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**REVISION OF THE INVESTMENT SERVICES  
DIRECTIVE (93/22/EEC)**

**ANNEX I : REVISED ORIENTATIONS**

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## **1. OBJECTIVES AND SCOPE OF DIRECTIVE:**

### **1.1. Objectives**

#### *1.1.1. Investor protection and free provision of services:*

This Directive harmonises the initial authorisation and operating conditions for EU investment firms so as to ensure a high level of protection for investors and clients relying on investment firms to perform services on their behalf, thereby creating the conditions under which those firms can freely provide services in other Member States on the basis of authorisation and supervision undertaken by the competent authority in its country of authorisation, and/or establish branches for conduct of business subject to common operating and organisational requirements and based on clear division of enforcement responsibilities between competent authorities.

#### *1.1.2. Market regulation, access to and competition between trading arrangements:*

This Directive establishes the harmonised provisions defining the requirements which regulated markets and investment firms must respect so as to promote the efficient, integrated and orderly functioning of the inter-connected EU system of markets and facilities for trading of financial instruments, so as to facilitate access to trading facilities by investment firms for the purposes of dealing on behalf of customers or own accounts, and to promote competition between all trading arrangements with the result that investors and issuers benefit from expanded investing or financing possibilities whilst being able at all times to make informed judgements in respect of proposed investments (in equity). It also harmonises the obligations of investment firms to the market and other counterparties when dealing on own account in the financial markets.

#### *1.1.3. Obligations of competent authorities and supervisory cooperation:*

This Directive specifies the role and responsibility of competent authorities in enforcing these provisions, and enshrines obligations to cooperate immediately and effectively with corresponding authorities from other Member States so as to ensure that infringements of this Directive, having a cross-border character, are pursued and punished as effectively as infringements perpetrated within a single Member State jurisdiction.

### **1.2. Scope of the Directive**

The relevant provisions of this Directive shall apply to all investment firms, meaning any legal person (and natural persons in accordance with relevant provisions of the

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Directive)<sup>1</sup> the regular occupation or business of which is the provision of investment services or the undertaking of investment activities as set out in section A of the annex. Any such person must receive an appropriate license from the relevant competent authority in accordance with the provisions of this Directive. This Directive shall also apply to the provision of non-core services listed in Section B of the Annex by Investment Firms licensed to provide core services or activities.

The relevant provisions of this Directive shall apply to all Regulated Markets which must be licensed by the relevant competent authority prior to operating as a “regulated market”.

### **1.3. Provisions applying to credit institutions providing investment services:**

The provisions of this Directive which lay down organisational arrangements and operating conditions in respect of investment activities and services shall apply to credit institutions which are authorised, under Directive 2000/12/EC, to perform one or more of the core services or activities listed in Section A of the Annex to this Directive.

### **1.4. Exemptions from the Scope of the directive**

This Directive shall not apply to:

- (a) insurance undertakings as defined in Article 1 of Directive 73/239/EEC or Article 1 of Directive 79/267/EEC or undertakings carrying on the reinsurance and retrocession activities referred to in Directive 64/225/EEC;
- (b) firms which provide investment services exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings;
- (c) firms that provide investment services consisting exclusively in the administration of employee-participation schemes;
- (d) firms that provide investment services which involve both administration of employee-participation schemes and the provision of investment services exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings;
- (e) persons providing an investment service where that service is provided in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the provision of that service;

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<sup>1</sup> The provisions of Art. 1(2) relating to possibility for Member States to authorise natural persons as investment firms subject to additional conditions laid down in that provision will be retained.

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- (f) the central banks of Member States and other national bodies performing similar functions and other public bodies charged with or intervening in the management of the public debt;
  - (g) collective investment undertakings whether co-ordinated at Community level or not and the depositaries and managers of such undertakings, except when the management company provides individual portfolio management (link to the new UCITS directive);
  - (h) persons providing dealing for own account in financial instruments as an ancillary activity to their main business, where that main business is not the provision of investment services within the meaning of this Directive or banking services under 2001/12/EEC;
  - (i) firms that provide investment services consisting exclusively in dealing for their own account on financial-futures or options markets or which deal for the accounts of other members of those markets or make prices for them and which are guaranteed by clearing members of the same markets. Responsibility for ensuring the performance of contracts entered into by such firms must be assumed by clearing members of the same markets.
  - (j) 'agenti di cambio' whose activities and functions are governed by Article 201 of Italian Legislative Decree No 58 of 28 February 1998.
  - (k) associations set up by Danish pension funds with the sole aim of managing the assets of pension funds that are members of those associations.

## **2. LICENSING AND OPERATING REQUIREMENTS FOR INVESTMENT FIRMS**

### **2.1. Conditions for taking up business:**

#### *2.1.1. Requirement for authorisation*

Each Member State shall reserve the taking up of the activities and the provision of the core investment services and activities listed in Section A of the Annex (hereafter “investment services”) relating to any of the instruments listed in Section C of the Annex (hereafter “financial instruments”) to entities authorised as investment firms within the meaning of this Directive. It shall ensure that all investment firms engaged in the provision of these services and activities for which it is the home Member State shall only operate once authorised in accordance with the provisions of this Directive.

Authorisation shall be granted by the home Member State’s designated competent authorities. The home Member State which grants the initial authorisation shall be:

- Where the investment firm is a natural person, the Member State in which its office is situated;
- Where the investment firm is a legal person, the Member State in which its registered office is situated. In this case, the competent authority shall also ensure

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that the head office of the firm is located in this Member State;

- or if under its national law it has no registered office, the Member State in which its head office is situated and where it initially commences its business.

Member States shall ensure that a public register of all authorised investment firms authorised in accordance with the Directive is established. This register shall be publicly accessible and will contain information on the activities and services for which the investment firm is authorised. It shall be updated regularly.

### *2.1.2. Scope of authorisation*

Authorisation shall be valid for the entire Community and shall permit an investment firm to provide investment services or carry out investment activities throughout the Community, either through the right of establishment of a branch in another Member State or the freedom to provide services .

The authorisation granted by the home authority shall specify the investment services and activities which the undertaking is authorised to provide. The authorisation may cover one or more of the non-core services referred to in section B of the annex. Authorisation within the meaning of the Directive may in no case be granted solely for the provision of non-core services.

An investment firm seeking authorisation to extend its business to additional, core or non-core, services or activities not foreseen at the time of initial authorisation or to introduce changes in the organisational structure conditions shall be required to submit a new scheme of operations.

### *2.1.3. Procedures for granting and refusal of request for authorisation:*

The competent authority will not grant authorisation unless and until such time as it is fully satisfied that the investment firm complies with all requirements arising from the Directive, and any other conditions of general application laid down by national law. Information submitted by the investment firm shall be sufficient to enable the competent authority to ascertain that the firm complies fully with all requirements arising from the Directive.

An applicant shall be informed within six months of the submission of a complete application whether or not authorisation has been granted.

Any decision to refuse an authorisation shall be properly motivated, and immediately communicated to the firm. Any such decision shall be subject to right of appeal by the investment firm to the courts.

Where the firm is seeking authorisation to provide the core service of investment advice, the authorising authority may take account of any existing registration to provide the services of reinsurance or insurance mediation in accordance with the Directive on Insurance Mediation [...] and any measures taken to comply with the

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authorisation requirements imposed under that Directive. An authorisation to provide the insurance mediation service does not however constitute an authorisation to provide investment advice. Separate authorisation under the relevant Directives is required.

#### *2.1.4. Fit and proper management:*

Competent authorities shall ensure that the persons who effectively direct the business of an investment firm are fit and proper.

The competent authorities shall refuse authorisation if, taking into account the need to ensure the sound and prudent management of an investment firm, they are not satisfied as to the fitness and propriety of the proposed managers.

Management of a firm's business must be decided by at least two persons meeting the above conditions. Where an appropriate arrangement ensures that the same result will be achieved, however, particularly in the cases provided for in the case of firms with only one proprietor, the competent authorities may grant authorisation to investment firms which are natural persons or, taking account of the nature and volume of their activities, to investment firms which are legal persons where such firms are managed by single natural persons in accordance with their articles of association and national laws.

Where the business of an investment firm is co-directed by persons appointed in a different legal entity or where persons appointed in a different legal entity exercise effective control on the management of an investment firm, these provisions shall apply *mutatis mutandis* to these persons.

#### *Changes in the management of the investment firm:*

The competent authorities of the home Member States shall examine any changes to management so as to ensure that persons who effectively control the firm are fit and proper.

Any changes to the management of the investment firm shall be notified to the competent authority, along with all information needed to assess the "fitness and properness" of the new staff appointed to manage the firm.

Competent authorities shall have the right to refuse to approve such changes to the management of the firm where there are real and demonstrable reasons to believe that they pose a threat to the sound and proper management of the firm.

Any such decision shall be properly motivated, and immediately communicated to the firm. A decision by the competent authority to refuse approval any changes to the management shall be subject to right of appeal by the investment firm to the courts.

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### *2.1.5. Persons exercising effective control:*

The competent authorities shall refuse authorisation if, taking into account the need to ensure the sound and prudent management of an investment firm, they are not satisfied as to the suitability of the shareholders owning any qualifying holding.

Authorisation shall also be refused if the competent authorities consider that “close links” between the investment firm and other natural or legal persons prevent the effective exercise of their supervisory functions.

Moreover, where close links exist between the investment firm and other natural or legal persons, the competent authorities shall grant authorisation only if those links do not prevent the effective exercise of their supervisory functions.

The competent authorities shall also refuse authorisation if the laws, regulations or administrative provisions of a non-member country governing one or more natural or legal persons with which the undertaking has close links, or difficulties involved in their enforcement, prevent the effective exercise of their supervisory functions.

### *Acquisition of a qualifying holding in an authorised investment firm:*

Member States shall require any persons who propose to acquire or dispose, directly or indirectly, a qualifying holding (10 %) in an investment firm, first to inform the competent authorities of the size of their intended holding. Such persons shall likewise inform the competent authorities if they propose to increase or reduce their qualifying holding so that the proportion of the voting rights or of the capital that they hold would reach or fall below or exceed 20, 33, or 50 % or so that the investment firm would become their subsidiary.

The competent authorities shall have up to three months from the date of the notification provided for in the first subparagraph to oppose such a plan if, in view of the need to ensure sound and prudent management of the investment firm, they are not satisfied as to the suitability of the persons referred to in the first subparagraph. If they do not oppose the plan, they may fix a deadline for its implementation.

If the acquirer of the holding is an investment firm authorised in another Member State or the parent undertaking of an investment firm authorised in another Member State or a person controlling an investment firm authorised in another Member State and if, as a result of that acquisition, the firm in which the acquirer proposes to acquire a holding would become the acquirer’s subsidiary or come under its control, the assessment of the acquisition must be the subject of prior consultation between competent authorities of the member states involved.

On becoming aware of them, investment firms shall inform the competent authorities of any acquisitions or disposals of holdings in their capital that cause holdings to exceed or fall below any of the thresholds referred to in paragraphs 1. At least once a year they shall also inform the competent authorities of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings as shown, for example, by the information received at annual general meetings of shareholders and members or as a result of compliance with the regulations applicable to companies listed on stock exchanges.

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Member States shall require that, where the influence exercised by the persons referred to in paragraph 1 is likely to be prejudicial to the sound and prudent management of an investment firm, the competent authorities take appropriate measures to put an end to that situation. Such measures may consist, for example, in injunctions, sanctions against directors and those responsible for management or suspension of the exercise of the voting rights attaching to the shares held by the shareholders or members in question. Similar measures shall apply to persons failing to comply with the obligation to provide prior information. If a holding is acquired despite the opposition of the competent authorities, the Member States shall, regardless of any other sanctions to be adopted, provide either for exercise of the corresponding voting rights to be suspended, for the nullity of the votes cast or for the possibility of their annulment.

A decision by the competent authority to refuse to approve such changes shall be properly motivated, immediately communicated to the firm and shall be subject to right of appeal by the investment firm to the courts.

#### *2.1.6. Membership of an authorised Investor Compensation Scheme (97/9)*

The competent authority shall verify that entities seeking authorisation as an investment firm shall be in compliance with their obligations under Directive 97/9/EEC at the time of authorisation.

#### *2.1.7. Initial capital endowment:*

The competent authorities shall ensure that the Investment Firm possesses sufficient initial capital in accordance with the rules laid down in Directive 93/6/EEC having regard to the nature of the investment service in question.

#### *2.1.8. Authorisation of third country firms and branches*

When considering requests for authorisation of establishment of a subsidiary of a third country firm or acquisition of holdings in investment firms by undertakings governed by the laws of third countries, competent authorities shall comply with the Community's obligations under any international agreements, bilateral or multilateral, governing the taking up or pursuit of the business of investment firms.

Competent authorities may authorise branches of investment firms that have registered offices outside the Community to commence or carry on business in their territory in accordance with national arrangements. Those branches shall not enjoy the freedom to provide services or the right of establishment in Member States other than those in which they are established. Competent authorities shall not apply provisions that result in treatment more favourable than that accorded to branches of investment firms that have registered offices in Member States.

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### 2.1.9. *Withdrawal of authorisation*

The competent authorities shall, where justified by the gravity of the infringement, withdraw the authorisation issued to an investment firm subject to this Directive where that investment firm:

- ❑ has obtained the authorisation by making false statements or by another irregular means;
- ❑ no longer fulfils the conditions under which authorisation was initially granted;
- ❑ has committed one or more serious infringements of the provisions of this Directive governing the conditions under which the firm must conduct its business;
- ❑ does not make use of the authorisation within 12 months, expressly renounces the authorisation or ceased to provide investment services more than six months previously unless the Member State concerned has provided for authorisation to lapse in such cases;
- ❑ falls within any of the cases where national law provides for withdrawal.

### 2.1.8. *Organisational requirements*

Competent authorities shall only grant authorisation to investment firms which have implemented effective arrangements to give effect to the requirements set out below.

All investment firms shall:

- (1) establish an independent compliance function which ensures, *inter alia*, that directors, partners, employees and agents behave in the best interests of the clients and the integrity of the market;
- (2) possess the capacity to contend with large foreseeable fluctuations in levels of demand, and have in place reasonable contingency arrangements for responding to client needs in the eventuality that the principal system becomes unavailable;
- (3) ensure that, when it relies on a third party for the performance of functions which are critical for the provision of continuous and satisfactory service to its client, that it takes reasonable steps to avoid undue additional operational risk. Delegation to third parties of important operational functions must not be undertaken in such a way as to impair the ability of the supervisor to fulfil its responsibilities for monitoring of firm compliance with all supervisory obligations;

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- (4) where relevant, and in particular where it engages in systematic order-internalisation or operates an “Alternative Trading System”, operate client/user order-handling processes and controls which are such as to ensure that client/user orders are executed impartially and expeditiously in the best interests and in accordance with the instructions of the client/user;
  - (5) have sound administrative and accounting procedures, adequate internal control mechanisms, effective procedures for risk assessment, and arrangements which ensure integrity of all information processing systems;
  - (6) arrange for records to be kept of transactions executed which shall at least be sufficient to enable the competent authority to monitor compliance with all of the requirements provided for under the Directive, and in particular that the firm has complied with all of its obligations with respect to the client;
  - (7) where it is holding client instruments/assets, make adequate arrangements so as to safeguard the client’s ownership rights, especially in the event of the investment firm’s insolvency, and to prevent the investment firm using clients’ instruments for its own account except with the investor’s express consent;
  - (8) where it is holding client funds, make adequate arrangements for funds belonging to investors with a view to safeguarding the latter’s rights and, except in the case of credit institutions, preventing the investment firm using client funds for its own account.

In the event of branches of investment firms providing services to clients in the Member State where the branch is located, the competent authorities of the country where the branch is located shall assume responsibility for enforcing the obligations under this provision in respect of protection of money and assets held by the branch, and record-keeping in respect of transactions undertaken by the branch.

Detailed rules specifying the concrete organisational requirements that shall be implemented in relation to the different investment services and activities, so as to ensure uniform application of the Directive shall be adopted by the Commission in accordance to the comitology procedure. These rules shall distinguish between different investment services and activities or combinations thereof, taking account of the different intensities or probability of potential damage to clients or users which may arise in the event that the investment firm is unable to meet any undertakings that it has entered into vis-à-vis clients/users, or to provide the proposed service.

#### *2.1.11. Conflicts of Interest*

The competent authorities shall ensure that where the business of the investment firm may give rise to conflicts of interest when it is providing services to clients, that the firm shall be organised in such a way as so as to prevent any risk of prejudice to client interests that might arise from:

- conflicts arising in the performance of the different activities of the investment firm, particularly in respect of any conflict of interest that may arise from its

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dealing activities or the matching of client orders against its order book and the obligations to clients that it incurs when it acts as agent on their behalf;

- conflicts between interests of different clients;
- any other conflicts of interest between the firm or its employees on the one hand and clients on the other.

The investment firm shall take appropriate and proportionate steps to limit potential damage to clients which may be occasioned by conflicts of interest. This shall require, at least, disclosure of all potential conflicts of interest to the client/potential client at the outset of the client relationship. In the event that enforcement of independent compliance arrangements, Chinese walls or other organisational arrangements are not sufficient to establish reasonable confidence that these conflicts of interest will not damage the client's interest, the investment firm shall desist from undertaking business with the client/prospective client.

The competent authority shall take particular care to ensure that investment firms which cumulate dealing on own account with execution of client orders, and in particular where client orders are systematically internalised, establish effective organisational requirements to manage any conflicts of interest between the firm's own trading interests and the interests of the client. These arrangements shall include, where appropriate, the creation of Chinese walls. Unless otherwise provided through detailed implementing measures, disclosure of potential conflicts of interests to the client/potential client shall not be sufficient to meet the obligations of investment firms which cumulate dealing on own account with execution of client orders.

Detailed rules specifying the concrete arrangements that shall be required so as to avoid prejudice to client interests arising from different combinations of core and non-core services/activities shall be adopted by the Commission in accordance with the comitology procedure. The stringency of the requirements shall take account of the potential incidence of conflicts of interest and the extent of damage that may ensue for the client or clients.

## **2.2. General operating conditions for investment firms:**

### *2.2.1. On-going supervision of organisational requirements and arrangements for managing conflicts of interest:*

The competent authority of the home Member State shall keep under review the internal organisation, operational and management procedures of firms providing investment services and activities, including all arrangements established to limit any conflicts of interest under 2.1.11.

Investment firms shall notify the competent authority of any changes to the organisational arrangements that it has implemented at the time of initial authorisation and provide the competent authority with all information needed to verify that revised organisational requirements are sufficient to ensure continued compliance with the requirements laid down in the Directive.

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The competent authority of the home Member State shall promptly take any appropriate steps needed to ensure that investment firm does not operate where it is not in compliance with the above-mentioned requirements, including withdrawal of the investment firm's authorisation.

*2.2.2. Ongoing capital adequacy requirements.*

The competent authorities of the home Member State shall require that a licensed investment firm which provides investment services and activities complies with the rules laid down in Directive 93/6/EEC.

*2.2.3. Obligation of the investment firm to uphold integrity and orderliness of market conditions:*

The competent authority of the home Member State shall ensure that the investment firm acts honestly, fairly and professionally in accordance with the integrity of the market.

The competent authority shall ensure that the investment firm is able to demonstrate that it has acted in compliance with the corresponding articles of the Market Abuse Directive, and any measures taken pursuant to that Directive. The investment firm shall also be able to demonstrate, at all times, that its organisation, policies and procedures facilitate such compliance.

*2.2.4. Obligations of investment firms to report transactions to competent authorities and to maintain transaction records at the disposal of competent authorities:*

Competent authorities shall establish arrangements to enable investment firms established under their responsibility and which conclude orders in the financial instruments admitted to trading on a regulated market on behalf of clients or for own account to report details of such transactions to the competent authority. These reports shall be transmitted as quickly as possible and no later than the close of the following working day.

These reports shall specify the instrument bought/sold, quantity, transaction prices and identify the market, trading system or other means through which the transaction was concluded.

The obligation established under this provision shall apply in respect of transactions in instruments belonging to the following classes where the individual instrument has been admitted to trading on a "regulated market":

- Shares;

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- Bonds and other forms of securitised debt;
  - Standardised derivative contracts where the underlying is an equity.

In order to ensure that the competent authorities have access to the information necessary for the performance of their duties, home Member States shall at least require that investment firms keep at the disposal of the authorities for at least five years the relevant data relating to the investment services and activities which they have carried out. This information shall contain all the information and details of the identity of the client, and information required under the Directive on Money Laundering.

Where requested, the competent authority of the home country of the investment firm shall make these reports available to competent authorities of Member States responsible for the regulated market or trading system on which the reported transactions were undertaken.

#### *2.2.5. Investment firm reporting obligation to competent authorities on key information for supervisory purposes.*

Member States shall require that investment firms report regularly to competent authorities in their home Member States on their activities and services so as to facilitate the monitoring of compliance of investment firms with the obligations stemming from this Directive.

Detailed rules specifying the content and periodicity of the report so as to ensure uniform application of the Directive shall be adopted by the Commission in accordance with the comitology procedure.

#### *2.2.6. Disclosure of details of transactions completed outside the rules and systems of a “regulated market” (post-trade):*

Competent authorities shall ensure that investment firms which conclude transactions in equity instruments, which are admitted to trading on a “regulated market”, outside the rules and systems of a “regulated market”, shall make public details regarding the price and volume of this transaction in accordance with the modalities specified in this provision.

Investment firms which conclude transactions outside the rules and systems of a regulated market when dealing with counterparties on own account or on behalf of clients or which internally match client orders on an incidental basis<sup>2</sup>, shall report transactions to a “regulated market” of which they are a member and where that instrument is admitted to trading. This obligation shall be waived for transactions in

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<sup>2</sup> Incidental internalisation is to be understood as internalisation of client orders which is not on a scale or in a form such as to be qualified as “systematic internalisation” as defined in Section C of the Annex.

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respect of instruments admitted to trading on “regulated markets” of which the investment firm is not a member.

Authorised intermediaries engaged in systematic order-internalisation shall either (1). report details of completed transactions to the most liquid or leading “regulated market” for trading in the equity instrument in question; or (2). operate proprietary arrangements for disclosing details of all transactions which it executes internally. Where such an investment firm proposes to disseminate this information indirectly, through the offices of an independent party, it shall be willing to make this information available to the latter on a reasonable commercial basis.

The competent authority shall require that the content of the information to be reported, and the time-frame within which it must be reported shall be the same as that required for a transaction of a similar size and type when conducted under the rules and systems of the regulated market. To this end, the measures adopted by the Commission under the comitology procedure stipulating the post-trade reporting requirements for classes of financial instrument when admitted to trading on a “regulated market” (corresponding provision of regulated market regime) shall apply to transactions in the same instruments when concluded by investment firms outside the rules and systems of “regulated markets”.

The Commission may adopt measures under the comitology procedure which will further clarify the modalities for reporting of transactions concluded outside the rules and systems of a “regulated market”, as well as any arrangements to avoid double counting of transactions in the event of off-exchange trades between investment firms.

### **2.3. Provisions governing the provision of services to clients:**

#### *2.3.1. Obligations of the investment firm when providing investment services to clients:*

Member States shall take effective measures to ensure that investment firms at all times act honestly, fairly and professionally in accordance with the best interests of its clients (when providing investment services to clients). The Member States shall also apply these rules where appropriate to the non-core services listed in the Annex.

In particular, competent authorities shall implement detailed conduct of business rules which shall be adopted by the Commission through the comitology procedure. These rules shall ensure that the following principles are fully upheld when an investment firm is providing any core or non-core services to its clients. The investment firm shall:

- (1) ensure that any marketing communications addressed to clients or potential clients, or information contained therein must be identified as such, be fair, clear and not misleading and comply fully with all provisions of Community legislation relating to marketing information or pre-contractual contacts;
- (2) provide information in comprehensible and timely way to clients or potential clients about the investment firm and the investment services that is sufficient

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to enable them to understand the precise nature and risks of the investment service/financial instrument that is being offered, and details of the investment compensation scheme of which the investment firm is a member pursuant to Directive 97/9;

- (3) communicate information to the client regarding financial instruments, proposed investments and execution venues which is fair, clear and not misleading on a timely basis, such as to allow them to take investment decisions on an informed basis, and to promptly react to actual or potential losses;
- (4) provide appropriate guidance and warnings on the risks and other attributes associated with investments, in particular instruments or strategies, having particular regard to the knowledge and experience of clients;
- (5) obtain information enabling the investment firm to determine the investment services and financial instruments that are suitable for the client, including the client's knowledge and experience in the investment field, investment objectives and financial situation/capacity;
- (6) establish a documentary record of an agreement between the firm and the client setting out the rights and obligations of the parties, and the other terms of business which the firm will provide to the client;
- (7) process and execute a client's order in the best interest of the customer, and taking account of any specific instructions from the client, so as to obtain the best possible result with reference to the price, costs, speed and likelihood of execution, taking into account the time, size and nature of customer orders. To this end, investment firms shall implement procedures and arrangements which together form a systematic, repeatable and demonstrable approach to ensure that investment firms are consistently seeking best execution for clients;
- (8) report on progress of execution of transactions, make adequate disclosure of relevant information in its dealing with its clients and where relevant the performance of portfolios managed by the firm on behalf of the client.

The application of these principles and the detailed implementing rules shall take into account:

- the nature of the service(s) and instruments offered or provided to the prospective or actual client, including the particular procedures and systems which investment firms use to execute orders on behalf of clients;
- the retail or professional nature of the client so as to ensure that retail investors benefit from the application of full set of conduct of business protections while allowing professional investors to avail of services provided under less stringent requirements.

The competent authority shall enforce the obligations of this provision and detailed implementing rules on investment firms when the latter are providing services in

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other Member States.

The competent authority of the Member State where a branch is located shall enforce the obligations of this provision in respect of the services provided by a branch to its clients.

Where an investment firm indirectly receives an instruction to execute a client order, transmitted to it by another investment firm, the executing investment firm shall be able to rely on the client information provided by and any suitability assessment undertaken by the investment firm which originally transmitted the order. When an investment firm receives an order from a client which has previously benefited from personal recommendation provided by an authorised investment advisor, the investment firm shall be able to provide the recommended service on the basis of documentary evidence of the personal recommendation provided by the advisor and without having to obtain further client information or undertake additional suitability assessment. The investment firm executing client orders on such basis shall remain fully responsible for ensuring that the orders based on this information are executed in the best interests of the client in accordance with any detailed rules relating to execution of orders on behalf of the client.

### *2.3.2. Obligations of investment firms when employing tied agents:*

Competent authorities shall ensure that investment firms may employ the services of tied agents only in accordance with the requirements of this provision. Tied agents shall not themselves be considered as investment firms for the purposes of this Directive; they may only provide the services of reception and transmission of orders and placement on behalf of one investment firm.

The investment firm employing a tied agent remains fully and unconditionally responsible for all obligations to the client or losses caused to third parties resulting from the activities of its tied agents, including cases where such losses are the consequence of any criminal offences.

Competent authorities shall enforce detailed conduct of business rules which shall require the investment firm to:

- ensure that tied agents' possess appropriate general, commercial and professional knowledge so as to be able to communicate accurately all relevant information regarding the proposed service to the client or potential client and to be able to perform such a service in the client's best interests. The information to be collected and the manner in which it is processed and relayed to the investment firm shall ensure that tied agents meet the standards that would be required of an investment firm directly soliciting business or collecting orders as laid down under the preceding provision (2.3.1);
- ensure that tied agents disclose immediately to any client or prospective client the capacity in which they are acting and the firm which they are representing. The content of any marketing communication and manner in which such information is presented shall meet the standards that would be required of an

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investment firm directly soliciting business or collecting orders as laid down under the preceding provision (2.3.1);

- prevent tied agents from handling money owed by the client to the investment firm or vice versa;
- monitor its tied agents' activities and adopt control measures and procedures so as to ensure that they fulfil, on a continuous basis, the above-mentioned requirements and that they operate in compliance with the provisions of this Directive.

Competent authorities shall establish and maintain, under their direct or indirect (e.g. through the offices of an independent professional body) responsibility, a register of tied agents. This register shall be updated on a regular basis. Admission to this register shall be a condition for employment as a tied agent in that Member State. Admission to the register shall take place on the basis of transparent and non-discriminatory criteria (including fitness and propriety requirements). To the fullest extent possible, account shall be taken of any existing or current authorisation to act as tied agent in another Member State.

Member States shall ensure that when investment firms employ tied agents located in another Member States, these agents are filed with the register of the State where they are located and comply with the detailed rules implementing this provision when providing services to clients in their territory.

#### **2.4. Provisions applying to investment firms when dealing on own account:**

This reserved activity consists of:

- trading on the basis of quotes in respect of financial instruments;
- resulting in agreements, contracts or transactions which affect the proprietary position of the dealer.
- where this is the regular occupation ("main business) of the firm, or is undertaken on a regular basis in conjunction with other investment services within the meaning of this Directive or services covered by Directive 2000/12/EEC.

Entities engaged in this activity shall be licensed as investment firms dealing on their own account in accordance with the relevant provisions of this Directive.

An Investment Firm or a Credit Institution which is dealing in the market solely with a view to executing orders on behalf of clients does not need to be licensed to "deal on own account".

This activity does not cover trading in financial instruments carried out by entities to the extent that this activity is ancillary to their main business where that main business is not the provision of services covered by this Directive or Directive 2000/12/EEC (see exceptions to the scope of the Directive in 1.4).

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*Dealing with eligible counterparties:*

Competent authorities shall ensure that investment firms dealing on own account with eligible counterparties are able to negotiate and conclude such transactions without being obliged to offer conduct of business protections to the eligible counterparty to the dealing transaction.

Competent authorities shall ensure that investment firms dealing on own account shall only be able to transact under the conditions set out in the previous paragraph with eligible counterparties.

For the purposes of this Directive, an investment firm authorised to deal on own account shall be able to treat the opposite party to a transaction as an eligible counterparty where:

- it is an Investment Firm, a Credit Institution or any other Financial Institution considered as such by EU Law (i.e. UCITs, Life Insurance companies, etc.)
- it is a corporate entity ... [to be finalised in the light of CESR standards on investor protection].

In these cases, the investment firm shall be able to enter into counterparty transactions without further formality.

In the case of other corporate entities, the investment firm shall, in the context of its dealing transactions, obtain information from the prospective counterparty regarding its financial position, investment objectives and experience and be responsible for determining whether it is in that prospective counterparty's interest to deal directly on its account with the investment firm. The investment firm shall obtain confirmation from the prospective corporate counterparty that it agrees to trade directly on its own account and that it is not requiring the investment firm to act on its behalf before concluding the transaction.

Classification as an eligible counterparty for the purposes of transactions with a dealer is without prejudice to the right of entities belonging to the above categories to be treated as clients for the purposes of purchasing investment services and to benefit from the conduct of business protections owed to them when acting in that capacity.

*Authorisation – Conditions for taking up business*

The competent authorities shall ensure that an entity seeking authorisation to conduct exclusively this activity complies with the general authorisation conditions for taking up business as an Investment Firm (section 2.1).

As regards "organisational requirements" applying to investment firms authorised to deal on own account, the competent authorities shall ensure that the Investment Firm:

- establish an independent compliance function which ensures, *inter alia*, that directors, partners and employees behave in the best interests of the market;
- when it relies on a third party for the performance of functions which are critical

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for the exercise of the activity, that it takes reasonable steps to avoid undue additional operational risk. Outsourcing of performance of important operational functions to third parties must not impair the ability of the supervisor to fulfil its responsibilities for monitoring of firm compliance with all supervisory obligations;

- have sound administrative and accounting procedures, adequate internal control mechanisms, effective procedures for risk assessment, and arrangements which ensure integrity of all information processing systems;
- arrange for records to be kept of transactions executed which shall at least be sufficient to enable the competent authority to monitor compliance with all of the requirements provided for under the Directive;

When this activity is carried out by the Investment Firm in conjunction with the service of execution of orders on behalf of clients, the competent authorities shall ensure that, in addition to the general provisions dealing with conflict of interest, the Investment Firm has set up the necessary arrangements to effectively separate the client order execution business from the dealer activities so as to prevent any possible risk or prejudice to the clients. In such case the Investment Firm must possess the authorisations required to execute client orders and to deal on own account.

#### *Operating Conditions*

The competent authorities shall ensure that an Investment Firm authorised to deal on own account complies with the operating conditions that apply to any Investment Firm that wants to provide investment services or activities.(see point 2.2) and its obligations under Directive 93/6/EEC.

The competent authorities shall ensure that the Investment Firm acts honestly, fairly and in accordance with the integrity of the market. In particular it must be able to demonstrate that it has acted in compliance with the Market Abuse Directive.

#### *Specific Provisions*

When the activity of dealing on own account is carried out by the Investment Firm in conjunction with the service of execution of orders on behalf of clients, the competent authorities shall ensure that the Investment Firm complies, when executing client orders, with the provisions governing the provision of services to clients, and in particular the conduct of business rules (see point 2.3).

## **2.5. Provisions relating to firms operating “Alternative Trading Systems”:**

### *2.5.1. Scope of obligations:*

The competent authority shall ensure that the requirements laid down in this chapter are applied in respect of all investment firms which operate Alternative Trading Systems.

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An Alternative Trading System is:

- a multilateral system that brings together multiple third party buying and selling interests in financial instruments – in the system;
- according to non-discretionary rules set by the system's operator; and
- in a way that forms, or results in a contract;

irrespective of whether countervailing orders are matched directly with each other or indirectly through the intercession of the investment firm as riskless counterparty to both sides of the transaction.

#### *2.5.2. Trading process and performance of transactions:*

The competent authority shall ensure that the processing, display and conclusion of orders on systems operated by the investment firm are governed by transparent and non-discretionary rules and procedures, which ensure fair and orderly trading on the system. These rules and procedures shall be such as to enable users to obtain the best price available within the system at the specified time and for the size and type of order in question.

The competent authority should satisfy itself that the investment firm operates satisfactory arrangements for the management of the technical operation of the system and that there are satisfactory contingency arrangements in the event of system disruption so as to provide high degree of confidence to its users – particularly where these are retail investors – that orders will be executed in accordance with their instructions.

The investment firm shall offer effective access to and use of the system in accordance with transparent conditions.

The competent authority shall verify that the investment firm clearly informs its users as regards its role, if any, in arranging the final settlement of transactions concluded on its systems. Where the investment firm operating an Alternative Trading System assumes part or all of responsibility for settlement of client/user orders, the competent authority shall ensure that the arrangements put in place by the investment firm are sufficient to ensure timely delivery of funds and/or assets to the client's account and protection of these assets/moneys.

#### *2.5.3. Monitoring and surveillance of orders entered into and agreements concluded on the system:*

The competent authority shall ensure that the firm operating the system has in place adequate and effective arrangements for monitoring use of the system by its users so as to detect atypical orders or other behaviours which might be reasonably associated with possible market manipulation or insider dealing (as defined in the Directive on

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Market Abuse).

The investment firm shall immediately report to the competent authority any suspected instances of client/user behaviour in breach of the Market Abuse Directive.

Arrangements established to monitor and detect possible market manipulation may take account of the susceptibility of the market in the instrument in question or any underlying to abusive practices, and the significance of trading on the system when compared to other order-execution venues/markets.

*2.5.4. Publication of information relating to expression of potential trading interests (pre-trade transparency):*

The competent authority shall require the Investment Firm that operates an Alternative Trading System to implement the necessary arrangements to ensure that expressions of potential trading interest in respect of equity transactions admitted to trading on a “regulated market” are made public on a reasonable commercial basis.

This information shall comprise an appropriate indication of the best bid and offers prices and depth of interest at those prices, as expressed in the form of limit orders or other types of order whose execution is conditional on fulfilment of specified terms, thereby representing an expression of potential interest which may inform investment judgement of other system participants and investors. The content of information to be made public, and conditions under which it shall be published, by the operator of an ATS shall be the same as that required of “regulated markets” which have admitted comparable instruments to trading.

Where pre-trade transparency obligations imposed on “regulated market” under the relevant provisions of this Directive are subsequently extended to other classes of financial instrument, these obligations shall also be extended on the same terms and conditions to multilateral order disclosure and execution of those classes of instrument on ATS.

To ensure a uniform level of pre-trade publication on “ATSS”, the Commission shall adopt measures under the comitology procedure which:

- clarify the scope of application of this application in terms of instruments or range of instruments for which firms operating an ATS must disclose the information required under this provision, as a function of the volume of orders in those instruments concluded on the system;
- Provide guidance on appropriate arrangements for making the information public.

*2.5.5. Publication of information on transactions concluded on the “regulated market” (post-trade transparency):*

The competent authority shall require that the Investment Firm that operates an Alternative Trading System implements adequate arrangements to promptly disclose

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to the public, the price, volume and time of orders executed under its rules or systems in respect of equity instruments which are admitted to trading on a “regulated market”. Post-trade information should be made public on a reasonable commercial basis.

This information shall be published as close to real-time as possible. The content of information to be made public, and the conditions under which its shall be published, by the operator of an ATS shall be the same as that required of “regulated markets” which have admitted that instrument to trading.

Competent authorities may authorise an Alternative Trading System to delay publication of details of transactions undertaken by market participants in respect of exceptional transactions that are very large compared with normal market size for securities of similar levels of liquidity and turnover, where similar arrangements are made in respect of transactions in that instrument when concluded on a “regulated market”. The competent authority must give prior approval to proposed arrangements for deferred trade-reporting, and ensure that the “ATS” clearly publicises these arrangements to system participants and the investing public.

Where post-trade transparency obligations imposed on “regulated market” under the relevant provisions of this Directive are subsequently extended to other classes of financial instrument, these obligations shall also be extended on the same terms and conditions to multilateral order disclosure and execution of those classes of instrument on ATS.

To ensure a uniform level of post-trade publication on “ATSs”, the Commission shall adopt measures under the comitology procedure which provide guidance on appropriate arrangements for making the information public.

#### *2.5.6. Organisational arrangements for firms operating Alternative Trading Systems:*

Competent authorities shall ensure that an investment firm operating an ATS, which cumulates this activity with other core or non-core investment services and activities, has in place the arrangements to:

- Meet all obligations to clients that arise when it is, inter alia, executing orders on behalf of clients;
- to prevent, in particular, any potential conflict of interest that might operate to the detriment of a user or client or result in less favourable treatment of one group of users or clients compared to another.

The competent authority shall only grant authorisation to operate an Alternative Trading System once it has satisfied itself that the proposed arrangements are sufficient to ensure compliance with all relevant provisions of this Directive.

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## **2.6. Rights of investment firms:**

### *2.6.1. Freedom to provide services*

Member States shall ensure that core and non-core investment services and activities may be freely provided within their territories by any investment firm authorised and supervised by the competent authorities of another member state in accordance with this directive, provided that such services are covered by the home country authorisation.

Competent authorities shall not impose any additional authorisation requirements, or any requirement to provide additional endowment capital or any other measure having equivalent effect on an investment firm which is duly authorised in another Member State which provide services in its territory in accordance with the notification mechanisms set out in this provision.

Any investment firm wishing to carry on business within the territory of another Member State for the first time under the freedom to provide services shall communicate the following information to the competent authorities of its home Member State:

- the Member State in which it intends to operate,
- a programme of operations stating in particular the investment service or services which it intends to provide.

The competent authorities of the home Member State shall, within one month of receiving the information, forward it to the competent authorities of the host Member State. The investment firm may then start to provide the investment service or services in question in the host Member State.

### *2.6.2. Establishment of a branch*

Member States shall ensure that core and non-core investment services and activities may be provided within their territories through the establishment of a branch of an investment firm authorised and supervised by the competent authorities of another Member State in accordance with this Directive, provided that the activities to be undertaken through the branch are covered by the home country authorisation.

Competent authorities shall not impose any additional authorisation requirements, or any requirement to provide additional endowment capital, or any other measure having equivalent effect, on an investment firm which is duly authorised in another Member State which establishes a branch in its territory in accordance with the notification mechanisms set out in this provision.

Any investment firm wishing to establish a branch within the territory of another Member State shall notify the competent authorities of its home Member State.

Member States shall require every investment firm wishing to establish a branch within the territory of another Member State to provide the following information

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when effecting the notification:

- (a) the Member State within the territory of which it plans to establish a branch;
- (b) a programme of operations setting out *inter alia* the types of business envisaged and the organizational structure of the branch;
- (c) the address in the host Member State from which documents may be obtained;
- (d) the names of those responsible for the management of the branch.

Unless the competent authorities of the home Member State have reason to doubt the adequacy of the administrative structure or the financial situation of an investment firm, taking into account the activities envisaged, they shall, within three months of receiving all the information, communicate that information to the competent authorities of the host Member State and shall inform the investment firm concerned accordingly.

They shall also communicate details of the accredited compensation scheme of which the investment firm is a member in accordance with Directive 97/9EEC. In the event of a change in the particulars, the authorities of the home Member State shall inform the authorities of the host Member State accordingly.

Where the competent authorities of the home Member State refuse to communicate the information to the competent authorities of the host Member State, they shall give reasons for their refusal to the investment firm concerned within three months of receiving all the information. That refusal or failure to reply shall be subject to the right to apply to the courts in the home Member States.

The competent authority of the country where a branch is located is responsible for enforcement and supervision of branch compliance with provisions of this Directive and detailed implementing rules relating to the obligations of the investment firm when providing services to clients, and organisational structure/arrangements of the branch related to the holding of client's assets or funds, and recording of transactions undertaken by the branch. The host authority shall have the right to examine, and request changes, to branch arrangements in these respects where these are strictly needed to ensure that they are such as to allow effective enforcement of the relevant obligations under this Directive by the host authority.

On receipt of a communication from the competent authorities of the host Member State or on the expiry of the period without receipt of any communication from those authorities, the branch may be established and commence business.

In the event of a change in any of the particulars communicated in accordance with (b), (c) or (d), an investment firm shall give written notice of that change to the competent authorities of the home and host Member States at least one month before implementing the change so that the competent authorities of the home Member State may take a decision on the change.

The competent authorities of the host Member State shall also be informed.

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Host Member States may, for statistical purposes, require all investment firms with branches within their territories to report periodically on their activities in those host Member States to the competent authorities of those host Member States.

*2.6.3. Right of eligibility to act as counterparty to state authorities or central banks when conducting monetary, exchange-rate, public debt and reserves management policies:*

State authorities or national bodies performing functions in the pursuit of exchange-rate, public-debt and reserves management policies of the authorities shall not, when selecting market participants to act as counterparties in the pursuit of these policies, discriminate between investment firms on the grounds of place of establishment unless this is strictly necessary and a demonstrably proportionate means of ensuring the effective performance of the counterparty functions in question.

The rights conferred by this Directive shall not extend to the provision of services as counterparty to members of the European System of Central Banks in the performance of monetary or exchange-rate policy operations.

*2.6.4. Access to Regulated Markets*

Member States shall ensure that investment firms which are authorised by the competent authorities of their home Member States to execute client orders, to operate systems for multilateral order disclosure and execution or to deal on own account can, directly, indirectly or on a remote basis, become members of or have access to the regulated markets in accordance with the provisions laid down in Chapter 3 relating to admission to participate on all Regulated Markets established under their responsibility.

The right to be a member of a “regulated market” shall also entitle the investment firm to become members of or have access to the clearing and settlement systems which are used by the “regulated market” for the finalisation of transactions undertaken on the “regulated market”.

*2.6.5. Right of Investment firms in respect of access and choice of Clearing and Settlement infrastructures*

Competent authorities shall ensure that investment firms from other Member States which are direct, indirect or remote members of regulated markets established in their territory can also benefit from direct or indirect access to central counterparty, clearing and/or settlement facilities for the purposes of finalising transactions concluded on the “regulated market” in question.

In particular, the investment firm which is admitted as direct, indirect or remote

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member of a “regulated market” in another Member State shall be able to:

- be admitted as full clearing member of any central counterparty or clearing arrangements subject to compliance with any objective and non-discretionary criteria as are applied to local participants including any capital adequacy requirements, margining or collateralisation arrangements;
- be admitted as a full member or account-holder in the relevant securities settlement system subject to the same objective and non-discretionary criteria applied to local participants in those systems.
- have positions cleared and/or settled in those systems through indirect participation, via the offices of an existing member(s) of those systems.

Access to central clearing counterparty systems shall not be restricted to the processing of positions resulting from activity on an affiliated “regulated market”. Investment firms shall also have the possibility to have direct or indirect access to these facilities for the purposes of novation and/or netting of off-market transactions in accordance with any rules and requirements put in place by the relevant clearing or settlement entity.

In addition to the above, investment firms shall also have the right to designate the location where securities settlement will take place for transactions in financial instruments undertaken on a “regulated market”.

The right of the investment firm to designate location of settlement shall be subject to the following conditions:

- the existence of adequate links between the system designated by the investment firm and the securities settlement system where the relevant financial instruments are issued. The existence of this right for the investment firm does not oblige a settlement system to put in place any technical linkages where these would not be in the interest of the system and its users, and is without prejudice to any possibility for the relevant competent authority to intervene where it has demonstrable and objective concerns regarding the technical soundness of the link between settlement systems;
- the existence of arrangements between the relevant regulated market, clearing house or the central counterparty (where a central counterparty function is used) and the designated settlement facility which satisfy the competent authority that transactions will be finalised efficiently and without creating undue operational or systemic risk which might prejudice the speedy and efficient finalisation of transactions and smooth functioning of the overall market and payment systems.

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### **3. PROVISIONS APPLICABLE TO “REGULATED MARKETS”:**

#### **3.1. Definition of Regulated Market**

A regulated market:

- ❑ Operates arrangements for organised disclosure and execution of orders in financial instruments from multiple buy and sell interests;
- ❑ functions regularly, subject to a set of formalised and non-discretionary rules, procedures or processes which result in agreement(s) to buy or sell financial instruments;
- ❑ and is authorised and operates in accordance with the provisions of this title.

The activities of the “regulated market” encompass all activities relating to the entry, display, processing, execution and confirmation of orders which are undertaken under the rules and on the systems of a “regulated market” from the point at which such orders are received by the market facilities to the point at which confirmed trades are transmitted for subsequent finalisation (clearing and/or settlement). This scope includes any transactions concluded through the medium of designated market-makers or liquidity providers appointed by the market operator and which are undertaken under the rules and systems of the regulated market. It also includes activities related to the processing and commercialisation of information relating to transactions performed under the rules and systems of the “regulated market”.

#### **3.2. Authorisation**

Prior to commencing operation as a Regulated Market shall obtain an authorisation from the competent authority. Prior to granting such authorisation, the competent authority shall ensure that the Regulated Market complies with the conditions for taking up business and any other obligations imposed upon them under this Directive. In particular, the competent authority shall ensure that the regulated market has clear and non discretionary rules for concluding transactions, adequate arrangements concerning listing of financial instruments, access to the market, the trading process and the performance of transactions, and disclosure of trading information. The competent authority shall verify that these rules meet the various requirements laid out in this Directive and approve them before granting authorisation for the regulated market to commence activities.

The competent authority shall have the right to obtain all information from the Regulated Market needed to verify the compliance of the Regulated Market with the conditions laid down in this Directive.

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### **3.3. Competent Authorities and applicable law**

The competent authority for authorisation shall be that of the Member State in which the registered office of the Regulated Market is situated or, if under its national law it has no registered office, the Member State in which the management and operations of the Regulated Market is effectively situated.

The competent authority shall inform the European Commission and partner country authorities of its decision to authorise a Regulated Market, of any significant extension to the scope of activities, or in the event that a regulated Market ceases to operate as such. The European Commission shall publish, and regularly update, a list of Regulated Markets.

The operation of the Regulated Market and, in particular, all activities undertaken under the rules and systems of the Regulated Market, shall be governed exclusively by the law of the Member State where it is authorised and where its management and operations are effectively situated. The competent authorities of this Member States shall also be responsible for supervising the operations of the Regulated Market. This provision is without prejudice to any additional arrangements that may be established with competent authorities of any Member State in the event that some part of the activities covered by the authorisation of the Regulated Market are delegated to an independent legal person which is established in that other Member State. In this case, appropriate arrangements shall be established between the competent authorities responsible for the regulated market and the entity performing delegated functions where necessary to ensure that the obligations flowing from this Directive are fully complied with.

### **3.4. Delegation of Supervisory responsibilities to the Regulated Market**

A Regulated Market may be entrusted with responsibilities by the competent public authority in the performance of well defined (self) regulatory and supervisory functions pursuant to the provisions of this Directive, subject to the competent public authority retaining ultimate responsibility for ensuring compliance with this Directive. Such delegation can only take place subject to the existence of clearly defined and documented framework for the exercise of any delegated responsibilities. The competent authority must also satisfy itself that the operator of the regulated market has the capacity and resources to effectively execute all responsibilities conferred upon it in the areas covered by this Directive, and takes appropriate steps to implement these requirements.

### **3.5. Conditions for taking up business and for operating a Regulated Market**

#### *3.5.1. Conditions concerning the ownership of the regulated market*

The Competent authority shall ensure that the Regulated Market provides it with, and makes public, information regarding:

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- ❑ its ownership structure, and in particular, the identity and scale of interest of any parties in a position to exercise effective control over the operation of the Regulated market.
  - ❑ changes to ownership and control of the market.

The Competent authority shall have the power to refuse to approve initial ownership structures or changes to ownership which are notified to it, where this would result in demonstrable prejudice to the sound functioning of the market or give rise to conflicts of interest in the operation of the market and any (self) regulatory functions delegated to the operator of the market. Any such refusal by the competent authority shall be duly motivated and communicated to the Regulated Market, and be subject to appeal before the courts.

#### *3.5.2. Conditions concerning the Management of the Regulated Market*

The Management of the Regulated Market are the persons and organs which ensure the effective operation of all the range of activities of the Market.

The Competent authority shall ensure that the persons responsible for the management of the market are fit and proper before granting authorisation.

The Competent authority shall ensure that Regulated markets promptly notify it of any changes to the executive management to the competent authority. The competent authority shall have the power to refuse changes to the management of the regulated market, where this would result in demonstrable prejudice to the sound functioning of the market. Refusal by the competent authority to recognise the proposed management of a regulated market, or any changes to it, as being fit and proper shall be duly motivated and communicated to the Regulated Market, and be subject to appeal before the courts.

#### *3.5.3. Conflict of interests*

The Competent authority shall ensure that the Regulated Market has established arrangements to clearly identify and avoid, in the operation of the regulated market (whether exercising the delegation of regulatory and supervisory functions or others), any potential conflict between the interest of the owners or the managers of the Regulated Market and its sound functioning or the exercise of regulatory/supervisory functions delegated to it by the competent public authority.

#### *3.5.4. Risk-Management and Minimum Capital requirements*

The Competent authority shall ensure that the Regulated Market is adequately equipped to manage the risks to which it is exposed and to enable an orderly closure of its operations should that become necessary.

Pursuant to this obligation, competent authorities shall ensure that the Regulated

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Market implements appropriate arrangements and systems to identify, at an early stage, all significant risks to its operation. The competent authority shall also ensure that the Regulated Market puts in place effective measures to mitigate these risks, and that it possess financial resources which are at least sufficient to allow for orderly closure of the regulated market.

The Commission shall adopt implementing measures under the comitology procedure in respect of:

- effective and sufficient methods for mitigating the risks to which a “regulated market” may be exposed; and
- the level of financial resources needed to provide for orderly closure of market operations.

#### *3.5.5. Conditions governing the technical operation of the trading system*

The Competent authority shall ensure that the Regulated Market implements satisfactory arrangements for the management of the technical operation of the system.

The Competent authority shall also ensure that the Regulated Market implements satisfactory contingency arrangements in the event of system disruption so as to provide high degree of confidence to its members or participants that their orders will be executed in accordance with their instructions.

### **3.6. Admission (and suspension or removal of) of instruments to trading on a “regulated market”:**

#### *3.6.1. General admission requirements*

The competent authority shall ensure that each market operator establishes clear and transparent requirements to be respected by financial instruments before they can be admitted to trading on the “regulated market”. These requirements shall seek to ensure, to the greatest extent possible, that instruments admitted to trading have been constituted and issued in a manner which is conducive to fair, orderly, efficient, transparent and liquid trading. The competent authority shall give its prior approval to these admission requirements.

The Commission may adopt detailed implementing under the comitology procedure which specify the characteristics of different classes of instrument which should be taken into account by market operators when assessing whether an instrument is constituted and issued in a manner so as to facilitate fair, orderly, efficient, transparent and liquid trading on the market.

The provisions of this Article are without prejudice to obligations applying under Directive 79/279/EEC in respect of instruments which should be respected by

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instruments admitted to the “official” segment of the “regulated market”.

### *3.6.2. Specific Requirements concerning the admission to trading of publicly offered securities*

In addition to those generic admission requirements, the competent authorities shall ensure that the Regulated Market has put in place effective arrangements in order to verify that issuers of publicly offered securities have taken the necessary steps to comply with any provisions of EU law governing the information that must be disclosed to the public at the time of offer or subsequently. In particular,

- In the event of securities which are offered to the public, the Regulated Market shall verify with the competent authority responsible for approval of the public offer prospectus, that the issuer has complied with its obligations under the Prospectus Directive. The Regulated Market shall provide market participants/users with guidance on how to obtain access to this information so as to allow them to obtain an informed investment judgement in respect of the security. The Regulated market shall also allow verify with the competent authority responsible for issuer disclosure in the country of establishment of the market, that the documentation prepared on the part of the issuer is in a form and language such as to allow its admission to trading in its territory;
- In the event of securities which are offered to the public in the EU and which are subject to obligations to disclose financial and other information to the market on a regular basis in accordance with the Regular Reporting Directive, the arrangements shall permit to verify with the relevant competent authority that the issuer is in compliance with its obligations. The Regulated Market shall provide market participants/users with guidance on how to obtain access to information so as to allow them to obtain an informed investment judgement in respect of the security;
- In the event of securities which are offered to the public and where the issuer is subject to an obligation to inform the public as soon as possible of any major new developments in its sphere of activity which are not public knowledge and which may ... lead to substantial movements in the prices of its shares or to meet its commitments (for debt securities), the Regulated Market shall establish with the relevant competent authority what (if any) administrative arrangements are in place to facilitate the dissemination of this information to the public so as to meet its obligations under Article 7 of Directive 89/592.<sup>3</sup> The Regulated Market shall make these arrangements known to its members and indirect participants, so as to help them to maintain an informed judgement on the current value of the offered security.
- In the event of securities which are offered to the public in a third country without being subsequently offered to the public in the EU, the Regulated Market shall verify (with its competent authority) that public offer documentation in the

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<sup>3</sup> To be taken over by Article 6 and 9 of the Directive on Market Abuse.

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country of initial offer are recognised as offering “equivalent” information to EU investors under the mechanism provided in the Prospectus Directive. Third country instruments should not be admitted to trading on the “regulated market” unless such recognition has been established.

### *3.6.3. Specific Requirements concerning the admission to trading of derivatives*

In the event of derivative instruments admitted to trading under its responsibility, the requirements for admission to trading shall ensure that the derivative contract is designed so as to allow orderly pricing in both the derivative and any underlying market, and effective settlement of the contract.

### *3.6.4. Conditions relating to instruments that do not comply with the requirements concerning the admission to trading*

Any instrument, whether cash or derivative, that does not comply with the requirements for admission to trading laid down by each Regulated Market should not be admitted to trading under its rules and systems. This does not prevent the admission of instruments to trading on other trading platforms, operated by the management of the Regulated Market under another licence and denomination. These platforms shall not be considered as Regulated Markets and may not benefit from any rights granted to Regulated Markets under this Directive.

### *3.6.5. Suspension or removal of instruments from trading:*

The competent authority shall ensure that the necessary arrangements are in place which allow for regular review of the instruments which are admitted to trading on the market so as to ensure that they continue to comply with its admission requirements. Where appropriate, the Regulated Market shall remove instruments from trading which no longer comply with those requirements.

The competent authority shall have the power to suspend or demand the Regulated Market to suspend securities/instruments from trading if the issuer’s situation is such that continued trading on the regulated market would be detrimental to investors’ interests or the orderly functioning of the market.

## **3.7. Rules relating to the access to the Regulated Market:**

Competent authorities shall ensure the existence of transparent, fair and non-discriminatory rules governing access to the market. They shall also ensure that the necessary arrangements are in place in order to enforce those rules.

Access to the market, admission to membership thereof and continued access or membership thereof shall be subject to compliance with the rules of the regulated

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market in relation to the constitution and administration of the regulated market and to compliance with the rules relating to transactions on the market, with the professional standards imposed on staff operating on and in conjunction with the market, and with the rules and procedures for clearing and settlement.

These requirements shall be applied in a non-discriminatory manner to investment firms and banks authorised to execute client orders or deal on own account, irrespective of whether those firms request access or membership on a direct, indirect or remote basis.

### **3.8. Rules relating to trading process and performance of transactions**

The Regulated Market shall lay down transparent and non-discretionary rules and procedures that guarantee fair and orderly trading in the Market. These rules shall be such as to enable users to obtain the best price available within the system for the size and type of order in question.

### **3.9. Disclosure of trading information**

#### *3.9.1. Publication of information relating to expression of potential trading interests (pre-trade transparency):*

The competent authority shall require Regulated Markets to implement the necessary arrangements to ensure that the expressions of potential trading interest in respect of equity transactions are disclosed to the public on a reasonable commercial basis.

This information shall comprise an appropriate indication of the best bid and offers prices and depth of interest at those prices, as expressed in the form of limit orders or other types of order whose execution is conditional on fulfilment of specified terms, thereby representing an expression of potential interest which may inform investment judgement of other market participants and investors.

To ensure a uniform level of pre-trade publication on “regulated markets”, the Commission shall adopt measures under the comitology procedure which:

- ❑ identify any other classes of financial instruments, in addition to equity instruments, to which these obligations could usefully apply, based on consideration of by the extent to which the publication of potential trading interest for the different classes of instrument is important for efficient price formation in those instruments, and the effective functioning of the overall market for that class of instrument;
- ❑ Stipulate the scope and content of information to be made available to the public as regards the range of (limit orders) bid and offers, and volume and depth of the market at those terms;
- ❑ Provide guidance on appropriate arrangements for making the information public

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on a reasonable commercial basis.

*3.9.2. Publication of information on transactions concluded on the “regulated market” (post-trade transparency):*

The competent authority shall require that the Regulated Market implements adequate arrangements to promptly disclose to the public, the price, volume and time of orders executed under its rules or systems in respect of equity instruments.

This information shall be published as close to real-time as possible. Competent authorities may authorise a Regulated Market to delay publication of details of transactions undertaken by market participants in respect of exceptional transactions that are very large compared with normal market size for securities of similar levels of liquidity and turnover. The competent authority must give prior approval to proposed arrangements for deferred trade-reporting, and ensure that the “regulated market” clearly publicises these arrangements to market participants and the investing public. Post-trade information should be made public on a reasonable commercial basis.

To ensure a uniform level of post-trade publication on “regulated markets”, the Commission shall adopt measures under the comitology procedure which:

- Identify any other classes of financial instruments, in addition to equity instruments, to which these obligations could usefully apply, based on consideration of the extent to which the publication of post-trade price and volume details for the different classes of instrument is important for efficient price formation in those instruments, and the effective functioning of the overall market for that class of instrument;
- Stipulate the scope and content of information to be made available to the public;
- Establish the conditions under which a “regulated market” may provide for deferred reporting of large trades;
- Provide guidance on appropriate arrangements for making the information public on a reasonable commercial basis.

### **3.10. Rights of Regulated Markets under this Directive**

*3.10.1. Right to provide facilities to serve remote members in other Member States:*

Regulated markets shall have the right to provide appropriate facilities in other Member State territories so as to be able to serve actual or prospective members or participants of the market which are established in that Member State.

*3.10.2. Right of “regulated market” to make use of central counterparty/clearing*

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*house facilities in another Member State:*

The operator of the “regulated markets” may enter into appropriate arrangements with a central counterparty/clearing house of another Member State with a view to providing for the novation/netting of some or all trades concluded by market participants on the “regulated market”.

The competent authority responsible for oversight of the “regulated market” may not oppose the use of central counterparty/clearing houses in another jurisdiction except where this is demonstrably required to maintain the orderly functioning of the regulated market or the soundness of the central counterparty.

*3.10.3.: Right to admit partner country instruments to trading on “regulated market”:*

Subject to the requirements laid down above regarding admission of instruments to trading on the “regulated market”, the market operator shall have the right to admit instruments to trading under its rules and systems where it has satisfied itself that these securities have been properly constituted and issued in accordance with all relevant obligations under EU law.

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## ANNEX - LIST OF SERVICES, LIST OF FINANCIAL INSTRUMENTS AND DEFINITIONS

### List Of activities and services that may be undertaken by investment firms

#### Section A. Core services and activities.

(a). *Services which may be provided by investment firms to clients:*

1. Reception and transmission, on behalf of investors, of orders in relation to one or more financial instrument (to a firm licensed to execute such orders) where the firm receiving and transmitting the order owes contractual obligations to the investor in respect of some or all of the conditions under which the order/transaction is concluded;
2. Execution of orders on behalf of clients, the conclusion of an agreement to buy or sell one or more financial instruments on behalf of its customers, in accordance with the instructions from the client, irrespective of whether the order is executed with a third party or against the proprietary trading positions of the firm;
3. Managing portfolios in accordance with mandates given by investors on a discriminatory client-by-client basis where such portfolios include one or more financial instruments;
4. Investment advice where the business of the firm is the provision of impartial and informed personal recommendation to a customer in respect of one or more transactions or investment services relating to financial instruments;
5. Underwriting, placing and other activities directly related (not advertising or other indirect activities) to public or private offer or promotion of financial instruments and investment services, their distribution to prospective clients (irrespective of whether this involves some element of direct guarantee in the even of unsubscribed offer).

(b). *Activities which may be undertaken by investment firms:*

1. Dealing on own account with counterparties: the active trading on regular and professional basis with eligible counterparties for own account .
2. Operation of an alternative Trading System: a multilateral system that brings together multiple third party buying and selling interests in financial instruments – in the system and according to non-discretionary rules set by the system’s operator – in a way that forms or results in a contract.

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## **Section B: Non-core services.**

1. Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management;
2. Granting credits or loans to an investor to allow him to carry out a transaction in one or more financial instruments [where the firm granting the credit or loan is involved in the transaction];
3. Advice to undertakings on capital structure, industrial strategy and related matter and advice and service relating to mergers and the purchase of undertakings;
4. Foreign exchange service and trading in commodities where these are connected to the provision of investment services.

## **SECTION C – List of Financial Instruments**

Transferable securities comprise:

- Shares or certificates representing an ownership interest in a company, and depositary receipts in respect of shares;
- Bonds or other debt securities whether or not convertible into shares;
- Securities normally dealt in on the money market (such as certificates of deposit, euro-commercial paper);
- Units in collective investment schemes;
- Warrants or similar securities entitling the holder to acquire any of the above securities or any basket of such securities or to receive a cash amount determined by reference to a future price or value of any such security or basket.

Derivative instruments consist of:

- Options and futures contracts in respect of securities;
- Any other cash-settled instrument, the value of which is determined by reference to prices of securities, interest rates or yields, foreign exchange rates, commodities or other indices or measures;
- Contracts for differences or other derivative instruments for transfer of credit risk

The European Commission may, under the comitology procedure, provide clarification on whether specific forms of transferable security or derivative instrument fall within the scope of this definition

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## SECTION C - Definitions

Investor: any person wishing to acquire or dispose of financial instruments;

Client: any actual or prospective customer giving orders, conferring a mandate or entrusting money or financial instruments to an investment firm to perform investment services on its behalf;

Counterparty: the opposite party to a principal transaction with an investment firm in respect of a financial instrument where that party has explicitly agreed/indicated that is trading on the conditions quoted/offered by the investment firm without requiring the firm to act in its interests (elsewhere in main body of Directive relating to CBR/counterparty waiver, introduce a presumption that certain types of investor – i.e. retail and professional below CESR market counterparty threshold cannot be dealt with as counterparties subject to further assessment of expertise, investment objectives and financial situation);

Order: for the purposes of this Directive, “order” means the expression of any firm trading interest in the sale or purchase of a financial instrument, irrespective of the terms and conditions in which the order is to be expressed (e.g. limit order, market order).

“Limit order”: a limit order is a bid/ask order entered by a market participant/system user that is executed at its specified limit or better. (These orders are of particular interest from pre-trade transparency perspective because they can sit on the order book until executed at specified price or better. They are therefore an indication of potential interest in transacting business in a given instrument at specified conditions, and are a valuable indication of the prices/volumes at which an investor can expect to trade should he/she go to the market. This type of order will be the focus of the pre-trade transparency obligation).

Order-execution: includes the matching or crossing of investor orders so as to result in contracts to buy or sell the instrument in question. The following provisions also apply to any activities relating to the centralisation, organisation or display of trading interests when they are undertaken by systems which may also execute such trading interests.

Professional Investor: to be finalised in the light of ongoing work by CESR on standards for investor protection.

Eligible counterparty: to be finalised in the light of ongoing work by CESR on standards for investor protection.

Systematic Internalisation: Internalisation of more than 10% of client order flow could be distinguished from incidental order-matching<sup>4</sup>. In establishing the extent to which an investment firm/bank seeks to match or execute client orders on a

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<sup>4</sup> Which could be calculated, for example, as an average over three of the last four quarters.

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systematic basis, regard could also be had to the systems functionality and capacity which the firm implements to support internalisation of client order flow.

Tied-agent: any legal or natural person filed with a public register and providing business solely for the account of and under the full and unconditional responsibility of an investment firm on the basis of a contract.