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	CONTENT	SUBTITLE	TITLE
ARTICLE	<ol class="crrNumList"> <li>This Directive lays down the detailed rules for the implementation of Article 4(1)(4) and 4(2), Article 13(2) to (8), Article 18, Article 19(1) to (6), Article 19(8), and Articles 21, 22 and 24 of Directive 2004/39/EC.</li> <li>Chapter II and Sections 1 to 4, Article 45 and Sections 6 and 8 of Chapter III and, to the extent they relate to those provisions, Chapter I and Section 9 of Chapter III and Chapter IV of this Directive shall apply to management companies in accordance with Article 5(4) of Directive 85/611/EEC.</li> </ol>	Subject-matter and scope	Article 1
	For the purposes of this Directive, the following definitions shall apply: <ol class="crrNumList"> <li>distribution channels means distribution channels within the meaning of Article 1(7) of Commission Directive 2003/125/EC;</li> <li>durable medium means any instrument which enables a client to store information addressed personally to that client in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;</li> <li>relevant person in relation to an investment firm, means any of the following:</li> <ol class="crrCharList"> <li>a director, partner or equivalent, manager or tied agent of the firm;</li> <li>a director, partner or equivalent, or manager of any tied agent of the firm;</li> <li>an employee of the firm or of a tied agent of the firm, as well as any other natural person whose services are placed at the disposal and under the control of the firm or a tied agent of the firm and who is involved in the provision by the firm of investment services and activities;</li> <li>a natural person who is directly involved in the provision of services to the investment firm or to its tied agent under an outsourcing arrangement for the purpose of the provision by the firm of investment services and activities;</li> </ol> <li>financial analyst means a relevant person who produces the substance of investment research;</li> <li>group, in relation to an investment firm, means the group of which that firm forms a part, consisting of a parent undertaking, its subsidiaries and the entities in which the parent undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship within the meaning of Article 12(1) of Council Directive 83/349/EEC on consolidated accountsOJ No L 193, 18.7.1983, p. 1.;</li> <li>outsourcing means an arrangement of any form between an investment firm and a service provider by which that service provider performs a process, a service or an activity which would otherwise be undertaken by the investment firm itself;</li> <li>person with whom a relevant person has a family relationship means any of the following:</li> <ol class="crrCharList"> <li>the spouse of the relevant person or any partner of that person considered by national law as equivalent to a spouse;</li> <li>a dependent child or stepchild of the relevant person;</li> <li>any other relative of the relevant person who has shared the same household as that person for at least one year on the date of the personal transaction concerned;</li> </ol> <li>securities financing transaction has the meaning given in Commission Regulation (EC) No 1287/2006See page 1 of this Official Journal.; </li> <li>senior management means the person or persons who effectively direct the business of the investment firm as referred to in Article 9(1) of Directive 2004/39/EC.</li> </ol>	Definitions	Article 2
	<ol class="crrNumList"> <li> Where, for the purposes of this Directive, information is required to be provided in a durable medium, Member States shall permit investment firms to provide that information in a durable medium other than on paper only if: <ol class="crrCharList"> <li>the provision of that information in that medium is appropriate to the context in which the business between the firm and the client is, or is to be, carried on; and</li> <li>the person to whom the information is to be provided, when offered the choice between information on paper or in that other durable medium, specifically chooses the provision of the information in that other medium.</li> </ol> </li> <li> Where, pursuant to Article 29, 30, 31, 32, 33 or 46(2) of this Directive, an investment firm provides information to a client by means of a website and that information is not addressed personally to the client, Member States shall ensure that the following conditions are satisfied: <ol class="crrCharList"> <li>the provision of that information in that medium is appropriate to the context in which the business between the firm and the client is, or is to be, carried on;</li> <li>the client must specifically consent to the provision of that information in that form;</li> <li>the client must be notified electronically of the address of the website, and the place on the website where the information may be accessed;</li> <li>the	Conditions applying to the provision of information	Article 3

information must be up to date;</li> <li>the information must be accessible continuously by means of that website for such period of time as the client may reasonably need to inspect it.</li> </ol> </li> <li>For the purposes of this Article, the provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the firm and the client is, or is to be, carried on if there is evidence that the client has regular access to the internet. The provision by the client of an e-mail address for the purposes of the carrying on of that business shall be treated as such evidence.</li> </ol>		
<ol class="crrNumList"> <li> Member States may retain or impose requirements additional to those in this Directive only in those exceptional cases where such requirements are objectively justified and proportionate so as to address specific risks to investor protection or to market integrity that are not adequately addressed by this Directive, and provided that one of the following conditions is met: <ol class="crrCharList"> <li>the specific risks addressed by the requirements are of particular importance in the circumstances of the market structure of that Member State;</li> <li>the requirement addresses risks or issues that emerge or become evident after the date of application of this Directive and that are not otherwise regulated by or under Community measures.</li> </ol> </li> <li>Any requirements imposed under paragraph 1 shall not restrict or otherwise affect the rights of investment firms under Articles 31 and 32 of Directive 2004/39/EC.</li> <li> Member States shall notify to the Commission: <ol class="crrCharList"> <li>any requirement which it intends to retain in accordance with paragraph 1 before the date of transposition of this Directive; and</li> <li>any requirement which it intends to impose in accordance with paragraph 1 at least one month before the date appointed for that requirement to come into force.</li> </ol> In each case, the notification shall include a justification for that requirement. The Commission shall communicate to Member States and make public on its website the notifications it receives in accordance with this paragraph. </li> <li>By 31 December 2009 the Commission shall report to the European Parliament and the Council on the application of this Article.</li> </ol>	Additional requirements on investment firms in certain cases	Article 4

SUBTITLE	SCOPE AND DEFINITIONS
TITLE	CHAPTER I

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ARTICLE			SUBTITLE	TITLE
CONTENT	**SUBTITLE**	**TITLE**		
<ol class="crrNumList"> <li> Member States shall require investment firms to comply with the following requirements: <ol class="crrCharList"> <li>to establish, implement and maintain decision-making procedures and an organisational structure which clearly and in documented manner specifies reporting lines and allocates functions and responsibilities;</li> <li>to ensure that their relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities;</li> <li>to establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the investment firm;</li> <li>to employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them;</li> <li>to establish, implement and maintain effective internal reporting				

					effective internal reporting and communication of information at all relevant levels of the investment firm;</li> <li>to maintain adequate and orderly records of their business and internal organisation; </li> <li>to ensure that the performance of multiple functions by their relevant persons does not and is not likely to prevent those persons from discharging any particular function soundly, honestly, and professionally.</li> </ol> Member States shall ensure that, for those purposes, investment firms take into account the nature, scale and complexity of the business of the firm, and the nature and range of investment services and activities undertaken in the course of that business. </li> <li>Member States shall require investment firms to establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question. </li> <li>Member States shall require investment firms to establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to their systems and procedures, the preservation of essential data and functions, and the maintenance of investment services and activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of their investment services and activities.</li> <li>Member States shall require investment firms to establish, implement and maintain accounting policies and procedures that enable them, at the request of the competent authority, to deliver in a timely manner to the competent authority financial reports which reflect a true and fair view of their financial position and which comply with all applicable accounting standards and rules.</li> <li>Member States shall require investment firms to monitor and, on a regular basis, to evaluate the adequacy and effectiveness of their systems, internal control mechanisms and arrangements established in accordance with paragraphs 1 to 4, and to take appropriate measures	(Article 13(2) to (8) of Directive 2004/39/EC)General organisational requirements	Article 5			

				take appropriate measures to address any deficiencies. </li> </ol>				
				<ol class="crrNumList"> <li>Member States shall ensure that investment firms establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the firm to comply with its obligations under Directive 2004/39/EC, as well as the associated risks, and put in place adequate measures and procedures designed to minimise such risk and to enable the competent authorities to exercise their powers effectively under that Directive.Member States shall ensure that, for those purposes, investment firms take into account the nature, scale and complexity of the business of the firm, and the nature and range of investment services and activities undertaken in the course of that business.</li> <li> <p>Member States shall require investment firms to establish and maintain a permanent and effective compliance function which operates independently and which has the following responsibilities:</p> <ol class="crrCharList"> <li>to monitor and, on a regular basis, to assess the adequacy and effectiveness of the measures and procedures put in place in accordance with the first subparagraph of paragraph 1, and the actions taken to address any deficiencies in the firm's compliance with its obligations;</li> <li>to advise and assist the relevant persons responsible for carrying out investment services and activities to comply with the firm's obligations under Directive 2004/39/EC.</li> </ol> </li> <li> <p>In order to enable the compliance function to discharge its responsibilities properly and independently, Member States shall require investment firms to ensure that the following conditions are satisfied: </p> <ol class="crrCharList"> <li>the compliance function must have the necessary authority, resources, expertise and access to all relevant information;</li> <li>a compliance officer must be appointed and must be responsible for the compliance function and for any reporting as to compliance required by Article 9(2);</li> <li>the relevant persons involved in the compliance function	(Article 13(2) of Directive 2004/39/EC)Compliance	Article 6		

					must not be involved in the performance of services or activities they monitor;</li> <li>the method of determining the remuneration of the relevant persons involved in the compliance function must not compromise their objectivity and must not be likely to do so.</li> </ol> However, an investment firm shall not be required to comply with point (c) or point (d) if it is able to demonstrate that in view of the nature, scale and complexity of its business, and the nature and range of investment services and activities, the requirement under that point is not proportionate and that its compliance function continues to be effective. </li> </ol>						
					<ol class="crrNumList"> <li> Member States shall require investment firms to take the following actions: <ol class="crrCharList"> <li>to establish, implement and maintain adequate risk management policies and procedures which identify the risks relating to the firm's activities, processes and systems, and where appropriate, set the level of risk tolerated by the firm; </li> <li>to adopt effective arrangements, processes and mechanisms to manage the risks relating to the firm's activities, processes and systems, in light of that level of risk tolerance;</li> <li>to monitor the following:</li> <ol class="crrRomanList"> <li>the adequacy and effectiveness of the investment firm's risk management policies and procedures;</li> <li>the level of compliance by the investment firm and its relevant persons with the arrangements, processes and mechanisms adopted in accordance with point (b); </li> <li>the adequacy and effectiveness of measures taken to address any deficiencies in those policies, procedures, arrangements, processes and mechanisms, including failures by the relevant persons to comply with such arrangements, processes and mechanisms or follow such policies and procedures.</li> </ol> </ol> </li> <li> Member States shall require investment firms, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of the investment services and activities undertaken in the	(second subparagraph of Article 13(5) of Directive 2004/39/EC)Risk management	Article 7				

					activities undertaken in the course of that business, to establish and maintain a risk management function that operates independently and carries out the following tasks: <ol class="crrCharList"> <li>implementation of the policy and procedures referred to in paragraph 1; </li> <li>provision of reports and advice to senior management in accordance with Article 9(2).</li> </ol> Where an investment firm is not required under the first sub-paragraph to establish and maintain a risk management function that functions independently, it must nevertheless be able to demonstrate that the policies and procedures which it is has adopted in accordance with paragraph 1 satisfy the requirements of that paragraph and are consistently effective. </li> </ol>			Organisation	SECTION 1	
					Member States shall require investment firms, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of investment services and activities undertaken in the course of that business, to establish and maintain an internal audit function which is separate and independent from the other functions and activities of the investment firm and which has the following responsibilities: <ol class="crrCharList"> <li>to establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the investment firm's systems, internal control mechanisms and arrangements;</li> <li>to issue recommendations based on the result of work carried out in accordance with point (a);</li> <li>to verify compliance with those recommendations;</li> <li>to report in relation to internal audit matters in accordance with Article 9(2).</li> </ol>	(second subparagraph of Article 13(5) of Directive 2004/39/EC)Internal audit	Article 8			
					<ol class="crrNumList"> <li>Member States shall require investment firms, when allocating functions internally, to ensure that senior management, and, where appropriate, the supervisory function, are responsible for ensuring that the firm complies with its obligations under Directive 2004/39/EC.In particular, senior management and, where appropriate, the					

supervisory function shall be required to assess and periodically to review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations under Directive 2004/39/EC and to take appropriate measures to address any deficiencies.</li> <li>Member States shall require investment firms to ensure that their senior management receive on a frequent basis, and at least annually, written reports on the matters covered by Articles 6, 7 and 8 indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies.</li> <li>Member States shall require investment firms to ensure that the supervisory function, if any, receives on a regular basis written reports on the same matters.</li> <li>For the purposes of this Article, supervisory function means the function within an investment firm responsible for the supervision of its senior management.</li> </ol>	(Article 13(2) of Directive 2004/39/EC)Responsibility of senior management	Article 9
Member States shall require investment firms to establish, implement and maintain effective and transparent procedures for the reasonable and prompt handling of complaints received from retail clients or potential retail clients, and to keep a record of each complaint and the measures taken for its resolution.	(Article 13(2) of Directive 2004/39/EC)Complaints handling	Article 10
For the purposes of Article 12 and Article 25, personal transaction means a trade in a financial instrument effected by or on behalf of a relevant person, where at least one of the following criteria are met: <ol class="crrCharList"> <li>that relevant person is acting outside the scope of the activities he carries out in that capacity;</li> <li>the trade is carried out for the account of any of the following persons:</li> <ol class="crrRomanList"> <li>the relevant person; </li> <li>any person with whom he has a family relationship, or with whom he has close links;</li> <li>a person whose relationship with the relevant person is such that the relevant person has a direct or indirect material interest in the outcome of the trade, other than a fee	(Article 13(2) of Directive 2004/39/EC)Meaning of personal transaction	Article 11

the trade, other than a fee or commission for the execution of the trade.</li> </ol> </ol>		
<ol class="crrNumList"> <li> Member States shall require investment firms to establish, implement and maintain adequate arrangements aimed at preventing the following activities in the case of any relevant person who is involved in activities that may give rise to a conflict of interest, or who has access to inside information within the meaning of Article 1(1) of Directive 2003/6/EC or to other confidential information relating to clients or transactions with or for clients by virtue of an activity carried out by him on behalf of the firm: <ol class="crrCharList"> <li>entering into a personal transaction which meets at least one of the following criteria:</li> <ol class="crrRomanList"> <li>that person is prohibited from entering into it under Directive 2003/6/EC;</li> <li>it involves the misuse or improper disclosure of that confidential information; </li> <li>it conflicts or is likely to conflict with an obligation of the investment firm under Directive 2004/39/EC;</li> </ol> <li>advising or procuring, other than in the proper course of his employment or contract for services, any other person to enter into a transaction in financial instruments which, if a personal transaction of the relevant person, would be covered by point (a) or Article 25(2)(a) or (b) or Article 47(3);</li> <li>without prejudice to Article 3(a) of Directive 2003/6/EC, disclosing, other than in the normal course of his employment or contract for services, any information or opinion to any other person if the relevant person knows, or reasonably ought to know, that as a result of that disclosure that other person will or would be likely to take either of the following steps:</li> <ol class="crrRomanList"> <li>to enter into a transaction in financial instruments which, if a personal transaction of the relevant person, would be covered by point (a) or Article 25(2)(a) or (b) or Article 47(3);</li> &;t;li>to advise or procure another person to enter into such a transaction.</li> </ol> </ol> </li> <li> The arrangements required	(Article 13(2) of Directive 2004/39/EC)Personal	Article 12

arrangements required under paragraph 1 must in particular be designed to ensure that: <ol class="crrCharList"> <li>each relevant person covered by paragraph 1 is aware of the restrictions on personal transactions, and of the measures established by the investment firm in connection with personal transactions and disclosure, in accordance with paragraph 1;</li> <li>the firm is informed promptly of any personal transaction entered into by a relevant person, either by notification of that transaction or by other procedures enabling the firm to identify such transactions;</li> In the case of outsourcing arrangements the investment firm must ensure that the firm to which the activity is outsourced maintains a record of personal transactions entered into by any relevant person and provides that information to the investment firm promptly on request. <li>a record is kept of the personal transaction notified to the firm or identified by it, including any authorisation or prohibition in connection with such a transaction. </li> </ol> </li> <li> Paragraphs 1 and 2 shall not apply to the following kinds of personal transaction: <ol class="crrCharList"> <li>personal transactions effected under a discretionary portfolio management service where there is no prior communication in connection with the transaction between the portfolio manager and the relevant person or other person for whose account the transaction is executed; </li> <li>personal transactions in units in collective undertakings that comply with the conditions necessary to enjoy the rights conferred by Directive 85/611/EEC or are subject to supervision under the law of a Member State which requires an equivalent level of risk spreading in their assets, where the relevant person and any other person for whose account the transactions are effected are not involved in the management of that undertaking.</li> </ol> </li> </ol>	transactions	12

CONTENT	SUBTITLE	TITLE
<ol class="crrNumList"> <li>For the purposes of the first subparagraph of Article		

first subparagraph of Article 13(5) of Directive 2004/39/EC, an operational function shall be regarded as critical or important if a defect or failure in its performance would materially impair the continuing compliance of an investment firm with the conditions and obligations of its authorisation or its other obligations under Directive 2004/39/EC, or its financial performance, or the soundness or the continuity of its investment services and activities.</li> <li> <p>Without prejudice to the status of any other function, the following functions shall not be considered as critical or important for the purposes of paragraph 1:</p> <ol class="crrCharList"> <li>the provision to the firm of advisory services, and other services which do not form part of the investment business of the firm, including the provision of legal advice to the firm, the training of personnel of the firm, billing services and the security of the firm's premises and personnel;</li> <li>the purchase of standardised services, including market information services and the provision of price feeds.</li> </ol> </li> </ol>	(Article 13(2) and first subparagraph of Article 13(5) of Directive 2004/39/EC)Meaning of critical and important operational functions	Article 13
<ol class="crrNumList"> <li> <p>Member States shall ensure that, when investment firms outsource critical or important operational functions or any investment services or activities, the firms remain fully responsible for discharging all of their obligations under Directive 2004/39/EC and comply, in particular, with the following conditions:</p> <ol class="crrCharList"> <li>the outsourcing must not result in the delegation by senior management of its responsibility;</li> <li>the relationship and obligations of the investment firm towards its clients under the terms of Directive 2004/39/EC must not be altered;</li> <li>the conditions with which the investment firm must comply in order to be authorised in accordance with Article 5 of Directive 2004/39/EC, and to remain so, must not be undermined;</li> <li>none of the other conditions subject to which the firm's authorisation was granted must be removed or modified.</li> </ol> </li> <li> <p>Member States shall require investment firms to exercise due skill, care and diligence when entering into, managing or terminating any arrangement for the outsourcing to a service provider of critical or important operational functions or of any investment services or activities.</p> <p>Investment firms shall in particular take		

				firms shall in particular take the necessary steps to ensure that the following conditions are satisfied:</p> <ol class="crrCharList"> <li>the service provider must have the ability, capacity, and any authorisation required by law to perform the outsourced functions, services or activities reliably and professionally;</li> <li>the service provider must carry out the outsourced services effectively, and to this end the firm must establish methods for assessing the standard of performance of the service provider;</li> <li>the service provider must properly supervise the carrying out of the outsourced functions, and adequately manage the risks associated with the outsourcing;</li> <li>appropriate action must be taken if it appears that the service provider may not be carrying out the functions effectively and in compliance with applicable laws and regulatory requirements;</li> <li>the investment firm must retain the necessary expertise to supervise the outsourced functions effectively and manage the risks associated with the outsourcing and must supervise those functions and manage those risks;</li> <li>the service provider must disclose to the investment firm any development that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with applicable laws and regulatory requirements;</li> <li>the investment firm must be able to terminate the arrangement for outsourcing where necessary without detriment to the continuity and quality of its provision of services to clients; </li> <li>the service provider must cooperate with the competent authorities of the investment firm in connection with the outsourced activities; </li> <li>the investment firm, its auditors and the relevant competent authorities must have effective access to data related to the outsourced activities, as well as to the business premises of the service provider; and the competent authorities must be able to exercise those rights of access;</li> <li>the service provider must protect any confidential information relating to the investment firm and its clients;</li> <li>the investment firm and the service provider must establish, implement and maintain a contingency plan for disaster recovery and periodic testing of backup facilities, where that is necessary having regard to the function, service or activity that has been outsourced.</li> </ol> </li> <li>Member States shall require the respective	(Article 13(2) and first subparagraph of Article 13(5) of Directive 2004/39/EC)Conditions for outsourcing critical or important operational functions or investment services or activities	Article 14	Outsourcing	SECTION 2

					rights and obligations of the investment firms and of the service provider to be clearly allocated and set out in a written agreement.</li> <li>Member States shall provide that, where the investment firm and the service provider are members of the same group, the investment firm may, for the purposes of complying with this Article and Article 15, take into account the extent to which the firm controls the service provider or has the ability to influence its actions.</li> <li>Member States shall require investment firms to make available on request to the competent authority all information necessary to enable the authority to supervise the compliance of the performance of the outsourced activities with the requirements of this Directive.</li> </ol>					
			SECTION		<ol class="crrNumList"> <li> In addition to the requirements set out in Article 14, Member States shall require that, where an investment firm outsources the investment service of portfolio management provided to retail clients to a service provider located in a third country, that investment firm ensures that the following conditions are satisfied: <ol class="crrCharList"> <li>the service provider must be authorised or registered in its home country to provide that service and must be subject to prudential supervision;</li> <li>there must be an appropriate cooperation agreement between the competent authority of the investment firm and the supervisory authority of the service provider.</li> </ol> </li> <li>Where one or both of those conditions mentioned in paragraph 1 are not satisfied, an investment firm may outsource investment services to a service provider located in a third country only if the firm gives prior notification to its competent authority about the outsourcing arrangement and the competent authority does not object to that arrangement within a reasonable time following receipt of that notification.</li> <li>Without prejudice to paragraph 2, Member States shall publish or require competent authorities to publish a statement of policy in relation to outsourcing covered by paragraph 2. That statement shall set out examples of cases where the competent authority would not, or would be likely not to, object to an outsourcing under paragraph 2 where one or both of the conditions in points (a) and (b) of paragraph 1 are not met. It shall include a clear explanation as to why the competent authority considers	(Article 13(2) and first subparagraph of Article 13(5) of Directive 2004/39/EC)Service providers located in third countries	Article 15			

				competent authority considers that in such cases outsourcing would not impair the ability of investment firms to fulfil their obligations under Article 14. </li> <li>Nothing in this article limits the obligations on investment firms to comply with the requirements in Article 14.</li> <li>Competent authorities shall publish a list of the supervisory authorities in third countries with which they have cooperation agreements that are appropriate for the purposes of point (b) of paragraph 1.</li> </ol>				

CONTENT	SUBTITLE	TITLE
<ol class="crrNumList"> <li> Member States shall require that, for the purposes of safeguarding clientsâ€™ rights in relation to financial instruments and funds belonging to them, investment firms comply with the following requirements: <ol class="crrCharList"> <li>they must keep such records and accounts as are necessary to enable them at any time and without delay to distinguish assets held for one client from assets held for any other client, and from their own assets;</li> <li>they must maintain their records and accounts in a way that ensures their accuracy, and in particular their correspondence to the financial instruments and funds held for clients;</li> <li>they must conduct, on a regular basis, reconciliations between their internal accounts and records and those of any third parties by whom those assets are held; </li> <li>they must take the necessary steps to ensure that any client financial instruments deposited with a third party, in accordance with Article 17, are identifiable separately from the financial instruments belonging to the investment firm and from financial instruments belonging to that third party, by means of differently titled accounts on the books of the third party or other equivalent measures that achieve the same level of protection; </li> <li>they must take the necessary steps to ensure that client funds deposited, in accordance with Article 18, in a central bank, a credit institution or a bank authorised in a third country or a qualifying money market fund are held in an account or accounts identified separately from any accounts used to hold funds belonging to the investment firm;</li> <li>they must introduce adequate organisational	(Article 13(7) and (8) of Directive 2004/39/EC)Safeguarding of client financial instruments and funds	Article 16

					adequate organisational arrangements to minimise the risk of the loss or diminution of client assets, or of rights in connection with those assets, as a result of misuse of the assets, fraud, poor administration, inadequate record-keeping or negligence.</li> </ol> </li> <li>If, for reasons of the applicable law, including in particular the law relating to property or insolvency, the arrangements made by investment firms in compliance with paragraph 1 to safeguard clientsâ€™ rights are not sufficient to satisfy the requirements of Article 13(7) and (8) of Directive 2004/39/EC, Member States shall prescribe the measures that investment firms must take in order to comply with those obligations.</li> <li>If the applicable law of the jurisdiction in which the client funds or financial instruments are held prevents investment firms from complying with points (d) or (e) of paragraph 1, Member States shall prescribe requirements which have an equivalent effect in terms of safeguarding clientsâ€™ rights.</li> </ol>						
					<ol class="crrNumList">\<li>Member States shall permit investment firms to deposit financial instruments held by them on behalf of their clients into an account or accounts opened with a third party provided that the firms exercise all due skill, care and diligence in the selection, appointment and periodic review of the third party and of the arrangements for the holding and safekeeping of those financial instruments.In particular, Member States shall require investment firms to take into account the expertise and market reputation of the third party as well as any legal requirements or market practices related to the holding of those financial instruments that could adversely affect clientsâ€™ rights.</li> <li>Member States shall ensure that, if the safekeeping of financial instruments for the account of another person is subject to specific regulation and supervision in a jurisdiction where an investment firm proposes to deposit client financial instruments with a third party, the investment firm does not deposit those financial instruments in that jurisdiction with a third party which is not subject to such regulation and	(Article 13(7) of Directive 2004/39/EC)Depositing client financial instruments	Article 17				

					supervision.</li> <li> Member States shall ensure that investment firms do not deposit financial instruments held on behalf of clients with a third party in a third country that does not regulate the holding and safekeeping of financial instruments for the account of another person unless one of the following conditions is met: <ol class="crrCharList"> <li>the nature of the financial instruments or of the investment services connected with those instruments requires them to be deposited with a third party in that third country; </li> <li>where the financial instruments are held on behalf of a professional client, that client requests the firm in writing to deposit them with a third party in that third country.</li> </ol> </li> </ol>					
					<ol class="crrNumList">

<li> Member States shall require investment firms, on receiving any client funds, promptly to place those funds into one or more accounts opened with any of the following: <ol class="crrCharList"> <li>a central bank;</li> <li>a credit institution authorised in accordance with Directive 2000/12/EC;</li> <li>a bank authorised in a third country;</li> <li>a qualifying money market fund.</li> </ol> The first subparagraph shall not apply to a credit institution authorised under Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast)OJ L 177, 30.6.2006, p. 1. 0 in relation to deposits within the meaning of that Directive held by that institution. </li> <li> For the purposes of point (d) of paragraph 1, and of Article 16(1)(e), a qualifying money market fund means a collective investment undertaking authorised under Directive 85/611/EEC, or which is subject to supervision and, if applicable, authorised by an authority under the national law of a Member State, and which satisfies the following conditions: <ol class="crrCharList"> <li>its primary investment objective must be to maintain the net asset value of the undertaking either constant at par (net of earnings), or at the value of the investorsâ€™ initial capital plus earnings;</li> <li>it must, with a view to | | | Safeguarding of client assets | SECTION 3 |

achieving that primary investment objective, invest exclusively in high quality money market instruments with a maturity or residual maturity of no more than 397 days, or regular yield adjustments consistent with such a maturity, and with a weighted average maturity of 60 days. It may also achieve this objective by investing on an ancillary basis in deposits with credit institutions;</li> <li>it must provide liquidity through same day or next day settlement.</li> </ol> <p>For the purposes of point (b), a money market instrument shall be considered to be of high quality if it has been awarded the highest available credit rating by each competent rating agency which has rated that instrument. An instrument that is not rated by any competent rating agency shall not be considered to be of high quality.</p> <p>For the purposes of the second subparagraph, a rating agency shall be considered to be competent if it issues credit ratings in respect of money market funds regularly and on a professional basis and is an eligible ECAI within the meaning of Article 81(1) of Directive 2006/48/EC.</p> </li> <li>Member States shall require that, where investment firms do not deposit client funds with a central bank, they exercise all due skill, care and diligence in the selection, appointment and periodic review of the credit institution, bank or money market fund where the funds are placed and the arrangements for the holding of those funds.Member States shall ensure, in particular, that investment firms take into account the expertise and market reputation of such institutions or money market funds with a view to ensuring the protection of clientsâ€™ rights, as well as any legal or regulatory requirements or market practices related to the holding of client funds that could adversely affect clientsâ€™ rights.Member States shall ensure that clients have the right to oppose the placement of their funds in a qualifying money market fund.</li> </ol>	(Article 13(8) of Directive 2004/39/EC)Depositing client funds	Article 18
<ol class="crrNumList"> <li> <p>Member States shall not allow investment firms to enter into arrangements for securities financing transactions in respect of financial		

				instruments held by them on behalf of a client, or otherwise use such financial instruments for their own account or the account of another client of the firm, unless the following conditions are met: <ol class="crrCharList"> <li>the client must have given his prior express consent to the use of the instruments on specified terms, as evidenced, in the case of a retail client, by his signature or equivalent alternative mechanism;</li> <li>the use of that client's financial instruments must be restricted to the specified terms to which the client consents.</li> </ol> </li> <li> Member States may not allow investment firms to enter into arrangements for securities financing transactions in respect of financial instruments which are held on behalf of a client in an omnibus account maintained by a third party, or otherwise use financial instruments held in such an account for their own account or for the account of another client unless, in addition to the conditions set out in paragraph 1, at least one of the following conditions is met: <ol class="crrCharList"> <li>each client whose financial instruments are held together in an omnibus account must have given prior express consent in accordance with point (a) of paragraph 1;</li> <li>the investment firm must have in place systems and controls which ensure that only financial instruments belonging to clients who have given prior express consent in accordance with point (a) of paragraph 1 are so used.</li> </ol> The records of the investment firm shall include details of the client on whose instructions the use of the financial instruments has been effected, as well as the number of financial instruments used belonging to each client who has given his consent, so as to enable the correct allocation of any loss. </li> </ol>	(Article 13(7) of Directive 2004/39/EC)Use of client financial instruments	Article 19		
				Member States shall require investment firms to ensure that their external auditors report at least annually to the competent authority of the home Member State of the firm on the adequacy of the firm's arrangements under Articles 13(7) and (8) of Directive 2004/39/EC and this Section.	(Article 13(7) and (8) of Directive 2004/39/EC)Reports by external auditors	Article 20		

CONTENT	SUBTITLE	TITLE

Member States shall ensure that, for the purposes of identifying the types of conflict of interest that arise in the course of providing investment and ancillary services or a combination thereof and whose existence may damage the interests of a client, investment firms take into account, by way of minimum criteria, the question of whether the investment firm or a relevant person, or a person directly or indirectly linked by control to the firm, is in any of the following situations, whether as a result of providing investment or ancillary services or investment activities or otherwise: <ol class="crrCharList"> <li>the firm or that person is likely to make a financial gain, or avoid a financial loss, at the expense of the client;</li> <li>the firm or that person has an interest in the outcome of a service provided to the client or of a transaction carried out on behalf of the client, which is distinct from the client's interest in that outcome;</li> <li>the firm or that person has a financial or other incentive to favour the interest of another client or group of clients over the interests of the client;</li> <li>the firm or that person carries on the same business as the client;</li> <li>the firm or that person receives or will receive from a person other than the client an inducement in relation to a service provided to the client, in the form of monies, goods or services, other than the standard commission or fee for that service.</li> </ol>	(Articles 13(3) and 18 of Directive 2004/39/EC)Conflicts of interest potentially detrimental to a client	Article 21
<ol class="crrNumList"> <li>Member States shall require investment firms to establish, implement and maintain an effective conflicts of interest policy set out in writing and appropriate to the size and organisation of the firm and the nature, scale and complexity of its business.Where the firm is a member of a group, the policy must also take into account any circumstances, of which the firm is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the group.</li> <li> The conflicts of interest policy established in accordance with paragraph 1 shall include the following content: <ol class="crrCharList"> <li>it must identify, with reference to the specific investment services and activities and ancillary services carried out by or on behalf of the investment firm, the		

				investment firm, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of one or more clients;</li> <li>it must specify procedures to be followed and measures to be adopted in order to manage such conflicts.</li> </ol> </li> <li> Member States shall ensure that the procedures and measures provided for in paragraph 2(b) are designed to ensure that relevant persons engaged in different business activities involving a conflict of interest of the kind specified in paragraph 2(a) carry on those activities at a level of independence appropriate to the size and activities of the investment firm and of the group to which it belongs, and to the materiality of the risk of damage to the interests of clients. For the purposes of paragraph 2(b), the procedures to be followed and measures to be adopted shall include such of the following as are necessary and appropriate for the firm to ensure the requisite degree of independence: <ol class="crrCharList"> <li>effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more clients;</li> <li>the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services to, clients whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the firm;</li> <li>the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;</li> <li>measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out investment or ancillary services or activities; </li> <li>measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate investment or ancillary services or activities where such involvement may impair the proper management of conflicts of interest.</li> </ol> If the adoption or the practice of one or more of those measures and	(Articles 13(3) and 18(1) of Directive 2004/39/EC)Conflicts of interest policy	Article 22			

					procedures does not ensure the requisite degree of independence, Member States shall require investment firms to adopt such alternative or additional measures and procedures as are necessary and appropriate for those purposes. </li> <li>Member States shall ensure that disclosure to clients, pursuant to Article 18(2) of Directive 2004/39/EC, is made in a durable medium and includes sufficient detail, taking into account the nature of the client, to enable that client to take an informed decision with respect to the investment or ancillary service in the context of which the conflict of interest arises.</li> </ol>				
					Member States shall require investment firms to keep and regularly to update a record of the kinds of investment or ancillary service or investment activity carried out by or on behalf of the firm in which a conflict of interest entailing a material risk of damage to the interests of one or more clients has arisen or, in the case of an ongoing service or activity, may arise.	(Article 13(6) of Directive 2004/39/EC)Record of services or activities giving rise to detrimental conflict of interest	Article 23		
					<ol class="crrNumList"> <li> For the purposes of Article 25, investment research means research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers of financial instruments, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public, and in relation to which the following conditions are met: <ol class="crrCharList"> <li>it is labelled or described as investment research or in similar terms, or is otherwise presented as an objective or independent explanation of the matters contained in the recommendation;</li> <li>if the recommendation in question were made by an investment firm to a client, it would not constitute the provision of investment advice for the purposes of Directive 2004/39/EC.</li> </ol> </li> <li>A recommendation of the type covered by Article 1(3) of Directive 2003/125/EC but relating to financial instruments as defined in Directive 2004/39/EC that does not meet the conditions set out in paragraph 1 shall be treated as a marketing communication for the purposes of Directive 2004/39/EC and Member States shall require any investment firm that produces or	(Article 19(2) of Directive 2004/39/EC)Investment research	Article 24	Conflicts of interest	SECTION 4

disseminates the recommendation to ensure that it is clearly identified as such.Additionally, Member States shall require those firms to ensure that any such recommendation contains a clear and prominent statement that (or, in the case of an oral recommendation, to the effect that) it has not been prepared in accordance with legal requirements designed to promote the independence of investment research, and that it is not subject to any prohibition on dealing ahead of the dissemination of investment research.</li> </ol>		
<ol class="crrNumList"> <li>Member States shall require investment firms which produce, or arrange for the production of, investment research that is intended or likely to be subsequently disseminated to clients of the firm or to the public, under their own responsibility or that of a member of their group, to ensure the implementation of all the measures set out in Article 22(3) in relation to the financial analysts involved in the production of the investment research and other relevant persons whose responsibilities or business interests may conflict with the interests of the persons to whom the investment research is disseminated.</li> <li> Member States shall require investment firms covered by paragraph 1 to have in place arrangements designed to ensure that the following conditions are satisfied: <ol class="crrCharList"> <li>financial analysts and other relevant persons must not undertake personal transactions or trade, other than as market makers acting in good faith and in the ordinary course of market making or in the execution of an unsolicited client order, on behalf of any other person, including the investment firm, in financial instruments to which investment research relates, or in any related financial instruments, with knowledge of the likely timing or content of that investment research which is not publicly available or available to clients and cannot readily be inferred from information that is so available, until the recipients of the investment research have had a reasonable opportunity to act on it;</li> <li>in circumstances not covered by point (a), financial analysts and any other relevant persons involved in the production of investment research must not undertake personal transactions in financial instruments to which the investment research		

				the investment research relates, or in any related financial instruments, contrary to current recommendations, except in exceptional circumstances and with the prior approval of a member of the firm's legal or compliance function;</li> <li>the investment firms themselves, financial analysts, and other relevant persons involved in the production of the investment research must not accept inducements from those with a material interest in the subject-matter of the investment research;</li> <li>the investment firms themselves, financial analysts, and other relevant persons involved in the production of the investment research must not promise issuers favourable research coverage;</li> <li>issuers, relevant persons other than financial analysts, and any other persons must not before the dissemination of investment research be permitted to review a draft of the investment research for the purpose of verifying the accuracy of factual statements made in that research, or for any other purpose other than verifiying compliance with the firm's legal obligations, if the draft includes a recommendation or a target price.</li> </ol> For the purposes of this paragraph, related financial instrument means a financial instrument the price of which is closely affected by price movements in another financial instrument which is the subject of investment research, and includes a derivative on that other financial instrument. </li> <li> Member States shall exempt investment firms which disseminate investment research produced by another person to the public or to clients from complying with paragraph 1 if the following criteria are met: <ol class="crrCharList"> <li>the person that produces the investment research is not a member of the group to which the investment firm belongs;</li> <li>the investment firm does not substantially alter the recommendations within the investment research;</li> <li>the investment firm does not present the investment research as having been produced by it;</li> <li>the investment firm verifies that the producer of the research is subject to requirements equivalent to the requirements under this Directive in relation to the production of that research, or has established a policy setting such requirements.</li> </ol> </li> </ol>	(Article 13(3) of Directive 2004/39/EC)Additional organisational requirements where a firm produces and disseminates investment research	Article 25		
			SUBTITLE	ORGANISATIONAL REQUIREMENTS					

TITLE	CHAPTER II

ARTICLE			SUBTITLE	TITLE
CONTENT	SUBTITLE	TITLE		
Member States shall ensure that investment firms are not regarded as acting honestly, fairly and professionally in accordance with the best interests of a client if, in relation to the provision of an investment or ancillary service to the client, they pay or are paid any fee or commission, or provide or are provided with any non-monetary benefit, other than the following: <ol class="crrCharList"> <li>a fee, commission or non-monetary benefit paid or provided to or by the client or a person on behalf of the client;</li> <li>a fee, commission or non-monetary benefit paid or provided to or by a third party or a person acting on behalf of a third party, where the following conditions are satisfied: </li> <ol class="crrRomanList"> <li>the existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount, must be clearly disclosed to the client, in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant investment or ancillary service;</li> <li>the payment of the fee or commission, or the provision of the non-monetary benefit must be designed to enhance the quality of the relevant service to the client and not impair compliance with the firm's duty to act in the best interests of the client;</li> </ol> <li>proper fees which enable or are necessary for the provision of investment services, such as custody costs, settlement and exchange fees, regulatory levies or legal fees, and which, by their nature, cannot give rise to conflicts with the firm's duties to act honestly, fairly and professionally in accordance with the best interests of its clients. </li> </ol> Member States shall permit an investment firm, for the purposes of point (b)(i), to disclose the essential terms of the arrangements relating to	(Article 19(1) of Directive 2004/39/EC)Inducements	Article 26	Inducements	SECTION 1

the fee, commission or non-monetary benefit in summary form, provided that it undertakes to disclose further details at the request of the client and provided that it honours that undertaking.

CONTENT	SUBTITLE	TITLE
<ol class="crrNumList"> <li>Member States shall require investment firms to ensure that all information they address to, or disseminate in such a way that it is likely to be received by, retail clients or potential retail clients, including marketing communications, satisfies the conditions laid down in paragraphs 2 to 8.</li> <li>The information referred to in paragraph 1 shall include the name of the investment firm.It shall be accurate and in particular shall not emphasise any potential benefits of an investment service or financial instrument without also giving a fair and prominent indication of any relevant risks.It shall be sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received.It shall not disguise, diminish or obscure important items, statements or warnings. </li> <li> Where the information compares investment or ancillary services, financial instruments, or persons providing investment or ancillary services, the following conditions shall be satisfied: <ol class="crrCharList"> <li>the comparison must be meaningful and presented in a fair and balanced way;</li> <li>the sources of the information used for the comparison must be specified;</li> <li>the key facts and assumptions used to make the comparison must be included.</li> </ol> </li> <li> Where the information contains an indication of past performance of a financial instrument, a financial index or an investment service, the following conditions shall be satisfied: <ol class="crrCharList"> <li>that indication must not be the most prominent feature of the communication;</li> <li>the information must include appropriate		

DOCUMENT	**SECTION**				performance information which covers the immediately preceding 5 years, or the whole period for which the financial instrument has been offered, the financial index has been established, or the investment service has been provided if less than five years, or such longer period as the firm may decide, and in every case that performance information must be based on complete 12-month periods;</li> <li>the reference period and the source of information must be clearly stated;</li> <li>the information must contain a prominent warning that the figures refer to the past and that past performance is not a reliable indicator of future results;</li> <li>where the indication relies on figures denominated in a currency other than that of the Member State in which the retail client or potential retail client is resident, the currency must be clearly stated, together with a warning that the return may increase or decrease as a result of currency fluctuations;</li> <li>where the indication is based on gross performance, the effect of commissions, fees or other charges must be disclosed. </li> </ol> </li> <li> Where the information includes or refers to simulated past performance, it must relate to a financial instrument or a financial index, and the following conditions shall be satisfied: <ol class="crrCharList"> <li>the simulated past performance must be based on the actual past performance of one or more financial instruments or financial indices which are the same as, or underlie, the financial instrument concerned;</li> <li>in respect of the actual past performance referred to in point (a), the conditions set out in points (a) to (c), (e) and (f) of paragraph 4 must be complied with;</li> <li>the information must contain a prominent warning that the figures refer to simulated past performance and that past performance is not a reliable indicator of future performance.</li> </ol> </li> <li> Where the information contains information on future performance, the following conditions shall be satisfied: <ol class="crrCharList"> <li>the information must	(Article 19(2) of Directive 2004/39/EC)Conditions with which information must comply in order to be fair, clear and not misleading	Article 27		

not be based on or refer to simulated past performance;</li> <li>it must be based on reasonable assumptions supported by objective data;</li> <li>where the information is based on gross performance, the effect of commissions, fees or other charges must be disclosed;</li> <li>it must contain a prominent warning that such forecasts are not a reliable indicator of future performance.</li> </ol> </li> <li>Where the information refers to a particular tax treatment, it shall prominently state that the tax treatment depends on the individual circumstances of each client and may be subject to change in the future. </li> <li>The information shall not use the name of any competent authority in such a way that would indicate or suggest endorsement or approval by that authority of the products or services of the investment firm.</li> </ol>		
<ol class="crrNumList"> <li>Member States shall ensure that investment firms notify new clients, and existing clients that the investment firm has newly categorised as required by Directive 2004/39/EC, of their categorisation as a retail client, a professional client or an eligible counterparty in accordance with that Directive.</li> <li>Member States shall ensure that investment firms inform clients in a durable medium about any right that client has to request a different categorisation and about any limitations to the level of client protection that it would entail.</li> <li> Member States shall permit investment firms, either on their own initiative or at the request of the client concerned: <ol class="crrCharList"> <li>to treat as a professional or retail client a client that might otherwise be classified as an eligible counterparty pursuant to Article 24(2) of Directive 2004/39/EC;</li> <li>to treat as a retail client a client that is considered as a professional client pursuant to Section I of Annex II to Directive 2004/39/EC.</li> </ol> </li> </ol>	(Article 19(3) of Directive 2004/39/EC)Information concerning client categorisation	Article 28
<ol class="crrNumList"> <li> Member States shall require investment firms, in good time before a retail client or potential		

					retail client is bound by any agreement for the provision of investment services or ancillary services or before the provision of those services, whichever is the earlier, to provide that client or potential client with the following information: <ol class="crrCharList"> <li>the terms of any such agreement;</li> <li>the information required by Article 30 relating to that agreement or to those investment or ancillary services.</li> </ol> </li> <li>Member States shall require investment firms, in good time before the provision of investment services or ancillary services to retail clients or potential retail clients, to provide the information required under Articles 30 to 33.</li> <li>Member States shall require investment firms to provide professional clients with the information referred to in Article 32(5) and (6) in good time before the provision of the service concerned.</li> <li>The information referred to in paragraphs 1 to 3 shall be provided in a durable medium or by means of a website (where that does not constitute a durable medium) provided that the conditions specified in Article 3(2) are satisfied. </li> <li> By way of exception to paragraphs 1 and 2, Member States shall permit investment firms, in the following circumstances, to provide the information required under paragraph 1 to a retail client immediately after that client is bound by any agreement for the provision of investment services or ancillary services, and the information required under paragraph 2 immediately after starting to provide the service: <ol class="crrCharList"> <li>the firm was unable to comply with the time limits specified in paragraphs 1 and 2 because, at the request of the client, the agreement was concluded using a means of distance communication which prevents the firm from providing the information in accordance with paragraph 1 or 2;</li> <li>in any case where Article 3(3) of Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council	(Article 19(3) of Directive 2004/39/EC)General requirements for information to clients	Article 29			

and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/ECOJ L 271, 9.10.2002, p. 16. does not otherwise apply, the investment firm complies with the requirements of that Article in relation to the retail client or potential retail client, as if that client or potential client were a consumer and the investment firm were a supplier within the meaning of that Directive. </li> </ol> </li> <li>Member State shall ensure that investment firms notify a client in good time about any material change to the information provided under Articles 30 to 33 which is relevant to a service that the firm is providing to that client. That notification shall be given in a durable medium if the information to which it relates is given in a durable medium.</li> <li>Member States shall require investment firms to ensure that information contained in a marketing communication is consistent with any information the firm provides to clients in the course of carrying on investment and ancillary services.</li> <li> <p>Member States shall ensure that, where a marketing communication contains an offer or invitation of the following nature and specifies the manner of response or includes a form by which any response may be made, it includes such of the information referred to in Articles 30 to 33 as is relevant to that offer or invitation:</p> <ol class="crrCharList"> <li>an offer to enter into an agreement in relation to a financial instrument or investment service or ancillary service with any person who responds to the communication;</li> <li>an invitation to any person who responds to the communication to make an offer to enter into an agreement in relation to a financial instrument or investment service or ancillary service.</li> </ol> <p>However, the first subparagraph shall not apply if, in order to respond to an offer or invitation contained in the marketing communication, the potential retail client must refer to another document or documents, which, alone or in combination, contain that information.</p> </li> </ol>		
<ol class="crrNumList"> <li> <p>Member States		

				<li> Member States shall require investment firms to provide retail clients or potential retail clients with the following general information, where relevant: <ol class="crrCharList"> <li>the name and address of the investment firm, and the contact details necessary to enable clients to communicate effectively with the firm;</li> <li>the languages in which the client may communicate with the investment firm, and receive documents and other information from the firm;</li> <li>the methods of communication to be used between the investment firm and the client including, where relevant, those for the sending and reception of orders;</li> <li>a statement of the fact that the investment firm is authorised and the name and contact address of the competent authority that has authorised it;</li> <li>where the investment firm is acting through a tied agent, a statement of this fact specifying the Member State in which that agent is registered;</li> <li>the nature, frequency and timing of the reports on the performance of the service to be provided by the investment firm to the client in accordance with Article 19(8) of Directive 2004/39/EC;</li> <li>if the investment firm holds client financial instruments or client funds, a summary description of the steps which it takes to ensure their protection, including summary details of any relevant investor compensation or deposit guarantee scheme which applies to the firm by virtue of its activities in a Member State;</li> <li>a description, which may be provided in summary form,			Information to clients and potential clients	SECTION 2
				of the conflicts of interest policy maintained by the firm in accordance with Article 22;</li> <li>at any time that the client requests it, further details of that conflicts of interest policy in a durable medium or by means of a website (where that does not constitute a durable medium) provided that the conditions specified in Article 3(2) are satisfied. </li> </ol> </li> <li>Member States shall ensure that, when providing the service of portfolio management, investment firms establish an appropriate method of evaluation and comparison such as a meaningful	(first indent of Article 19(3) of Directive 2004/39/EC)Information about the investment firm and its services for retail clients and potential retail clients	Article 30		

					benchmark, based on the investment objectives of the client and the types of financial instruments included in the client portfolio, so as to enable the client for whom the service is provided to assess the firm's performance.</li> <li> <p>Member States shall require that where investment firms propose to provide portfolio management services to a retail client or potential retail client, they provide the client, in addition to the information required under paragraph 1, with such of the following information as is applicable:</p> <ol class="crrCharList"> <li>information on the method and frequency of valuation of the financial instruments in the client portfolio;</li> <li>details of any delegation of the discretionary management of all or part of the financial instruments or funds in the client portfolio;</li> <li>a specification of any benchmark against which the performance of the client portfolio will be compared;</li> <li>the types of financial instrument that may be included in the client portfolio and types of transaction that may be carried out in such instruments, including any limits;</li> <li>the management objectives, the level of risk to be reflected in the manager's exercise of discretion, and any specific constraints on that discretion.</li> </ol> </li> </ol>									
					<ol class="crrNumList"> <li>Member States shall require investment firms to provide clients or potential clients with a general description of the nature and risks of financial instruments, taking into account, in particular, the client's categorisation as either a retail client or a professional client. That description must explain the nature of the specific type of instrument concerned, as well as the risks particular to that specific type of instrument in sufficient detail to enable the client to take investment decisions on an informed basis.</li> <li> <p>The description of risks shall include, where relevant to the specific type of instrument concerned and the status and level of knowledge of the client, the following elements:</p> <ol class="crrCharList"> <li>the risks associated with that type of financial									

with that type of financial instrument including an explanation of leverage and its effects and the risk of losing the entire investment;</li> <li>the volatility of the price of such instruments and any limitations on the available market for such instruments;</li> <li>the fact that an investor might assume, as a result of transactions in such instruments, financial commitments and other additional obligations, including contingent liabilities, additional to the cost of acquiring the instruments;</li> <li>any margin requirements or similar obligations, applicable to instruments of that type.</li> </ol> Member States may specify the precise terms, or the contents, of the description of risks required under this paragraph. </li> <li>If an investment firm provides a retail client or potential retail client with information about a financial instrument that is the subject of a current offer to the public and a prospectus has been published in connection with that offer in accordance with Directive 2003/71/EC, that firm shall inform the client or potential client where that prospectus is made available to the public.</li> <li>Where the risks associated with a financial instrument composed of two or more different financial instruments or services are likely to be greater than the risks associated with any of the components, the investment firm shall provide an adequate description of the components of that instrument and the way in which its interaction increases the risks.</li> <li>In the case of financial instruments that incorporate a guarantee by a third party, the information about the guarantee shall include sufficient detail about the guarantor and the guarantee to enable the retail client or potential retail client to make a fair assessment of the guarantee.</li> </ol>	(second indent of Article 19(3) of Directive 2004/39/EC)Information about financial instruments	Article 31
<ol class="crrNumList"> <li>Member States shall ensure that, where investment firms hold financial instruments or funds belonging to retail clients, they provide those retail clients or potential retail clients with such of		

					the information specified in paragraphs 2 to 7 as is relevant.</li> <li>The investment firm shall inform the retail client or potential retail client where the financial instruments or funds of that client may be held by a third party on behalf of the investment firm and of the responsibility of the investment firm under the applicable national law for any acts or omissions of the third party and the consequences for the client of the insolvency of the third party.</li> <li>Where financial instruments of the retail client or potential retail client may, if permitted by national law, be held in an omnibus account by a third party, the investment firm shall inform the client of this fact and shall provide a prominent warning of the resulting risks.</li> <li>The investment firm shall inform the retail client or potential retail client where it is not possible under national law for client financial instruments held with a third party to be separately identifiable from the proprietary financial instruments of that third party or of the investment firm and shall provide a prominent warning of the resulting risks.</li> <li>The investment firm shall inform the client or potential client where accounts that contain financial instruments or funds belonging to that client or potential client are or will be subject to the law of a jurisdiction other than that of a Member State and shall indicate that the rights of the client or potential client relating to those financial instruments or funds may differ accordingly.</li> <li>An investment firm shall inform the client about the existence and the terms of any security interest or lien which the firm has or may have over the client's financial instruments or funds, or any right of set-off it holds in relation to those instruments or funds. Where applicable, it shall also inform the client of the fact that a depository may have a security interest or lien over, or right of set-off in relation to those instruments or funds.</li> <li>An investment firm, before entering into securities financing transactions in relation to financial instruments held by it on behalf of a retail client, or	(first indent of Article 19(3) of Directive 2004/39/EC)Information requirements concerning safeguarding of client financial instruments or client funds	Article 32			

behalf of a retail client, or before otherwise using such financial instruments for its own account or the account of another client, shall in good time before the use of those instruments provide the retail client, in a durable medium, with clear, full and accurate information on the obligations and responsibilities of the investment firm with respect to the use of those financial instruments, including the terms for their restitution, and on the risks involved.</li> </ol>		
Member States shall require investment firms to provide their retail clients and potential retail clients with information on costs and associated charges that includes such of the following elements as are relevant: <ol class="crrCharList"> <li>the total price to be paid by the client in connection with the financial instrument or the investment service or ancillary service, including all related fees, commissions, charges and expenses, and all taxes payable via the investment firm or, if an exact price cannot be indicated, the basis for the calculation of the total price so that the client can verify it;</li> <li>where any part of the total price referred to in point (a) is to be paid in or represents an amount of foreign currency, an indication of the currency involved and the applicable currency conversion rates and costs;</li> <li>notice of the possibility that other costs, including taxes, related to transactions in connection with the financial instrument or the investment service may arise for the client that are not paid via the investment firm or imposed by it;</li> <li>the arrangements for payment or other performance.</li> </ol> For the purposes of point (a), the commissions charged by the firm shall be itemised separately in every case.	(fourth indent of Article 19(3) of Directive 2004/39/EC)Information about costs and associated charges	Article 33
<ol class="crrNumList"> <li>Member States shall ensure that in respect of units in a collective investment undertaking covered by Directive 85/611/EEC, a simplified prospectus complying with Article 28 of that Directive is regarded as appropriate information for the purposes of the second indent of Article 19(3) of	(second and fourth	

Directive 2004/39/EC.</li> <li>Member States shall ensure that in respect of units in a collective investment undertaking covered by Directive 85/611/EEC, a simplified prospectus complying with Article 28 of that Directive is regarded as appropriate information for the purposes of the fourth indent of Article 19(3) of Directive 2004/39/EC with respect to the costs and associated charges related to the UCITS itself, including the exit and entry commissions.</li> </ol>	(second and fourth indent of Article 19(3) of Directive 2004/39/EC)Information drawn up in accordance with Directive 85/611/EEC	Article 34

CONTENT	SUBTITLE	TITLE
<ol class="crrNumList"> <li> Member States shall ensure that investment firms obtain from clients or potential clients such information as is necessary for the firm to understand the essential facts about the client and to have a reasonable basis for believing, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of providing a portfolio management service, satisfies the following criteria: <ol class="crrCharList"> <li>it meets the investment objectives of the client in question;</li> <li>it is such that the client is able financially to bear any related investment risks consistent with his investment objectives;</li> <li>it is such that the client has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.</li> </ol> </li> <li>Where an investment firm provides an investment service to a professional client it shall be entitled to assume that, in relation to the products, transactions and services for which it is so classified, the client has the necessary level of experience and knowledge for the purposes of paragraph 1(c).Where that investment service consists in the provision of investment advice to a professional client covered by Section 1 of Annex II to Directive 2004/39/EC, the investment firm shall be entitled to assume for the purposes of paragraph 1(b) that the client is able financially to bear any related investment risks	(Article 19(4) of Directive 2004/39/EC)Assessment of suitability	Article 35

				consistent with the investment objectives of that client.</li> <li>The information regarding the financial situation of the client or potential client shall include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments.</li> <li>The information regarding the investment objectives of the client or potential client shall include, where relevant, information on the length of time for which the client wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.</li> <li>Where, when providing the investment service of investment advice or portfolio management, an investment firm does not obtain the information required under Article 19(4) of Directive 2004/39/EC, the firm shall not recommend investment services or financial instruments to the client or potential client.</li> </ol>					
				Member States shall require investment firms, when assessing whether an investment service as referred to in Article 19(5) of Directive 2004/39/EC is appropriate for a client, to determine whether that client has the necessary experience and knowledge in order to understand the risks involved in relation to the product or investment service offered or demanded.For those purposes, an investment firm shall be entitled to assume that a professional client has the necessary experience and knowledge in order to understand the risks involved in relation to those particular investment services or transactions, or types of transaction or product, for which the client is classified as a professional client.	(Article 19(5) of Directive 2004/39/EC)Assessment of appropriateness	Article 36	Assessment of suitability and appropriateness	SECTION 3
				<ol class="crrNumList"> <li> <p>Member States shall ensure that the information regarding a client's or potential client's knowledge and experience in the investment field includes the following, to the extent appropriate to the nature of the client, the nature and extent of the service to be provided and the type of product or				

				SECTION	transaction envisaged, including their complexity and the risks involved: <ol class="crrCharList"> <li>the types of service, transaction and financial instrument with which the client is familiar;</li> <li>the nature, volume, and frequency of the client's transactions in financial instruments and the period over which they have been carried out;</li> <li>the level of education, and profession or relevant former profession of the client or potential client. </li> </ol> </li> <li>An investment firm shall not encourage a client or potential client not to provide information required for the purposes of Article 19(4) and (5) of Directive 2004/39/EC.</li> <li>An investment firm shall be entitled to rely on the information provided by its clients or potential clients unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete.</li> </ol>	(Article 19(4) and (5) of Directive 2004/39/EC)Provisions common to the assessment of suitability or appropriateness	Article 37			
					A financial instrument which is not specified in the first indent of Article 19(6) of Directive 2004/39/EC shall be considered as non-complex if it satisfies the following criteria: <ol class="crrCharList"> <li>it does not fall within Article 4(1)(18)(c) of, or points (4) to (10) of Section C of Annex I to, Directive 2004/39/EC;</li> <li>there are frequent opportunities to dispose of, redeem, or otherwise realise that instrument at prices that are publicly available to market participants and that are either market prices or prices made available, or validated, by valuation systems independent of the issuer; </li> <li>it does not involve any actual or potential liability for the client that exceeds the cost of acquiring the instrument;</li> <li>adequately comprehensive information on its characteristics is publicly available and is likely to be readily understood so as to enable the average retail client to make an informed judgment as to whether to enter into a transaction in that instrument.</li> </ol>	(first indent of Article 19(6) of Directive 2004/39/EC)Provision of services in non-complex instruments	Article 38			
					Member States shall require an investment firm that provides an investment					

service other than investment advice to a new retail client for the first time after the date of application of this Directive to enter into a written basic agreement, in paper or another durable medium, with the client setting out the essential rights and obligations of the firm and the client.The rights and duties of the parties to the agreement may be incorporated by reference to other documents or legal texts.	(Article 19(1) and 19(7) of Directive 2004/39/EC)Retail client agreement	Article 39

CONTENT	SUBTITLE	TITLE
<ol class="crrNumList"> <li> Member States shall ensure that where investment firms have carried out an order, other than for portfolio management, on behalf of a client, they take the following action in respect of that order: <ol class="crrCharList"> <li>the investment firm must promptly provide the client, in a durable medium, with the essential information concerning the execution of that order; </li> <li>in the case of a retail client, the investment firm must send the client a notice in a durable medium confirming execution of the order as soon as possible and no later than the first business day following execution or, if the confirmation is received by the investment firm from a third party, no later than the first business day following receipt of the confirmation from the third party.</li> </ol> Point (b) shall not apply where the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the retail client by another person. Points (a) and (b) shall not apply where orders executed on behalf of clients relate to bonds funding mortgage loan agreements with the said clients, in which case the report on the transaction shall be made at the same time as the terms of the mortgage loan are communicated, but no later than one month after the execution of the order. </li> <li>In addition to the requirements under paragraph 1, Member States shall require investment firms to supply the client, on request, with information about the status of his order.</li> <li>Member States shall ensure that, in the case of orders for a retail clients		

					relating to units or shares in a collective investment undertaking which are executed periodically, investment firms either take the action specified in point (b) of paragraph 1 or provide the retail client, at least once every six months, with the information listed in paragraph 4 in respect of those transactions.</li> <li> The notice referred to in point (b) of paragraph 1 shall include such of the following information as is applicable and, where relevant, in accordance with Table 1 of Annex I to Regulation (EC) No 1287/2006: <ol class="crrCharList"> <li>the reporting firm identification;</li> <li>the name or other designation of the client;</li> <li>the trading day;</li> <li>the trading time;</li> <li>the type of the order;</li> <li>the venue identification;</li> <li>the instrument identification; </li> <li>the buy/sell indicator;</li> <li>the nature of the order if other than buy/sell;</li> <li>the quantity;</li> <li>the unit price;</li> <li>the total consideration;</li> <li>a total sum of the commissions and expenses charged and, where the retail client so requests, an itemised breakdown;</li> <li>the client's responsibilities in relation to the settlement of the transaction, including the time limit for payment or delivery as well as the appropriate account details where these details and responsibilities have not previously been notified to the client;</li> <li>if the client's counterparty was the investment firm itself or any person in the investment firm's group or another client of the investment firm, the fact that this was the case unless the order was executed through a trading system that facilitates anonymous trading.</li> </ol> For the purposes of point (k), where the order is executed in tranches, the investment firm may supply the client with information about the price of each tranche or the average price. Where the average price is provided, the investment firm shall supply the retail client with information about the price of each tranche upon request. </li> <li>The investment firm may provide the client with the information referred to in paragraph 4 using standard codes if it also	(Article 19(8) of Directive 2004/39/EC)Reporting obligations in respect of execution of orders other than for portfolio management	Article 40			

				provides an explanation of the codes used.</li> </ol>					
				<ol class="crrNumList"> <li>Member States shall require investments firms which provide the service of portfolio management to clients to provide each such client with a periodic statement in a durable medium of the portfolio management activities carried out on behalf of that client unless such a statement is provided by another person.</li> <li> In the case of retail clients, the periodic statement required under paragraph 1 shall include, where relevant, the following information: <ol class="crrCharList"> <li>the name of the investment firm;</li> <li>the name or other designation of the retail client's account;</li> <li>a statement of the contents and the valuation of the portfolio, including details of each financial instrument held, its market value, or fair value if market value is unavailable and the cash balance at the beginning and at the end of the reporting period, and the performance of the portfolio during the reporting period;</li> <li>the total amount of fees and charges incurred during the reporting period, itemising at least total management fees and total costs associated with execution, and including, where relevant, a statement that a more detailed breakdown will be provided on request;</li> <li>a comparison of performance during the period covered by the statement with the investment performance benchmark (if any) agreed between the investment firm and the client;</li> <li>the total amount of dividends, interest and other payments received during the reporting period in relation to the client's portfolio;</li> <li>information about other corporate actions giving rights in relation to financial instruments held in the portfolio;</li> <li>for each transaction executed during the period, the information referred to in Article 40(4)(c) to (l) where relevant, unless the client elects to receive information about executed transactions on a transaction-by-transaction basis, in which case paragraph 4 of this Article shall apply.</li> </ol> </li> <li> In the case of	(Article 19(8) of Directive 2004/39/EC)Reporting obligations in respect of portfolio management	Article 41		Reporting to clients	SECTION 4

retail clients, the periodic statement referred to in paragraph 1 shall be provided once every six months, except in the following cases: <ol class="crrCharList"> <li>where the client so requests, the periodic statement must be provided every three months;</li> <li>in cases where paragraph 4 applies, the periodic statement must be provided at least once every 12 months;</li> <li>where the agreement between an investment firm and a retail client for a portfolio management service authorises a leveraged portfolio, the periodic statement must be provided at least once a month.</li> </ol> Investment firms shall inform retail clients that they have the right to make requests for the purposes of point (a). However, the exception provided for in point (b) shall not apply in the case of transactions in financial instruments covered by Article 4(1)(18)(c) of, or any of points 4 to 10 of Section C in Annex I to, Directive 2004/39/EC. </li> <li>Member States shall require investment firms, in cases where the client elects to receive information about executed transactions on a transaction-by-transaction basis, to provide promptly to the client, on the execution of a transaction by the portfolio manager, the essential information concerning that transaction in a durable medium.Where the client concerned is a retail client, the investment firm must send him a notice confirming the transaction and containing the information referred to in Article 40(4) no later than the first business day following that execution or, if the confirmation is received by the investment firm from a third party, no later than the first business day following receipt of the confirmation from the third party.The second subparagraph shall not apply where the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the retail client by another person.</li> </ol>		
Member States shall ensure that where investment firms provide portfolio management transactions for retail clients or operate retail client accounts that		

certain client accounts that include an uncovered open position in a contingent liability transaction, they also report to the retail client any losses exceeding any predetermined threshold, agreed between the firm and the client, no later than the end of the business day in which the threshold is exceeded or, in a case where the threshold is exceeded on a non-business day, the close of the next business day.	(Article 19(8) of Directive 2004/39/EC)Additional reporting obligations for portfolio management or contingent liability transactions	Article 42
<ol class="crrNumList"> <li>Member States shall require investment firms that hold client financial instruments or client funds to send at least once a year, to each client for whom they hold financial instruments or funds, a statement in a durable medium of those financial instruments or funds unless such a statement has been provided in any other periodic statement.The first subparagraph shall not apply to a credit institution authorised under Directive 2000/12/EC in respect of deposits within the meaning of that Directive held by that institution. </li> <li> The statement of client assets referred to in paragraph 1 shall include the following information: <ol class="crrCharList"> <li>details of all the financial instruments or funds held by the investment firm for the client at the end of the period covered by the statement;</li> <li>the extent to which any client financial instruments or client funds have been the subject of securities financing transactions;</li> <li>the extent of any benefit that has accrued to the client by virtue of participation in any securities financing transactions, and the basis on which that benefit has accrued.</li> </ol> In cases where the portfolio of a client includes the proceeds of one or more unsettled transactions, the information referred to in point (a) may be based either on the trade date or the settlement date, provided that the same basis is applied consistently to all such information in the statement. </li> <li>Member States shall permit investment firms which hold financial instruments or funds and which carry out the service of portfolio management for a client to include the statement of client assets	(Article 19(8) of Directive 2004/39/EC)Statements of client financial instruments or client funds	Article 43

statement of client assets referred to in paragraph 1 in the periodic statement it provides to that client pursuant to Article 41(1). </li> </ol>		

CONTENT	SUBTITLE	TITLE
<ol class="crrNumList"> <li> Member States shall ensure that, when executing client orders, investment firms take into account the following criteria for determining the relative importance of the factors referred to in Article 21(1) of Directive 2004/39/EC: <ol class="crrCharList"> <li>the characteristics of the client including the categorisation of the client as retail or professional;</li> <li>the characteristics of the client order;</li> <li>the characteristics of financial instruments that are the subject of that order;</li> <li>the characteristics of the execution venues to which that order can be directed. </li> </ol> For the purposes of this Article and Article 46, execution venue means a regulated market, an MTF, a systematic internaliser, or a market maker or other liquidity provider or an entity that performs a similar function in a third country to the functions performed by any of the foregoing. </li> <li>An investment firm satisfies its obligation under Article 21(1) of Directive 2004/39/EC to take all reasonable steps to obtain the best possible result for a client to the extent that it executes an order or a specific aspect of an order following specific instructions from the client relating to the order or the specific aspect of the order. </li> <li>Where an investment firm executes an order on behalf of a retail client, the best possible result shall be determined in terms of the total consideration, representing the price of the financial instrument and the costs related to execution, which shall include all expenses incurred by the client which are directly related to the execution of the order, including execution venue fees, clearing and settlement fees and any other fees paid to third parties involved in the execution of the order.For the purposes of delivering best execution where there is more than one competing venue to execute an order for a financial instrument, in order to assess and compare the results for the client that would be achieved by	(Articles 21(1) and 19(1) of Directive 2004/39/EC)Best execution criteria	Article 44

					executing the order on each of the execution venues listed in the firm's order execution policy that is capable of executing that order, the firm's own commissions and costs for executing the order on each of the eligible execution venues shall be taken into account in that assessment. </li> <li>Member States shall require that investment firms do not structure or charge their commissions in such a way as to discriminate unfairly between execution venues.</li> <li>Before 1 November 2008 the Commission shall present a report to the European Parliament and to the Council on the availability, comparability and consolidation of information concerning the quality of execution of various execution venues.</li> </ol>					
					<ol class="crrNumList"> <li>Member States shall require investment firms, when providing the service of portfolio management, to comply with the obligation under Article 19(1) of Directive 2004/39/EC to act in accordance with the best interests of their clients when placing orders with other entities for execution that result from decisions by the investment firm to deal in financial instruments on behalf of its client.</li> <li>Member States shall require investment firms, when providing the service of reception and transmission of orders, to comply with the obligation under Article 19(1) of Directive 2004/39/EC to act in accordance with the best interests of their clients when transmitting client orders to other entities for execution.</li> <li>Member States shall ensure that, in order to comply with paragraphs 1 or 2, investment firms take the actions mentioned in paragraphs 4 to 6.</li> <li>Investment firms shall take all reasonable steps to obtain the best possible result for their clients taking into account the factors referred to in Article 21(1) of Directive 2004/39/EC. The relative importance of these factors shall be determined by reference to the criteria set out in Article 44(1)and, for retail clients, to the requirement under Article 44(3).An investment firm satisfies its obligations under paragraph 1 or 2, and is not required to take the steps mentioned in this paragraph, to the extent that it follows specific instructions from its client when placing an order with,	(Article 19(1) of Directive 2004/39/EC)Duty of investment firms carrying out portfolio		Best execution	SECTION 5

when placing an order with, or transmitting an order to, another entity for execution. </li> <li>Investment firms shall establish and implement a policy to enable them to comply with the obligation in paragraph 4. The policy shall identify, in respect of each class of instruments, the entities with which the orders are placed or to which the investment firm transmits orders for execution. The entities identified must have execution arrangements that enable the investment firm to comply with its obligations under this Article when it places or transmits orders to that entity for execution.Investment firms shall provide appropriate information to their clients on the policy established in accordance with this paragraph.</li> <li>Investment firms shall monitor on a regular basis the effectiveness of the policy established in accordance with paragraph 5 and, in particular, the execution quality of the entities identified in that policy and, where appropriate, correct any deficiencies.In addition, investment firms shall review the policy annually. Such a review shall also be carried out whenever a material change occurs that affects the firm's ability to continue to obtain the best possible result for their clients.</li> <li>This Article shall not apply when the investment firm that provides the service of portfolio management and/or reception and transmission of orders also executes the orders received or the decisions to deal on behalf of its client's portfolio. In those cases Article 21 of Directive 2004/39/EC applies. </li> </ol>	carrying out portfolio management and reception and transmission of orders to act in the best interests of the client	Article 45
<ol class="crrNumList"> <li>Member States shall ensure that investment firms review annually the execution policy established pursuant to Article 21(2) of Directive 2004/39/EC, as well as their order execution arrangements.Such a review shall also be carried out whenever a material change occurs that affects the firm's ability to continue to obtain the best possible result for the execution of its client orders on a consistent basis using the venues included in its execution policy.</li> <li> Investment firms shall provide retail clients with the following details on their execution policy in good time prior to the provision of the service: <ol class="crrCharList"> <li>an		

account of the relative importance the investment firm assigns, in accordance with the criteria specified in Article 44(1), to the factors referred to in Article 21(1) of Directive 2004/39/EC, or the process by which the firm determines the relative importance of those factors; </li> <li>a list of the execution venues on which the firm places significant reliance in meeting its obligation to take all reasonable steps to obtain on a consistent basis the best possible result for the execution of client orders; </li> <li>a clear and prominent warning that any specific instructions from a client may prevent the firm from taking the steps that it has designed and implemented in its execution policy to obtain the best possible result for the execution of those orders in respect of the elements covered by those instructions.</li> </ol> That information shall be provided in a durable medium, or by means of a website (where that does not constitute a durable medium) provided that the conditions specified in Article 3(2) are satisfied. </li> </ol>	(Article 21(3) and (4) of Directive 2004/39/EC)Execution policy	Article 46

CONTENT	SUBTITLE	TITLE
<ol class="crrNumList"> <li> Member States shall require investment firms to satisfy the following conditions when carrying out client orders: <ol class="crrCharList"> <li>they must ensure that orders executed on behalf of clients are promptly and accurately recorded and allocated;</li> <li>they must carry out otherwise comparable client orders sequentially and promptly unless the characteristics of the order or prevailing market conditions make this impracticable, or the interests of the client require otherwise;</li> <li>they must inform a retail client about any material difficulty relevant to the proper carrying out of orders promptly upon becoming aware of the difficulty.</li> </ol> </li> <li>Where an investment firm is responsible for overseeing or arranging the settlement of an executed order, it shall take all reasonable steps to ensure that any client financial instruments or client funds received in settlement of that executed order are promptly and correctly delivered to the account of the appropriate client	(Articles 22(1) and 19(1) of Directive 2004/39/EC)General principles	Article 47

				the appropriate client. </li> <li>An investment firm shall not misuse information relating to pending client orders, and shall take all reasonable steps to prevent the misuse of such information by any of its relevant persons.</li> </ol>					
				<ol class="crrNumList"> <li> Member States shall not permit investment firms to carry out a client order or a transaction for own account in aggregation with another client order unless the following conditions are met: <ol class="crrCharList"> <li>it must be unlikely that the aggregation of orders and transactions will work overall to the disadvantage of any client whose order is to be aggregated;</li> <li>it must be disclosed to each client whose order is to be aggregated that the effect of aggregation may work to its disadvantage in relation to a particular order;</li> <li>an order allocation policy must be established and effectively implemented, providing in sufficiently precise terms for the fair allocation of aggregated orders and transactions, including how the volume and price of orders determines allocations and the treatment of partial executions.</li> </ol> </li> <li>Member States shall ensure that where an investment firm aggregates an order with one or more other client orders and the aggregated order is partially executed, it allocates the related trades in accordance with its order allocation policy. </li> </ol>	(Articles 22(1) and 19(1) of Directive 2004/39/EC)Aggregation and allocation of orders	Article 48	Client order handling	SECTION 6	
				<ol class="crrNumList"> <li>Member States shall ensure that investment firms which have aggregated transactions for own account with one or more client orders do not allocate the related trades in a way that is detrimental to a client. </li> <li>Member States shall require that, where an investment firm aggregates a client order with a transaction for own account and the aggregated order is partially executed, it allocates the related trades to the client in priority to the firm.However, if the firm is able to demonstrate on reasonable grounds that without the combination it would not have been able	(Articles 22(1) and 19(1) of Directive 2004/39/EC)Aggregation and allocation of transactions for own	Article 49			

				would not have been able to carry out the order on such advantageous terms, or at all, it may allocate the transaction for own account proportionally, in accordance with its order allocation policy referred to in Article 48(1)(c).</li> <li>Member States shall require investment firms, as part of the order allocation policy referred to in Article 48(1)(c), to put in place procedures designed to prevent the reallocation, in a way that is detrimental to the client, of transactions for own account which are executed in combination with client orders.</li> </ol>	transactions for own account			
				<ol class="crrNumList"> <li>Member States may recognise an undertaking as an eligible counterparty if that undertaking falls within a category of clients who are to be considered professional clients in accordance with paragraphs 1, 2 and 3 of Section I of Annex II to Directive 2004/39/EC, excluding any category which is explicitly mentioned in Article 24(2) of that Directive.On request, Member States may also recognise as eligible counterparties undertakings which fall within a category of clients who are to be considered professional clients in accordance with Section II of Annex II to Directive 2004/39/EC. In such cases, however, the undertaking concerned shall be recognised as an eligible counterparty only in respect of the services or transactions for which it could be treated as a professional client.</li> <li>Where, pursuant to the second subparagraph of Article 24(2) of Directive 2004/39/EC, an eligible counterparty requests treatment as a client whose business with an investment firm is subject to Articles 19, 21 and 22 of that Directive, but does not expressly request treatment as a retail client, and the investment firm agrees to that request, the firm shall treat that eligible counterparty as a professional client.However, where that eligible counterparty expressly requests treatment as a retail client, the provisions in respect of requests of non-professional treatment specified in the second, third and fourth sub-paragraphs of Section I of Annex II to Directive 2004/39/EC shall apply.</li> </ol>	(Article 24(3) of Directive 2004/39/EC)Eligible counterparties	Article 50	Eligible counterparties	SECTION 7
				CONTENT	**SUBTITLE**	**TITLE**	
				<ol class="crrNumList"> <li>Member States shall require investment firms to			

					retain all the records required under Directive 2004/39/EC and its implementing measures for a period of at least five years.Additionally, records which set out the respective rights and obligations of the investment firm and the client under an agreement to provide services, or the terms on which the firm provides services to the client, shall be retained for at least the duration of the relationship with the client.However, competent authorities may, in exceptional circumstances, require investment firms to retain any or all of those records for such longer period as is justified by the nature of the instrument or transaction, if that is necessary to enable the authority to exercise its supervisory functions under Directive 2004/39/EC.Following the termination of the authorisation of an investment firm, Member States or competent authorities may require the firm to retain records for the outstanding term of the five year period required under the first subparagraph.</li> <li> The records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority, and in such a form and manner that the following conditions are met: <ol class="crrCharList"> <li>the competent authority must be able to access them readily and to reconstitute each key stage of the processing of each transaction;</li> <li>it must be possible for any corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained;</li> <li>it must not be possible for the records otherwise to be manipulated or altered.</li> </ol> </li> <li>The competent authority of each Member State shall draw up and maintain a list of the minimum records investment firms are required to keep under Directive 2004/39/EC and its implementing measures.</li> <li>Record-keeping obligations under Directive 2004/39/EC and in this Directive are without prejudice to the right of Member States to impose obligations on investment firms relating to the recording of telephone conversations or electronic communications involving client orders.</li>	(Article 13(6) of Directive 2004/39(EC)Retention of records	Article 51	Record-keeping	SECTION 8	

<li>Before 31 December 2009 the Commission shall, in the light of discussions with the Committee of European Securities Regulators, report to the European Parliament and the Council on the continued appropriateness of the provisions of paragraph 4.</li> </ol>			

CONTENT	SUBTITLE	TITLE		
\ For the purposes of the definition of investment advice in Article 4(1)(4) of Directive 2004/39/EC, a personal recommendation is a recommendation that is made to a person in his capacity as an investor or potential investor, or in his capacity as an agent for an investor or potential investor. That recommendation must be presented as suitable for that person, or must be based on a consideration of the circumstances of that person, and must constitute a recommendation to take one of the following sets of steps: <ol class="crrCharList"> <li>to buy, sell, subscribe for, exchange, redeem, hold or underwrite a particular financial instrument;</li> <li>to exercise or not to exercise any right conferred by a particular financial instrument to buy, sell, subscribe for, exchange, or redeem a financial instrument.</li> </ol> A recommendation is not a personal recommendation if it is issued exclusively through distribution channels or to the public.	(Article 4(1)(4) of Directive 2004/39/EC)Investment advice	Article 52	Defined terms for the purposes of Directive 2004/39/EC	SECTION 9

SUBTITLE	OPERATING CONDITIONS FOR INVESTMENT FIRMS
TITLE	CHAPTER III

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	CONTENT	SUBTITLE	TITLE
ARTICLE	<ol class="crrNumList"> <li>Member States shall adopt and publish, by 31 January 2007 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.</li> <li>Member States shall apply those provisions from 1 November 2007.</li> <li>When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.</li> <li>Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.</li> </ol>	Transposition	Article 53
	This Directive shall enter into force on the 20th day following its publication in the Official Journal of the European Union.	Entry into force	Article 54
	This Directive is addressed to the Member States.	Addressees	Article 55

SUBTITLE	FINAL PROVISIONS
TITLE	CHAPTER IV