
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 47(2) thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Economic and Social Committee (2),

Having regard to the opinion of the European Central Bank (3),

Acting in accordance with the procedure laid down in Article 251 of the Treaty (4),

Whereas:

(1) Council Directive of 10 May 1993 on investment services in the securities field 93/22/EEC (5) sought to establish the conditions under which authorised investment firms and banks could provide specified services or establish branches in other Member States on the basis of home country authorisation and supervision. To this end, that Directive aimed to harmonise the initial authorisation and operating requirements for investment firms including conduct of business rules. It also provided for the harmonisation of some conditions governing the operation of regulated markets. In this respect, it granted Member States the option of allowing retail investors to request execution of their transactions on a regulated market.

(2) In recent years more investors have become active in the financial markets and are offered an even more complex wide-ranging set of services and instruments. In view of these developments the legal framework of the Community should encompass the full range of investor-oriented activities. To this end, it is necessary to provide for the degree of harmonisation needed to offer investors a high level of protection and to allow investment firms to provide services throughout the Community, being a Single Market, on the basis of home country supervision. In view of the preceding, Directive 93/22/EEC should be replaced by a new Directive.

(3) Due to the increasing dependence of investors on personal recommendations, it is appropriate to include the provision of investment advice as an investment service requiring authorisation. Therefore proportionate and relevant requirements should be imposed on investment advisors to ensure that the content of personal recommendations is not influenced by factors other than the financial situation, investment objectives, knowledge, risk profile and expertise of the client. Those requirements should not apply to the mere provision of information of a general nature on financial instruments, provided that the purpose of that activity is not to help the client conclude or fulfil a contract for an investment service or financial instrument. In granting authorisation to provide investment advice, the competent authority, or the body to which it delegates this responsibility, should be able to take into account any authorisation conditions required for registration as an insurance intermediary which overlap with the requirements laid down in this Directive.

It is appropriate to include in the list of financial instruments commodity derivatives which, not being physical spot or forward commodity contracts, are constituted and traded in such a way as to give rise to regulatory issues comparable to traditional financial instruments such as certain futures or options contracts traded on regulated markets or on a multilateral trading facility (MTF) which, even though they may be physically settled, possess the characteristics of financial instruments and swaps which are settled only in cash and where the amounts to be settled are calculated by reference to values of a full range of underlying prices, rates, indices and other measures. In this respect, regard may be had to whether, inter alia, they are cleared and settled through recognised clearing houses, give rise to daily margin calls, are priced in reference to regularly published prices, standard lots, standard delivery dates or standard terms as opposed to the terms of settlement being specified in individual contracts.

It is important that financial regulation establish a fair and level playing field for the different forms of intermediaries, both regulated markets and investment firms, offering securities execution services and that fair competition be permitted to thrive in order to ensure further efficiency. The twin objectives of regulation should be to ensure a high quality of execution of investor transactions and to uphold the integrity and overall efficiency of the financial system. A coherent and risk-sensitive framework for regulating the main types of order-execution arrangement currently active in the European financial marketplace should therefore be provided for so as to preserve the efficient and orderly functioning of financial markets. Where trading systems operated by investment firms potentially raise market integrity concerns similar to those raised by regulated markets, they should be regulated as MTFs and subject to similar regulatory principles tailored to their specific circumstances.

Definitions of regulated market and MTF should be introduced and closely aligned with each other to reflect the extent to which they represent a similar organised trading functionality. The definitions should exclude bilateral systems where the investment firm enters into every trade on own account and not as a riskless counterparty interposed between the buyer and seller. The term 'buying and selling interests' is to be understood in a broad sense and includes orders, quotes and indications of interest. The requirement that the interests be 'brought together ... in the system by means of non-discretionary rules set by the system operator' means that they are brought together under the system's rules or by means of the system's protocols or internal operating procedures (including procedures embodied in computer software). The expression 'non-discretionary rules' means that these rules leave the investment firm operating an MTF with no discretion as to how interests may interact. The definitions require that interests be brought together in such a way as to result in a contract, so that execution takes place under the system's rules or by means of the system's protocols or internal operating procedures.

The purpose of this Directive is to cover undertakings the regular business of which is to provide third parties with investment services on a professional basis. Its scope should not therefore cover any person or undertaking with a different professional activity or any person who uses the services of an investment firm to enter into transactions in financial instruments on own account (whether the investment firm enters into the transaction as principal or agent or receives and transmits the order to a third party for execution).

It is important to recognise that the execution, clearing and settlement of securities trades benefit from economies of scale. To avoid the emergence of monopolistic market structures, it is therefore necessary for regulation to be applied in a proportionate, risk-based manner, which encourages innovation, new market entrants and competition. Regulation should not serve as an unnecessary barrier to entry.

Insurance undertakings the activities of which are subject to appropriate monitoring by the competent prudential-supervision authorities and which are subject of Council Directive 64/225/EEC of 25 February 1964 on the abolition of restrictions on freedom of establishment and freedom to pro-

(10) Undertakings which do not provide services for third parties but the business of which consists in providing investment services solely for their parent undertakings, for their subsidiaries, or for other subsidiaries of their parent undertakings should not be covered by this Directive.

(11) Persons who provide investment services only on an incidental basis in the course of professional activity should also be excluded from the scope of this Directive, provided that activity is regulated and the relevant rules do not prohibit the provision, on an incidental basis, of investment services.

(12) Firms which provide investment services consisting exclusively in the administration of employee-participation schemes and which therefore do not provide investment services for third parties should not be covered by this Directive.

(13) It is necessary to exclude from the scope of this Directive central banks and other bodies performing similar functions as well as public bodies charged with or intervening in the management of the public debt, which concept covers the investment thereof, with the exception of bodies that are partly or wholly State-owned, the role of which is commercial or linked to the acquisition of holdings.

(14) It is also necessary to exclude from the scope of this Directive collective investment undertakings, whether or not coordinated at Community level, and the depositaries or managers of such undertakings, since they are subject to specific rules directly adapted to their activities.

(15) Firms that provide the investment services covered by this Directive should be subject to authorisation by their home Member States in order to protect investors and the stability of the financial system.

(16) The principles of mutual recognition and of home Member State supervision require that the Member States’ competent authorities should not grant or should withdraw authorisation where factors such as the content of programmes of operations, the geographical distribution or the activities actually carried out indicate clearly that an investment firm has opted for the legal system of one Member State for the purpose of evading the stricter standards in force in another Member State within the territory of which it intends to carry out or does carry out the greater part of its activities. An investment firm which is a legal person should be authorised in the Member State in which it has its registered office. An investment firm which is not a legal person should be authorised in the Member State in which it has its head office. In addition, Member States should require that an investment firm’s head office must always be situated in its home Member State and that it actually operates there.

(17) An investment firm authorised in its home Member State should be able to carry out business throughout the Community by whatever means it deems appropriate.

(18) In the interest of the sound and prudent management of the investment firm, special obligations should be imposed on persons who effectively direct the business and persons exercising effective control. Since certain investment firms are exempted from the obligation imposed by Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institu-

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tions (1), they should be obliged to hold professional indemnity insurance. The adjustments of the amounts of that insurance should take account adjustments made in the framework of European Parliament and Council Directive 2002/92/EC of 9 December 2002 on insurance mediation (2). This particular treatment for the purposes of capital adequacy should be without prejudice to any decisions regarding the appropriate treatment of these firms under future changes to Community legislation on capital adequacy. No later than the 31 December 2006, the Commission should present a report to the European Parliament and the Council on the application of these provisions accompanied where appropriate by proposals for their revision. These proposals should take account of developments within the Community and other international fora, particularly those pertaining to capital charges on operational risk.

(19) Since the scope of prudential regulation should be limited to those entities which, by virtue of running a trading book on a professional basis, represent a source of counterparty risk to other market participants, entities which deal for their own account in financial instruments, including those commodity derivatives covered by this Directive, on an ancillary basis to their main business, should be excluded from the scope of this Directive.

(20) Since the prudential framework established by Community law is not currently adapted to the specific situation of persons or undertakings whose main business consists in dealing on own account in commodity derivatives it is appropriate to exclude them from the scope of this Directive.

(21) In order to protect an investor’s ownership and other similar rights in respect of securities and his rights in respect of funds entrusted to a firm those rights should in particular be protected by being kept distinct from those of the firm. This principle should not, however, prevent a firm from doing business in its name but on behalf of the investor, where that is required by the very nature of the transaction and the investor is in agreement, for example stock lending.

(22) For the purposes of ensuring that retail investors do not enter into unsuitable transactions, access to the systems operated by an MTF should be restricted to professional investors, as defined in Annex II, for the purposes of trading on own account or on behalf of their customers and other professional investors.

(23) The procedures for the authorisation, within the Community, of branches of investment firms authorised in third countries should continue to apply to such firms. Those branches should not enjoy the freedom to provide services under the second paragraph of Article 49 of the Treaty or the right of establishment in Member States other than those in which they are established. In view of cases where the Community is not bound by any bilateral or multilateral obligations it is appropriate to provide for a procedure intended to ensure that Community investment firms receive reciprocal treatment in the third countries concerned.

(24) The expanding range of activities that many investment firms and credit institutions undertake simultaneously has increased potential for conflicts of interests between these different activities and the interest of their clients. It is therefore necessary to provide for rules to ensure that such conflicts do not adversely affect client interest.

(25) It is necessary to strengthen the Community’s legal framework to protect investors by enhancing obligations of investment firms when providing services with or on behalf of client. In particular, it is indispensable for an investment firm providing advice or discretionary services on behalf of a client, in order to properly fulfil its agency obligations to its clients, to obtain information on the client’s financial position, experience, and investment objectives and to assess the suitability, for that client, of services or transactions in financial instruments which are being considered in the light of this information. The performance of this assessment should not require a separate authorisation to provide investment advice.

(2) OJ L 9, 15.1.2003, p. 3.
By way of derogation from the principle of home country authorisation, supervision and enforcement of obligations in respect of the operation of branches, it is appropriate that the competent authority of the host Member State assume responsibility for enforcing conduct of business rules in relation to business conducted with clients through a branch, since that authority is in greatest proximity to the branch, and is better placed to detect and intervene in respect of infringements of rules governing firm-client transactions.

It is necessary to impose an effective 'best execution' obligation to ensure that the investment firms execute client orders on terms that are the best reasonably achievable under the terms of the execution policy agreed between the firm and the client or, in the case of professional clients, in accordance with the client's specific instructions. This obligation should apply to the firm which owes contractual or agency obligations to the client — irrespective of whether that firm executes the order itself or relies on another intermediary to do so. It is appropriate to require investment firms to have in place effective and efficient procedures so as to be able to demonstrate to the competent authority that it has met its best execution obligations.

In order to enhance confidence in the impartiality and quality of execution services and to improve the overall price-formation process, it is essential that the investment firm which receives a limit order and is unable to execute such an order on specified terms immediately, route it to a 'regulated market' or MTF, or disclose the terms of the trading interest to the market in some other way.

This Directive recognises that investors should be fully aware of the potential risks and benefits associated with particular order handling arrangements. To this end, the clients should give their express consent before their orders are executed, in particular against the proprietary positions of the firm. The investment firm should have the right to decide whether to obtain this prior consent on a general basis (e.g. at the outset of the relationship) or on a trade-by-trade basis.

It is appropriate to determine the conditions under which investment firms can rely on the offices of tied agents. As it performs a limited range of functions on behalf of one investment firm, the tied agent should not be considered an investment firm itself and should not be eligible to undertake its activities in other Member States. Member States should be able to delegate responsibility as regards the authorisation, registration and supervision of tied agents to appropriately resourced and independent self-regulatory bodies. This Directive should be without prejudice to the right of tied agents to undertake related activities in respect of financial services or products not covered by this Directive, including on behalf of parts of the same financial group. The conditions for conducting activities outside the premises of the investment firm (door-to-door selling) should not be covered by this Directive.

For the purposes of ensuring that conduct of business rules are enforced in respect of those investors most in need of these protections, and in reflection of well-established market practice throughout the Community, it is appropriate to clarify that conduct of business rules may be waived in the case of transactions between eligible counterparties.

The mere fact, however, that an entity which is neither a credit institution nor an investment firm may be recognised as 'eligible counterparty' should not deprive it of the right to be treated as a client to whom conduct of business or other agency protections are due.

With the two-fold aim of protecting investors and ensuring the smooth operation of securities markets, it is necessary to ensure that transparency of transactions is achieved and that the rules laid down for that purpose apply both to investment firms and to credit institutions when they operate on the markets. In order to enable investors or market participants to assess at any time the terms of a transaction on shares that they are considering and to verify afterwards the conditions in which it has been carried out, common rules should be established for the publication of details of completed transactions.
transactions in shares and disclosure of details of current opportunities to trade in shares. These rules are needed to ensure the effective integration of Member State equity markets, to promote the efficiency of the overall price formation process for equity instruments, and to assist the effective operation of ‘best execution’ obligations. These considerations require a comprehensive transparency regime applicable to all transactions in shares irrespective of their execution by an investment firm on a bilateral basis or through regulated markets or MTF.

(34) In order to ensure a degree of pre-trade information needed to support the efficient formation of prices in shares and to allow market participants to determine the most favourable terms for concluding transactions, it is appropriate to require investment firms dealing on own account to make public a firm two-sided quote for transactions of a specified size in respect of liquid shares.

(35) Investment firms should all have the same opportunities of joining or having access to regulated markets throughout the Community. Regardless of the manner in which transactions are at present organised in the Member States, it is important to abolish the technical and legal restrictions on direct, indirect and remote access to the regulated markets.

(36) In order to facilitate the finalisation of cross-border transactions, it is also appropriate to provide for the access to clearing and settlement systems throughout the Community, by investment firms including those operating an MTF, irrespective of whether transactions have been concluded through regulated markets in the Member State concerned. Investment firms which wish to participate directly in partner country settlement systems should comply with the relevant operational and commercial requirements for membership and the prudential measures to uphold the smooth and orderly functioning of the financial markets.

(37) The authorisation to operate a regulated market should extend to all activities which are directly related to the display, processing, execution, confirmation and reporting of orders from the point at which such orders are received by the regulated market to the point at which they are transmitted for subsequent finalisation, and to activities related to the admission of financial instruments to trading. This should also include transactions concluded through the medium of designated market makers appointed by the regulated market which are undertaken under its rules and systems.

(38) Operators of a regulated market should also be able to operate an MTF without being required to obtain additional authorisation as an investment firm.

(39) The provisions of this Directive concerning the admission of instruments to trading under the rules enforced by the regulated market should be without prejudice to the application of Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities (1). A regulated market should not be prevented from applying more demanding requirements in respect of the issuers of securities or instruments which it is considering for admission to trading than are imposed pursuant to this Directive.

(40) Member States should be able to designate different competent authorities to enforce the wide-ranging obligations laid down in this Directive. Such authorities should be public, thereby guaranteeing their independence of economic actors and avoiding conflicts of interest. The designation of public authorities should not exclude delegation under the responsibility of the competent authority.

(41) It is necessary to enhance convergence of powers at the disposal of competent authorities so as to pave the way towards an equivalent degree of enforcement across the integrated financial market. A common minimum set of powers coupled with adequate resources should guarantee supervisory effectiveness.

With a view to protecting clients and without prejudice to the right of customers to bring their action before the courts, it is appropriate that Member States encourage public or private bodies established with a view to settling disputes out-of-court, to cooperate in resolving cross-border disputes, taking into account Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes (1). When implementing provisions on complaints and redress procedures for out-of-court settlements, Member States should use existing cross border co-operation mechanisms, notably the Financial Services Complaints Network (FIN-Net).

It is necessary to reinforce provisions on exchange of information between national competent authorities and to strengthen the duties of assistance and cooperation which they owe to each other. Due to increasing cross-border activity, competent authorities should provide each other with the relevant information for the exercise of their functions, so as to ensure the effective enforcement of this Directive including in situations where infringements or suspected infringements may be of concern to authorities in two or more Member States. In the exchange of information, strict professional secrecy is needed to ensure the smooth transmission of that information and the protection of particular rights.

At its meeting on 17 July 2000, the Council set up the Committee of Wise Men on the Regulation of European Securities Markets. In its final report, the Committee of Wise Men proposed the introduction of new legislative techniques based on a four-level approach, namely framework principles, implementing measures, cooperation and enforcement. Level 1, the Directive, should confine itself to broad general ‘framework’ principles while Level 2 should contain technical implementing measures to be adopted by the Commission with the assistance of a committee.

The Resolution adopted by the Stockholm European Council of 23 March 2001 endorsed the final report of the Committee of Wise Men and the proposed four-level approach to make the regulatory process for Community securities legislation more efficient and transparent.

According to the Stockholm European Council, Level 2 implementing measures should be used more frequently, to ensure that technical provisions can be kept up to date with market and supervisory developments, and deadlines should be set for all stages of Level 2 work.

The Resolution of the European Parliament of 5 February 2002 on the implementation of financial services legislation also endorsed the Committee of Wise Men's report, on the basis of the solemn declaration made before Parliament the same day by the Commission and the letter of 2 October 2001 addressed by the Internal Market Commissioner to the chairman of Parliament’s Committee on Economic and Monetary Affairs with regard to the safeguards for the European Parliament's role in this process.

The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (2).

The European Parliament should be given a period of three months from the first transmission of draft implementing measures to allow it to examine them and to give its opinion. However, in urgent and duly justified cases, this period may be shortened. If, within that period, a resolution is passed by the European Parliament, the Commission should re-examine the draft measures.

With a view to taking into account further developments in the financial markets the Commission should submit reports to the European Parliament and the Council on the application of the provisions concerning professional indemnity insurance, the scope of the transparency rules and the possible

(2) OJL 184, 17.7.1999, p. 23.
authorisation of specialised dealers in commodity derivatives as investment firms, which should include, in the latter case, a review of whether it is appropriate to make changes to the rules on regulatory capital laid down in Directive 93/6/EEC so as to ensure that those rules are proportionate in relation to the business of dealing in:

(a) futures/options which contain a contractual requirement for physical settlement,

(b) commodities, and

(c) commodity derivatives.


(52) The objectives of creating an integrated financial market in which investors are effectively protected and the efficiency and integrity of the overall market are safeguarded, require the establishment of common regulatory requirements relating to investment firms wherever they are authorised in the Community and governing the functioning of regulated markets and other trading systems so as to prevent opacity or disruption on one market from undermining the efficient operation of European financial system as a whole. Given that these objectives may be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

TITLE I
DEFINITIONS AND SCOPE

Article 1
Scope

1. This Directive shall apply to investment firms and operators of regulated markets.

2. Articles 12 and 13 and Chapters II and II of Title II (with the exception of Articles 29 and 30) shall apply also to credit institutions authorised under Directive 2000/12/EC to perform one or more investment services.

Article 2
Exemptions

1. This Directive shall not apply to:

(a) insurance undertakings as defined in Article 1 of Directive 73/239/EEC or in Article 1 of Directive 79/267/EEC or undertakings carrying on the reinsurance and retrocession activities referred to in Directive 64/225/EEC;

(b) firms which provide investment services exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings;

(c) persons providing an investment service where that service is provided in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the provision of that service;

(d) firms which provide investment services consisting exclusively in the administration of employee-participation schemes;

(e) the members of the European System of Central Banks and other national bodies performing similar functions and other public bodies charged with or intervening in the management of the public debt;

(f) collective investment undertakings whether co-ordinated at Community level or not and the depositaries and managers of such undertakings;

(g) persons or undertakings dealing on own account in financial instruments as an ancillary activity to their main business, where that main business is not the provision of investment services within the meaning of this Directive or banking services under Directive 2000/12/EC;

(h) persons or undertakings whose main business consists of dealing on own account in any derivatives referred to in points 4 or 6 of Section C of Annex I (except those in respect of securities, prices of securities, interest rates or yields or foreign exchange rates) and/or trading in commodities;

(i) persons or undertakings which provide investment services consisting exclusively in dealing on their own account on futures, options or other derivatives markets under the rules of those markets or which deal for the accounts of other members of those markets or make prices for them and which are guaranteed by clearing members of the same markets, and where responsibility for ensuring the performance of contracts entered into by such persons or undertakings is assumed by clearing members of the same markets;

(j) associations set up by Danish pension funds with the sole aim of managing the assets of pension funds that are members of those associations;

(k) 'agenti di cambio' whose activities and functions are governed by Article 201 of Italian Legislative Decree No 58 of 28 February 1998;

(l) firms which may not provide any investment service except the reception and transmission of orders and investment advice in units in collective investment undertakings and which do not hold client’s funds and which for that reason may not at any time place themselves in debit with their clients, and which in the course of providing that service may transmit orders only to

(i) investment firms authorised in accordance with this Directive;

(ii) credit institutions authorised in accordance with Directive 2000/12/EC;

(iii) branches of investment firms or of credit institutions which are authorised in a third country and which are subject to and comply with prudential rules considered by the competent authorities as at least as strict as those laid down in this Directive, in Directive 2000/12/EC or in Directive 93/6/EEC;

(iv) collective investment undertakings authorised under the law of a Member State to market units to the public and to the managers of such undertakings;

(v) investment companies with fixed capital, as defined in Article 15(4) of Directive 77/91/EEC, the securities of which are listed or dealt in on a regulated market in a Member State;

the activities of which are governed at national level by rules or by a code of ethics.
Member States may exempt natural and legal persons from the scope of this Directive where they only provide investment advice and transmit orders concerning units in collective investment undertakings, and carry out these activities solely on a national basis, without any cross-border activity.

2. The rights conferred by this Directive shall not extend to the provision of services as counterparty in transactions carried out by members of the European System of Central Banks performing their tasks as provided for by the Treaty and the Statute of the European System of Central Banks and of the European Central Bank.

3. In order to take account of developments on financial markets, and to ensure the uniform application of this Directive, the Commission, acting in accordance with the procedure referred to in Article 60(2), may clarify the exemptions provided for under paragraph 1 of this Article.

Article 3
Definitions

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

   (1) ‘Investment firm’ means any legal person whose regular occupation or business is the provision of investment services on a professional basis to third parties;

   (2) ‘Investment service’ means any of the services, provided for third parties, listed in Section A of Annex I relating to any of the instruments listed in Section C of Annex I;

   (3) ‘Ancillary service’ means any of the services listed in Section B of Annex I relating to any of the instruments listed in Section C of Annex I;

   (4) ‘Investment advice’ means the provision of personal recommendation to a client in respect of one or more transactions relating to financial instruments;

   (5) ‘Execution of orders on behalf of clients’ means acting as an agent to conclude agreements to buy or sell one or more financial instruments on behalf of clients, including acting on behalf of clients to conclude transactions in financial instruments on a regulated market or MTF, or any comparable third-country system, where the firm acts as principal by virtue of the rules of that market or system;

   (6) ‘Dealing on own account’ means active trading against proprietary capital, on a regular and professional basis, resulting in the conclusion of transactions in one or more financial instruments and not based on a previous request or a mandate of a third party;

   (7) ‘Client’ means any natural or legal person to whom an investment firm provides investment or ancillary services;

   (8) ‘Professional client’ means a client falling within the criteria and procedures laid down in Annex II;

   (9) ‘Retail client’ means a client who is not a professional client;

   (10) ‘Market operator’ means a legal person or persons who effectively direct the business of a regulated market;

   (11) ‘Regulated market’ means a multilateral system, operated by a market operator, which brings together multiple third-party buying and selling interests in financial instruments — in the system and in accordance with non-discretionary rules — in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and systems, and which is authorised and functions regularly and in accordance with the provisions of Title III;
(12) ‘Multilateral trading facility’ (MTF) means a multilateral system which brings together multiple third-party buying and selling interests in financial instruments — in the system and in accordance with non-discretionary rules and trading methodologies — in a way that results in a contract and which is authorised and functions in accordance with the provisions of Title II;

(13) ‘Market order’ means an order to buy or sell a financial instrument at the best available price for a specified size;

(14) ‘Limit order’ means an order to buy or sell a financial instrument at its specified limit or better for a specified size and without other conditions attached;

(15) ‘Financial instrument’ means those instruments specified in Section C of Annex I;

(16) ‘Transferable securities’ means those classes of securities which are negotiable on the capital market, with the exception of instruments of payment, such as:

(a) shares in companies and other securities equivalent to shares in companies, partnership or other entities, and depositary receipts in respect of shares;

(b) bonds or other forms of securitised debt, and depositary receipts in respect of bonds.

(c) any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures;

(17) ‘Money-market instruments’ means those classes of instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment;

(18) ‘Home Member State’ means:

(a) in the case of investment firms:

(i) if the investment firm is a natural person, the Member State in which its head office is situated;

(ii) if the investment firm is a legal person, the Member State in which its registered office is situated. In this case, the competent authority shall also ensure that the head office of the firm is located in this Member State;

(iii) if the investment firm has, under its national law, no registered office, the Member State in which its head office is situated;

(b) in the case of the operator of a regulated market, the Member State in which the market operator is registered or, if under the law of that Member State it has no registered office, the Member State in which the head office of the market operator is situated;

(c) in the case of a regulated market, the Member State granting the authorisation as a regulated market;

(19) ‘Host Member State’ means:

(a) in the case of investment firms, the Member State in which the investment firm has a branch or provides services;

(b) in the case of the operator of a regulated market, the Member State other than the home Member State where the market operator operates a regulated market or provides services;

(20) ‘Competent authority’ means the authority, designated by the home Member State in accordance with Article 46, unless otherwise specified in this Directive;

(21) ‘Credit institutions’ means credit institutions as defined under Directive 2000/12/EC;

(22) ‘UCITS Management company’ means a management company as defined in Directive 85/611/EEC;
(23) ‘Tied agent’ means a natural or legal person who, without being considered as an investment firm for the purposes of this Directive, promotes the investment and ancillary services of the investment firms for which it acts to clients or prospective clients, collects and transmits instructions or orders from the client in respect of investment services or financial instruments to those investment firms, and provides advice to clients or prospective clients in respect of the financial instruments or services offered by those investment firms under the full and unconditional responsibility of the investment firms on whose behalf it acts;

(24) ‘Systematic internalisation’ means the execution, on a systematic, regular and continuous basis, of:

1) orders up to a standard market size undertaken by any type of clients or counterparties,
2) in shares admitted to or included in trading on a regulated market,
3) on own account or by means of matching with other client orders,
4) within a system, a component of which is primarily aimed at facilitating the activities set out in points (1) to (3),
5) outside the rules or systems of a regulated market or MTF.

Where executions in several securities are part of one transaction (such as portfolio transaction), the size of the total transaction shall determine whether the transaction was of a standard market size;

(25) ‘Branch’ means a place of business, other than the head office, which is part of an investment firm, which has no legal personality and which provides investment services or ancillary services for which the investment firm has been authorised;

(26) ‘Qualifying holding’ means any direct or indirect holding in an investment firm which represents 10% or more of the capital or of the voting rights, as set out in Article 7 of Council Directive 88/627/EEC (1), or which makes it possible to exercise a significant influence over the management of the investment firm in which that holding subsists;

(27) ‘Parent undertaking’ means a parent undertaking as defined in Articles 1 and 2 of Council Directive 83/349/EEC (2);

(28) ‘Subsidiary’ means a subsidiary undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC, including any subsidiary of a subsidiary undertaking of an ultimate parent undertaking;

(29) ‘Control’ means control as defined in Article 1 of Directive 83/349/EEC;

(30) ‘Close links’ means a situation in which two or more natural or legal persons are linked by:

(a) participation which means the ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking,
(b) control which means the relationship between a parent undertaking and a subsidiary, in all the cases referred to in Article 1(1) and (2) of Directive 83/349/EEC, or a similar relationship between any natural or legal person and an undertaking, any subsidiary undertaking of a subsidiary undertaking also being considered a subsidiary of the parent undertaking which is at the head of those undertakings.

A situation in which two or more natural or legal persons are permanently linked to one and the same person by a control relationship shall also be regarded as constituting a close link between such persons.

2. In order to take account of developments on financial markets, and to ensure the uniform application of this Directive, the Commission, acting in accordance with the procedure referred to in Article 60(2), may clarify the definitions provided in paragraph 1 of this Article.

TITLE II

AUTHORISATION AND OPERATING CONDITIONS
FOR INVESTMENT FIRMS

CHAPTER I

CONDITIONS AND PROCEDURES FOR AUTHORISATION

Article 4

Requirement for authorisation

1. Each Member State shall reserve the provision of investment services under this Directive to investment firms. It shall ensure that all investment firms for which it is the home Member State operate only after authorisation in accordance with the provisions of this Directive.

Notwithstanding subparagraph 1, the Member States may waive the requirement of authorisation under the provisions of this Directive in the case of investment firms within the meaning of Article 2(2)(c) and (d) of Directive 93/6/EEC, which have already been registered under Directive 2002/92/EC.

2. By way of derogation from paragraph 1, Member States shall allow any market operator to operate an MTF, subject to compliance with Articles 12, 13, 24, 27 and 28.

3. By way of derogation from point 1 of Article 3(1), Member States may authorise as investment firms undertakings which are not legal persons, provided that:

(a) their legal status ensures a level of protection for third parties' interests equivalent to that afforded by legal persons, and

(b) they are subject to equivalent prudential supervision appropriate to their legal form.

However, where a natural person provides services involving the holding of third parties' funds or transferable securities, it may be considered as an investment firm for the purposes of this Directive only if, without prejudice to the other requirements imposed in this Directive and in Directive 93/6/EEC, it complies with the following conditions:

(a) the ownership rights of third parties in instruments and funds must be safeguarded, especially in the event of the insolvency of the firm or of its proprietors, seizure, set-off or any other action by creditors of the firm or of its proprietors;

(b) the firm must be subject to rules designed to monitor the firm's solvency and that of its proprietors;

(c) the firm's annual accounts must be audited by one or more persons empowered, under national law, to audit accounts;

(d) where the firm has only one proprietor, he must make provision for the protection of investors in the event of the firm's cessation of business following his death, his incapacity or any other such event.

4. Member States shall establish a register of all investment firms. This register shall be publicly accessible and shall contain information on the services for which the investment firm is authorised. It shall be updated on a regular basis.

5. In the case of investment firms which provide only investment advice, Member States may allow the competent authority to delegate the function of granting authorisation to a body which meets the conditions set out in Article 46.
Article 5
Scope of authorisation

1. The home Member State shall ensure that the authorisation specifies the investment services which the investment firm is authorised to provide. The authorisation may cover one or more of the ancillary services set out in Section B of Annex I. Authorisation may in no case be granted solely for the provision of ancillary services.

2. An investment firm seeking authorisation to extend its business to additional investment or ancillary services not foreseen at the time of initial authorisation shall submit a request for extension of its authorisation.

3. The authorisation shall be valid for the entire Community and shall allow an investment firm to provide the services for which it has been authorised, throughout the Community, either through the establishment of a branch or the free provision of services.

Article 6
Procedures for granting and refusing requests for authorisation

1. The competent authority shall not grant authorisation unless and until such time as it is fully satisfied that the applicant complies with all requirements under the provisions adopted pursuant to this Directive.

2. The investment firm shall provide all information, including a programme of operations setting out inter alia the types of business envisaged and the organisational structure necessary to enable the competent authority to satisfy itself that the investment firm has established, at the time of initial authorisation, all the necessary arrangements to meet its obligations under the provisions of this Chapter.

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

Article 7
Withdrawal of authorisations

The competent authority may withdraw the authorisation issued to an investment firm where such an investment firm:

(a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has provided no investment services for the preceding six months, unless the Member State concerned has provided for authorisation to lapse in such cases;

(b) has obtained the authorisation by making false statements or by any other irregular means;

(c) no longer meets the conditions under which authorisation was granted, such as compliance with the conditions set out in Directive 93/6/EEC;

(d) has seriously and systematically infringed the provisions adopted pursuant to this Directive governing the operating conditions for investment firms;

(e) falls within any of the cases where national law, in respect of matters outside the scope of this Directive, provides for withdrawal.

Article 8
Persons who effectively direct the business

1. Member States shall require the persons who effectively direct the business of an investment firm to be of sufficiently good repute and sufficiently experienced as to ensure the sound and prudent management of the investment firm.
2. Member States shall require the investment firm to notify the competent authority of any changes to its management, along with all information needed to assess whether the new staff appointed to manage the firm are of sufficiently good repute and sufficiently experienced.

3. The competent authority shall refuse authorisation if it is not satisfied that the persons who will effectively direct the business of the investment firm are of sufficiently good repute or sufficiently experienced, or if there are objective and demonstrable grounds for believing that proposed changes to the management of the firm pose a threat to its sound and prudent management.

4. Member States shall ensure that the management of investment firms is undertaken by at least two persons meeting the requirements laid down in paragraph 1.

By way of derogation from the first subparagraph, Member States may grant authorisation to investment firms which are natural persons or to investment firms which are legal persons managed by a single natural person in accordance with their constitutive rules and national laws. Member States shall nevertheless ensure that alternative arrangements are in place which ensure the sound and prudent management of such investment firms.

Article 9
Persons exercising effective control and acquisitions of qualifying holdings

1. Member States shall require any shareholder owning a qualifying holding in the investment firm to be suitable, having regard to the need to ensure the sound and prudent management of the investment firm.

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

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

3. Member States shall require any natural or legal person who proposes to acquire or sell, directly or indirectly, a qualifying holding in an investment firm, first to notify, in accordance with the second subparagraph, the competent authority of the size of the resulting holding. Such persons shall likewise be required to notify the competent authority if they propose to increase or reduce their qualifying holding, if in consequence the proportion of the voting rights or of the capital that they hold would reach or fall below or exceed 20%, 33% or 50% or the investment firm would become their subsidiary.

Without prejudice to the provisions of paragraph 4, the competent authority shall have up to three months from the date of the notification provided for in the first subparagraph to oppose such a plan if, in view of the need to ensure sound and prudent management of the investment firm, it is not satisfied as to the suitability of the persons referred to in the first subparagraph. If the competent authority does not oppose the plan, it may fix a deadline for its implementation.

4. If the acquirer of any holding referred to in paragraph 3 is an investment firm, a credit institution or an insurance undertaking authorised in another Member State, or the parent undertaking of an investment firm, credit institution or insurance undertaking authorised in another Member State, or a person controlling an investment firm, credit institution or insurance undertaking authorised in another Member State, and if, as a result of that acquisition, the undertaking would become the acquirer's subsidiary or come under his control, the assessment of the acquisition shall be subject to the prior consultation provided for in Article 56.

5. Member States shall require that, if an investment firm becomes aware of any acquisitions or disposals of holdings in its capital that cause holdings to exceed or fall below any of the thresholds referred to in the first subparagraph of paragraph 3, that investment firm is to inform the competent authority without delay.
At least once a year, investment firms shall also inform the competent authority of the names of share-
holders and members possessing qualifying holdings and the sizes of such holdings as shown, for example,
by the information received at annual general meetings of shareholders and members or as a result of
compliance with the regulations applicable to companies whose transferable securities are admitted to
trading on a regulated market.

6. Member States shall require that, where the influence exercised by the persons referred to in the first
subparagraph of paragraph 1 is likely to be prejudicial to the sound and prudent management of an invest-
ment firm, the competent authority takes appropriate measures to put an end to that situation.

Such measures may consist in applications for judicial orders and/or the imposition of sanctions against
directors and those responsible for management, or suspension of the exercise of the voting rights attach-
ing to the shares held by the shareholders or members in question.

Similar measures shall be taken in respect of persons who fail to comply with the obligation to provide
prior information in relation to the acquisition or increase of a qualifying holding. If a holding is acquired
despite the opposition of the competent authorities, the Member States shall, regardless of any other
sanctions to be adopted, provide either for exercise of the corresponding voting rights to be suspended,
for the nullity of the votes cast or for the possibility of their annulment.

Article 10
Membership of an authorised Investor Compensation Scheme

The competent authority shall verify that any entity seeking authorisation as an investment firm meets its
ensation schemes (1) at the time of authorisation.

Article 11
Initial capital endowment

1. Member States shall ensure that the competent authority does not grant authorisation unless the
investment firm has sufficient initial capital in accordance with the requirements of Directive 93/6/EEC
having regard to the nature of the investment service in question.

2. Member States shall ensure that investment firms exempted from the scope of Directive 93/6/EEC,
pursuant to points (c) and (d) of Article 2(2) thereof, have sufficient financial capacity. Such measures
shall take one or more of the following forms:

(a) minimum initial capital of EUR 50 000;

(b) professional indemnity insurance covering the whole territory of the Community or some other
comparable guarantee against liability arising from professional negligence, representing at least
EUR 1 000 000 applying to each claim and in aggregate EUR 1 500 000 per year for all claims; or

(c) a combination of points (a) and (b), in a form resulting in protection equivalent to one of them.

The Member States need not apply the provisions of this paragraph to investment companies that
already comply with them under Directive 2002/92/EC.

3. The amounts referred to in paragraph 2 shall be periodically reviewed by the Commission in order to
take account of changes in the European Index of Consumer Prices as published by Eurostat, in line with
and at the same time as the adjustments made under Article 4(7) of Directive 2002/92/EC.

Article 12
Organisational requirements

1. The home Member State shall ensure that investment firms comply with the organisational requirements set out in paragraphs 2 to 9.

2. An investment firm shall establish adequate policies and procedures to take reasonable steps to ensure compliance of the firm and its directors, employees and tied-agents with its obligations under this Directive when conducting business with and on behalf of clients and which require it to act with market integrity.

3. An investment firm shall be structured and organised in such a way as to minimise the risk of client interests being prejudiced by conflicts of interest between the firm and its clients or between one of its clients and another.

4. An investment firm shall take reasonable steps to employ such systems, resources, and procedures as are necessary to ensure continuity and regularity in the provision of the service.

5. An investment firm shall ensure that, when relying on a third party for the performance of functions which are critical for the provision of continuous and satisfactory service to clients, that it takes reasonable steps to avoid undue additional operational risk. Outsourcing of important operational functions may not be undertaken in such a way as to impair materially the quality of its internal control and the ability of the supervisor to monitor the firm’s compliance with all obligations.

6. An investment firm shall have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems, including, in particular, rules governing personal transactions by employees.

7. An investment firm shall arrange for records to be kept of transactions undertaken by it which shall be sufficient to enable the competent authority to monitor compliance with the requirements under this Directive, and in particular, where relevant, to ascertain that the investment firm has complied with all obligations with respect to clients.

8. An investment firm shall, when holding financial instruments belonging to clients, make adequate arrangements so as to safeguard clients’ ownership rights, especially in the event of the investment firm’s insolvency, and to prevent the use of a client’s instruments on own account except with the client’s express consent.

9. An investment firm shall, when holding funds belonging to clients, make adequate arrangements to safeguard the clients’ rights and, except in the case of credit institutions, prevent the use of client funds for its own account.

10. In the case of branches of investment firms, the competent authority of the Member State in which the branch is located shall, without prejudice to the possibility of the competent authority of the home Member State of the investment firm to have direct access to those records, enforce the obligation laid down in paragraph 7 with regard to transactions undertaken by the branch.

11. In order to take account of technical developments on financial markets and to ensure the uniform application of paragraphs 2 to 10, the Commission may adopt, in accordance with the procedure referred to in Article 60(2), implementing measures which specify the high-level principles which should underlie the organisational requirements adopted by investment firms providing different investment and ancillary services or combinations thereof.
Article 13
Trading process and finalisation of transactions in an MTF

1. Member States shall require that investment firms operating an MTF, in addition to meeting the requirements laid down in Article 12, establish transparent and non-discretionary rules, trading methodologies and procedures for fair and orderly trading and establish objective criteria for the efficient execution of orders, taking into account the nature of the users of the system and the type of instruments traded on it. Those rules, trading methodologies and procedures shall be subject to prior approval by the competent authority of the home Member State and shall take into account the particular nature of each MTF.

2. Member States shall require that investment firms operating an MTF provide for access to the facility in accordance with transparent and objective commercial conditions.

3. Member States shall require that investment firms operating an MTF clearly inform their users of their respective responsibilities for the settlement of the transactions executed in that facility. If investment firms operating an MTF assume part of the responsibility for the settlement of those transactions, the competent authority shall ensure that they have put in place the necessary arrangements to facilitate efficient settlement.

4. Where a transferable security, which has been admitted to trading on a regulated market, is also traded on an MTF without the consent of the issuer, the issuer shall not be subject to any obligation relating to initial, ongoing or ad hoc financial disclosure with regard to that MTF.

5. Member States shall ensure that any investment firm operating an MTF complies immediately with any instruction from its competent authority pursuant to Article 47(1) to suspend or remove a financial instrument from trading.

6. In order to take account of technical developments on financial markets and to ensure uniform application of paragraphs 1 and 2, the Commission shall adopt, in accordance with the procedure referred to in Article 60(2), implementing measures governing transparent and non-discretionary rules, trading methodologies and procedures for fair and orderly trading through the MTF and establish objective criteria for the efficient execution of orders.

Article 14
Authorisation of third country firms and branches

1. The Member States shall inform the Commission of any general difficulties which their investment firms encounter in establishing themselves or providing investment services in any third country.

2. Whenever it appears to the Commission, on the basis of information submitted to it under paragraph 1, that a third country does not grant Community investment firms effective market access comparable to that granted by the Community to investment firms from that third country, the Commission may submit proposals to the Council for an appropriate mandate for negotiation with a view to obtaining comparable competitive opportunities for Community investment firms. The Council shall act by a qualified majority.

3. Whenever it appears to the Commission, on the basis of information submitted to it under paragraph 1, that Community investment firms in a third country are not granted national treatment affording the same competitive opportunities as are available to domestic investment firms and that the conditions of effective market access are not fulfilled, the Commission may initiate negotiations in order to remedy the situation.

In the circumstances referred to in the first subparagraph, the Commission may decide in accordance with the procedure referred to in Article 60(2), at any time and in addition to the initiation of negotiations, that the competent authorities of the Member States must limit or suspend their decisions regarding requests pending or future requests for authorisation and the acquisition of holdings by direct or indirect parent
undertakings governed by the law of the third country in question. Such limitations or suspensions may not be applied to the setting-up of subsidiaries by investment firms duly authorised in the Community or by their subsidiaries, or to the acquisition of holdings in Community investment firms by such firms or subsidiaries. The duration of such measures may not exceed three months.

Before the end of the three-month period referred to in the preceding subparagraph and in the light of the results of the negotiations, the Commission may decide, in accordance with the procedure referred to in Article 60(2), to extend these measures.

4. Whenever it appears to the Commission that one of the situations referred to in paragraphs 2 and 3 obtains, the Member States shall inform it at its request:

(a) of any application for the authorisation of any firm which is the direct or indirect subsidiary of a parent undertaking governed by the law of the third country in question;

(b) whenever they are informed in accordance with Article 9(3) that such a parent undertaking proposes to acquire a holding in a Community investment firm, in consequence of which the latter would become its subsidiary.

That obligation to provide information shall lapse whenever agreement is reached with the third country concerned or when the measures referred to in the first and second subparagraphs of paragraph 3 cease to apply.

5. Measures taken under this Article shall comply with the Community's obligations under any international agreements, bilateral or multilateral, governing the taking up or pursuit of the business of investment firms.

CHAPTER II
OPERATING CONDITIONS FOR INVESTMENT FIRMS

SECTION 1
GENERAL PROVISIONS

Article 15
General obligation in respect of on-going supervision

1. Member States shall ensure that the competent authorities keep under regular review the organisational arrangements which investment firms are required to put in place as a condition for initial authorisation.

2. Member States shall require investment firms or their external auditor to notify the competent authorities of any material changes to their programme of operations. Member States shall require investment firms to provide the competent authorities on request with all information needed to verify that modified organisational requirements are sufficient to ensure continued compliance with the obligations under this Directive.

3. Member States shall ensure that the competent authorities monitor the activities of investment firms so as to assess compliance with the operating conditions provided for in this Chapter and other obligations under this Directive. Member States shall ensure that the competent authorities obtain the information needed to assess the compliance of investment firms with those obligations.

4. In the case of investment firms which provide only investment advice, the competent authority may delegate the function of regular monitoring of operational and organisational requirements to a body meeting the requirements set out in Article 46(2).
Article 16

Conflicts of interest

1. Member States shall require investment firms to take all reasonable steps to identify conflicts of interest between themselves, including their managers and employees, and their clients or between one client and another that arise in the course of providing any investment and ancillary services, or combinations thereof.

2. Member States shall require that investment firms whose activities give rise to conflicts of interest maintain and operate effective organisational and administrative arrangements to prevent those conflicts from adversely affecting the interests of clients, or otherwise manage them so as to achieve the same result.

3. Where organisational or administrative arrangements made by the investment firm to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to client interests will be effectively avoided, the investment firm shall clearly disclose the general nature and/or sources of conflicts of interest to the client before undertaking business on its behalf.

4. In order to take account of technical developments on financial markets and to ensure consistent application of paragraphs 1 and 2, the Commission may adopt, in accordance with the procedure referred to in Article 60(2), implementing measures to:

   (a) specify the steps that investment firms might reasonably be expected to take to identify, prevent, manage and/or disclose conflicts of interest when providing various investment and ancillary services and combinations thereof, while leaving it to firms, subject to regulatory oversight, to determine the appropriate mix of prevention, management and disclosure. With regard to the nature of the steps to be specified under this paragraph, the Commission shall take into account the frequency of conflicts of interest (whether they occur regularly or in limited, individual cases) in different types of investment firms;

   (b) address conflicts that arise from any inducement that is received or self-interest that arises in connection with the performance of an investment service which may compromise the quality or fairness of a related investment service that is performed on behalf of or provided to a client.

5. The competent authority of the home Member State shall ensure that the obligations of this provision and the implementing measures adopted under paragraph 4 are complied with by investment firms when providing services in other Member States. The competent authority of the Member State in which a branch is located shall enforce the obligations of this provision and any implementing measures adopted under paragraph 4 in respect of the services provided by a branch to its clients.

Article 17

Ongoing capital endowment

The Member States shall require that investment firms comply at all times with the rules laid down in Directive 93/6/EEC, having regard to the nature of the investment service in question.

SECTION 2

PROVISIONS TO ENSURE INVESTOR PROTECTION

Article 18

Conduct of business obligations when providing investment services to clients

1. Member States shall ensure that, when providing investment services or ancillary services to clients, an investment firm acts honestly, fairly and professionally in accordance with the best interests of its clients and complies, in particular, with the principles set out in paragraphs 2 to 8.
2. Marketing communications addressed to clients or potential clients shall be identified as such and shall be fair, clear and not misleading.

3. Timely information shall be provided in a comprehensible form to clients or potential clients about the investment firm and its services, so that they are able to understand the precise nature and risks of the investment service and financial instrument that is being offered. Information may be provided to clients in a standard form.

4. The necessary information shall be obtained from the client regarding its knowledge and experience in the investment field, its investment objectives and financial situation so as to enable the investment firm to determine the investment services and financial instruments suitable for that client. These obligations shall be modulated according to the complexity of the investment services and financial instruments being proposed and shall not apply where investment advice, as referred to in Article 3(1)(4), is not being provided. In such cases, product promotional literature and/or the initial agreement with the client shall make clear that no advice is being provided.

5. Timely information shall be provided to the client regarding financial instruments, proposed investments and execution venues which is fair, clear and not misleading, so as to enable the client to take investment decisions on an informed basis. These obligations shall be modulated according to the complexity of the investment services and financial instruments being proposed and shall not apply where investment advice, as referred to in Article 3(1)(4), is not being provided. In such cases, product promotional literature and/or the initial agreement with the client shall make clear that no advice is being provided.

6. When providing advice or discretionary services, appropriate guidance and warnings on the risks associated with investments in particular types of instruments or investment strategies shall be provided to the client having particular regard to the information which the firm has obtained about the client’s knowledge and experience.

7. A documentary record of an agreement between the firm and the client shall be established which sets out the rights and obligations of the parties and the other terms on which the firm will provide services to the client. A documentary record of an agreement may also be made in a standardised format.

8. The client shall receive an order confirmation and a settlement note. The settlement note shall include the costs associated with the transactions and services undertaken on behalf of the client.

9. In order to ensure the necessary protection of investors and the consistent application of paragraphs 1 to 8 the Commission shall adopt, in accordance with the procedure referred to in Article 60(2), implementing measures to ensure that investment firms comply with the principles set out therein when providing investment or ancillary services to their clients. Those implementing measures shall take into account:

(a) the nature of the service(s) offered or provided to the client or potential client, including the particular procedures and systems which investment firms use to execute orders on behalf of clients;

(b) the nature of the financial instruments being offered or considered;

(c) the retail or professional nature of the client or potential clients including adequate grandfathering provisions for the categorisation of existing clients and leaving a sufficient degree of flexibility for investment firms when implementing the categorisation set out in Annex II.

Where appropriate, the implementing measures adopted under this paragraph may provide that the principles set out in paragraphs 1 to 8 shall not apply to professional clients or potential professional clients and/or that conduct of business rules may be waived by professional clients, if they so wish.
10. Member States shall ensure that an investment firm receiving from another investment firm an instruction to perform investment or ancillary services on behalf of a client of that other investment firm is able to rely on client information transmitted by that firm and is not obliged to seek information about the client of that other investment firm.

The investment firm which receives an instruction to undertake services on behalf of a client in this way shall also be able to rely on any recommendations in respect of the service or transaction that have been provided to the client by another investment firm.

The investment firm which receives client instructions or orders through the medium of another investment firm shall remain responsible for concluding the service or transaction, based on any such information or recommendations, in accordance with measures adopted pursuant to paragraph 9.

11. The competent authority of the home Member State shall ensure that the obligations of this provision and the implementing measures adopted under paragraph 9 are complied with by investment firms when providing services in other Member States.

12. The competent authority of the Member State in which a branch is located shall enforce the obligations referred to in paragraphs 1 to 8 and the implementation measures adopted pursuant to paragraph 9 in respect of the services provided by a branch to its clients.

### Article 19

Obligation to execute orders on terms most favourable to the client

1. Member States shall require that investment firms providing services which entail the execution of client orders in financial instruments are responsible for making arrangements designed to ensure that those orders are executed in such a way that the client obtains the best result reasonably achievable, under the execution policy described in Article 20(3), for the size and type of the customer's order, taking into account any specific instructions from the client. The execution policy shall cover price, costs, speed and likelihood of execution and the execution venues to which the firm has access.

In the case of professional clients who have retained discretion over the manner and market of execution, the investment firm's best-execution duty shall consist only of a need to follow the client's instructions.

2. The requirements imposed under paragraph 1 shall take into account the size and type of order and the professional or non-professional nature of the client.

3. The competent authority shall verify that such investment firms implement systematic, effective and efficient procedures for monitoring execution quality and facilitating execution of client orders in accordance with paragraph 1. In assessing these procedures, regard shall be had to the extent to which the procedures enable the firm to obtain the best result reasonably achievable having regard to the conditions of the order, and the conditions prevailing in the marketplace to which the investment firm can reasonably be expected to have access under the terms of the execution policy. The competent authority must regularly monitor compliance of investment firms with these obligations.

4. Member States shall require investment firms to review, on a regular basis, their execution arrangements and, where appropriate, make changes to them so as to obtain the best result reasonably achievable for their clients.

Member States shall require that investment firms implement effective and efficient procedures for monitoring execution quality. In assessing these procedures, regard shall be had to the extent to which the procedures enable the firm to identify and correct, where appropriate, consistent inefficiencies in its execution practices.
5. In order to ensure the protection necessary for investors, the fair and orderly functioning of markets, and to ensure the uniform application of paragraphs 1, 2 and 3, the Commission shall, in accordance with the procedure referred to in Article 60(2), adopt implementing measures concerning:

(a) the factors that may be taken into account for determining best execution or the calculation of best net price prevailing in the marketplace for the size and type of order and type of client, taking particular account of whether the client is a retail investor or a professional client;

(b) the procedures which, taking into account the scale of operations of different investment firms, may be considered as constituting reasonable and effective methods of obtaining access to the execution venues which offer the most favourable terms of execution in the marketplace.

6. The competent authority of the home Member State shall ensure that the obligations of this provision and the implementing measures adopted under paragraph 5 are complied with by investment firms when providing services in other Member States. The competent authority of the Member State in which a branch is located shall enforce the obligations of this provision in respect of the services provided by a branch to its clients.

7. The obligation referred to in paragraph 1 shall not apply if the investment firm has agreed otherwise with a professional client.

**Article 20**

Client order handling rules

1. Member States shall require that investment firms authorised to execute orders on behalf of clients implement procedures and arrangements which provide for the fair and expeditious execution of client orders, relative to other client orders or the trading interests of the investment firm.

2. Member States shall ensure that investment firms operate procedures or arrangements or rules for executing otherwise comparable client orders which ensure that the firm does not knowingly execute orders out of time priority, unless this is carried out in accordance with a client order aggregation policy or by agreement with the client.

3. Member States shall ensure that investment firms, before proceeding to execute retail client orders, disclose to their retail clients their execution policy, including whether orders are to be executed under or outside the rules and systems operated by a regulated market or MTF, and obtain their consent to it. This consent may be obtained either at the outset of the client relationship in the form of a general agreement or in respect of individual transactions. If the prior consent of clients is given in the form of a general agreement, it should be contained in a separate section.

**Member States shall ensure that investment firms inform their clients of any significant change to their execution policy. Following any such significant change, clients shall always have the right to terminate without delay the contractual arrangement made with the investment firm.**

4. Member States shall require that, in the case of a client limit order for shares which cannot be immediately executed under prevailing market conditions, investment firms are, unless the client expressly instructs otherwise, to take measures to facilitate the earliest possible execution of that order by making public immediately the client limit order, in particular by forwarding the client limit order to a regulated market or MTF or by some other means which ensures that it is easily accessible to other market participants. Member States shall provide that the competent authorities are to be able to waive the obligation to make public a limit order that is large in scale compared with normal market size as determined under Article 42(2).
5. In order to ensure that measures for the protection of investors and fair and orderly functioning of markets take account of technical developments in financial markets, and to ensure the consistent application of paragraphs 1 to 4, the Commission may adopt, in accordance with the procedure referred to in Article 60(2), implementing measures which define:

(a) the conditions and nature of the procedures and arrangements which result in the prompt, fair and expeditious execution of client orders and the situations in which or types of transaction for which investment firms may reasonably deviate from prompt execution so as to obtain more favourable terms for clients;

(b) the procedures for obtaining and renewing client consent prior to executing those orders outside the rules and systems of a regulated market or MTF.

6. The competent authority of the home Member State shall ensure that the obligations of this provision and the implementing measures adopted under paragraph 5 are complied with by investment firms when providing services in other Member States. The competent authority of the Member State in which a branch is located shall enforce the obligations of this provision and any implementing measures adopted under paragraph 5 in respect of the services provided by a branch to its clients.

**Article 21**

Obligations of investment firms when employing tied agents

1. Member States shall ensure that an investment firm may employ tied agents in particular for the purposes of promoting the services of the investment firm, soliciting business or collecting orders from clients or potential clients and transmitting these to that investment firm, and providing advice in respect of financial instruments or services offered by that investment firm and of all activities necessarily linked to it.

2. Member States shall require an investment firm employing a tied agent to remain fully and unconditionally responsible for any action or omission on the part of the tied agent when acting on behalf of the firm. Should the investment firm be subject to the own funds requirement, the amount of own funds required must be geared to the actual liability risk, having regard to existing insurance cover. Member States shall require the investment firm to ensure that a tied agent, prior to mediating a particular product, discloses immediately to any client or potential client the capacity in which he acts and the firm which he is representing.

3. Member States shall ensure that investment firms monitor the activities of their tied agents and adopt measures and procedures so as to ensure that they operate, on a continuous basis, in compliance with this Directive.

4. Each Member State shall ensure that tied agents which act or wish to act on its territory are entered in a public register which is established and maintained under the responsibility of the competent authority.

The competent authority shall ensure that tied agents are only admitted to the public register if it has been established that they are of sufficiently good repute and that they possess appropriate general, commercial and professional knowledge so as to be able to communicate accurately all relevant information regarding the proposed service to the client or potential client.

The existence of appropriate general, commercial and professional knowledge may be determined by way of a grandfathering clause in terms of existing professional experience or appropriate training or further training measures.

The register shall be updated on a regular basis. It shall be publicly available for consultation.

5. Member States shall ensure that investment firms employ only tied agents entered in the public registers referred to in paragraph 4.
6. Member States may allow the competent authority to delegate the establishment and maintenance of the public register pursuant to paragraph 4 and the tasks of monitoring compliance of tied agents with the requirements of paragraph 4 to a body meeting the conditions laid down in Article 46(2).

7. The Member States shall ensure that the rights and obligations of tied agents are geared to the requirements of Directive 2002/92/EC and that harmonisation is carried out accordingly.

Article 22
Transactions executed with eligible counterparties

1. The Member States shall ensure that investment firms authorised to execute orders on behalf of clients, operate an MTF, receive and transmit orders, provide investment advice and/or deal on own account, may provide such services to eligible counterparties without being obliged to comply with the obligations under Articles 18, 19 and 20 in respect of those services.

2. Member States shall recognise as eligible counterparties for the purposes of this Article:

(a) investment firms,
(b) credit institutions,
(c) insurance companies,
(d) commodity and commodity derivatives dealers and other entities authorised or regulated to operate in financial markets, including entities authorised by a Member State under a Directive, entities authorised or regulated without reference to a Directive and entities authorised or regulated by a third country,
(e) any other authorised or regulated financial intermediary considered as such by Community legislation,
(f) central banks, national governments and their representatives and corresponding offices, including public bodies which are responsible for public debt,
(g) international and supranational organisations.

Member States shall also recognise as eligible counterparties UCITS and their management companies, pension funds and their management companies, and other undertakings meeting pre-determined proportionate requirements, including quantitative thresholds.

Classification as an eligible counterparty under the second subparagraph shall be without prejudice to the right of such entities to request treatment as clients whose business with the investment firm is subject to Articles 18, 19 and 20.

3. Member States shall ensure that transactions undertaken by users or participants of a regulated market or an MTF, on or through the systems of the regulated market or MTFs, are treated as transactions between eligible counterparties.

4. Member States shall also recognise as eligible counterparties entities having their registered office or head office in third countries and subject to rules similar to those that apply to the entities referred to in paragraph 2.

5. In order to ensure the consistent application of paragraphs 1, 2 and 3 in the light of changing market practice and to facilitate the effective operation of the single market, the Commission may adopt, in accordance with the procedure referred to in Article 60(2), implementing measures concerning the classification of eligible counterparties.
SECTION 3
MARKET TRANSPARENCY AND INTEGRITY

Article 23
Obligation to uphold integrity of markets, report transactions, and maintain records

1. Without prejudice to the allocation of responsibilities for enforcing the provisions of European Parliament and Council Directive 2003/.../EC of ... [on market abuse] (1), the competent authority shall also monitor the activities of investment firms to ensure that they act honestly, fairly and professionally and in a manner which promotes the integrity of the market.

2. Member States shall require investment firms to keep at the disposal of the competent authority, for at least five years, the relevant data relating to all transactions in financial instruments which they have carried out, whether on own account or on behalf of a client. In the case of transactions carried out on behalf of clients, the records shall contain all the information and details of the identity of the client, and the information required under Council Directive 91/308/EEC (2).

3. Member States shall require investment firms which execute transactions in any financial instruments admitted to trading on a regulated market to report details of such transactions to the competent authority in the home Member State of the investment firm. This obligation shall apply whether or not such transactions were carried out on a regulated market.

4. Those reports shall be transmitted as quickly as possible, and no later than the close of the following working day. The reports shall specify the instrument bought/sold, the quantity, the date and time of execution, and transaction prices. They shall identify the party executing the transaction and indicate the market, trading system or other means through which the transaction was concluded.

5. Member States shall provide that the reports are to be made to the competent authority either by the investment firm, a third party acting on its behalf or by the operator of the regulated market or MTF through whose systems the transaction was completed or by a trade-matching or reporting system approved by the competent authority. In cases where transactions on a regulated market or MTF are reported directly to the competent authority by the regulated market or MTF, or where the transactions are reported directly to the competent authority by a trade-matching or reporting system approved by the competent authority, the obligation on the investment firm laid down in paragraph 3 may be waived.

6. In order to ensure that measures for the protection of market integrity are modified to take account of technical developments in financial markets, and to ensure the uniform application of paragraphs 1 to 5, the Commission may adopt, in accordance with the procedure referred to in Article 60(2), implementing measures which clarify the methods and arrangements for reporting financial transactions, the form and content of these reports, as well as arrangements for communicating them to the competent authorities of other Member States, having particular regard to the expenses incurred by any adjustment of existing reporting systems.

7. The competent authority of the home Member State shall ensure that the obligations of this provision and the implementing measures adopted under paragraph 6 are complied with by investment firms when providing services in other Member States. The competent authority of the Member State in which a branch is located shall enforce the obligations of this provision and any implementing measures adopted under paragraph 6 in respect of the services provided by a branch to its clients.

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Article 24

Monitoring of trading on or through an MTF

1. Member States shall ensure that, where necessary and appropriate given the MTF’s position in the overall market for the investment concerned, investment firms operating an MTF establish adequate and effective arrangements to facilitate the effective and regular monitoring of transactions undertaken on or through the facility in order to identify disorderly trading conditions or behaviour that may involve market abuse.

Member States shall ensure that under those arrangements, which shall be proportionate to the share of trading undertaken on the MTF outside the rules of a regulated market, investment firms supply immediately the information gathered pursuant to the first subparagraph to the home Member State’s competent authority and provide full assistance to the latter in investigating and prosecuting market abuse undertaken on or through the MTF. Member States shall ensure that, in complying with their obligations under this Article, operators of MTFs have no legal liability to third parties.

2. In order to promote the orderly and effective monitoring of trading on MTFs so as to sustain overall market integrity, and to ensure the uniform application of paragraph 1, the Commission shall adopt, in accordance with the procedure referred to in Article 60(2), implementing measures which define the arrangements referred to in paragraph 1. The Commission shall also adopt implementing measures which define circumstances in which an MTF’s reporting requirements are restricted to situations where market abuse or disorderly trading is suspected.

Article 25

Obligation for investment firms to make public firm bid and offers

1. Member States shall require investment firms which practise systematic internalisation in shares to make public a firm bid and offer quotes for transactions of a standard market size in those shares, where those shares are admitted to trading on a regulated market and for which there is a liquid market.

Member States shall require that the investment firms referred to in the first subparagraph trade with their systematic internalisation clients at a price equal to or better than that quoted, except where justified by legitimate commercial considerations.

2. Member States shall provide that the obligation set out in paragraph 1 is waived in respect of investment firms whose systematic internalisation does not represent an important provision of liquidity for the share(s) in question on a regular or continuous basis.

3. Member States shall ensure that the bid and offer prices required under paragraph 1 are made public in a manner which is easily accessible to other market participants on reasonable commercial terms, on a regular and continuous basis during normal trading hours.

The competent authorities shall:

(a) verify whether investment firms fulfil the criteria laid down in Article 3(1)(24);

(b) monitor whether investment firms regularly update the bid and offer prices published in accordance with paragraph 1 and maintain prices which are generally representative of overall market conditions.

Investment firms are permitted to decide, on the basis of their own commercial policies, which persons they accept as clients and consequently with whom they deal on their prices quoted under paragraph 1.
However, Member States shall require that the investment firms subject to the obligation under paragraph 1, which do not exercise their option under paragraph 4, point (e)(i) of providing their quotes through the facilities of a regulated market or MTF, have clear standards for governing access for new systematic internalisation clients, based on objective, non-discriminatory, commercial criteria.

4. In order to ensure the uniform application of paragraphs 1, 2 and 3, in a manner which supports the efficient valuation of shares and maximises the possibility of investment firms to obtain the best deal for their clients, the Commission shall, in accordance with the procedure referred to in Article 60(2), adopt implementing measures which:

(a) specify what is a transaction of a standard market size in respect of which the investment firm shall make public firm bid and offer quotes, having regard to at least the following factors and with the aim of ensuring transparent, competitive and liquid markets:

(i) prevailing local market conditions and practices and respective trading volumes in different Member States and the views of local competent authorities,

(ii) the effect on liquidity, competition, price formation and the general functioning of the market in different Member States,

(iii) the risks to which the obligation under paragraph 1 exposes firms, including associated obligations and risks regulated under the Capital Adequacy Directives;

(b) specify what is an order of standard market size for the purposes of Article 3(1)(24). The Commission shall take into account the aim and factors referred to in point (a)(i) to (iii) but shall not be obliged to adopt the same specification or definition of standard market size for the purposes of Article 3(1)(24) and Article 25(1) and may, if it considers this to be appropriate, adopt a different approach to the term in the two different contexts;

(c) define the shares or classes of share for which there is sufficient liquidity to allow application of the obligation under paragraph 1

(d) determine which types of investment firms shall be exempted, pursuant to paragraph 2, from the obligation under paragraph 1;

(e) specify the means whereby investment firms may comply with their obligations under paragraph 1. These shall include the following possibilities: through the facilities of any regulated market which has admitted the instrument in question to trading;

(i) through the offices of a third party;

(ii) through proprietary arrangements.

Article 26

Post-trade disclosure by investment firms

1. Member States shall require investment firms which, either on own account or on behalf of clients, conclude transactions in shares admitted to trading on a regulated market outside the rules and systems of a regulated market or MTF, to make public the volume and price of those transactions and the time at which they were concluded. This information shall be made public as soon as available on a reasonable commercial basis, and in a manner which is easily accessible to other market participants.

2. The competent authority shall ensure that the information which is made public in accordance with paragraph 1 and the time-limits within which it is published comply with the requirements adopted pursuant to Article 43. Where the measures adopted pursuant to Article 43 provide for deferred reporting for certain categories of transaction in shares, this possibility shall apply mutatis mutandis to those transactions when undertaken outside the rules and systems of regulated markets or MTFs.
3. In order to ensure the transparent and orderly functioning of markets and the consistent application of paragraph 1, the Commission shall adopt, in accordance with the procedure referred to in Article 60(2), implementing measures which:

(a) specify the means by which investment firms may comply with their obligations under paragraph 1 including the following possibilities:
   (i) through the facilities of any regulated market which has admitted the instrument in question to trading;
   (ii) through the offices of a third party;
   (iii) through proprietary arrangements;

(b) clarify in which circumstances the obligation under paragraph 1 should apply neither to transactions involving the use of shares for collateral, lending or other purposes where the exchange of shares is determined by factors other than the current market valuation of the share nor to other transactions which contain little or no useful price information.

Article 27
Pre-trade transparency requirements for MTFs

1. Member States shall require that, where appropriate given the size and nature of trading undertaken on an MTF outside the rules of a regulated market, investment firms operating an MTF make public current bid and offer prices which are advertised through their systems to all users in respect of shares admitted to trading on a regulated market. Member States shall provide that this information is to be made available to the public on a reasonable commercial basis, as close to real time as possible.

2. Competent authorities shall waive or modify the obligations referred to in paragraph 1 when the particular structure of the MTF, or its small size relative to the overall market in an instrument, make it appropriate to do so.

Article 28
Post-trade transparency for MTFs

1. Member States shall require that investment firms operating an MTF make public the price, volume and time of the transactions executed under its rules and systems in respect of shares which are admitted to trading on a regulated market. Member States shall require that details of all such transactions be made public, on a reasonable commercial basis, as close to real time as possible. These requirements shall not apply where details of trades executed on an MTF are made public under the rules of a regulated market.

2. The competent authority shall ensure that the content and timing of the post-trade information, and the methods for its publication comply with the same requirements as apply pursuant to Article 43 in respect of transactions in shares undertaken on a regulated market.

CHAPTER III
RIGHTS OF INVESTMENT FIRMS

Article 29
Freedom to provide services

1. Member States shall ensure that any investment firm authorised and supervised by the competent authorities of another Member State in accordance with this Directive may freely provide investment and ancillary services within their territories, provided that such services are covered by its authorisation. Member States shall not impose any additional requirements on such an investment firm in respect of the matters covered by this Directive.
2. Any investment firm wishing to provide services within the territory of another Member State for the first time, or which wishes to change the range of services so provided, shall communicate the following information to the competent authorities of its home Member State:

(a) the Member State in which it intends to operate;

(b) a programme of operations stating in particular the investment or ancillary services which it intends to provide and whether it intends to employ the services of tied agents in the territory of the Member States in which it intends to provide services.

3. The competent authority of the home Member State shall, within one month of receiving the information, forward it to the competent authority of the host Member State.

4. In the event of a change in any of the particulars communicated in accordance with paragraph 2, an investment firm shall give written notice of that change to the competent authority of the home Member State at least one month before implementing the change. The competent authority of the home Member State shall inform the competent authority of the host Member State of those changes.

5. Member States shall, without further legal or administrative requirement, allow MTFs from other Member States to provide appropriate arrangements on their territory so as to facilitate access to and use of their systems by remote users or participants established in their territory.

Article 30
Establishment of a branch

1. Member States shall ensure that investment and ancillary services may be provided within their territories through the establishment of a branch of an investment firm provided that those services are covered by the authorisation granted to the investment firm in the home Member State. Member States shall not impose any additional requirements on the organisation and operation of the branch in respect of the matters covered by this Directive.

2. Member States shall require any investment firm wishing to establish a branch within the territory of another Member State first to notify the competent authority of its home Member State and to provide it with the following information:

(a) the Member States within the territory of which it plans to establish a branch;

(b) a programme of operations setting out inter alia the services to be offered and the organisational structure of the branch and indicating whether the branch intends to employ the services of tied agents;

(c) the address in the host Member State from which documents may be obtained;

(d) the names of those responsible for the management of the branch.

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

4. In addition to the information referred to in paragraph 2, the competent authority of the home Member State shall communicate details of the accredited compensation scheme of which the investment firm is a member in accordance with Directive 97/9/EC to the competent authority of the host Member State. In the event of a change in the particulars, the competent authority of the home Member State shall inform the authority of the host Member State accordingly.

5. Where the competent authority of the home Member State refuses to communicate the information to the competent authority of the host Member State, it shall give reasons for its refusal to the investment firm concerned within three months of receiving all the information.
6. On receipt of a communication from the competent authority of the host Member State, or failing such communication from the latter at the latest after two months from the date of transmission of the communication by the competent authority of the home Member State, the branch may be established and commence business.

7. Each Member State shall provide that, where an investment firm authorised in another Member State has established a branch within its territory, the competent authority of the home Member State of the investment firm, in the exercise of its responsibilities and after informing the competent authority of the host Member State, may itself or through the intermediary of persons instructed for that purpose, carry out on-site inspections in that branch.

8. In the event of a change in any of the information communicated in accordance with paragraph 2, an investment firm shall give written notice of that change to the competent authority of the home Member State at least one month before implementing the change. The competent authority of the host Member State shall also be informed of those changes by the competent authority of the home Member State.

**Article 31**

**Regulation of branches**

The competent authority of the host Member State shall assume responsibility for ensuring that the services provided by the branch comply with the obligations laid down in Articles 12(7), 16, 18, 19, 20, 21, 22, 23, 25 and 26 and in measures adopted pursuant thereto.

The competent authority of the host Member State shall have the right to examine the branch arrangements and to request such changes as are strictly needed to enable the competent authority to enforce the obligations under Articles 12(7), 16, 18, 19, 20, 21, 22, 23, 25, and 26 and measures adopted pursuant thereto.

**Article 32**

**Access to regulated markets**

1. Member States shall ensure that investment firms from other Member States which are authorised to execute client orders or to deal on own account have the right of membership or have access to regulated markets established in their territory by means of any or all of the following arrangements:

   (a) directly, by setting up branches in the host Member States;

   (b) indirectly, by setting up subsidiaries in the host Member States or by acquiring firms in the host Member States that are already members of their regulated markets or already have access thereto; and/or

   (c) by becoming remote members of or having remote access to the regulated market without having to be established in the home Member State of the regulated market, where the trading procedures and systems of the market in question do not require a physical presence for conclusion of transactions on the market.

2. Member States shall not impose any additional regulatory or administrative requirements, in respect of matters covered by this Directive, on investment firms exercising the right conferred by paragraph 1.

3. The right conferred by paragraph 1 shall be without prejudice to the obligation of the investment firm to comply with any transparent and objective commercial criteria which the regulated market imposes as a condition for membership or access in accordance with Article 40.
Article 33

Access to clearing and settlement facilities and right
to designate settlement system

1. Member States shall ensure that investment firms from other Member States have the right of direct or indirect access to central counterparty, clearing and settlement systems in their territory for the purposes of finalising transactions in financial instruments.

Member States shall ensure that access of those investment firms to such facilities is subject to the same transparent and objective commercial criteria as apply to local participants. Member States shall not restrict the use of those facilities to the clearing and settlement of transactions in financial instruments undertaken on a regulated market or MTF in their territory.

2. Member States shall ensure that regulated markets in their territory offer direct, indirect and remote members or participants the right to designate the system for the settlement of transactions in financial instruments undertaken on that regulated market, subject to:

(a) such links and arrangements between the designated settlement system and any other system or facility as are necessary to ensure the efficient and economic settlement of the transaction in question; and

(b) agreement by the competent authority responsible for the regulated market that technical conditions for settlement of transactions concluded on the regulated market through a settlement system other than that designated by the regulated market are such as to allow the smooth and orderly functioning of financial markets.

3. The rights of investment firms under paragraphs 1 and 2 shall be without prejudice to the right of operators of central counterparty, clearing or securities settlement systems to refuse on legitimate commercial grounds to make the requested services available.

4. In order to ensure the consistent application of paragraphs 1, 2 and 3, the Commission shall adopt, in accordance with the procedure referred to in Article 60(2), implementing measures which clarify:

(a) the nature of the technical links between settlement systems designated by investment firms and other systems and facilities which are needed to ensure the efficient and economic settlement of transactions, and the conditions under which those links are to be considered adequate for the purposes of this Article;

(b) those considerations which a competent authority is entitled to take into account when assessing whether the settlement of transactions on a regulated market through a securities settlement system other than that designated by the regulated market might prove prejudicial to the smooth and orderly functioning of financial markets.

TITLE III

REGULATED MARKETS

Article 34

Authorisation and applicable law

1. Member States shall reserve authorisation as a regulated market to those entities on their territory which comply with the provisions of this Title.

Authorisation as a regulated market shall be granted only where the competent authority is satisfied that both the market operator and the rules and systems of the regulated market comply with the requirements laid down in this Title.

In the event of a regulated market being a legal person and being managed or operated by a market operator other than the regulated market itself, Member States shall establish how the obligations imposed on market operators under this Directive are to be apportioned between the regulated market and the market operator.
2. Member States shall require the operator of a regulated market to perform tasks relating to the organisation and operation of the regulated market under the supervision and responsibility of the competent authority. Member States shall ensure that competent authorities keep under regular review the compliance of regulated markets with the provisions of this Title.

3. Without prejudice to any relevant provisions of Directive 2003/.../EC [on market abuse], the public law governing the transactions conducted under the rules and systems of the regulated market shall be that of the home Member State of the regulated market, unless the regulated market concerned determines that the law of another jurisdiction shall govern such transactions. The rules of the regulated market shall specify the governing law if it is not to be the law of the home Member State.

4. Member States shall require the market operator to notify the competent authority of any intended change to the conditions under which authorisation was granted or to the programme of operations of a regulated market.

The competent authority shall refuse to authorise the proposed changes where the resulting programme of operations would not fulfil the conditions laid down in this Title.

5. Member States shall provide that the competent authority may withdraw the authorisation granted to a regulated market where failure to comply with the provisions of this Title has resulted or may result in demonstrable and significant prejudice to the sound and prudent operation of the regulated market or the smooth and orderly functioning of financial markets.

Article 35
Requirements for the market operator

1. Member States shall require the management of the market operator to be of sufficiently good repute and sufficiently experienced as to ensure the sound and prudent management of the regulated market. Member States shall also require the market operator to inform the competent authority of any changes to the identity of the senior management and key personnel of the market operator.

The competent authority shall refuse to approve proposed changes to the senior management and key personnel of the market operator where there are objective and demonstrable grounds for believing that they pose a threat to the sound and prudent management of the regulated market.

2. Member States shall ensure that the market operator is responsible, in particular, for ensuring that the regulated market complies with all requirements under this Title.

3. Member States shall require that the market operator possess, at the time of authorisation and on an ongoing basis, sufficient financial resources to facilitate the orderly functioning of the regulated market, having regard to the nature and extent of the transactions concluded on the regulated market and the range and degree of the risks to which the regulated market is exposed.

4. In order to ensure the consistent application of paragraph 3, the Commission shall adopt, in accordance with the procedure referred to in Article 60(2), implementing measures to determine the financial resources that a market operator is to be required to hold, taking into account any other arrangements that may be used by the regulated market to mitigate the risks to which it is exposed.

5. Market operators which are recognised by the competent authority of their home Member State as complying with paragraph 1 shall be deemed to comply with those requirements when seeking authorisation to establish a regulated market in another Member State.
Article 36

Requirements relating to persons exercising effective control of the operator of the regulated market

1. Member States shall require the persons who are in a position to exercise, directly or indirectly, effective control of the operator of the regulated market to be suitable.

2. Member States shall require the operator of the regulated market:

(a) to provide the competent authority with, and to make public, information regarding its ownership structure, and in particular, the identity and scale of interests of any parties in a position to exercise control over its operation;

(b) to inform the competent authority of and to make public any transfer of ownership which gives rise to change in the identity of the persons exercising effective control.

3. The competent authority shall refuse to approve proposed changes to the controlling interests of the operator of the regulated market where there are objective and demonstrable grounds for believing that they would pose a threat to the sound and prudent management of the regulated market.

Article 37

Organisational requirements

Member States shall require the market operator:

(a) to have arrangements to identify clearly and manage the potential adverse consequences, for the operation of the regulated market or its participants, of any conflict of interest between the interest of the regulated market, its owners or its operator and the sound functioning of the regulated market, and in particular where such conflicts of interest might prove prejudicial to accomplishment of any functions delegated to the regulated market by the competent authority;

(b) to be adequately equipped to manage the risks to which it is exposed, implement appropriate arrangements and systems to identify all significant risks to its operation, and have in place effective measures to mitigate those risks;

(c) to have arrangements for the sound management of the technical operations of the system, including the establishment of effective contingency arrangements to cope with risks of systems disruptions;

(d) to have transparent and non-disccretionary rules and procedures that provide for the efficient execution of orders in accordance with objective criteria, taking into account the nature of the users of the system and the type of instruments traded on it. The requirements of the competent authority of the home Member State of the regulated market shall be applicable;

(e) to have effective arrangements to facilitate the efficient and timely finalisation of the transactions executed under its rules and systems.

Article 38

Admission of financial instruments to trading

1. Member States shall require that regulated markets have, or are subject to, clear and transparent rules regarding the admission of financial instruments to trading. Member States shall require those rules to be approved by the competent authority, taking into account all implementing measures adopted pursuant to paragraph 6.

Those rules shall ensure that any financial instruments admitted to trading in a regulated market are capable of being traded in a fair, orderly and efficient manner and, in the case of transferable securities, are freely negotiable.
In the case of derivatives, the rules shall ensure in particular that the design of the derivative contract allows for orderly pricing both in the derivative and in the underlying market and for effective and orderly settlement.

In addition to the obligations set out in paragraphs 1 and 2, Member States shall require a regulated market that admits transferable securities to trading to establish and maintain effective arrangements to verify that issuers of such transferable securities being considered for admission to trading comply with their obligations under Community law in respect of initial, ongoing and ad hoc financial disclosure. The competent authority shall ensure that a regulated market that admits transferable securities to trading establishes arrangements which facilitate its members or participants in obtaining access to information which has been made public under Community law by issuers of such transferable securities under Community law in respect of initial, ongoing or ad hoc financial disclosure.

Member States shall ensure that regulated markets have established the necessary arrangements to review regularly the compliance with the admission requirements of the financial instruments which they admit to trading.

Member States shall provide that once a transferable security issued in their territory has been admitted to trading on a regulated market, it can subsequently be admitted to trading on other regulated markets without the consent of the issuer in compliance with Article 4 of Directive 2003/.../EC of the European Parliament and of the Council of ... [on the prospectus to be published when securities are offered to the public or admitted to trading] (1). The issuer shall be informed by the operator of the regulated market of the fact that its securities are traded on that regulated market. The issuer shall not be subject to any obligation to provide information required under paragraph 3 directly to any regulated market which has admitted the issuer's securities to trading without its consent. The operator of the regulated market shall also inform the competent authority of the home Member State that securities have been admitted to trading without the consent of the issuer.

In order to ensure the consistent application of paragraphs 1 to 5, the Commission shall, in accordance with the procedure referred to in Article 60(2) adopt implementing measures which:

(a) specify the characteristics of different classes of instruments to be taken into account by the regulated market when assessing whether an instrument is issued in a manner consistent with the conditions laid down in the second subparagraph of paragraph 1 for admission to trading on the different market segments which it operates;

(b) clarify the arrangements that the regulated market is to implement so as to be considered to have fulfilled its obligation to verify that the issuer of a transferable security complies with its obligations under Community law in respect of initial, ongoing or ad hoc financial disclosure.

(c) clarify the arrangements that the regulated market is to establish in order to facilitate its members or participants in obtaining access to information which has been made public under Community law.

**Article 39**

Suspension and removal of instruments from trading

Without prejudice to the right of the competent authority under Article 47(1)(j) and (k) to demand suspension or removal of an instrument from trading, the regulated market may suspend or remove from trading a financial instrument which no longer complies with its rules or other obligations unless such a step would be likely to prove detrimental to investors' interests or the orderly functioning of the market.

Member States shall ensure that a regulated market which suspends or removes from trading a financial instrument makes public this decision and communicates relevant information to the competent authority. The competent authority shall be required to inform competent authorities of other Member States accordingly.

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2. A competent authority which demands the suspension or removal of a financial instrument from trading on one or more regulated markets shall immediately make public its decision and inform the competent authorities of other Member States accordingly.

Article 40
Access to the regulated market

1. Member States shall require the regulated market to establish and maintain transparent rules, based on objective commercial criteria, governing access to or membership of the regulated market. Those rules shall specify any obligations for the members or participants arising from:

(a) the constitution and administration of the regulated market;
(b) rules relating to transactions on the market;
(c) professional standards imposed on staff operating on and in conjunction with the market;
(d) the rules and procedures for the clearing and settlement of transactions concluded on the regulated market.

Member States shall also ensure that regulated markets establish effective arrangements to monitor the continued compliance of members and participants with those rules.

2. Member States shall ensure that regulated markets may offer membership or access to any person, with the exception of those who lack the requisite expertise, experience and financial resources to trade on the regulated market in question.

The competent authority shall assess whether the rules of a regulated market governing membership and access to that market are appropriate, taking into account the specific characteristics of the regulated market in question and, in particular, the nature of the financial instruments traded, as well as the infrastructure in place to facilitate management of the risks associated with access and with the orderly functioning of the market in question.

3. Member States shall ensure that the rules on access to or membership of the regulated market provide for the direct, indirect or remote participation of investment firms.

4. Member States shall, without further legal or administrative requirement, allow regulated markets from other Member States to provide appropriate arrangements on their territory so as to facilitate access to and trading on those markets by remote members or participants established in their territory.

5. Member States shall require the regulated market to communicate, on a regular basis, the list of its members and participants to its competent authority.

Article 41
Monitoring of trading on regulated markets

1. Member States shall ensure that regulated markets establish and maintain effective arrangements and procedures for the regular monitoring of transactions undertaken by their members or participants under their rules and systems in order to identify breaches of those rules, disorderly trading conditions or conduct that may involve market abuse.

2. Member States shall require regulated markets to report breaches of their rules or of legal obligations relating to market integrity to the competent authority. Member States shall also require the regulated market to supply the relevant information immediately to the competent authority and to provide full assistance to the latter in investigating and prosecuting market abuse undertaken on or through the systems of the regulated market. Member States shall not require operators of regulated markets to provide details of insignificant breaches of their rules.
Article 42

Pre-trade transparency requirements for regulated markets

1. Member States shall require regulated markets to make public current bid and offer prices which are advertised through their systems for shares admitted to trading. Member States shall require this information to be made available to the public on reasonable commercial terms and on a continuous basis during normal trading hours.

Member States shall also require any regulated market to make public, through the arrangements employed for making public the information required under the first subparagraph, firm bid and offer prices in shares which it has admitted to trading and which are communicated to it by investment firms pursuant to Article 25.

2. Member States shall provide that the competent authorities may waive the obligation for regulated markets to make public the information referred to in paragraph 1 in respect of quotes, orders and other indications of interest that are large in scale compared with normal market size for the share or type of share in question.

3. In order to ensure the consistent application of paragraphs 1 and 2, the Commission shall, in accordance with the procedure referred to in Article 60(2) adopt implementing measures as regards:

(a) the range of bid and offers or designated market-maker quotes, and the depth of trading interest at those prices, to be made public;

(b) the types of order or market-maker quote to be made public;

(c) the size or type of transactions for which pre-trade disclosure may be waived under paragraph 2;

(d) the applicability of paragraphs 1 and 2 to trading methods operated by regulated markets which conclude transactions under their rules by reference to prices established outside the rules and systems of the regulated market or by periodic auction;

(e) appropriate arrangements for making the information public on a reasonable commercial basis.

Article 43

Post-trade transparency requirements for regulated markets

1. Member States shall require regulated markets to make public the price, volume and time of the transactions executed under their rules and systems in respect of shares admitted to trading. Member States shall require details of all such transactions to be made public, on a reasonable commercial basis and as close to real-time as possible.

Member States shall also require any regulated market to make public, through the arrangements employed for making public the information required under the first subparagraph, details of transactions in shares which it has admitted to trading and which have been reported to it by investment firms pursuant to Article 26.

2. Member States shall provide that the competent authority may authorise regulated markets to provide for deferred publication of the details of transactions that are large in scale compared with the normal market size for that share or that class of shares. The competent authority must give prior approval to proposed arrangements for deferred trade-publication, and ensure that these arrangements are clearly disclosed to market participants and the investing public.
3. In order to provide for the efficient and orderly functioning of financial markets, and to ensure the consistent application of paragraphs 1 and 2, the Commission shall, in accordance with the procedure referred to in Article 60(2) adopt implementing measures in respect of:

(a) the scope and content of the information to be made available to the public;

(b) the conditions under which a regulated market may provide for deferred publication of trades and the sizes of transaction or types of share for which deferred publication is allowed;

(c) appropriate arrangements for making the information public on a reasonable commercial basis.

Article 44
Provisions regarding clearing arrangements

1. Member States shall provide that regulated markets have the right to enter into appropriate arrangements with a central counterparty or clearing house of another Member State or of an appropriately authorised third country with a view to providing for the novation or netting of some or all trades concluded by market participants under their rules and systems.

2. The competent authority of a regulated market may not oppose the use of central counterparty or clearing houses in another Member State except where this is demonstrably necessary in order to maintain the orderly functioning of that regulated market.

Article 45
List of regulated markets

Each Member State shall draw up a list of the regulated markets for which it is the home Member State and shall forward that list to the other Member States and the Commission. A similar communication shall be effected in respect of each change to that list. The Commission shall publish a list of all regulated markets in the Official Journal of the European Union and update it at least once a year.

TITLE IV
COMPETENT AUTHORITIES

CHAPTER I
DESIGNATION, POWERS, RESOURCES AND REDRESS PROCEDURES

Article 46
Designation of competent authorities

1. Each Member State shall designate a competent authority to carry out each of the duties provided for under the provisions of this Directive. Member States shall inform the Commission of the identity of the competent authority responsible for enforcement of each of those duties, and of any division of those duties.

The Commission shall publish a list of competent authorities in the Official Journal of the European Union and update it at least once a year.

2. The competent authorities referred to in paragraph 1 shall be public authorities, without prejudice to the possibility of delegating functions to other entities where that is expressly provided for.
Such delegation may take place only if a clearly defined and documented framework for the exercise of any delegated functions has been established. Prior to delegation, competent authorities shall ensure that the body to which functions are to be delegated has the capacity and resources to effectively execute all responsibilities and that it has established the necessary arrangements to clearly identify and avoid the potential negative effects of any conflict of interest between the exercise of the delegated functions and any other proprietary or commercial interest.

Competent authorities shall periodically review the effectiveness of these arrangements. They shall retain ultimate responsibility for ensuring that the provisions adopted pursuant to this Directive are applied.

3. If a Member State designates more than one competent authority to enforce a provision of this Directive, their respective roles shall be clearly defined and they shall cooperate closely.

Each Member State shall ensure that such cooperation also takes place between the competent authorities for the purposes of this Directive and the competent authorities responsible in that Member State for the supervision of credit and other financial institutions and insurance undertakings.

Member States shall ensure that those authorities exchange any information which is essential or relevant for the exercise of their duties.

Article 47

Powers to be made available to competent authorities

1. Member States shall ensure that the competent authorities possess all supervisory, investigatory and enforcement powers necessary for the exercise of their functions. They shall exercise such powers in conformity with national law, either directly or, where appropriate, in cooperation with other authorities, including judicial authorities.

In particular, Member States shall ensure that competent authorities have at least the powers to:

(a) have access to any document in any form whatsoever;
(b) request additional information from any person, investment firm or regulated market, and if needed to summon and question a person with a view to obtaining information;
(c) carry out on-site inspections;
(d) require existing telephone and data traffic records;
(e) require cessation of a practice that is contrary to the provisions laid down pursuant to this Directive;
(f) request the freezing and/or the sequestration of assets;
(g) request temporary prohibition of professional activity;
(h) require authorised entities' auditors to provide information;
(i) adopt any type of measure to ensure that authorised entities continue to comply with the legal requirements;
(j) demand the suspension of trading in a financial instrument;
(k) demand the removal of a financial instrument from trading, whether on a regulated market or under other trading arrangements;
(l) seek judicial orders and take other action to ensure compliance with these regulatory, administrative and investigation powers;

(m) impose administrative sanctions;

(n) initiate or refer matters for criminal prosecution.

2. Member States shall ensure that competent authorities have the adequate resources for the exercise of their functions, and that the staff of such authorities observe professional standards and are subject to appropriate internal procedures or rules of conduct which ensure, in particular, the protection of personal data, procedural fairness and the proper observance of confidentiality and secrecy provisions.

Article 48
Sanctions

1. Without prejudice to the procedures for the withdrawal of authorisation or to the right of Member States to impose criminal penalties, Member States shall ensure, in conformity with their national law, that the competent authorities take appropriate administrative measures or impose administrative sanctions in respect of the persons responsible where the provisions adopted pursuant to this Directive have not been complied with. Member States shall ensure that these measures are effective, proportionate and dissuasive.

2. Member States shall determine the sanctions to be applied for failure to co-operate in an investigation.

3. Member States shall provide that the competent authority may disclose to the public any measure or sanction that will be imposed for infringement of the provisions adopted pursuant to this Directive, unless the disclosure would jeopardise the financial markets or cause disproportionate damage to the parties involved.

Article 49
Right of appeal

1. Member States shall ensure that any decision taken under laws, regulations or administrative provisions adopted in accordance with this Directive is properly reasoned and is open to appeal or review by the courts. The same shall apply where, in respect of an application for authorisation which provides all the information required, no decision is taken within six months of its submission.

2. With regard to the right of appeal referred to in paragraph 1, Member States shall provide that public bodies or their representatives as determined by national law, may, in the interests of consumers and in accordance with national law, take action before the competent authority or the courts.

Article 50
Extra-judicial mechanism for investors’ complaints

1. Member States shall set up efficient and effective complaints and redress procedures for the out-of-court settlement of consumer disputes concerning the provision of investment and ancillary services provided by investment firms, using existing bodies where appropriate.

2. Member States shall cooperate to identify, share and encourage best practice and shall ensure that those bodies are not prevented by legal or regulatory provisions from cooperating effectively in the resolution of cross-border disputes.
Article 51
Professional secrecy

1. Member States shall ensure that all persons who work or who have worked for the competent authorities or bodies to whom functions are delegated pursuant to Article 46(2), as well as auditors and experts instructed by the competent authorities, are bound by the obligation of professional secrecy. No confidential information which they may receive in the course of their duties may be divulged to any person or authority whatsoever, save in summary or aggregate form such that individual investment firms cannot be identified, without prejudice to cases covered by criminal law.

2. Where an investment firm has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in attempts to rescue that investment firm may be divulged in civil or commercial proceedings.

Article 52
Relations with auditors

1. Member States shall provide at least that any person authorised within the meaning of Council Directive 84/253/EEC (1), performing in an investment firm the task described in Article 51 of Council Directive 78/660/EEC (2), Article 37 of Directive 83/349/EEC or Article 31 of Directive 85/611/EEC or any other task prescribed by law, shall have a duty to report promptly to the competent authorities any factor decision concerning that undertaking of which that person has become aware while carrying out that task and which is liable to:

(a) constitute a material breach of the laws, regulations or administrative provisions which lay down the conditions governing authorisation or which specifically govern pursuit of the activities of investment firms;

(b) affect the continuous functioning of the investment firm;

(c) lead to refusal to certify the accounts or to the expression of reservations.

That person shall also have a duty to report any facts and decisions of which the person becomes aware in the course of carrying out one of the tasks referred to in the first subparagraph in an undertaking having close links resulting from a control relationship with the investment firm within which he is carrying out that task.

2. The disclosure in good faith to the competent authorities, by persons authorised within the meaning of Directive 84/253/EEC, of any fact or decision referred to in paragraph 1 shall not constitute a breach of any contractual or legal restriction on disclosure of information and shall not involve such persons in liability of any kind.

CHAPTER II
COOPERATION BETWEEN COMPETENT AUTHORITIES OF DIFFERENT MEMBER STATES

Article 53
Obligation to cooperate

1. Competent authorities of different Member States shall co-operate with each other whenever necessary for the purpose of carrying out their duties under this Directive, in the exercise of their powers under this Directive or national law.

Competent authorities shall render assistance to competent authorities of other Member States. In particular, they shall exchange information and co-operate in any investigation activities.

(1) OJL 126, 12.5.1985, p. 20.
2. Member States shall take the necessary administrative and organisational measures to facilitate the assistance provided for in paragraph 1.

Competent authorities shall use their powers to the full for the purpose of cooperation, even in cases where the conduct under investigation does not constitute an infringement of any regulation in force in that Member State.

3. Where a competent authority is convinced that acts contrary to the provisions of this Directive, carried out by entities not subject to its supervision, are being or have been carried out on the territory of another Member State, it shall notify this in as specific a manner as possible to the competent authority of the other Member State. The latter authority shall take appropriate action. It shall inform the notifying competent authority of the outcome of the action and, to the extent possible, of significant interim developments.

**Article 54**
Cooperation in investigations

1. A competent authority of one Member State may request the cooperation of the competent authority of another Member State for an on-the-spot verification or in an investigation.

Competent authorities which receive such requests shall, within the framework of their powers, act upon them by:

(a) carrying out the verifications themselves;
(b) allowing the authorities who have requested them to carry them out; or
(c) allowing auditors or experts to carry out the verification.

2. A competent authority may refuse to act on a request for cooperation in carrying out an investigation as provided for in paragraph 1 only where:

(a) such an investigation might adversely affect the sovereignty, security or public policy of the State addressed;
(b) judicial proceedings have already been initiated in respect of the same actions and the same persons before the authorities of the Member State addressed;
(c) final judgement has already been given in the Member State addressed in respect of the same persons and the same actions.

In the case of such a refusal, the competent authority shall notify the requesting competent authority accordingly, providing as detailed information as possible.

**Article 55**
Exchange of information

1. Competent authorities of Member States shall immediately supply one another with the information required for the purposes of carrying out their duties set out in the provisions adopted pursuant to this Directive.

Article 51 shall not prevent the competent authorities from exchanging information in accordance with this Directive.

Competent authorities communicating information shall indicate what information, or part of it, thus supplied shall be considered confidential and therefore covered by professional secrecy.

The Commission may adopt, in accordance with the procedure referred to in Article 60(2), implementing measures concerning procedures for the exchange of information.
2. Competent authorities receiving confidential information under paragraph 1 of this Article or under Articles 52 and 59 may use it only in the course of their duties:

(a) to check that the conditions governing the taking up of the business of investment firms are met and to facilitate the monitoring, on a non-consolidated or consolidated basis, of the conduct of that business, especially with regard to the capital adequacy requirements imposed by Directive 93/6/EEC, administrative and accounting procedures and internal-control mechanisms;

(b) to monitor the proper functioning of trading venues;

(c) to impose sanctions;

(d) in administrative appeals against decisions by the competent authorities; or

(e) in court proceedings initiated under Article 49.

However, where the competent authority communicating information consents thereto, the authority receiving the information may use it for other purposes.

3. Paragraphs 1 and 2 of this Article and Article 51 shall neither preclude the disclosure of information to bodies which administer compensation schemes where this is necessary for the performance of their functions nor the exchange of information needed for the performance of supervisory functions:

(a) within a Member State or between Member States, between competent authorities and
   (i) bodies responsible for the liquidation and bankruptcy of investment firms and other similar procedures;
   (ii) and persons responsible for carrying out statutory audits of the accounts of investment firms and other financial institutions and insurance undertakings,

(b) between competent authorities and the authorities or bodies of other Member States responsible for the supervision of credit institutions, other financial institutions and insurance undertakings.

Such information shall be subject to the conditions of professional secrecy laid down in Article 51.

4. Notwithstanding paragraphs 1 and 2 of this Article and Articles 51 and 59, Member States may authorise exchanges of information between, the competent authorities and:

(a) the authorities responsible for overseeing the bodies involved in the liquidation and bankruptcy of investment firms and other similar procedures;

(b) the authorities responsible for overseeing persons charged with carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms and other financial institutions.

Member States which have recourse to the option provided for in the first subparagraph shall require at least that the following conditions are met:

(a) the information must be for the purpose of performing the task of overseeing referred to in the first subparagraph;

(b) information received in that context must be subject to the conditions of professional secrecy laid down in Article 51;

(c) where the information originates in another Member State, it must not be disclosed without the express agreement of the competent authorities which have transmitted it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Member States shall communicate to the Commission and to the other Member States the names of the authorities which may receive information pursuant to this paragraph.
5. Notwithstanding paragraphs 1 and 2 of this Article and Articles 51 and 59, Member States shall, with the aim of strengthening the stability and integrity of the financial system, authorise the exchange of information between the competent authorities and the authorities or bodies with legal responsibility for the detection and investigation of breaches of company law.

Member States which have recourse to the option provided for in the first subparagraph shall require at least that the following conditions are met:

(a) the information shall be for the purpose of performing the task referred to in the first subparagraph;
(b) information received in this context shall be subject to the conditions of professional secrecy imposed in Article 51;
(c) where the information originates in another Member State, it must not be disclosed without the express agreement of the competent authorities which have transmitted it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Where, in a Member State, the authorities or bodies referred to in the first subparagraph perform their task of detection or investigation with the aid, in view of their specific competence, of persons appointed for that purpose and not employed in the public sector, the possibility of exchanging information provided for in the first subparagraph may be extended to such persons under the conditions stipulated in the second subparagraph.

In cases referred to in point (c) of the second subparagraph, the authorities or bodies referred to in the first subparagraph shall communicate to the competent authorities which have transmitted the information the names and precise responsibilities of the persons to whom it is to be sent.

Member States shall communicate to the Commission and to the other Member States the names of the authorities or bodies which may receive information pursuant to this paragraph.

6. This Article and Articles 51 and 59 shall not prevent a competent authority from transmitting to central banks, the European System of Central Banks and the European Central Bank, in their capacity as monetary authorities, and, where appropriate, to other public authorities responsible for overseeing payment systems, information intended for the performance of their tasks.

Likewise such authorities or bodies shall not be prevented from communicating to the competent authorities such information as they may need for the purposes of paragraph 3. Information received in this context shall be subject to the conditions of professional secrecy laid down in Article 51.

7. This Article and Articles 51 and 59 shall not prevent the competent authorities from communicating the information to a clearing house or other similar body recognised under national law for the provision of clearing or settlement services for the markets of one of the Member States, if the competent authorities consider that it is necessary to communicate that information in order to ensure the proper functioning of those bodies in relation to defaults or potential defaults by market participants.

The information received shall be subject to the conditions of professional secrecy laid down in Article 51. The Member States shall, however, ensure that information received under paragraph 1 of this Article may not be disclosed in the circumstances referred to in this paragraph without the express consent of the competent authorities which transmitted it.

8. In addition to and notwithstanding the provisions referred to in paragraphs 1 and 2 and in Articles 51 and 59, Member States may, by virtue of provisions laid down by law, authorise the disclosure of certain information to other departments of their central government administrations responsible for legislation on the supervision of credit institutions, financial institutions, investment firms and insurance undertakings and to inspectors instructed by those departments.

Such disclosures may, however, be made only where necessary for reasons of prudential supervision.
9. This Article and Article 51 shall not prevent the competent authorities from communicating information to any body or bodies to whom they have delegated their functions if they consider it necessary in order to ensure the proper exercise of those functions.

The information received shall be subject to the conditions of professional secrecy laid down in Article 51. The Member States shall, however, ensure that information received under paragraph 1 of this Article from the competent authorities of other Member States may not be disclosed in the circumstances referred to in this paragraph without the express consent of the competent authorities which transmitted it.

Article 56

Inter-authority consultation prior to supplementary authorisation

1. The competent authorities of the other Member State involved shall be consulted prior to granting authorisation to any investment firm which is:
   (a) a subsidiary of an investment firm or credit institution authorised in another Member State;
   (b) a subsidiary of the parent undertaking of an investment firm or credit institution authorised in another Member State;
   (c) controlled by the same natural or legal persons as control an investment firm or credit institution authorised in another Member State

2. The competent authority of the Member State responsible for the supervision of credit institutions or insurance undertakings shall be consulted prior to granting an authorisation to an investment firm which is:
   (a) a subsidiary of a credit institution or insurance undertaking authorised in the Community; or
   (b) a subsidiary of the parent undertaking of a credit institution or insurance undertaking authorised in the Community;
   (c) controlled by the same person, whether natural or legal, who controls a credit institution or insurance undertaking authorised in the Community.

3. The relevant competent authorities referred to in paragraphs 1 and 2 shall in particular consult each other when assessing the suitability of the shareholders and the reputation and experience of directors involved in the management of another entity of the same group. They shall exchange all information regarding the suitability of shareholders and the reputation and experience of directors that is of relevance to the other competent authorities involved, for the granting of an authorisation as well as for the ongoing assessment of compliance with operating conditions.

Article 57

Powers for host Member States

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

2. In discharging their responsibilities under this Directive, host Member States may require branches of investment firms to provide the information necessary for the monitoring of their compliance with the standards set by the host Member State that apply to them. Those requirements may not be more stringent than those which the same Member State imposes on established firms for the monitoring of their compliance with the same standards.
Article 58
Precautionary powers for host Member States

1. Where the competent authority of the host Member State has clear and demonstrable grounds for believing that an investment firm acting within its territory under the freedom to provide services is in breach of the obligations arising from the provisions adopted pursuant to this Directive, it shall refer those findings to the competent authority of the home Member State.

2. If in exceptional circumstances, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate, the investment firm persists in acting in a manner that is clearly prejudicial to the interests of host country investors or the orderly functioning of markets, the competent authority of the host Member State, after informing the competent authority of the home Member State, shall take all the appropriate measures needed in order to protect investors and the proper functioning of the markets. The Commission shall be informed of such measures without delay.

Article 59
Exchange of information with third countries

1. Member States may conclude cooperation agreements providing for the exchange of information with the competent authorities of third countries or with third country authorities or bodies whose responsibilities are analogous to those of the bodies referred to in points (i) and (ii) of Article 55(3)(a) and points (a) and (b) of the first subparagraph of Article 55(4) only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those required under Article 51. Such exchange of information must be intended for the performance of the supervisory task of those authorities or bodies.

2. Where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have transmitted it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

TITLE V
FINAL PROVISIONS

Article 60

1. The Commission shall be assisted by the European Securities Committee instituted by Commission Decision 2001/528/EC (1) of 6 June 2001 (hereinafter referred to as the Committee).

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof, provided that the implementing measures adopted in accordance with this procedure do not modify the essential provisions of this Directive.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be three months.

3. Without prejudice to the implementing measures already adopted, on the expiry of a four-year period following the entry into force of this Directive, the application of its provisions requiring the adoption of technical rules and decisions in accordance with paragraph 2 shall be suspended. On a proposal from the Commission, the European Parliament and the Council may renew the provisions concerned in accordance with the procedure laid down in Article 251 of the Treaty and, to that end, they shall review them prior to the expiry of that period.

Article 61

The Commission shall seek to ensure that any implementing measures adopted under this Directive are proportionate to the regulatory goals sought and shall take account of the impact of these measures (including cost impact) on the differing sizes, business activities and business structures of credit institutions authorised under Directive 2000/12/EC, investment firms and operators of regulated markets.

Article 62

Reports and review

1. The committee referred to in Article 60(1) shall monitor and evaluate the impact of Article 25 and of the exemptions provided for therein — in terms of market distortion, distortion of competition and creation of counterparty risk, and report to the Commission. On the basis of such reports, the Commission shall submit proposals for amendments to this Directive with a view to taking prompt remedial action.

2. Not later than …(*) the Commission shall, on the basis of public consultation and in the light of discussions with competent authorities, report to the European Parliament and Council on:

   (a) the continued appropriateness of the obligation in Article 25 for investment firms to make public bids and offers;

   (b) the possible extension of scope of the provisions of the Directive concerning pre- and post-trade transparency obligations to transactions in classes of financial instrument other than shares.

On the basis of that report, the Commission may submit proposals for related amendments to this Directive.

3. Not later than …(**), the Commission shall, on the basis of public consultations and in the light of discussions with competent authorities, report to the European Parliament and Council on:

   (a) the continued appropriateness of the exemption under Article 2(1)(i) of this Directive for persons or undertakings whose main business is dealing on own account in commodities and/or the derivatives referred to in that point;

   (b) the content and form of proportionate requirements for the authorisation and supervision of such undertakings as investment firms within the meaning of this Directive;

   (c) modifications to the rules laid down in Directive 93/6/EEC for those persons or undertakings which deal in commodities or the derivatives referred to in Article 2(1)(i) to ensure that those rules are proportionate, having regard to the nature of that business.

On the basis of that report, the Commission may submit proposals for related amendments to this Directive.

4. Not later than …(***) the Commission shall, on the basis of public consultations and in the light of discussions with the competent authorities, report to the European Parliament and Council on:

   (a) the appropriateness of the criteria laid down in Article 3(1)(24) for classification as systematic internalisation;

   (b) suitable requirements in relation to the practice of systematic internalisation.

On the basis of that report, the Commission may submit proposals for related amendments to this Directive.

(*) Four years after the date of entry into force of this Directive.
(**) Five years after the date of entry into force of this Directive.
(***) Five years after the date of entry into force of this Directive.
5. The Commission shall assess the need to lay down at European level definitions of central counterparty and clearing and settlement systems. On the basis of this assessment, the Commission shall submit a proposal to the European Parliament and Council.

Article 63
Amendment of Directive 85/611/EEC

In Article 5 of Directive 85/611/EEC, paragraph 4 is replaced by the following:


(*) OJ L [OPOCE to insert number of this Directive].’

Article 64
Amendment of Directive 93/6/EEC

In Directive 93/6/EEC, point (2) of Article 2 is replaced by the following:

‘2. Investment firms shall mean all institutions that provide investment services in accordance with European Parliament and Council Directive 2003/…/EC (*) [OPOCE to insert reference to this Directive] with the exception of:
(a) credit institutions;
(b) local firms;
(c) firms which only receive and transmit orders from investors without holding money or securities belonging to their clients and which for that reason may not at any time place themselves in debit with their clients;
(d) investment firms which are authorised to provide only the service of investment advice and firms which are authorised to provide only the services of investment advice and insurance advice.
(e) investment firms that provide only the investment services covered in points (c) and (d).

(*) OJ L [OPOCE to insert OJ reference of this Directive].’

Article 65
Amendment of Directive 2000/12/EC

Annex I of Directive 2000/12/EC is amended as follows:
(a) in point 7 the following point is added:

‘(f) commodity and other derivatives’
(b) the following points are added:

‘15. Operation of a multilateral trading facility;
16. Services related to commodities;
17. Reception and transmission of orders in relation to one or more financial instruments;
18. Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments.’
Article 66
Repeal of Directive 93/22/EEC

Directive 93/22/EEC is repealed with effect from the date of application set out in Article 67.

References to Directive 93/22/EEC shall be construed as references to this Directive.

Article 67
Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 June 2006 [18 months after its entry into force] at the latest, subject to any transitional provisions which may be strictly necessary in order to cover the extension of licensing rights, in particular where it is necessary to create new systems or infrastructure (for instance in relation to transparency requirements for investment firms and MTFs) or to put in place new documentation.

They shall apply those provisions as from 1 July 2006.

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.

Article 68
Entry into force

This Directive shall enter into force on the day following that of its publication in the Official Journal of the European Union.

Article 69
Addressees

This Directive is addressed to the Member States.

Done at ..., on ...

For the European Parliament
The President

For the Council
The President

ANNEX I

LIST OF SERVICES AND FINANCIAL INSTRUMENTS

SECTION A
INVESTMENT SERVICES

1. Reception and transmission, of orders in relation to one or more financial instruments.

2. Execution of orders on behalf of clients.

3. Dealing on own account.