

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 I

SCOPE AND DEFINITIONS

Article 1

Subject-matter and scope

1 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.

2 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.

Article 2

Definitions

For the purposes of this Directive, the following definitions shall apply:

- (1) ‘distribution channels’ means distribution channels within the meaning of Article 1(7) of Commission Directive 2003/125/EC;
- (2) ‘durable medium’ means any instrument which enables a client to store information addressed personally to that client in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;
- (3) ‘relevant person’ in relation to an investment firm, means any of the following:
 - (a) a director, partner or equivalent, manager or tied agent of the firm;
 - (b) a director, partner or equivalent, or manager of any tied agent of the firm;
 - (c) 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;
 - (d) 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;

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- (4) ‘financial analyst’ means a relevant person who produces the substance of investment research;
- (5) ‘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 accounts⁽¹⁾;
- (6) ‘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;
- (7) ‘person with whom a relevant person has a family relationship’ means any of the following:
- (a) the spouse of the relevant person or any partner of that person considered by national law as equivalent to a spouse;
 - (b) a dependent child or stepchild of the relevant person;
 - (c) 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;
- (8) ‘securities financing transaction’ has the meaning given in Commission Regulation (EC) No 1287/2006⁽²⁾;
- (9) ‘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.

Article 3

Conditions applying to the provision of information

1 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:

- a 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
- b 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.

2 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:

- a 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;
- b the client must specifically consent to the provision of that information in that form;
- c the client must be notified electronically of the address of the website, and the place on the website where the information may be accessed;
- d the information must be up to date;

- e 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.

3 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.

Article 4

Additional requirements on investment firms in certain cases

1 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:

- a the specific risks addressed by the requirements are of particular importance in the circumstances of the market structure of that Member State;
- b 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.

2 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.

3 Member States shall notify to the Commission:

- a any requirement which it intends to retain in accordance with paragraph 1 before the date of transposition of this Directive; and
- b 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.

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.

4 By 31 December 2009 the Commission shall report to the European Parliament and the Council on the application of this Article.

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- (1) [OJ No L 193, 18.7.1983, p. 1.](#)
- (2) See page 1 of this Official Journal.