internal control rules, as well as policies and procedures for the establishment of any risk of default on the investment intermediary's obligations under the MFIA and its implementing instruments and the related risks and adequate measures and procedures for the minimization of these risks, appropriate to the pursued by the investment intermediary business;

(2) The management body of the investment intermediary on a yearly basis, by 31<sup>st</sup> of January shall review and assess the rules, policies and procedures under para 1 with the purpose of ensuring the lawful, efficient and reliable functioning of the internal control department, and in case of deficiencies and/or need of the internal control improvement, shall adopt amendments and supplements to the rules. Regardless of the requirement of the preceding sentence, the management body shall adopt amendments and supplements to the rules, policies and procedures according to para 1 whenever the necessity of it is established.

**Art. 81.** (1) An investment intermediary, by decision of the management body, may not apply in its activities the measures under Art. 76, para 5 and/or Art. 77 para 3, if they are not needed with a view to the scale and complexity of its activities and the type and scope of the performed investment services and activities, and if non-compliance with them does not create jeopardy for the lawful, efficient and reliable exercising of the internal control in the investment intermediary.

(2) The investment intermediary, latest on the next business day after taking the decision under para 1, shall notify the deputy chairman of that decision, producing evidence for compliance with the conditions under para 1.

(3) On the basis of the notification under para 2 the deputy chairman shall make an assessment of the compliance with the conditions under para 1, and may direct in writing to the investment intermediary to continue to apply in its activities the requirements under Art. 76 para 5 and/or Art. 77 para 3 if those conditions were not complied with. Directions under the preceding sentence may be given after the receiving of the notification under para 2, or upon the receiving of additional data, on the basis of which the conclusion can be made that the conditions under para 1 were not complied with.

### **Section III**

#### **Risk Management**

**Art. 82.** (1) The management body of the investment intermediary shall adopt and apply rules for risk management, adequate to the pursued by the investment intermediary business, which shall:

1. contain policy and procedures which identify the risks relating to the investment intermediary's activities, procedures and systems, as well as to the tolerated by the investment intermediary level of risk, if such can be established;

2. contain effective procedures and measures to manage the risks associated with the investment intermediary's activities, procedures and systems in accordance with the tolerated by the investment intermediary admissible level of risk;

3. include mechanisms for exercising control over the adequacy and efficiency of the policy and procedures under item 1 and over compliance by the investment intermediary and the persons who work under a contract for the investment intermediary, with the procedures and measures under item 2;

4. include mechanisms for control over the adequacy and effectiveness of the measures taken to eliminate found out deficiencies and inconsistencies in the policy and procedures under item 1 and the procedures and measures under item 2, including the impossibility for their observance by the persons.

(2) The management body of an investment intermediary shall at least once in a quarter review and assess the rules under para 1, and in case of deficiencies and/or need of improvement of the risk management, shall adopt amendments and settlements to the rules. Regardless of the requirements according the preceding sentence, the management body shall adopt amendments and supplements to the rules under para 1 whenever the need of that is established.

(3) An investment intermediary where applicable and in view of the nature, scale and complexity of its business and the nature and range of the performed investment services and activities undertaken in the course of that business, shall have a risk management department, which operates independently and applies the policy and procedures under para 1.

(4) The risk management department shall prepare and present to the management body, as well as to the supervisory body, if any, of the investment intermediary by the 10<sup>th</sup> day of every month a report on the department's activities in the preceding month, in which it shall indicate the established deficiencies and inconsistencies in the policy and the procedures under para 1 item 1 and the procedures and measures under para 1 item 2, as well as the measures taken for their elimination.

(5) An investment intermediary may not establish a risk management department according para 3 if the maintenance of such is not appropriate in view of the nature, scale and complexity of its business and the nature and range of the performed investment services and activities undertaken in the course of that business and may prove at any time that the policy and procedures established according para 1 satisfy the requirements of para 1 and are effective.

(6) In the case under para 5, on request of the deputy chairman, the investment intermediary shall submit evidence of the availability of the conditions under para 5. The deputy chairman may order the investment intermediary to establish a risk management department according para 3, if the conditions of para 5 were not complied with.

#### **Section IV**

##### **Internal Audit**

**Art. 83.** (1) An investment intermediary, where applicable, and in view of the nature, scale and complexity of its business and the nature and range of the performed investment services and activities undertaken in the course of that business, shall set up and maintain an internal audit department which functions separately and independently from the other departments and activities and examines and evaluates the adequacy and effectiveness of the adopted by the investment

intermediary internal rules and the established systems of internal organization, internal control, information storage and processing, accounting, etc.

(2) To the persons from the internal audit department shall apply accordingly the requirements under Art. 76 para 3 and Art. 77 para 3, and for the person in charge of the department – the requirements under Art. 77 para 2.

(3) The person in charge of the internal audit department shall adopt a plan for conducting the audits under para 1 and shall ensure its observance.

(4) After conducting an audit in consistence with the plan according para 3, the person in charge of the internal audit department may give recommendations for removal of the established deficiencies and inconsistencies. In the cases under the preceding sentence, the department shall check the undertaken in compliance with them actions and the applied measures and shall verify their fulfillment.

(5) The internal audit department shall prepare and present to management body, as well as to the supervisory body, if any, of the investment intermediary by the 10<sup>th</sup> day of every month, a report on the department's activities for the preceding month, where it shall indicate the established deficiencies and inconsistencies, as well as the measures taken for their removal.

(6) An investment intermediary may not set up an internal audit department, or it may consists of one person only, if the maintenance of such according para 1-3 is not appropriate and proportionate in view of the nature, scale and complexity of its business and the nature and range of the performed investment services and activities.

(7) In the case under para 6, on request of the deputy chairman, the investment intermediary shall submit evidence of the availability of the conditions under para 6. The deputy chairman may order the investment intermediary to set up an internal audit department, if the existence of such is needed in view of the nature, scale and complexity of the investment intermediary's business and the nature and range of the performed investment services and activities.

(8) The management body of an investment intermediary shall on an annual basis, by 31<sup>st</sup> January, review and assess the operation of the internal audit department and shall undertake appropriate measures if it is necessary to improve its activities. Regardless of the requirement under the preceding sentence, the management body shall take appropriate measures to improve the internal audit whenever the need of that is established.

## **Chapter Nine**

### **PROVISION OF INFORMATION**

**Art. 84.** (1) The persons that have been granted a license to pursue the business of an investment intermediary shall file with the Commission within a 7-day period:

1. a copy of decision of the regional court for entry of the company in the commercial register, or of the change in the subject of activity;

2. a list with the addresses of the premises, in which the relevant activity will be carried out, copy of a document (notarial act or another act of ownership, notarial act for established real right to use, lease contract), verifying rights over the premises, in which the relevant activity will be carried out, and a fire safety certificate for those premises;

3. written information about the hardware and software required for pursuance of the business.

(2) A copy of the decision under para 1 item 1 shall be filed with the Commission within a 7-day period, and the documents under item 2 and 3 – within a 14-day period – after coming into effect of the decision for entry in the commercial register.

**Art. 85.** (1) Investment intermediaries shall notify the Commission of:

1. any change in the subject of activity, the business name, seat and registered office, the identification code BULSTAT or the tax number;

2. opening or closing of a branch or office;

3. change in the way of representation;

4. amendment and/or supplement to the Articles of Association, or the Memorandum of Association, and the applied rules, procedures and systems of the investment intermediary;

5. any change in the circumstances, reflected in documents which served as a ground a license to be issued for carrying out the activity of an investment intermediary, and in the documents under Art. 84, para 1;

6. arising of or change in a circumstance, as a result of which the statutory requirements to the members of the management or supervisory body, to other persons, to whom the management of the company has been entrusted, or to other persons who work under a contract for the investment intermediary, are no longer met;

7. replacement of a person, to whom the management of the company has been entrusted, of the persons under Art. 39 para 1, of the person in charge of and officials from the internal control department, from the internal audit department and from the risk management department;

8. withdrawal of a license to pursue business, as well of imposition of other coercive measures, administrative sanctions and other sanctions for grave offences related to the company's subject of activity on members of the management and supervisory bodies and to persons working under a contract for the investment intermediary by the Bulgarian National Bank, by other government authorities, by the regulated market in financial instruments or by the depository institution;

9. initiation of bankruptcy proceedings;

10. taking a decision for winding-up;

11. initiation of liquidation proceedings;

12. occurrence of some other circumstances, subject to entry in the Commission's register, or changes in these circumstances.

(2) The obligation according para 1 shall be performed by the investment intermediary within a 7-day period of:

1. the decision-making by the competent authority under para 1 item 1, 2, 3, 4, 7 and 10, and when the circumstance is subject to entry in the commercial register – of the entry;

2. learning of the occurrence of or the change in the circumstance under para 1, item 5, 6, 8, 9 and 11;

3. the decision-taking by the competent authority under para 1 item 12, and when the circumstance is subject to entry in the commercial register- from the entry, or coming to know of the occurrence of or the change in the circumstance.

(3) The investment intermediary after any amendment under para 1 item 4 shall present a full text of the relevant document with the amendments as of the respective date under para 2 item 1.

(4) By making the notification under para 1 the investment intermediaries declare that no other circumstances have occurred, including changes in already occurred circumstances.

(5) An investment intermediary shall pay in due time the annual fee for the exercising of general financial supervision, including for processing of the obligatory current and regular information and for the conducting of inspections.

**Art. 86.** (1) By the 15<sup>th</sup> day of the month from which a new quarter begins, the investment intermediary shall inform the Commission about the number and the summarized content of:

1. the received during the past quarter written complaints, if any, by its clients, as well as the results of the received complaints' review;

2. the legal proceedings related to its subject of activity as an investment intermediary, initiated during the past quarter by it and against it, or against members of its management and supervisory bodies and against the persons working under contract for it, as well as about the judgments given on the pending lawsuits, if any.

**Art. 87.** An investment intermediary which executes transactions and activities with financial instruments in a third country shall inform the Commission within 3 business days about the executed during the past week transactions and activities abroad for its own account and for client account, about the market situation, the keeping and exercising of the rights attaching to the foreign financial instruments, which the investment intermediary holds for its account or for clients' account or which are directly owned by its clients.

**Art. 88.** The deputy chairman may adopt guidelines on the ways of provision of the information under this Chapter.

## **Chapter Ten**

### **ADMINISTRATIVE LIABILITY AND PENALTY PROVISION**

Art. 89. (1) The persons who have committed offences of the Ordinance, and the persons who admitted the commitment of such offences, shall be punished according Art. 127 para 1 of the MFIA.

(2) The acts of the established offences of the Ordinance shall be drawn up by authorized by the deputy chairman officials, and the penal warrants shall be issued by the deputy chairman.

(3) The establishment of the offences, the issue, appeal against and the execution of the penal warrants shall be done under the Administrative Violations and Sanctions Act.

## **ADDITIONAL PROVISIONS**

**§ 1.** (1) Within the meaning of the Ordinance:

1. ‘Distribution channels’ shall mean ‘distribution channels’ within the meaning of § 1, item 9 of the Law on Measures against Market Abuse with Financial Instruments (LMAMAFI).
2. “Durable medium” means any instrument which enables a client to store information addressed personally to that client in a way accessible for future reference for a period of time adequate for the purposes of the information provision and which allows the unchanged reproduction of the information stored.
3. ‘Persons who work under a contract for the investment intermediary’ shall be:
  - a) the members of the intermediary’s management bodies;
  - b) employees of the intermediary as well as any other person whose services are placed at the disposal and under the control of the intermediary and who is involved in the provision of investment services and activities;
  - c) a natural person who is directly involved in the provision of services to the investment intermediary under an outsourcing arrangement for the purpose of the provision by the intermediary of investment services or activities.
4. ‘Financial analyst’ means a person who works under a contract for the investment intermediary and produces investment research.
5. ‘Person with whom a person working under a contract for the investment intermediary, has a family relationship’ shall mean:
  - a) spouse of a person under item 3, or any partner of that person considered by national law as equivalent to a spouse;
  - b) dependent children;
  - c) any other relatives of a persons according item 3 who have shared the same household as that person for at least one year on the date of the personal transaction concerned.
6. “Trading venue” for the purposes of Art. 2, 4 and 5 means a regulated market, multilateral trading facility, systematic internaliser or market maker or another liquidity supplier or an entity, which performs similar to the above mentioned functions in a third country.
7. "Execution by occupation of transactions with financial instruments" exists in case of:
  - a) conclusion of transactions with financial instruments on behalf and for the account of more than three persons, who are not relatives in the direct line without limitation, relatives in the collateral line up to the third degree inclusive, or a spouse of the person who concluded the transactions, or
  - b) direct execution (not in fulfillment of orders given to an investment intermediary) of more than three transactions with financial instruments for own account with persons who are not investment intermediaries or persons under letter "a"; this restriction shall not apply to transactions with financial instruments under Art. 149a, para 4 of the LPOS.
8. "Concealed purchase or sell of financial instruments" means a sequence of transactions and actions, related to financial instruments, through which the result is achieved of purchase and/or sale of such financial instruments, for instance, exchange of shares with government financial

instruments and subsequent sale of the government financial instruments or exchange of shares with debt financial instruments with a residual term until maturity not less than one month. The concealed purchase or sale of financial instruments shall be presumed if the sequence of transactions and actions under the preceding sentence have been carried out within a period of one month.

9. “Personal Transaction” means a trade in financial instruments effected by or on behalf of a person who works under a contract for the investment intermediary, where at least one of the following criteria are met:

a) the person who works under a contract for the investment intermediary is acting outside the scope of the activities he carries out in that capacity;

b) the trade is carried out for the account of any of the following persons:

aa) the person who works under a contract for the investment intermediary;

bb) any person with whom the person under letter “aa” has a family relationship, or with whom he is a related person;

cc) a person whose relationship with the person under letter “aa” is such that the person under letter “aa” has a direct or indirect material interest in the outcome of the trade, other than fees or commissions for the execution of the trade.

10. “non-complex financial instruments” are the financial instruments under Art. 28 para 6 item 1 of the MFIA, as well as other financial instruments which satisfy the following criteria:

a) they are not securities within the meaning of § 1 item 1 letter “c” of the Additional Provisions and financial instruments within the meaning of Art. 3 item 2 letter “c” – “i” of the MFIA;

b) there are frequent opportunities to dispose of, redeem, or otherwise realize those instruments at prices which are publicly available to market participants and that are either market prices or prices made available, or validated, by valuation systems independent of the issuer;

c) they do not involve any actual or potential liability for the client that exceeds the cost of acquiring the instruments;

d) adequately comprehensive information on its characteristics is publicly available and is likely to be readily understood so as to enable the average non-professional client to make an informed judgment as to whether to enter into a transaction in that instrument;

11. “Securities financing transaction” means a trade for securities financing within the meaning of Art. 2 paragraph 10 of Regulation 1287/2006/EC.

**§ 2.** (1) Any document which this Ordinance requires to be drawn up in writing may be drawn up as an electronic document, provided that it is signed in accordance with the Law for the Electronic Document and Electronic Signature and relevant compliance with the other provisions of the Ordinance is ensured.

(2) In the cases when the electronic document contains an electronic statement, whose addressee is the Commission or the deputy chairman, it may be signed only with a universal electronic signature.

(3) The Commission shall give obligatory directions on the application of the preceding paragraphs.

## **TRANSITIONAL AND FINAL PROVISIONS**

§ 3. This Ordinance implements the provisions of Commission Directive 2006/73/EC implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organizational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

§ 4. This Ordinance supersedes Ordinance No. 1 in 2003 on the requirements to the investment intermediaries' activities (SG iss. 90 in 2003).

§ 5. The Ordinance is issued on the ground of § 25 in relation to Art. 24 para 2 and 6, Art. 32 para 7, Art. 33 para 4, Art. 34 para 5, Art. 39 para 1 item 5, Art. 41 para 2, Art. 43 and Art. 50 para 1 of the MFIA and was adopted by Resolution No. 84-H from 25 July, 2007 of the Financial Supervision Commission.

§ 6. The Financial Supervision Commission shall give obligatory directions on the Ordinance application.

§ 7. The deputy chairman may prepare model forms of written statements and other standardized documents.

§ 8. The deputy chairman shall approve a list containing minimum data and information for which the investment intermediaries must keep records according the MFIA and this Ordinance.

§ 9 This Ordinance comes into effect from 1<sup>st</sup> November, 2007.

**TRANSITIONAL AND FINAL PROVISIONS** to the Ordinance on Amendment and Supplement of Ordinance No. 38 from 2007 on the requirements to the activities of investment intermediaries (SG, iss. 60 in 2008, in effect as from 5 Sept., 2008)

§ 3. The depository institution of the financial instruments and the regulated market on which orders for sale of the financial instruments are executed, which at the moment of the sale are not available on the seller's account, shall create and maintain mechanisms, systems and procedures for management of the risks associated with the clearing and settlement of these transactions, including by the establishment of a guarantee system for their securing.

§ 4. The Ordinance shall come into effect two months after its promulgation in State Gazette.

**TRANSITIONAL AND FINAL PROVISIONS** to the Ordinance on Amendment and Supplement of Ordinance No. 38 from 2007 on the requirements to the activities of investment intermediaries (SG, iss. 39 in 2009)

§ 2. Upon termination of contractual relations arisen before the coming into effect of the Ordinance, between an investment intermediary and a client, whose financial instruments are kept on a client sub-account with the investment intermediary at the Central Depository, if within the provided by the investment intermediary reasonable term, the client fails to indicate other member of the Depository, on whose sub-account the financial instruments are to be transferred, the investment intermediary shall have the right to transfer them on a personal account of the client, including by opening a new account, according a procedure set forth in the Central Depository's Rules.