

Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (Text with EEA relevance)

## CHAPTER II

### ORGANISATIONAL REQUIREMENTS

#### SECTION 1

#### Organisation

##### *Article 12*

#### **(Article 13(2) of Directive 2004/39/EC) Personal transactions**

1 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:

- a entering into a personal transaction which meets at least one of the following criteria:
  - (i) that person is prohibited from entering into it under Directive 2003/6/EC;
  - (ii) it involves the misuse or improper disclosure of that confidential information;
  - (iii) it conflicts or is likely to conflict with an obligation of the investment firm under Directive 2004/39/EC;
- b 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);
- c 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:
  - (i) 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);
  - (ii) to advise or procure another person to enter into such a transaction.

2 The arrangements required under paragraph 1 must in particular be designed to ensure that:

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- a 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;
- b 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;

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.

- c 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.
- 3 Paragraphs 1 and 2 shall not apply to the following kinds of personal transaction:
- a 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;
  - b 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.