

No.F09222/806

**HELLENIC REPUBLIC**  
**HELLENIC CAPITAL MARKET COMMISSION**  
**LEGAL ENTITY IN PUBLIC LAW**

**DECISION**

1/452/1 Nov 2007

of the Board of Directors

Re: Investment firms' rules of conduct

**THE BOARD OF DIRECTORS OF**  
**THE HELLENIC CAPITAL MARKET COMMISSION**

Having regard to:

1. Article 25, paragraph 10, of Law 3606/2007 about markets for financial instruments and other provisions (Government Gazette-GG A/195/2007);
2. Article 27, paragraph 7, of Law 3606/2007 about markets for financial instruments and other provisions (Government Gazette-GG A/195/2007);
3. Article 28, paragraph 3, of Law 3606/2007 about markets for financial instruments and other provisions (Government Gazette-GG A/195/2007);
4. Article 30, paragraph 5, of Law 3606/2007 about markets for financial instruments and other provisions (Government Gazette-GG A/195/2007);
5. Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (L 145/1/30 April 2004);
6. Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (L241/26/2006);

7. Article 90 of presidential decree 63/2005 on the codification of legislation on Government and governmental bodies (GG A/98/2005).

**HAS UNANIMOUSLY DECIDED**

**CHAPTER 1**

**SUBJECT-MATTER, SCOPE AND DEFINITIONS**

**Article 1**

**Subject-matter and scope**

1. The purpose of this decision is to transpose articles 2, 3, 26 to 50 and 52 of Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.
2. This decision shall also apply to credit institutions, when providing one or more investment services and/or performing investment activities.
3. This decision, except for articles 21 and 23, shall also apply to mutual fund management companies authorised pursuant to article 4, paragraph 2, of Law 3238/2004 and to the collective investment management undertakings referred to in article 5, paragraph 4, of Directive 85/611/EEC.
4. Articles 2 to 8, 10 to 17, 22, 24 and 27 hereof shall also apply to investment intermediaries, operating pursuant to article 36 of Law 3606/2007.

**Article 2**

**Definitions**

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

1. "Relevant person" in relation to an investment firm, means any of the following:
  - (a) a director, partner or equivalent, manager or tied agent of the firm;
  - (b) a director, partner or equivalent, or manager of any tied agent of the firm;

(c) an employee of the firm or of a tied agent of the firm, as well as any other natural person whose services are placed at the disposal and under the control of the firm or a tied agent of the firm and who is involved in the provision by the firm of investment services and activities; and

(d) a natural person who is directly involved in the provision of services to the investment firm or to its tied agent under an outsourcing arrangement for the purpose of the provision by the firm of investment services and activities;

2. "Senior management" means the person or persons who effectively direct the business of the investment firm as referred to in article 17, paragraph 4, of Law 3606/2007.

3. "Person with whom a relevant person has a family relationship" means any of the following:

(a) the spouse of the relevant person or any partner of that person considered by national law as equivalent to a spouse;

(b) a dependent child or stepchild of the relevant person;

(c) any other relative of the relevant person who has shared the same household as that person for at least one year on the date of the personal transaction concerned.

4. "Financial analyst" means a relevant person who produces the substance of investment research.

5. "Group", in relation to an investment firm, means the group of which that firm forms a part, consisting of a parent undertaking, its subsidiaries and the entities in which the parent undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship within the meaning of article 106 of Codified Law 2190/1920 on consolidated accounts.

6. "Outsourcing" means an arrangement of any form between an investment firm and a service provider by which that service provider performs a process, a service or an activity which would otherwise be undertaken by the investment firm itself.

7. "Client" means the investment firms' clients and potential clients.
8. "Securities financing transaction" means an instance of stock lending or stock borrowing or the lending or borrowing of other financial instruments, a repurchase or reverse repurchase transaction, or a buy-sell back or sell-buy back transaction, pursuant to article 2, paragraph 10, of Commission Regulation (EC) No 1287/2006.
9. "Investment advice" means a personal recommendation to a person in his capacity of client or potential client or an agent of a client or potential client, which:
- (a) shall be suitable for such person or shall take into account the circumstances of such person, and
  - (b) shall constitute a recommendation for:
    - (i) purchase, sale, subscription, exchange, reverse repurchase, holding or underwriting specific financial instruments;
    - (ii) exercise or non-exercise of a right to specific financial instruments for purchase, sale, subscription, exchange, reverse repurchase, holding or underwriting thereof.
- A recommendation shall not be personal when it is provided exclusively through distributions channels or is addressed to the public.
10. "Distribution channel" shall mean a channel through which information is, or is likely to become, publicly available and accessed by a large number of persons, including but not limited to mass media, the internet and mass mailings (on paper and electronically).
11. "Durable medium" means any instrument which enables a client to store information addressed personally to that client in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored.
12. "Execution venue" shall mean a regulated market, a Multilateral Trading Facility (MTF), a systematic internaliser or a market maker or other liquidity provider or an entity that performs a function in a third country

similar to the functions performed by any of the foregoing.

### **Article 3**

#### **Conditions applying to the provision of information**

1. Where information is required to be provided in a durable medium, investment firms may provide that information in a durable medium other than on paper only if:

- (a) the provision of that information in that medium is appropriate to the context in which the business between the firm and the client is, or is to be, carried on; and
- (b) the person to whom the information is to be provided, when offered the choice between information on paper or in that other durable medium, specifically chooses the provision of the information in that other medium.

2. Where, pursuant to articles 6 to 10 and article 23, paragraph 6, an investment firm provides information to a client by means of a website and that information is not addressed personally to the client, the following conditions shall be satisfied:

- (a) the provision of that information in that medium is appropriate to the context in which the business between the firm and the client is, or is to be, carried on;
- (b) the client must specifically consent to the provision of that information in that form;
- (c) the client must be notified electronically of the address of the website, and the place on the website where the information may be accessed;
- (d) the information must be up to date;
- (e) the information must be accessible continuously by means of that website for such period of time as the client may reasonably need to inspect it.

3. The provision of information by means of electronic communications shall be treated as appropriate to the context in which the

business between the firm and the client is, or is to be, carried on if there is evidence that the client has regular access to the internet. The provision by the client of an e-mail address for the purposes of the carrying on of that business shall be treated as such evidence.

## **CHAPTER 2**

### **INFORMATION TO CLIENTS**

#### **Article 4**

#### **Conditions with which information must comply in order to be fair, clear and not misleading**

1. Investment firms shall ensure that all information they address to, or disseminate in such a way that it is likely to be received by, retail clients or potential retail clients, including marketing communications, satisfies the conditions in order to be fair, clear and not misleading.
2. This information shall include the name of the investment firm.
3. The information shall be accurate and in particular shall not emphasise any potential benefits of an investment service or financial instrument without also giving a fair and prominent indication of any relevant risks. It shall be sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received. It shall not disguise, diminish or obscure important items, statements or warnings.
4. Where the information compares investment or ancillary services, financial instruments, or persons providing investment or ancillary services, the following conditions shall be satisfied:
  - (a) the comparison must be meaningful and presented in a fair and balanced way;
  - (b) the sources of the information used for the comparison must be specified;
  - (c) the key facts and assumptions used to make the comparison must be included.
5. Where the information contains an indication of past performance of

a financial instrument, a financial index or an investment service, the following conditions shall be satisfied:

- (a) that indication must not be the most prominent feature of the communication;
- (b) the information must include appropriate performance information which covers the immediately preceding 5 years, or the whole period for which the financial instrument has been offered, the financial index has been established, or the investment service has been provided if less than five years, or such longer period as the firm may decide, and in every case that performance information must be based on complete 12-month periods;
- (c) the reference period and the source of information must be clearly stated;
- (d) the information must contain a prominent warning that the figures refer to the past and that past performance is not a reliable indicator of future results;
- (e) where the indication relies on figures denominated in a currency other than that of the Member State in which the retail client or potential retail client is resident, the currency must be clearly stated, together with a warning that the return may increase or decrease as a result of currency fluctuations;
- (f) where the indication is based on gross performance, the effect of commissions, fees or other charges must be disclosed.

6. Where the information includes or refers to simulated past performance, it must relate to a financial instrument or a financial index, and the following conditions shall be satisfied:

- (a) the simulated past performance must be based on the actual past performance of one or more financial instruments or financial indices which are the same as, or underlie, the financial instrument concerned;
- (b) in respect of the actual past performance referred to in point (a), the

conditions set out in points (a) to (c), (e) and (f) of paragraph 5 must be complied with;

- (c) the information must contain a prominent warning that the figures refer to simulated past performance and that past performance is not a reliable indicator of future performance.

7. Where the information contains information on future performance, the following conditions shall be satisfied:

- (a) the information must not be based on or refer to simulated past performance;
- (b) it must be based on reasonable assumptions supported by objective data;
- (c) where the information is based on gross performance, the effect of commissions, fees or other charges must be disclosed;
- (d) it must contain a prominent warning that such forecasts are not a reliable indicator of future performance.

8. Where the information refers to a particular tax treatment, it shall prominently state that the tax treatment depends on the individual circumstances of each client and may be subject to change in the future.

9. The information shall not use the name of any competent authority in such a way that would indicate or suggest endorsement or approval by that authority of the products or services of the investment firm.

## **Article 5**

### **Information concerning client categorisation**

1. Investment firms shall notify new clients, and existing clients that the investment firm has newly categorised of their categorisation as a retail client, a professional client or an eligible counterparty.

2. Investment firms shall inform clients in a durable medium about any right that client has to request a different categorisation and about any limitations to the level of client protection that it would entail.

3. Investment firms may, either on their own initiative or at the request of the client concerned:

- (a) treat as a professional or retail client a client that might otherwise be classified as an eligible counterparty pursuant to article 30, paragraph 2, of Law 3606/2007; or
  - (b) treat as a retail client a client that is considered as a professional client pursuant to article 6, paragraph 1, of Law 3606/2007.
4. Investment firms may treat as professional clients on request eligible counterparties whose business with an investment firm is subject to the provisions of articles 25, 27 and 28 of Law 3606/2007. Eligible counterparties may explicitly request non-professional treatment, in which case article 6, paragraphs 2, 3 and 4 of Law 3606/2007 shall apply.

#### **Article 6**

##### **General requirements for information to clients**

1. Investment firms shall, in good time before a retail client or potential retail client is bound by any agreement for the provision of investment services or ancillary services or before the provision of those services, whichever is the earlier, provide that client or potential client with the terms of any such agreement and the information required by Article 7 relating to that agreement or to those investment or ancillary services.
2. Investment firms shall, in good time before the provision of investment services or ancillary services, provide:
- (a) to retail clients, the information required under articles 7 to 10;
  - (b) to professional clients, the information referred to in Article 9, items (4) to (g).
3. The information referred to in paragraphs 1 and 2 shall be provided in a durable medium or by means of a website (where that does not constitute a durable medium) provided that the conditions specified in article 3, paragraph 2, are satisfied.
4. By way of exception to paragraphs 1 and 2(a), investment firms may, in the following circumstances, provide the information required under paragraph 1 to a retail client immediately after that client is bound by any agreement for the provision of investment services or ancillary services, and

the information required under paragraph 2(a) immediately after starting to provide the service:

- (a) the firm was unable to provide the relevant information because, at the request of the client, the agreement was concluded using a means of distance communication; or
- (b) in any case where article 4a(3)(a)(iii) of Law 2251/1994 does not otherwise apply, the investment firm complies with the requirements of that article in relation to the retail client or potential retail client, as if that client or potential client were a "consumer" and the investment firm were a "supplier" within the meaning of Law 2251/1994.

5. Investment firms shall notify a client in good time about any material change to the information provided under articles 7 to 10 which is relevant to a service that the firm is providing to that client. That notification shall be given in a durable medium if the information to which it relates is given in a durable medium.

6. Investment firms shall ensure that information contained in a marketing communication is consistent with any information the firm provides to clients in the course of carrying on investment and ancillary services.

7. Where a marketing communication contains an offer or invitation of the following nature and specifies the manner of response or includes a form by which any response may be made, it shall include such of the information referred to in articles 7 to 10 as is relevant to that offer or invitation:

- (a) an offer to enter into an agreement in relation to a financial instrument or investment service or ancillary service with any person who responds to the communication;
- (b) an invitation to any person who responds to the communication to make an offer to enter into an agreement in relation to a financial instrument or investment service or ancillary service.

However, the first subparagraph shall not apply if, in order to respond to an offer or invitation contained in the marketing communication, the potential retail client must refer to another document or documents, which, alone or in combination, contain that information.

### **Article 7**

#### **Information about the investment firm and its services**

1. Investment firms shall provide retail clients or potential retail clients with the following general information, where relevant:
  - (a) the name and address of the investment firm, and the contact details necessary to enable clients to communicate effectively with the firm;
  - (b) the languages in which the client may communicate with the investment firm, and receive documents and other information from the firm;
  - (c) the methods of communication to be used between the investment firm and the client including, where relevant, those for the sending and reception of orders;
  - (d) a statement of the fact that the investment firm is authorised and the name and contact address of the competent authority that has authorised it;
  - (e) where the investment firm is acting through a tied agent, a statement of this fact specifying the Member State in which that agent is registered;
  - (f) the nature, frequency and timing of the reports on the performance of the service to be provided by the investment firm to the client in accordance with article 25, paragraph 8, of Law 3606/2007;
  - (g) if the investment firm holds client financial instruments or client funds, a summary description of the steps which it takes to ensure their protection, including summary details of any relevant investor compensation or deposit guarantee scheme which applies to the firm;
  - (h) a description, which may be provided in summary form, of the conflicts of interest policy maintained by the firm.

2. At any time that the client requests it, the investment firm shall provide further details of that conflicts of interest policy in a durable medium or by means of a website (where that does not constitute a durable medium) provided that the conditions specified in article 3(2) are satisfied.

3. When providing the service of portfolio management, investment firms establish an appropriate method of evaluation and comparison such as a meaningful benchmark, based on the investment objectives of the client and the types of financial instruments included in the client portfolio, so as to enable the client for whom the service is provided to assess the firm's performance.

4. Where investment firms propose to provide portfolio management services to a retail client or potential retail client, they provide the client, in addition to the information required under paragraph 1, with such of the following information as is applicable:

- (a) information on the method and frequency of valuation of the financial instruments in the client portfolio;
- (b) details of any delegation of the discretionary management of all or part of the financial instruments or funds in the client portfolio;
- (c) a specification of any benchmark against which the performance of the client portfolio will be compared;
- (d) the types of financial instrument that may be included in the client portfolio and types of transaction that may be carried out in such instruments, including any limits;
- (e) the management objectives, the level of risk to be reflected in the manager's exercise of discretion, and any specific constraints on that discretion.

## **Article 8**

### **Information about financial instruments**

1. Investment firms shall provide clients or potential clients with a general description of the nature and risks of financial instruments, taking into account, in particular, the client's categorisation as either a retail client

or a professional client. That description must explain the nature of the specific type of instrument concerned, as well as the risks particular to that specific type of instrument in sufficient detail to enable the client to take investment decisions on an informed basis.

2. The description of risks shall include, where relevant to the specific type of instrument concerned and the status and level of knowledge of the client, the following elements:

- (a) the risks associated with that type of financial instrument including an explanation of leverage and its effects and the risk of losing the entire investment;
- (b) the volatility of the price of such instruments and any limitations on the available market for such instruments;
- (c) the fact that an investor might assume, as a result of transactions in such instruments, financial commitments and other additional obligations, including contingent liabilities, additional to the cost of acquiring the instruments;
- (d) any margin requirements or similar obligations, applicable to instruments of that type.

3. If an investment firm provides a retail client or potential retail client with information about a financial instrument that is the subject of a current offer to the public and a prospectus has been published in connection with that offer in accordance with Law 3401/2005, that firm shall inform the client or potential client where that prospectus is made available to the public.

4. Where the risks associated with a financial instrument composed of two or more different financial instruments or services are likely to be greater than the risks associated with any of the components, the investment firm shall provide an adequate description of the components of that instrument and the way in which its interaction increases the risks.

5. In the case of financial instruments that incorporate a guarantee by a third party, the information about the guarantee shall include sufficient

detail about the guarantor and the guarantee to enable the retail client or potential retail client to make a fair assessment of the guarantee.

### **Article 9**

#### **Information requirements concerning safeguarding of client financial instruments or client funds**

Where investment firms hold financial instruments or funds belonging to retail clients, they shall inform those retail clients or potential retail clients:

- (a) where the financial instruments or funds of that client may be held by a third party on behalf of the investment firm and of the responsibility of the investment firm under the applicable national law for any acts or omissions of the third party and the consequences for the client of the insolvency of the third party;
- (b) where financial instruments of the retail client or potential retail client may be held in an omnibus account by a third party, and shall provide a prominent warning of the resulting risks;
- (c) where it is not possible for client financial instruments held with a third party to be separately identifiable from the proprietary financial instruments of that third party or of the investment firm and shall provide a prominent warning of the resulting risks;
- (d) where accounts that contain financial instruments or funds belonging to that client or potential client are or will be subject to the law of a jurisdiction other than that of a Member State and shall indicate that the rights of the client or potential client relating to those financial instruments or funds may differ accordingly;
- (e) about the existence and the terms of any security interest or lien which the firm has or may have over the client's financial instruments or funds;
- (f) about any right of set-off it holds in relation to those instruments or funds;
- (g) of the fact that a depository may have a security interest or lien over, or right of set-off in relation to those instruments or funds;

- (h) in good time before entering into securities financing transactions in relation to financial instruments held by it on behalf of a retail client, or before otherwise using such financial instruments for its own account or the account of another client, or before the use of those instruments provide the retail client, in a durable medium, with clear, full and accurate information on the obligations and responsibilities of the investment firm with respect to the use of those financial instruments, including the terms for their restitution, and on the risks involved.

### **Article 10**

#### **Information about costs and associated charges**

1. Investment firms shall provide their retail clients and potential retail clients with information on costs and associated charges that includes such of the following elements as are relevant:
  - (a) the total price to be paid by the client in connection with the financial instrument or the investment service or ancillary service, including all related fees, commissions, charges and expenses, and all taxes payable via the investment firm or, if an exact price cannot be indicated, the basis for the calculation of the total price so that the client can verify it;
  - (b) the arrangements for payment or other performance.
2. The commissions charged by the firm shall be itemised separately in every case.
3. Where any part of the total price to be paid by the client in connection with the financial instrument or the investment service is to be paid in or represents an amount of foreign currency, an indication of the currency involved and the applicable currency conversion rates and costs.
4. The investment firm shall give notice to the client of the possibility that other costs, including taxes, related to transactions in connection with the financial instrument or the investment service may arise for the client that are not paid via the investment firm or imposed by it.

## **Article 11**

### **Information about UCITS shares/units**

1. In respect of mutual fund units covered by Law 3283/2004 and units in a collective investment undertaking covered by Directive 85/611/ EEC, a simplified prospectus complying with article 30 of Law 3283/2004 shall be regarded as appropriate information for the purposes of the article 25(3)(b) of Law 3606/2007.
2. In respect of mutual fund units covered by Law 3283/2004 and units in a collective investment undertaking covered by Directive 85/611/EEC, a simplified prospectus complying with Article 30 of Law 3283/2004 shall be regarded as appropriate information for the purposes of article 25(3)(d) of Law 3606/2007 with respect to the costs and associated charges related to the mutual fund or UCITS itself, including the exit and entry commissions.

## **CHAPTER 3**

### **ASSESSMENT OF SUITABILITY AND APPROPRIATENESS**

## **Article 12**

### **Assessment of suitability**

1. Investment firms shall obtain from clients or potential clients such information as is necessary for the firm to understand the essential facts about the client and to have a reasonable basis for believing, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of providing a portfolio management service, satisfies the following criteria:
  - (a) it meets the investment objectives of the client in question;
  - (b) it is such that the client is able financially to bear any related investment risks consistent with his investment objectives;
  - (c) it is such that the client has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.
2. The information regarding the investment objectives of the client shall include, where relevant, information on

- (a) the length of time for which the client wishes to hold the investment,
  - (b) his preferences regarding risk taking,
  - (c) his risk profile, and
  - (d) the purposes of the investment.
3. The information regarding the financial situation of the client shall include, where relevant, information on
- (a) the source and extent of his regular income,
  - (b) his assets, including liquid assets, investments and real property, and
  - (c) his regular financial commitments.
4. A professional client shall be considered, in relation to the products, transactions and services for which it is so classified, as having the necessary level of experience and knowledge. A professional client referred to in article 6(1)(a) of Law 3606/2007 shall be considered as financially able to bear any related investment risks consistent with the investment objectives of that client where an investment firm provides an investment service. An eligible counterparty shall be considered as financially able to bear any related investment risks consistent with the investment objectives of that client.
5. Where an investment firm does not obtain the information required under article 25(4) of Law 3606/2007 and specified in paragraphs 1 to 3 of this article, the firm shall not recommend investment services or financial instruments to the client.

#### Article 13

##### Assessment of appropriateness

1. Investment firms, when assessing whether an investment service as referred to in article 25(5) of Law 3606/2007 is appropriate for a client, shall determine whether that client has the necessary experience and knowledge in order to understand the risks involved in relation to the product or investment service offered or demanded.
2. A professional client shall be considered as having the necessary experience and knowledge in order to understand the risks involved in

relation to those particular investment services or transactions, or types of transaction or product, for which the client is classified as a professional client.

#### **Article 14**

##### **Provisions common to the assessment of suitability or appropriateness**

1. The information regarding a client's knowledge and experience in the investment field shall include the following, to the extent appropriate to the nature of the client, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved:

- (a) the types of service, transaction and financial instrument with which the client is familiar;
- (b) the nature, volume, and frequency of the client's transactions in financial instruments and the period over which they have been carried out;
- (c) the level of education, and profession or relevant former profession of the client.

2. An investment firm shall not encourage a client or potential client not to provide information required for the purposes of article 25(4) and (5) of Law 3606/2007, as specified in articles 13 to 15.

3. An investment firm shall be entitled to rely on the information provided by its clients or potential clients unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete.

#### **Article 15**

##### **Non-complex financial instruments**

A financial instrument which is not specified in article 25(6) of Law 3606/2007 shall be considered as non-complex if it satisfies the following criteria:

- (a) it does not fall within article 2(13)(c) of, or points (d) to (j) of article 5 of Law 3606/2007;

- (b) there are frequent opportunities to dispose of, redeem, or otherwise realise that instrument at prices that are publicly available to market participants and that are either market prices or prices made available, or validated, by valuation systems independent of the issuer;
- (c) it does not involve any actual or potential liability for the client that exceeds the cost of acquiring the instrument;
- (d) adequately comprehensive information on its characteristics is publicly available and is likely to be readily understood so as to enable the average retail client to make an informed judgment as to whether to enter into a transaction in that instrument.

#### **Article 16**

##### **Retail client agreement**

1. An investment firm that provides an investment service other than investment advice to a new retail client shall enter into a written basic agreement, in paper or another durable medium, with the client setting out the essential rights and obligations of the firm and the client.
2. The rights and duties of the parties to the agreement may be incorporated by reference to other documents or legal texts.

#### **CHAPTER 4**

##### **REPORTING TO CLIENTS**

#### **Article 17**

##### **Reporting obligations in respect of execution of orders other than for portfolio management**

1. Where investment firms have carried out an order, other than for portfolio management, on behalf of a client, they shall take the following action in respect of that order:
  - (a) the investment firm must promptly provide the client, in a durable medium, with the essential information concerning the execution of that order;
  - (b) in the case of a retail client, the investment firm must send the client

a notice in a durable medium confirming execution of the order as soon as possible and no later than the first business day following execution or, if the confirmation is received by the investment firm from a third party, no later than the first business day following receipt of the confirmation from the third party. The foregoing shall not apply where the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the retail client by another person.

(c) Investment firms to supply the client, on request, with information about the status of his order.

2. Points (a) and (b) of paragraph 1 shall not apply where orders executed on behalf of clients relate to bonds funding mortgage loan agreements with the said clients, in which case the report on the transaction shall be made at the same time as the terms of the mortgage loan are communicated, but no later than one month after the execution of the order.

3. In the case of orders for a retail clients relating to units or shares in a collective investment undertaking which are executed periodically, investment firms either take the action specified in paragraph 1 or provide the retail client, at least once every six months, with the information listed in paragraph 4 in respect of those transactions.

4. The notice shall include such of the following information as is applicable and, where relevant, in accordance with Table 1 of Annex I to Regulation (EC) No 1287/2006:

- (a) the reporting firm identification;
- (b) the name or other designation of the client;
- (c) the trading day;
- (d) the trading time;
- (e) the type of the order;
- (f) the venue identification;
- (g) the instrument identification;
- (h) the buy/sell indicator;

- (i) the nature of the order if other than buy/sell;
- (j) the quantity;
- (k) the unit price;
- (l) the total consideration;
- (m) a total sum of the commissions and expenses charged and, where the retail client so requests, an itemised breakdown;
- (n) the client's responsibilities in relation to the settlement of the transaction, including the time limit for payment or delivery as well as the appropriate account details where these details and responsibilities have not previously been notified to the client;
- (o) if the client's counterparty was the investment firm itself or any person in the investment firm's group or another client of the investment firm, the fact that this was the case unless the order was executed through a trading system that facilitates anonymous trading.

5. For the purposes of point (k), where the order is executed in tranches, the investment firm may supply the client with information about the price of each tranche or the average price. Where the average price is provided, the investment firm shall supply the retail client with information about the price of each tranche upon request.

6. The investment firm may provide the client with the information referred to in paragraph 4 using standard codes if it also provides an explanation of the codes used.

## **Article 18**

### **Reporting obligations in respect of portfolio management**

1. Investments firms which provide the service of portfolio management to clients shall provide each such client with a periodic statement in a durable medium of the portfolio management activities carried out on behalf of that client unless such a statement is provided by another person.

2. In the case of retail clients, the periodic statement required under

paragraph 1 shall include, where relevant, the following information:

- (a) the name of the investment firm;
- (b) the name or other designation of the retail client's account;
- (c) a statement of the contents and the valuation of the portfolio, including details of each financial instrument held, its market value, or fair value if market value is unavailable and the cash balance at the beginning and at the end of the reporting period, and the performance of the portfolio during the reporting period;
- (d) the total amount of fees and charges incurred during the reporting period, itemising at least total management fees and total costs associated with execution, and including, where relevant, a statement that a more detailed breakdown will be provided on request;
- (e) a comparison of performance during the period covered by the statement with the investment performance benchmark (if any) agreed between the investment firm and the client;
- (f) the total amount of dividends, interest and other payments received during the reporting period in relation to the client's portfolio;
- (g) information about other corporate actions giving rights in relation to financial instruments held in the portfolio;
- (h) for each transaction executed during the period, the information referred to in article 17(4)(c) to (l) where relevant, unless the client elects to receive information about executed transactions on a transaction-by-transaction basis, in which case paragraph 5 of this article shall apply.

3. Where the agreement between an investment firm and a retail client for a portfolio management service authorises a leveraged portfolio, the periodic statement must be provided at least once a month.

4. In the case of retail clients, the periodic statement referred shall be provided once every two months

5. Investment firms, in cases where the client elects to receive information about executed transactions on a transaction-by-transaction

basis, shall provide promptly to the client, on the execution of a transaction by the portfolio manager, the essential information concerning that transaction in a durable medium. Where the client concerned is a retail client, the investment firm must send him a notice confirming the transaction and containing the information referred to in Article 17(4) no later than the first business day following that execution or, if the confirmation is received by the investment firm from a third party, no later than the first business day following receipt of the confirmation from the third party.

The second subparagraph shall not apply where the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the retail client by another person.

In this case, the periodic statement referred to in paragraph 2 must be provided at least once every 12 months, except for transactions in securities covered by article 2(13)(c) or derivatives covered by article 5(d) to (j) of Law 3606/2007.

### **Article 19**

#### **Additional reporting obligations**

Where investment firms provide portfolio management transactions for retail clients or operate retail client accounts that include an uncovered open position in a contingent liability transaction, they shall also report to the retail client any losses exceeding any predetermined threshold, agreed between the firm and the client, no later than the end of the business day in which the threshold is exceeded or, in a case where the threshold is exceeded on a non-business day, the close of the next business day.

### **Article 43**

#### **Statements of client financial instruments or client funds**

1. Investment firms that hold client financial instruments or client funds shall send at least once a year, to each client for whom they hold financial instruments or funds, a statement in a durable medium of those financial instruments or funds unless such a statement has been provided in

any other periodic statement. This shall not apply to a credit institution authorised under Law 3601/2007 in respect of deposits held by that institution.

2. The statement of client assets shall include the following information:

- (a) details of all the financial instruments or funds held by the investment firm for the client at the end of the period covered by the statement;
- (b) the extent to which any client financial instruments or client funds have been the subject of securities financing transactions;
- (c) the extent of any benefit that has accrued to the client by virtue of participation in any securities financing transactions, and the basis on which that benefit has accrued.

3. In cases where the portfolio of a client includes the proceeds of one or more unsettled transactions, the information referred to in point (a) may be based either on the trade date or the settlement date, provided that the same basis is applied consistently to all such information in the statement.

4. Investment firms which hold financial instruments or funds and which carry out the service of portfolio management for a client may include the statement of client assets in the periodic statement it provides to that client pursuant to article 18(1).

## **CHAPTER 5**

### **BEST EXECUTION**

#### **Article 21**

##### **Best execution criteria**

1. When executing client orders, investment firms shall take into account the following criteria for determining the relative importance of the factors referred to in article 27(1) of Law 3006/2007:

- (a) the characteristics of the client including the categorisation of the client as retail or professional;
- (b) the characteristics of the client order;

- (c) the characteristics of financial instruments that are the subject of that order;
  - (d) the characteristics of the execution venues to which that order can be directed.
2. An investment firm satisfies its obligation under article 27(1) of Law 3606/2007 to take all reasonable steps to obtain the best possible result for a client to the extent that it executes an order or a specific aspect of an order following specific instructions from the client relating to the order or the specific aspect of the order.
3. Where an investment firm executes an order on behalf of a retail client, the best possible result shall be determined in terms of the total consideration, representing the price of the financial instrument and the costs related to execution, which shall include all expenses incurred by the client which are directly related to the execution of the order, including execution venue fees, clearing and settlement fees and any other fees paid to third parties involved in the execution of the order.
4. For the purposes of delivering best execution where there is more than one competing venue to execute an order for a financial instrument, in order to assess and compare the results for the client that would be achieved by executing the order on each of the execution venues listed in the firm's order execution policy that is capable of executing that order, the firm's own commissions and costs for executing the order on each of the eligible execution venues shall be taken into account in that assessment.
5. Investment firms shall not structure or charge their commissions in such a way as to discriminate unfairly between execution venues.

## **Article 22**

### **Duty of investment firms carrying out portfolio management and reception and transmission of orders to act in the best interests of the client**

1. Investment firms, when providing the service of portfolio management, shall comply with the obligation under article 25(1) of Law

3606/2007 to act in accordance with the best interests of their clients when

(a) placing orders with other entities for execution that result from decisions by the investment firm to deal in financial instruments on behalf of its client.

(b) transmitting client orders to other entities for execution.

2. Investment firms shall take all reasonable steps to obtain the best possible result for their clients taking into account the factors referred to in article 25(1) of Law 3606/2007. The relative importance of these factors shall be determined by reference to the criteria set out in article 21(1) and, for retail clients, to the requirement under article 21(3). An investment firm satisfies its obligations under paragraph 1 to the extent that it follows specific instructions from its client when placing an order with, or transmitting an order to, another entity for execution.

3. Investment firms shall establish and implement a policy to enable them to comply with the obligation in paragraph 2. The policy shall identify, in respect of each class of instruments, the entities with which the orders are placed or to which the investment firm transmits orders for execution. The entities identified must have execution arrangements that enable the investment firm to comply with its obligations under this article when it places or transmits orders to that entity for execution. Investment firms shall provide appropriate information to their clients on the policy established in accordance with this paragraph.

4. Investment firms shall monitor on a regular basis the effectiveness of the policy established in accordance with paragraph 3 and, in particular, the execution quality of the entities identified in that policy and, where appropriate, correct any deficiencies. In addition, investment firms shall review the policy annually. Such a review shall also be carried out whenever a material change occurs that affects the firm's ability to continue to obtain the best possible result for their clients.

5. This article shall not apply when the investment firm that provides the service of portfolio management and/or reception and transmission of

orders also executes the orders received or the decisions to deal on behalf of its client's portfolio. In those cases article 27 of Law 3606/2007 applies.

### **Article 23**

#### **Execution policy**

1. Investment firms shall review annually the execution policy established pursuant to article 27(2) of Law 3606/2007, as well as their order execution arrangements. Such a review shall also be carried out whenever a material change occurs that affects the firm's ability to continue to obtain the best possible result for the execution of its client orders on a consistent basis using the venues included in its execution policy.
2. Investment firms shall provide retail clients with the following details on their execution policy in good time prior to the provision of the service:
  - (a) an account of the relative importance the investment firm assigns, in accordance with the criteria specified in article 27(1), to the factors referred to in article 21(1) of Law 3606/2007, or the process by which the firm determines the relative importance of those factors;
  - (b) a list of the execution venues on which the firm places significant reliance in meeting its obligation to take all reasonable steps to obtain on a consistent basis the best possible result for the execution of client orders;
  - (c) a clear and prominent warning that any specific instructions from a client may prevent the firm from taking the steps that it has designed and implemented in its execution policy to obtain the best possible result for the execution of those orders in respect of the elements covered by those instructions.

## **CHAPTER 6**

### **CLIENT ORDER HANDLING**

#### **Article 24**

##### **General principles**

1. Investment firms shall satisfy the following conditions when

carrying out client orders:

- (a) they must ensure that orders executed on behalf of clients are promptly and accurately recorded and allocated;
- (b) they must carry out otherwise comparable client orders sequentially and promptly unless the characteristics of the order or prevailing market conditions make this impracticable, or the interests of the client require otherwise;
- (c) they must inform a retail client about any material difficulty relevant to the proper carrying out of orders promptly upon becoming aware of the difficulty.

2. Where an investment firm is responsible for overseeing or arranging the settlement of an executed order, it shall take all reasonable steps to ensure that any client financial instruments or client funds received in settlement of that executed order are promptly and correctly delivered to the account of the appropriate client.

3. An investment firm shall not misuse information relating to pending client orders, and shall take all reasonable steps to prevent the misuse of such information by any of its relevant persons.

4. Investment firms shall be relieved of the obligation to disclose limit orders, pursuant to article 28(2) of Law 3606/2007 and articles 31 and 32 of Commission Regulation 1287/2006, for orders that are large in scale compared with normal market size for the specific share or type of share, as specified in article 20 of Commission Regulation 1287/2006.

## **Article 25**

### **Aggregation and allocation of orders**

1. Investment firms shall not be permitted to carry out a client order or a transaction for own account in aggregation with another client order unless the following conditions are met:

- (a) it must be unlikely that the aggregation of orders and transactions will work overall to the disadvantage of any client whose order is to be aggregated;

- (b) it must be disclosed to each client whose order is to be aggregated that the effect of aggregation may work to its disadvantage in relation to a particular order; and
  - (c) an order allocation policy must be established and effectively implemented, providing in sufficiently precise terms for
    - (i) the fair allocation of aggregated orders and transactions;
    - (ii) how the volume and price of orders determines allocations; and
    - (iii) the treatment of partial executions.
2. Where an investment firm aggregates an order with one or more other client orders and the aggregated order is partially executed, it shall allocate the related trades in accordance with its order allocation policy.

#### **Article 26**

##### **Aggregation and allocation of transactions for own account**

1. Investment firms which have aggregated transactions for own account with one or more client orders shall not allocate the related trades in a way that is detrimental to a client.
2. Where an investment firm aggregates a client order with a transaction for own account and the aggregated order is partially executed, it shall allocate the related trades to the client in priority to the firm. However, if the firm is able to demonstrate on reasonable grounds that without the combination it would not have been able to carry out the order on such advantageous terms, or at all, it may allocate the transaction for own account proportionally, in accordance with its order allocation policy referred to in article 25(1)(c).
3. Investment firms, as part of the order allocation policy referred to in article 25(1)(c), shall put in place procedures designed to prevent the reallocation, in a way that is detrimental to the client, of transactions for own account which are executed in combination with client orders.

**CHAPTER 7**  
**INDUCEMENTS**

**Article 27**

**Inducements**

1. Investment firms shall not be regarded as acting honestly, fairly and professionally in accordance with the best interests of a client if, in relation to the provision of an investment or ancillary service to the client, they pay or are paid any fee or commission, or provide or are provided with any non-monetary benefit.
2. The foregoing paragraph shall not apply to:
  - (a) a fee, commission or non-monetary benefit paid or provided to or by the client or a person on behalf of the client;
  - (b) a fee, commission or non-monetary benefit paid or provided to or by a third party or a person acting on behalf of a third party, where the following conditions are satisfied:
    - (i) the existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount, must be clearly disclosed to the client, in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant investment or ancillary service;
    - (ii) the payment of the fee or commission, or the provision of the non-monetary benefit must be designed to enhance the quality of the relevant service to the client and not impair compliance with the firm's duty to act in the best interests of the client;
  - (c) proper fees which enable or are necessary for the provision of investment services, such as custody costs, settlement and exchange fees, regulatory levies or legal fees, and which, by their nature, cannot give rise to conflicts with the firm's duties to act honestly, fairly and professionally in accordance with the best interests of its

clients.

3. An investment firm, for the purposes of point (b)(i), may disclose the essential terms of the arrangements relating to the fee, commission or non-monetary benefit in summary form, provided that it undertakes to disclose further details at the request of the client and provided that it honours that undertaking.

## **TRANSITIONAL PROVISIONS**

### **Article 28**

#### **Abrogated decisions**

The following decisions shall be abrogated on entry hereof into force:

- (a) HCMC decision 3/363/30 Nov 2005 (GG B 1755/14 Dec 2005) on investment firms' reporting obligations;
- (b) HCMC decision 3/356/26 Oct 2005 (GG B 1554/10 Nov 2005) on recordkeeping for the provision of investment services;
- (c) HCMC decision 5/196/28 July 2000 (GG B 1002/9 Aug 2000) on recordkeeping by members of ADEX and ETESEP;
- (d) HCMC decision 8/152/2 Mar 1999(GG B 741/19 May 1999) on recordkeeping by members of the Athens Derivatives Exchange and the Derivatives Settlement Company.

### **Article 29**

#### **Entry into force**

1. This decision shall enter into force on publication in the Government Gazette.
2. No expenditure is incurred by the State Budget due to the provisions hereof.
3. The present shall be published in the Government Gazette.

The Secretary

The President	The 1st Vice-President	The 2nd Vice-President
Alexios A. Pilavios	Giangos Haralambous	Anastasios Th. Gavriilidis

The Members

True copy

Signature

Seraphim Varvaris

Administrative & Financial Services Director

Seal: Hellenic Republic, Hellenic Capital Market Commission, Legal Entity  
in Public Law

*Athens, March 2009*

*True translation from Greek*

*The translator Eleni Dimitriou*