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**Annex to Working Document ESC/24/2005
Comparative Table CESR Commission's document**

CESR Advice	Commission's working document	Comments
I. Advice on Article 19 (2) Box 8		
Marketing communications	Reflected in spirit	See explanatory note
Specific retail marketing communications	Included in Art. 10 (2)	
Direct offer retail marketing communications	Included in Art. 10 (2)(b)	
References to tax treatment	Included in Art. 3	
Simulated historic returns	Included in Art. 3	
References to past performance and forecasts of future performance	Included in Art. 3 and reflected in Art. 7	
References to past performance: conversion and cloning of collective investment undertakings	Not included	Covered by the general provisions relating to past performance
Estimates, forecasts and promises	Reflected in Art. 3	
Comparisons	Included in Art. 3	
II. Advice on Article 19 (3) Box 9		
Timing and form of information provision	Included in Art. 4	
Information given on a previous occasion	Not included	Recital included clarifying that information can be given at any time provided it is sufficiently in advance of the firm starting the provision of investment services.
Meaning of "in good time"	Recital included	

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Changes to information	Included in Art. 4 (3)	
Derogation for voice telephone communications and Means of distance communication not enabling the provision of information in a durable medium	Included in Art. 4 through a reference to the DMD	
Information about the investment firm and methods of redress	Partly included in Art. 5	We have included a requirement to give clients information about the name of the investment and the contact details necessary to enable those clients to effectively communicate with the firm. This requirement is flexible and covers the range of information necessary in different situations. We have not included the obligation to give information about the services and the type of instrument since that is already expressly imposed by the Level 1 text.
Information about services, financial instruments and costs and charges	Included in Art. 5, 6 and 7	
Information about the basis of calculation of the price	Included in Art. 7	
Compound products	Included in Art. 6 (3)	
Guarantees	Included in Art. 6 (4)	
Presentation of risk warnings	Included in Art 3	
Examples of areas where risk warnings required	Partly included in Art. 6	
Information relating to public offers of securities	Included in Art. 6	
Information to be provided at the beginning of voice telephone communications	Included in Art. 4 through a reference to the DMD	
Information on the investment firm's conflicts policy	Partly included in Art. 5	

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Information about inducements	Included in Art. 27	
III. Advice on Art. 19 (7)		
Retail client agreement	Not included	See explanatory note
Minimum contents of the retail client agreement	Included as information obligations in Art. 5, 6 and 7 and Art. 14 (2)	
Modification of the retail client agreement	Not included	See explanatory note
Record keeping	Included in the ESC Working document dealing with record keeping	
Retail client agreement involving trading in warrants or derivatives	Partly included as an information obligation in Art. 5 and 6	Information on whether the instrument is admitted to trading on a regulated market or not has not been included because it is too specific. The proposed level 2 provision makes it clear that the requirement can be met by the provision of generic information if sufficiently detailed.
Retail client agreement for portfolio management	Included as an information obligation in Art. 5	
Retail client agreement for portfolio management: reporting of losses	Included as a reporting obligation in Art. 14 (6)	
Retail client agreement for portfolio management: variable management fee	Reflected in Art. 7	
Termination of retail client agreement for portfolio management	Not included	See explanatory note

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IV. Advice on Art. 13 (7) and (8) Safeguarding of client assets	Included as information obligations in Art. 8	See explanatory note.
V. Advice on Art. 19 (4) Suitability test		
Criteria for assessing the minimum level of information from the client	Included in spirit in Art. 11	
Criteria for assessing the suitability	Partly included in Art. 11	We have not included a right for investment firms to provide the service if they do not possess the necessary information. In contrast to Art. 19(5), Art. 19(4) does not provide a legal basis for allowing investment firms to provide advisory or portfolio management services without any type of information, since in the absence of information firms would be unable to assess the client suitability.
VI. Advice on Art. 19 (5) Appropriateness test		
Minimum Level of information to be obtained from the client	Included in Art. 11	
Criteria for assessing the appropriateness	Not included	Repetition of the Level 1 text
VII. Advice on Art. 19 (6) Execution only services		
Definition of “non-complex instrument”	Included in Art. 12	
VIII. Advice on Art. 19 (8) Reporting to clients		
Contract notes and confirmation notices	Included in Art. 13	
Contract notes and confirmation notices: retail clients	Included in Art. 13 (3)	

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Use of anonymous trading systems	Not included	The level 2 text should not enter into this degree of detail.
Execution of an order in multiple tranches for a retail client	Partially included in Art. 13 (3)	We have required firms to give an average price in a case where an order was executed in multiple tranches. Information about the price of each tranche should be supplied upon request.
Unexecuted open orders received from retail clients	Partially included	When an order has not been executed an investment firm is obliged to supply clients with information about the status of the order upon request.
Provision of information to an agent of the client	Not included	The level 2 text should not enter into this degree of detail.
Duplication of information: contract notes or confirmation notices	Not included	It is sufficient to establish the general objective, which is that the client gets the confirmation note.
Arrangement for a series of purchases of units or shares in a collective investment undertaking	Included in Art. 13 (4)	
Failure by another person to supply required information	Not included	We have doubts on this principle. All essential elements of the confirmation note should be present in it;
Statements of client assets	Included in Art. 15	
Duplication of information: statements of client assets	Not included	It is sufficient to establish the general objective, which is that the client gets the statement.
Deposits with investment firms that are credit institutions	Included in Art. 15	
Contingent liability transactions Contingent liability transactions: retail clients	Respected in Art. 14 (6)	Obligation to report losses immediately included
Failure to accept or execute an order received from a retail client	Not included	Some further clarification is needed.
Periodic information for portfolio management clients	Included in Art. 14 (1)	

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Periodic information for retail portfolio management clients	Included in Art. 14	
Portfolio management: change in basis for valuing assets	Not included	Already covered by the general requirement to inform clients about changes in the information given in Art. 4
Portfolio management: provision of contract notes or confirmation notices in the periodic statement	Included in Art. 14 (4)	
Portfolio management: timing of periodic statements for retail clients	Included in Art. 14 (3)	
Portfolio management: periodic statements for retail clients: leveraged portfolios	Included in Art. 14 (5)	
Duplication of information: periodic statements	Not included	It is sufficient to establish the general objective, which is that the client gets the statement.
IX. Advice on Art. 24 Eligible counterparties		
Opt-in regime (eligible counterparties "per se" classified as professional clients or retail clients)	Not included	Already covered in Level 1
Opt-out regime (certain undertakings classified as eligible counterparties)	Partly included in Art. 16	We have only included those parts considered as essential for achieving a harmonised European eligible counterparty regime.
Services provided to an eligible counterparty "per se" before the transposition of the Directive	Not included	Grandfathering provisions are not allowed under the Level 2 since such possibility is not provided by Level 1
X. Advice on the Art. 4 (1) (4) Investment advice		
Definition of personal recommendation	Included in Art. 17	Additional recital included to clarify what might constitute relevant circumstances to be taken into account when determining whether investment advice is provided.
Differentiation with other terms	Not included	This is guidance which cannot be included in a legal text.

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XI. Advice on Art. 21 Best execution		
Relative importance of the factors	Included in Art. 18	See explanatory note
Execution policy	Included in Art. 20	
Information on best execution	Included in spirit in Art. 21	
Voice telephone communications	Not included	Necessity needs to be checked.
XII. Advice on Art. 22 Client order handling rules		
Information	Included in Art. 22	
Front running	Not included	Covered by the Market Abuse Directive. (MAD)
Dealing ahead		
Prompt and sequential execution and transmission of orders	Included in Art. 22	
Aggregation and allocation of orders	Included in Art. 22, 23 and 24	
Record keeping of orders carried out	Included in Art. 26	
XIII. Advice on Art. 13 (3) and 18 Inducements		
Inducements	Included in spirit in Art. 27	See explanatory note
Disclosure of inducements	Included in spirit in Art. 27	See explanatory note
XIV. Advice on Art. 4 and Annex I Sec. C List of financial instruments		
Definition of "commodity"	Included in Art. 2	
Definition of "delivery"	Included in Art. 2	

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Commercial purpose and characteristics of other derivative financial instruments	Partly included in Art. 28	See explanatory note
Derivative instruments within Section C (10) of Annex I Commodity derivatives Derivatives relating to climatic variables, freight rates, emission allowances, inflation rates, etc.	Included in Art. 29 Included in Art. 28 (4)	