In case of discrepancies between the French and the English text, the French text shall prevail

Grand-Ducal Regulation of 13 July 2007 relating to organisational requirements and rules of conduct in the financial sector and transposing 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.

Chapter I: Scope and definitions

Article 1. Subject matter and scope.

(1) This regulation lays down the detailed rules for implementation of Articles 37-1, 37-2, 37-3(1) to (6) and (8), 37-5, 37-6 and 37-7 of the amended law of 5 April 1993 on the financial sector.

(2) Chapter II, Sections 1 to 4 and 6 and 8 of Chapter III, Article 53 and, to the extent that they relate to these provisions, Chapters I and IV of this regulation shall also apply to management companies within the limits and in accordance with the rules set out in Article 77(4) of the amended law of 20 December 2002 relating to undertakings for collective investment.

Article 2. Definitions.

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

1) "financial analyst": the relevant person who produces the substance of investment research;

2) "distribution channels": distribution channels within the meaning of Article 1, point 18) of the law of 9 May 2006 on market abuse;

3) "securities financing transaction": an operation that has the meaning given in Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading and defined terms for the purposes of that Directive;

4) "authorised management": persons authorised pursuant to Article 7(2) or Article 19(2) of the amended law of 5 April 1993 on the financial sector;

5) "outsourcing": an arrangement of any form between a credit institution and a service provider or between an investment firm and a service provider by which the service provider performs a process, a service or an activity which would otherwise be undertaken by the credit institution or investment firm itself;

6) "group": in relation to a credit institution or an investment firm, the group of which that credit institution or investment 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 by the fact that they are managed on a unified basis pursuant to a contract or provisions in the memorandum or articles of association or by the fact that their administrative, management or supervisory bodies consist for the major part of the same persons;

7) "supervisory functions": the members of the bodies of a credit institution or investment firm who are responsible for the supervision of authorised management, such as members of the management board, supervisory board or executive board;

8) "person with whom a relevant person has a family relationship": any of the following:

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

   b) a child or stepchild who, pursuant to its law, is a dependent of the relevant person;

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

9) "relevant person": in relation to a credit institution or investment firm, any of the following:

a) a director, partner or equivalent, manager or tied agent of the credit institution or investment firm;

b) a director, partner or equivalent, or manager of any tied agent of the credit institution or investment firm;

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

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

10) "durable medium": 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.

Article 3. Conditions applying to the provision of information by means of electronic communications.

(1) When, for the purposes of this regulation, information is required to be provided in a durable medium, credit institutions and investment firms shall be permitted to provide that information in a durable medium other than on paper only if the following conditions are met:

a) the provision of information in that medium must be appropriate to the context in which the business between the credit institution or investment firm and the client is, or is to be, conducted;

b) the person to whom the information is to be provided, when offered the choice between information on paper or in another durable medium, has specifically chosen the provision of the information in that other medium.

(2) Where, pursuant to Articles 34, 35, 36, 37, 38 or 54(3) of this regulation, a credit institution or 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 must be satisfied:

a) the provision of information in that medium must be appropriate to the context in which the business between the credit institution or investment firm and the client is, or is to be, conducted;

b) the client must specifically consent to the provision of 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 by the client;

d) the information must be up to date;

e) the information must be accessible continuously on the website for such period of time as the client may reasonably need to inspect it.

(3) For the purposes of this article, the provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the credit institution or investment firm and the client is, or is to be, conducted 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 regarded as evidence of such regular access.

Chapter II: Organisational requirements

Section 1. Organisation

Article 4. Subject matter and scope.

This section sets out the measures that credit institutions and investment firms incorporated in Luxembourg, as well as the Luxembourg branches of credit institutions and investment firms having their registered office in a third country, are required to take in order to satisfy the organisational requirements defined in Article 37-1 of the amended law of 5 April 1993 on the financial sector.

For the purposes of this section, credit institutions and investment firms shall take into account the nature, scale and complexity of their business, and the nature and range of investment services and activities undertaken in the course of that business.

Article 5. General organisational requirements.

(1) Credit institutions and investment firms must comply with the following requirements:

a) they must establish, implement and maintain decision-making procedures and an organisational structure which clearly and in documented manner specifies reporting lines and allocates functions and responsibilities;

b) they must ensure that the relevant persons are aware of the procedures to be followed to discharge their responsibilities;

c) they must establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the credit institution or investment firm;

d) they must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them;

e) they must establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the credit institution or investment firm;

f) they must maintain adequate and orderly records of their business and internal organisation;

g) they must ensure that the performance of multiple functions by these relevant persons does not and is not likely to prevent these persons from discharging any particular function soundly, honestly and professionally.

(2) Credit institutions and investment firms must establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question.

(3) Credit institutions and investment firms must establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to their systems and procedures, the preservation of essential data and functions and the maintenance of their activities or, where that is not possible, the timely recovery of such data and functions and the timely resumption of their activities.

(4) Credit institutions and investment firms shall establish, implement and maintain accounting policies and procedures that enable them to provide the Commission in a timely manner, upon request, with financial reports which reflect a true view of their financial position and which comply with the applicable accounting standards and rules in Luxembourg.

(5) Credit institutions and investment firms must monitor and evaluate, on a regular basis, the adequacy and effectiveness of their systems, internal control mechanisms and other arrangements put in place in accordance with paragraphs (1) to (4), and must take appropriate corrective measures to address any deficiencies noted.

Article 6. Compliance.

(1) This article sets out the measures that credit institutions and investment firms are required to take to satisfy the requirements of Article 37-1(1) of the amended law of 5 April 1993 on the financial sector.

(2) Credit institutions and investment firms must establish, implement and maintain a compliance policy and procedures designed to identify any risk that the credit institution or investment firm is not complying with its obligations under the law of 13 July 2007 on markets in financial instruments, as well as the associated risks. Credit institutions and investment firms must put in place adequate measures and procedures designed to minimise such risk and to enable the Commission to exercise its powers effectively under the law.

(3) Credit institutions and investment firms must establish and maintain a permanent and effective compliance function which operates independently and which has the following responsibilities:

a) to identify the risk referred to in paragraph (2) and assess it in order to determine its importance and possible consequences;

b) to monitor and, on a regular basis, assess the adequacy and effectiveness of the measures and procedures put in place in accordance with paragraph (2) and the actions taken to address any deficiencies in the compliance of the credit institution or investment firm with its obligations;

c) to advise and assist the relevant persons responsible for carrying out investment services and activities in order to comply with the obligations of the credit institution or investment firm under the law of 13 July 2007 on markets in financial instruments.

(4) In order to enable the compliance function to discharge its responsibilities properly and independently, credit institutions and investment firms must ensure that the following conditions are satisfied:

a) the compliance function must have the necessary authority, human and technical resources and expertise as well as a right to access all the information required to perform its responsibilities. It shall report to authorised management and, where necessary, to supervisory functions;

b) authorised management shall appoint an employee to manage the compliance function and with responsibility for this function. This employee is responsible for drawing up the written compliance status reports referred to in Article 9(3);

c) the relevant persons involved in the compliance function must not be involved in the performance of services and activities they monitor;

d) the method of determining the remuneration of the relevant persons involved in the compliance function must not compromise their objectivity or be likely to do so.

However, the Commission may exempt a credit institution or investment firm from compliance with point c) or point d) if the credit institution or investment firm is able to demonstrate that in view of the nature, scale and complexity of its business, and the nature and range of investment services and activities undertaken in the course of its business, the requirement under point c) or point d) is not proportionate and that its compliance function continues to be effective.

Article 7. Risk management.

(1) This article sets out the measures that credit institutions and investment firms are required to take to satisfy the requirements of Article 37-1(1) of the amended law of 5 April 1993 on the financial sector.

(2) Credit institutions and investment firms must take the following actions:

a) they must establish, implement and maintain adequate risk management policies and procedures which identify the risks relating to their activities, processes and systems and, where appropriate, set the level of risk tolerated by the credit institution or investment firm;

b) they must establish effective arrangements, processes and mechanisms for the management of risks relating to their activities, processes and systems in light of their level of risk tolerance;

c) they must monitor:

— the adequacy and effectiveness of their risk management policy and procedures;

— the level of compliance by the credit institution or investment firm and its relevant persons with the arrangements, processes and mechanisms adopted in accordance with point b) and

— the adequacy and effectiveness of measures taken to address any deficiencies in those policies, procedures, arrangements, processes and mechanisms, including failure to comply with them by the relevant persons.

(3) Where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of the investment services and activities undertaken in the course of that business, credit institutions and investment firms must establish and maintain a risk management function that operates independently and carries out the following tasks:

a) implementation of the policy and procedures referred to in paragraph (2);

b) reporting to authorised management and providing it with advice in accordance with Article 9(3).

Where a credit institution or investment firm is not required under the first subparagraph to establish and maintain a risk management function that operates independently, it must nevertheless be able to demonstrate that the policy and procedures which it has adopted in accordance with paragraph (2) satisfy the requirements of that paragraph and are consistently effective.

Article 8. Internal audit.

(1) This article sets out the measures that credit institutions and investment firms are required to take to satisfy the requirements of Article 37-1(1) of the amended law of 5 April 1993 on the financial sector.

(2) Where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of the investment services and activities undertaken in the course of that business, credit institutions and investment firms must establish and maintain an internal audit function which is separate and independent from the other functions and activities of the credit institution or investment firm and which has the following responsibilities:

a) to establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the systems, internal control mechanisms and arrangements of the credit institution or investment firm;

b) to issue recommendations based on the result of work carried out in accordance with point a);

c) to verify compliance with those recommendations;

d) to report to authorised management in relation to internal audit matters in accordance with Article 9(3).

Article 9. Responsibility of authorised management and supervisory functions.

(1) This article sets out the measures that credit institutions and investment firms are required to take to satisfy the requirements of Article 37-1(1) of the amended law of 5 April 1993 on the financial sector.

(2) Authorised management and, where appropriate, the supervisory functions are responsible for ensuring that the credit institution or investment firm complies with its obligations under the law of 13 July 2007 on markets in financial instruments.

In particular, authorised management and, where appropriate, the supervisory functions must assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations laid down by the law of 13 July 2007 on markets in financial instruments. They must take appropriate measures to address any deficiencies noted.

(3) The authorised management of credit institutions and investment firms must receive on a frequent basis, and at least annually, written reports on the status of the compliance, risk management and internal audit functions. These reports must show in particular the inadequacies noted, the corrective measures taken and the actual monitoring of these measures.

(4) Authorised management must provide the supervisory functions on a regular basis, and at least annually, with written reports on the status of the functions of compliance, risk management and internal audit. These reports must show in particular the deficiencies noted, the corrective measures taken and the actual monitoring of these measures.

(5) Credit institutions and investment firms must provide the Commission with a copy of the reports referred to in paragraphs (3) and (4).

(6) This Article is applicable mutatis mutandis to investment firms that are natural persons or that have a legal form which does not provide for supervisory functions.

Article 10. Complaints handling.

For the purposes of Article 37-1(1) of the amended law of 5 April 1993 on the financial sector, credit institutions and investment firms must establish, implement and maintain effective and transparent procedures for the reasonable and prompt handling of complaints received from existing or potential retail clients. They must keep a record of each complaint and the measures taken for its resolution.

Article 11. Meaning of personal transaction.

For the purposes of Article 37-1(1) of the amended law of 5 April 1993 on the financial sector and Articles 12 and 28 of this regulation, personal transaction means a trade in a financial instrument effected by or on behalf of a relevant person, where at least one of the following criteria is met:

a) the person referred to is acting outside the scope of the activities he carries out in that capacity;

b) the trade is carried out for the account of any of the following persons:

— the relevant person;

— any person with whom the relevant person has a family relationship, or with whom he has close links;

— a person whose relationship with the relevant person is such that the relevant person has a direct or indirect material interest in the outcome of the trade, other than a fee or commission for the execution of the trade.

Article 12. Personal transactions.

(1) Credit institutions and investment firms must establish, implement and maintain adequate arrangements aimed at preventing any of the following activities from being undertaken by any relevant person who is involved in activities that may give rise to a conflict of interest or who has access, by virtue of an activity carried out on behalf of the credit institution or investment firm, to inside information within the meaning of point 1) of Article 1 of the law of 9 May 2006 on market abuse or to other confidential information relating to clients or transactions with or for clients:

a) entering into a personal transaction which meets any of the following criteria:

— the transaction is prohibited by the law of 9 May 2006 on market abuse;

— the activity involves the misuse or improper disclosure of that confidential information;

— the activity conflicts or is likely to conflict with the obligations of the credit institution or investment firm under the law of 13 July 2007 on markets in financial instruments;

b) advising or procuring, other than in the specific context of his work or contract for services, any other person to enter into a transaction in financial instruments which, if a personal transaction of the relevant person, would be covered by point a) or Article 28(2), points a) or b), or Article 56(3);

c) without prejudice to the first indent of Article 9 of the law of 9 May 2006 on market abuse, disclosing, other than in the specific context of his work or contract for services, any information or opinion to any other person if the relevant person knows, or reasonably ought to know, that as a result of that disclosure that other person will or would be likely to take either of the following steps:

— to enter into a transaction in financial instruments which, if a personal transaction of the relevant person, would be covered by point a) or Article 28(2), points a) or b), or Article 56(3);

— to advise or procure another person to enter into such a transaction.

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

a) each relevant person referred to in paragraph (1) is aware of the restrictions on personal transactions and of the measures established by the credit institution or investment firm in connection with personal transactions and disclosure, in accordance with paragraph (1);

b) the credit institution or investment firm is informed promptly of any personal transaction entered into by a relevant person, either by notification of that transaction or by other procedures enabling the credit institution or investment firm to identify such transactions;

Credit institutions and investment firms that have entered into outsourcing agreements are required to ensure that the firm to which the activity is outsourced maintains a record of personal transactions entered into by any relevant person and provides that information to the credit institution or investment firm promptly on request;

c) the credit institution or investment firm keeps a record of any personal transactions notified to it or identified by it. The record also mentions any authorisation or prohibition in connection with such a personal transaction.

(3) Paragraphs (1) and (2) shall not apply to the following kinds of personal transaction:

a) personal transactions effected under a discretionary portfolio management service where there is no prior communication in connection with the transaction between the portfolio manager and the relevant person or any other person for whose account the transaction is executed;

b) personal transactions in units in collective undertakings that comply with the conditions necessary to enjoy the rights conferred by Directive 85/611/EEC or are subject to supervision under the law of a Member State which requires an equivalent level of risk spreading in their assets, where the relevant person and any other person for whose account the transaction is effected are not involved in the management of that collective undertaking.

Section 2. Outsourcing

Article 13. Subject matter and scope.

This section sets out the measures that credit institutions and investment firms incorporated in Luxembourg, as well as the Luxembourg branches of credit institutions and investment firms having their registered office in a third country, are required to take in order to satisfy the organisational requirements defined in Article 37-1(5) of the amended law of 5 April 1993 on the financial sector.

Article 14. Meaning of critical or important operational functions.

(1) For the purposes of Article 37-1(5) of the amended law of 5 April 1993 on the financial sector and Articles 15 and 16 of this regulation, an operational function shall be regarded as critical or important if a partial or total failure in its performance would materially impair:

— the continuing compliance of the credit institution or investment firm with the conditions of authorisation or its other obligations under the law of 13 July 2007 on markets in financial instruments, or

— the financial performance of the credit institution or investment firm, or

— the quality or continuity of the investment services and activities undertaken by the credit institution or investment firm.

(2) Without prejudice to the status of any other function, the following functions shall not be considered as critical or important for the purposes of paragraph (1):

a) the provision to the credit institution or investment firm of advisory services and other services which do not form part of the investment business of the credit institution or investment firm, including the provision of legal advice, the training of its personnel, billing services and the security of the premises and personnel of the credit institution or investment firm;

b) the purchase of standardised services, including market information services and the provision of price feeds.

Article 15. Conditions for outsourcing critical or important operational functions or for outsourcing investment services or activities.

(1) Credit institutions and investment firms that outsource critical or important operational functions or an investment service or activity remain fully responsible for discharging all of their obligations under the law of 13 July 2007 on markets in financial instruments. They must comply in particular with the following conditions:

a) the outsourcing must not lead to the delegation by the authorised management of the credit institution or investment firm of its responsibility;

b) the relationship and obligations of the credit institution or investment firm towards its clients under the terms of the law of 13 July 2007 on markets in financial instruments must not be altered;

c) the conditions with which the credit institution or investment firm must comply in order to be authorised in accordance with Article 5(1) or Article 17(1) of the amended law of 5 April 1993 on the financial sector must not be compromised;

d) none of the other conditions subject to which the authorisation of the credit institution or investment firm was granted must be removed or modified.

(2) Credit institutions and investment firms must exercise due skill, care and diligence when entering into, managing or terminating any arrangement for the outsourcing to a service provider of critical or important operational functions or of an investment service or activity.

Credit institutions and investment firms must in particular take the necessary steps to ensure that the following conditions are satisfied:

a) the service provider must have the ability, capacity and any authorisation required by law to perform the outsourced functions, services or activities reliably and professionally;

b) the service provider must carry out the outsourced services effectively, and to this end the credit institution or investment firm must establish methods for assessing the standard of performance of the service provider;

c) the service provider must properly supervise the carrying out of the outsourced function and adequately manage the risks associated with the outsourcing;

d) appropriate action must be taken if it appears that the service provider may not be carrying out the outsourced functions effectively and in compliance with the law and regulatory requirements;

e) the credit institution or investment firm must retain the necessary expertise to supervise the outsourced functions effectively and manage the risks associated with the outsourcing and must supervise those functions and manage those risks;

f) the service provider must disclose to the credit institution or investment firm any development that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with the law and regulatory requirements;

g) the credit institution or investment firm must be able to terminate the arrangement for outsourcing where necessary without detriment to the continuity and quality of its provision of services to clients;

h) the service provider must cooperate with the Commission in connection with the outsourced activities;

i) the credit institution or investment firm, its auditor and the Commission must have effective access to data related to the outsourced activities, as well as to the business premises of the service provider, and the Commission must be able to exercise those rights of access;

j) the service provider must protect any confidential information relating to the credit institution, investment firm and its clients;

k) the credit institution or investment firm and the service provider must establish, implement and maintain a business contingency plan for disaster recovery and periodic testing of backup facilities, where that is necessary having regard to the outsourced function, service or activity.

(3) The respective rights and obligations of the credit institution or investment firm and the service provider must be clearly allocated and set out in a written agreement.

(4) Where the credit institution or investment firm and the service provider are members of the same group, the credit institution or investment firm may, for the purposes of the application of this Article and Article 16, take into account the extent to which it controls the service provider or has the ability to influence the service provider's actions.

(5) Credit institutions and investment firms must make available on request to the Commission all information necessary to enable it to supervise the compliance of the performance of the outsourced activities with the requirements of this regulation.

Article 16. Service providers located in third countries.

(1) In addition to the conditions set out in Article 15, credit institutions and investment firms that outsource the investment service of portfolio management provided to retail clients to a service provider located in a third country must ensure that the following conditions are satisfied:

a) the service provider must be authorised or registered in its home country to provide the service of portfolio management to retail clients and must be subject to prudential supervision;

b) there must be a cooperation agreement between the Commission and the supervisory authority of the service provider.

(2) Where one or both of those conditions mentioned in paragraph (1) are not satisfied, a credit institution or investment firm may outsource the service of portfolio management provided to retail clients to a service provider located in a third country only on condition that:

— the credit institution or investment firm has given prior notification to the Commission about the outsourcing arrangement, and

— the Commission has not objected to that arrangement within the 3 months following receipt of that notification, or where the notification is incomplete, within 3 months of receiving the information necessary to make a decision.

(3) Without prejudice to paragraph (2), the Commission shall publish a policy statement in relation to outsourcing.

(4) The Commission shall publish on its website a list of the supervisory authorities in third countries with which it has cooperation agreements that are appropriate for the purposes of point b) of paragraph (1).

Section 3. Protection of client assets

Article 17. Subject matter and scope.

This section sets out the measures that credit institutions and investment firms incorporated in Luxembourg, as well as the Luxembourg branches of credit institutions and investment firms having their registered office in a third country, are required to take in order to satisfy the organisational requirements defined in Article 37-1(7) and (8) of the amended law of 5 April 1993 on the financial sector. This section applies to institutions referred to within the limits specified in this section.

Article 18. Protection of client financial instruments and funds.

(1) For the purposes of safeguarding clients' rights in relation to financial instruments and funds belonging to them, credit institutions and investment firms must comply with the following requirements:

a) they must keep records and accounts that enable them at any time and without delay to distinguish assets held for one client from assets held for any other client, and from their own assets;

b) they must maintain the records and accounts in a way that ensures their accuracy and in particular their correspondence to the financial instruments and, as far as investment firms are concerned, the funds held for clients;

c) they must conduct, on a regular basis, reconciliations between their internal accounts and records and those of any third parties by whom the assets are held;

d) they must take the necessary steps to ensure that any client financial instruments deposited with a third party, in accordance with Article 19, are identifiable separately from the financial instruments belonging to the credit institution or investment firm and from financial instruments belonging to that third party, by means of differently titled accounts on the books of the third party or other equivalent measures that achieve the same level of protection;

e) investment firms must take the necessary steps to ensure that client funds which, in accordance with Article 20, are deposited in a central bank or a credit institution authorised in a Member State or a third country or are invested in a qualifying money market fund are held in an account or accounts identified separately from any accounts used to hold funds belonging to the investment firm;

f) they must introduce adequate organisational arrangements to minimise the risk of the loss or depreciation of client assets, or of rights in connection with those assets, as a result of the misuse of the assets, fraud, negligence, poor administration or inadequate record-keeping.

(2) If the applicable law of the jurisdiction in which the client funds or financial instruments are held prevents credit institutions or investment firms from complying with the provisions of points d) or e) of paragraph (1), insofar as these provisions apply to them, they shall inform the Commission which shall prescribe requirements that have an equivalent effect in terms of safeguarding clients' rights.

(3) Accounts for financial instruments held in their name by credit institutions or investment firms and cash accounts held in their name by investment firms with a Luxembourg depository and identified to the depository as client assets for these credit institutions or investment firms may not be seized by the creditors of these credit institutions or investment firms or by the creditors of their clients.

Article 19. Depositing client financial instruments.

(1) Credit institutions and investment firms may deposit financial instruments held by them on behalf of their clients into an account or accounts opened with a third party provided that they exercise all due skill, care and diligence in the selection, appointment and periodic review of the third party and of the arrangements agreed with that third party for the holding and safekeeping of those financial instruments.

In particular, credit institutions and investment firms must take into account the expertise and market reputation of the third party as well as the legal or regulatory requirements or market practices related to the holding of those financial instruments that could adversely affect clients' rights.

(2) If the safekeeping of financial instruments for the account of another person is subject to specific regulation and supervision in a jurisdiction where a credit institution or investment firm proposes to deposit client financial instruments with a third party, the credit institution or investment firm shall not deposit those financial instruments with a third party which is not subject to such regulation and supervision.

(3) Credit institutions and investment firms shall not be authorised to deposit financial instruments held on behalf of clients with a third party in a third country that does not regulate the holding and safekeeping of financial instruments for the account of another person unless one of the following conditions is met:

a) the nature of the financial instruments or of the investment services connected with those instruments requires them to be deposited with a third party in that third country;

b) where the financial instruments are held on behalf of a professional client, that client requests the credit institution or investment firm in writing to deposit them with a third party in that third country.

Article 20. Depositing client funds.

(1) Investment firms, on receiving client funds, must promptly place those funds into one or more accounts opened with any of the following:

a) a central bank;

b) a credit institution authorised in a Member State;

c) a credit institution authorised in a third country;

d) a qualifying money market fund.

(2) For the purposes of point d) of paragraph (1) of this Article and of Article 18(1)(e), a "qualifying money market fund" means a collective investment undertaking authorised under Directive 85/611/EEC or which is subject to supervision and authorised, if applicable, by an authority under the national law of a Member State, and which satisfies the following conditions:

a) its primary investment objective must be to maintain the net asset value of the collective investment undertaking either constant at par (net of earnings) or at the value of the investors' initial capital plus earnings;

b) it must, with a view to achieving that primary investment objective, invest exclusively in high quality money market instruments with a maturity or residual maturity of no more than 397 days, or regular yield adjustments consistent with such a maturity, and with a weighted average maturity of 60 days. It may also achieve this objective by investing on an ancillary basis in deposits with credit institutions;

c) it must provide liquidity through same day or next day settlement.

For the purposes of point b), a money market instrument shall be considered to be of high quality if it has been awarded the highest available credit rating by each competent rating agency which has rated that instrument. An instrument that is not rated by any competent rating agency shall not be considered to be of high quality.

For the purposes of the previous subparagraph, a rating agency shall be considered to be competent if it issues credit ratings in respect of money market funds regularly and on a professional basis and is an eligible External Credit Assessment Institution (ECAI) within the meaning of Article 81(1) of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast).

(3) Investment firms that do not deposit client funds with a central bank must exercise all due skill, care and diligence in the selection, appointment and periodic review of the credit institution or money market fund where the funds are placed and the arrangements agreed with the credit institution or money market fund for the holding of those funds.

In particular, investment firms must take into account the expertise and market reputation of such credit institutions or money market funds, as well as the legal or regulatory requirements or market practices related to the holding of client funds that could adversely affect clients' rights.

Clients shall have the right to oppose the placement of their funds in a qualifying money market fund.

Article 21. Use of client financial instruments.

(1) Credit institutions and investment firms shall not be allowed to enter into arrangements for securities financing transactions in respect of financial instruments held on behalf of a client or otherwise use such financial instruments for their own account or the account of another client, unless the following conditions are met:

a) the client must have given his prior express consent to the use of the financial instruments on specified terms, as evidenced, in the case of a retail client, by his signature or equivalent alternative mechanism;

b) the use of that client's financial instruments must be restricted to the specified terms to which the client consents.

(2) Credit institutions and investment firms shall not be allowed to enter into arrangements for securities financing transactions in respect of financial instruments held on behalf of a client in an omnibus account maintained by a third party or otherwise use such financial instruments held in such an account for their own account or the account of another client, unless, in addition to the conditions set out in paragraph (1), at least one of the following conditions is met:

a) the client whose financial instruments are held together in an omnibus account must have given his prior express consent in accordance with point a) of paragraph (1);

b) the credit institution or investment firm must have in place systems and controls which ensure that only the financial instruments of clients who have given prior express consent in accordance with point a) of paragraph (1) are used in this way.

The internal accounts of the credit institution or investment firm must include details of the client on whose instructions the use of the financial instruments has been effected, as well as the number of financial instruments used belonging to each client who has given his consent, so as to enable the correct allocation of any loss.

(3) The third party with which a credit institution or investment firm has an account used to hold financial instruments identified as belonging to one or more clients of this credit institution or investment firm may legitimately rely on confirmation from the credit institution or investment firm in question to the effect that it has obtained the necessary consents to use these financial instruments.

Article 22. Reports by external auditors.

Credit institutions and investment firms must ensure that their external auditors report in writing on an annual basis on the adequacy of the arrangements made under Article 37-1(7) and (8) of the amended law of 5 April 1993 on the financial sector and this section. The external auditor's report shall also cover any branches that the credit institution or investment firm incorporated in Luxembourg has in other countries. The report is to be sent by the external auditor to the authorised management of the credit institution or investment firm which will provide a copy of this report to the Commission.

Section 4. Conflicts of interest

Article 23. Subject matter and scope.

Articles 24, 25, 27 and 28 set out the measures that credit institutions and investment firms incorporated in Luxembourg, as well as the Luxembourg branches of credit institutions and investment firms having their registered office in a third country, are required to take in order to satisfy the organisational requirements defined in Article 37-1(2) and Article 37-2 of the amended law of 5 April 1993 on the financial sector.

Article 26 sets out the measures that credit institutions and investment firms incorporated in Luxembourg, as well as the Luxembourg branches of credit institutions and investment firms having their registered office in a third country, are required to take in order to satisfy the organisational requirements defined in Article 37-1(6) of the amended law of 5 April 1993 on the financial sector.

Article 24. Conflicts of interest potentially detrimental to a client.

For the purposes of identifying the types of conflict of interest that arise in the course of providing investment and ancillary services or a combination thereof to clients and whose existence may damage the interests of a client, credit institutions and investment firms must take into account at least the question of whether the credit institution, investment firm, a relevant person or a person directly or indirectly linked by control to the credit institution or investment firmis in any of the following situations, whether as a result of providing investment or ancillary services or investment activities or otherwise:

a) the credit institution, investment firm or that person is likely to make a financial gain, or avoid a financial loss, at the expense of the client;

b) the credit institution, investment firm or that person has an interest in the outcome of a service provided to the client or of a transaction carried out on behalf of that client, which is distinct from the client's interest in that outcome;

c) the credit institution, investment firm or that person has a financial or other incentive to favour the interest of another client or group of clients over the interests of the client;

d) the credit institution, investment firm or that person carries on the same business as the client;

e) the credit institution, investment firm or that person receives or will receive from a person other than the client an inducement in relation to a service provided to the client, in the form of monies, goods or services, other than the standard commission or fee for that service.

Article 25. Conflicts of interest policy.

(1) Credit institutions and investment firms must establish, implement and maintain an effective conflicts of interest policy set out in writing and appropriate to the size and organisation of the credit institution or investment firm and the nature, scale and complexity of its business.

Where the credit institution or investment firm is a member of a group, the conflicts of interest policy must also take into account any circumstances, of which the credit institution or investment firm is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the group.

(2) The conflicts of interest policy must, in particular:

a) identify, with reference to the specific investment services and activities and ancillary services carried out by or on behalf of the credit institution or investment firm, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of one or more clients;

b) specify the procedures to be followed and measures to be adopted in order to manage such conflicts of interest.

(3) The procedures and measures provided for in point b) of paragraph (2) must be designed to ensure that relevant persons engaged in different business activities involving a conflict of interest of the kind specified in point a) of paragraph (2) carry on those activities at a level of independence appropriate to the size and activities of the credit institution or investment firm and of the group to which it belongs, and to the materiality of the risk of damage to the interests of clients.

For the purposes of point b) of paragraph (2), the procedures to be followed and measures to be adopted shall include such of the following as are necessary and appropriate for the credit institution or investment firm to ensure the requisite degree of independence:

a) effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of conflict of interest where the exchange of that information may harm the interests of one or more clients;

b) the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services to, clients whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the credit institution or investment firm;

c) the removal of any direct link between, on the one hand, the remuneration of relevant persons principally engaged in one activity and, on the other hand, the remuneration of or revenues generated by different relevant persons principally engaged in another activity, where the activities in question may give rise to a conflict of interest;

d) measures to prevent or restrict any person from exercising inappropriate influence over the way in which a relevant person provides investment or ancillary services or carries out investment activities;

e) measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate investment or ancillary services or activities where such involvement may impair the proper management of conflicts of interest.

If the adoption or the practice of one or more of those measures and procedures does not ensure the requisite degree of independence, credit institutions and investment firms shall be required to adopt such alternative or additional measures and procedures as are necessary and appropriate for those purposes.

(4) Disclosure to clients pursuant to Article 37-2(2) of the amended law of 5 April 1993 on the financial sector must be made in a durable medium and must include sufficient detail, taking into account the nature of the client, to enable that client to take an informed decision with respect to the investment or ancillary service in the context of which the conflict of interest arises.

Article 26. Record of services or activities giving rise to detrimental conflict of interest.

For the purposes of Article 37-1(6) of the amended law of 5 April 1993 on the financial sector, credit institutions and investment firms must keep and regularly update a record of the kinds of investment or ancillary service or investment activity carried out by or on behalf of the credit institution or investment firm in which a conflict of interest entailing a material risk of damage to the interests of one or more clients has arisen or, in the case of an ongoing service or activity, may arise.

Article 27. Investment research.

(1) For the purposes of Article 28, “investment research” means research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers of financial instruments, including any opinion as to the present or future value or price of such financial

instruments, intended for distribution channels or for the public, and in relation to which the following conditions are met:

a) it is labelled or described as investment research or in similar terms, or is otherwise presented as an objective or independent explanation of the matters concerned in the recommendation;

b) if the recommendation in question were made by a credit institution or investment firm to a client, it would not constitute the provision of investment advice for the purposes of the amended law of 5 April 1993 on the financial sector.

(2) A recommendation of the type covered by point 16) of Article 1 of the law of 9 May 2006 on market abuse but relating to financial instruments within the meaning of point 19) of Article 1 of the amended law of 5 April 1993 on the financial sector that does not meet the conditions set out in paragraph (1) must be treated as a marketing communication for the purposes of the law of 13 July 2007 on markets in financial instruments. Credit institutions and investment firms that produce or disseminate the recommendation in question must ensure that it is clearly identified as such.

In addition, the credit institutions and investment firms in question must ensure that any such recommendation contains a clear and prominent statement that (or, in the case of an oral recommendation, to the effect that) it has not been prepared in accordance with legal requirements designed to promote the independence of investment research and that it is not subject to any prohibition on dealing ahead of the dissemination of investment research.

Article 28. Additional organisational requirements where credit institutions and investment firms produce and disseminate investment research.

(1) Credit institutions or investment firms which produce, or arrange for the production of, investment research that is intended or likely to be subsequently disseminated to their clients or to the public, under their own responsibility or that of a member of their group, must ensure the implementation of all the measures set out in Article 25(3) in relation to the financial analysts involved in the production of the investment research and other relevant persons whose responsibilities or business interests may conflict with the interests of the persons to whom the investment research is disseminated.

(2) Credit institutions and investment firms covered by paragraph (1) must take the necessary steps to ensure that the following conditions are satisfied:

a) financial analysts and other relevant persons who have knowledge of the likely timing and content of investment research which is not publicly available or available to clients and cannot readily be inferred from information that is so available must not undertake personal transactions in relation to financial instruments subject to investment research, or any related financial instruments, or trade in such financial instruments on behalf of any other person, including the credit institution or investment firm, until the recipients of the investment research have had a reasonable opportunity to act on it. This restriction does not apply where financial analysts and other relevant persons are acting as market makers in good faith and in the ordinary course of market making or in the execution of an unsolicited client order;

b) in circumstances not covered by point a), financial analysts and any other relevant persons involved in the production of investment research must not undertake personal transactions in relation to financial instruments subject to investment research, or to any related financial instruments, contrary to current recommendations, except in exceptional circumstances and with the prior approval of a member of the legal or compliance function of the credit institution or investment firm;

c) the credit institutions and investment firms themselves, financial analysts and other relevant persons involved in the production of the investment research must not accept inducements from those with a material interest in the subject matter of the investment research;

d) the credit institutions and investment firms themselves, financial analysts and other relevant persons involved in the production of the investment research must not promise issuers favourable research coverage;

e) issuers, relevant persons other than financial analysts, and any other persons must not before the dissemination of investment research be permitted to review a draft of the investment research for the purpose of verifying the accuracy of factual statements made in that research, or for any other purpose other than

verifying compliance with the legal obligations of the credit institution or investment firm, if the draft includes a recommendation or target price.

For the purposes of this paragraph, “related financial instrument” means a financial instrument the price of which is closely affected by price movements in another financial instrument which is the subject of investment research, and includes derivatives based on that other financial instrument.

(3) Credit institutions and investment firms which disseminate investment research produced by another person to the public or their clients shall be exempted from complying with the provisions of paragraph (1) if the following criteria are met:

a) the person that produces the investment research is not a member of the group to which the credit institution or investment firm belongs;

b) the credit institution or investment firm does not substantially alter the recommendations within the investment research;

c) the credit institution or investment firm does not present the investment research as having been produced by it;

d) the credit institution or investment firm verifies that the producer of the research is subject to requirements equivalent to those under this regulation in relation to the production of that research or has established a policy setting such requirements.

Chapter III: Operating conditions for credit institutions and investment firms

Section 1. Inducements.

Article 29. Subject matter and scope.

This section sets out the measures that credit institutions and investment firms established in Luxembourg are required to take to satisfy the requirements of Article 37-3(1) of the amended law of 5 April 1993 on the financial sector.

Article 30. Inducements.

Credit institutions and investment firms are not acting honestly, fairly and professionally in accordance with the best interests of a client if, in relation to the provision of an investment or ancillary service to the client, they pay or are paid any fee or commission, or provide or are provided with any non-monetary benefit, other than the following:

a) a fee, commission or non-monetary benefit paid or provided to or by the client or another 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 improve the quality of the relevant service to the client and must not prevent the credit institution or investment firm from complying with its 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 duties of the credit institution or investment firm to act honestly, fairly and professionally in accordance with the best interests of its clients.

For the purposes of point b) (i), credit institutions and investment firms may disclose the essential terms of the arrangements relating to the fee, commission or non-monetary benefit in summary form, provided that they undertake to disclose further details at the request of the client and provided that they honour that undertaking.

Section 2. Information to existing and potential clients.

Article 31. Subject matter and scope.

Article 32 sets out the measures that credit institutions and investment firms established in Luxembourg are required to take to satisfy the requirements of Article 37-3(2) of the amended law of 5 April 1993 on the financial sector. Articles 33 to 39 set out the measures that credit institutions and investment firms established in Luxembourg are required to take to satisfy the requirements of Article 37-3(3) of the amended law of 5 April 1993 on the financial sector.

Article 32. Conditions with which information must comply in order to be fair, clear and not misleading.

(1) Credit institutions and investment firms must ensure that all information they address to, or disseminate in such a way that it is likely to be received by their existing or potential retail clients, including marketing communications, satisfies the conditions laid down in paragraphs (2) to (8).

(2) The information referred to in paragraph (1) must satisfy the following conditions:

a) it shall include the name of the credit institution or investment firm;

b) it shall be accurate and in particular shall not emphasise any potential benefits of an investment service or financial instrument without also giving a fair and prominent indication of any relevant risks;

c) 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;

d) it shall not disguise, diminish or obscure important items, statements or warnings.

(3) 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.

(4) 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 five 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 credit institution or investment firm may decide.

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 or the third country in which the existing 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.

(5) 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), b), c), e) and f) of paragraph (4) must be satisfied;

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.

(6) 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.

(7) 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.

(8) The information shall not use the name of the Commission in such a way that would indicate or suggest endorsement or approval by the Commission of the products or services of the credit institution or investment firm.

Article 33. Information concerning client categorisation.

(1) Credit institutions and investment firms must notify new clients of their categorisation as a retail client, a professional client or an eligible counterparty in accordance with the amended law of 5 April 1993 on the financial sector. Where credit institutions and investment firms reclassify existing clients into a new category pursuant to the amended law of 5 April 1993 on the financial sector, they shall notify these clients of their new categorisation as a retail client, a professional client or an eligible counterparty in accordance with this law.

(2) Credit institutions and investment firms must 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) Credit institutions and 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 who would otherwise be classified as an eligible counterparty pursuant to Article 37-7(2) of the amended law of 5 April 1993 on the financial sector;

b) treat as a retail client a client that is considered as a professional client pursuant to Section A of Annex III of the amended law of 5 April 1993 on the financial sector.

Article 34. General requirements for information to clients.

(1) Credit institutions and investment firms must provide existing and potential retail clients with the following information in good time, before those clients are bound by any agreement for the provision of investment services or ancillary services or before the provision of those services, whichever is the earlier:

a) the terms of such an agreement;

b) the information relating to that agreement or to those investment or ancillary services that is required pursuant to Article 35.

(2) Credit institutions and investment firms, in good time before the provision of investment services or ancillary services to existing or potential retail clients, must provide the information required under Articles 35 to 38.

(3) Credit institutions and investment firms must provide professional clients with the information referred to in Article 37(6) and (7) in good time before the provision of the service concerned.

(4) Credit institutions and investment firms must provide the information referred to in paragraphs (1) to (3) in a durable medium or, provided that the conditions specified in Article 3(2) are satisfied, on a website.

(5) By way of exception to paragraphs (1) and (2), credit institutions and 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) immediately after starting to provide the service:

a) the credit institution or investment firm was unable to comply with the time limits specified in paragraphs (1) and (2) because, at the request of the client, the agreement was concluded using a means of distance communication which prevents the credit institution or investment firm from providing the information in accordance with paragraphs (1) or (2);

b) in the case of voice telephony communications, the credit institution or investment firm complies with the requirements of Article 4 of the law on distance financial services as if the existing or potential retail client were a "consumer" and the credit institution or investment firm were a "supplier" within the meaning of that law.

(6) Credit institutions and investment firms must notify a client in good time about any material change to the information provided under Articles 35 to 38 which is relevant to a service that they provide to that client. They must provide that information in a durable medium if the information to which the change relates is given in a durable medium.

(7) Credit institutions and investment firms must ensure that the information contained in a marketing communication is consistent with any information that they provide to clients in the course of carrying on investment and ancillary services.

(8) Where a marketing communication contains an offer or invitation of the following nature and specifies the manner of response or includes a response form, it must include such of the information referred to in Articles 35 to 38 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 35. Information about the credit institution or investment firm and its services for existing and potential retail clients.

(1) This Article sets out the information that credit institutions and investment firms are required to provide to existing or potential retail clients under the first indent of Article 37-3(3) of the amended law of 5 April 1993 on the financial sector.

(2) Credit institutions and investment firms must provide existing and potential retail clients with the following general information, where relevant:

a) the name and address of the credit institution or investment firm and the contact details necessary to enable clients to communicate effectively with the credit institution or investment firm;

b) the languages in which the client may communicate with the credit institution or investment firm and receive documents and other information from the credit institution or investment firm;

c) the methods of communication to be used between the credit institution or investment firm and the client including, where relevant, those for the sending and reception of orders;

d) a statement of the fact that the credit institution or investment firm is authorised and the name and address of the competent supervisory authority;

e) where the credit institution or investment firm is acting through a tied agent, a statement of this fact specifying the Member State in which that tied agent is registered;

f) the nature, frequency and timing of reports on the services to be provided that the credit institution or investment firm is required to provide to the client in accordance with Article 37-3(8) of the amended law of 5 April 1993 on the financial sector;

g) where the credit institution or 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 the credit institution or investment firm has joined;

h) a description, which may be provided in summary form, of the conflicts of interest policy maintained by the credit institution or investment firm in accordance with Article 25;

i) at any time that the client requests it, further details of that conflicts of interest policy in a durable medium or on a website provided that the conditions specified in Article 3(2) are satisfied.

(3) When credit institutions and investment firms provide the service of portfolio management, they must 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 performance of the credit institution or investment firm.

(4) Where a credit institution or investment firm proposes to provide portfolio management services to an existing or a potential retail client, it must provide the client, in addition to the information required under paragraph (2), 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) information on 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 taken into account by the manager when exercising his discretion, and any specific constraints on the manager's discretion.

Article 36. Information about financial instruments.

(1) This Article sets out the information that credit institutions and investment firms are required to provide to existing and potential clients under the second indent of Article 37-3(3) of the amended law of 5 April 1993 on the financial sector.

(2) Credit institutions and investment firms must provide existing and potential clients with a general description of the nature and risks of financial instruments, taking into account, in particular, the clients' categorisation as either a retail client or a professional client. The 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.

(3) The description of risks shall include, where relevant to the specific type of financial 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 financial 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 financial instruments, financial commitments and other additional obligations, including contingent liabilities, additional to the cost of acquiring the financial instruments;

d) any margin requirements or similar obligations applicable to financial instruments of that type.

The Commission may specify the precise terms or the contents of the description of risks required under this paragraph.

(4) If a credit institution or investment firm provides an existing or a potential retail client with information about a financial instrument that is the subject of a current offer to the public and a prospectus has been published in connection with that offer in accordance with Directive 2003/71/EC, the credit institution or investment firm must inform the client or potential client where this prospectus is made available to the public.

(5) Where the risks associated with a financial instrument composed of two or more financial instruments or services are likely to be greater than the risks associated with any of the components, the credit institution or investment firm must provide an adequate description of the components of the financial instrument and the way in which their interaction increases the risks.

(6) 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 existing or potential retail client to make a fair assessment of the guarantee.

Article 37. Information concerning the protection of client financial instruments and funds.

(1) This Article sets out the information that credit institutions and investment firms are required to provide to existing or potential clients under the first indent of Article 37-3(3) of the amended law of 5 April 1993 on the financial sector in relation to the safeguarding of client financial instruments and, for investment firms, client funds.

(2) Credit institutions and investment firms that hold financial instruments or funds belonging to retail clients shall provide those retail clients or potential retail clients with such of the information specified in paragraphs (2) to (8) as is relevant.

(3) The credit institution or investment firm must inform the existing or potential retail client:

— where the financial instruments or, for investment firms, the funds of that client may be held by a third party on behalf of the credit institution or investment firm;

— of the responsibility of the credit institution or investment firm under Luxembourg law for any acts or omissions of the third party, and

— of the consequences for the client of the insolvency of the third party.

(4) Credit institutions and investment firms must inform the existing or potential retail client that financial instruments may be held in an omnibus account with a third party, and shall provide a prominent warning of the resulting risks.

(5) The credit institution or investment firm shall inform the existing or potential retail client where it is not possible under national law for client financial instruments held with a third party to be separately identifiable from the proprietary financial instruments of that third party or of the credit institution or investment firm and shall provide a prominent warning of the resulting risks.

(6) Credit institutions and investment firms must inform the existing or potential client where accounts that contain financial instruments or funds belonging to that existing or potential client are or will be subject to the law of a third country. They must indicate that the rights of clients relating to those financial instruments or funds may differ accordingly.

(7) Credit institutions and investment firms must inform the client about the existence and the terms of any security interest or lien which they have or may have over the client's financial instruments or funds, or any right of set-off that they hold in relation to those client financial instruments or funds. Where applicable, they must also inform the client of the fact that a depository may have a security interest or lien over or right of set-off in relation to those financial instruments or funds.

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

Article 38. Information about costs and associated charges.

(1) This Article sets out the information that credit institutions and investment firms are required to provide to clients and potential clients under the fourth indent of Article 37-3(3) of the amended law of 5 April 1993 on the financial sector.

(2) Credit institutions and investment firms must provide their existing 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 credit institution or 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) where any part of the total price referred to in point a) is to be paid in or represents an amount of foreign currency, an indication of the currency involved and the applicable currency conversion rates and costs;

c) notice of the possibility that other costs, including taxes, related to transactions in connection with the financial instrument or the investment service may arise for the client that are not paid via the credit institution or investment firm or imposed by it;

d) the arrangements for payment or other performance.

For the purposes of point a), the commissions charged by the credit institution or investment firm shall be itemised separately in every case.

Article 39. Information drawn up in accordance with Directive 85/611/EEC.

(1) In respect of units in a collective investment undertaking covered by Directive 85/611/EEC, a simplified prospectus complying with Article 28 of that Directive is regarded as appropriate information for the purposes of the second indent of Article 37-3(3) of the amended law of 5 April 1993 on the financial sector.

(2) In respect of units in a collective investment undertaking covered by Directive 85/611/EEC, a simplified prospectus complying with Article 28 of that Directive is regarded as appropriate information for the purposes of the fourth indent of Article 37-3(3) of the amended law of 5 April 1993 on the financial sector with respect to the costs and associated charges related to the UCITS itself, including the exit and entry commissions.

Section 3. Assessment of suitability and appropriateness for the client

Article 40. Subject matter and scope.

This section sets out the measures that credit institutions and investment firms established in Luxembourg are required to take to satisfy the requirements of Article 37-3(4) to (7) of the amended law of 5 April 1993 on the financial sector.

Article 41. Assessment of suitability for the client.

(1) This Article sets out the measures that credit institutions and investment firms are required to take to comply with the requirements of Article 37-3(4) of the amended law of 5 April 1993 on the financial sector.

(2) Credit institutions and investment firms must obtain from clients or potential clients such information as is necessary for them to understand the essential facts about those clients 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 to those clients, satisfies the following criteria:

a) the transaction meets the investment objectives of the client in question;

b) the transaction is such that the client is able financially to bear the risks related to the investment consistent with the investment objectives of the client in question;

c) the transaction 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.

(3) Where credit institutions and investment firms provide an investment service to a professional client they shall be entitled to assume that, in relation to the products, transactions and services for which the client is classified as a professional client, this client has the experience and knowledge for the purposes of paragraph (2), point c).

Where that investment service consists in the provision of investment advice to a professional client covered by Section A of Annex III of the amended law of 5 April 1993 on the financial sector, credit institutions and investment firms shall be entitled to presume, for the purposes of paragraph (2), point b), that the client is able financially to bear the risks related to the investment consistent with the investment objectives of that client.

(4) The information regarding the financial situation of the existing or potential client must include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, his investments and real property, and his regular financial commitments.

(5) The information regarding the investment objectives of the existing or potential client must include, where relevant, information on the length of time for which the client wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.

(6) Where credit institutions and investment firms that provide the investment service of investment advice or portfolio management do not obtain the information required under Article 37-3(4) of the amended law of 5 April 1993 on the financial sector, they shall not recommend investment services or financial instruments to the existing or potential client.

Article 42. Assessment of appropriateness.

Credit institutions and investment firms, when assessing whether an investment service as referred to in Article 37-3(5) of the amended law of 5 April 1993 on the financial sector is appropriate for a client, must determine whether that client has the necessary experience and knowledge in order to understand the risks involved in relation to the product or investment service offered or demanded.

For those purposes, credit institutions and investment firms shall be entitled to assume that a professional client has the necessary experience and knowledge in order to understand the risks involved in relation to those particular investment services or transactions, or types of transaction or product, for which the client is classified as a professional client.

Article 43. Provisions common to the assessment of suitability and appropriateness for the client

(1) Information regarding an existing client's or a potential client's knowledge and experience in the investment field must include the following information, 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 the complexity and risks involved in the service in question:

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 existing or potential client.

(2) Credit institutions and investment firms shall not encourage an existing or potential client not to provide information required for the purposes of Article 37-3(4) and (5) of the amended law of 5 April 1993 on the financial sector.

(3) Credit institutions and investment firms shall be entitled to rely on the information provided by their existing and potential clients unless they are aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete.

Article 44. Provision of services in non-complex instruments.

A financial instrument which is not specified in the first indent of Article 37-3(6) of the amended law of 5 April 1993 on the financial sector shall be considered as non-complex if it satisfies the following criteria:

a) the financial instrument is not covered by Article (1), point 33) c) of the amended law of 5 April 1993 on the financial sector or by points 4 to 10 of Section B of Annex II to that law;

b) there are frequent opportunities to dispose of, redeem or otherwise realise the financial 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) the financial instrument does not involve any actual or potential liability for the client that exceeds the cost of acquiring this instrument;

d) adequately comprehensive information on the characteristics of the financial instrument 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 financial instrument.

Article 45. Retail client agreement.

For the purposes of Article 37-3(1) and (7) of the amended law of 5 April 1993 on the financial sector, credit institutions and investment firms that provide, for the first time after the date of application of this regulation, an investment service other than investment advice to a new retail client must enter into a written basic agreement, in paper or another durable medium, with the client, setting out the essential rights and obligations of the credit institution or investment firm and the client.

The rights and obligations of the parties to the agreement may be incorporated by reference to other documents or legal texts.

Section 4. Reporting to clients

Article 46. Subject matter and scope.

This section sets out the measures that credit institutions and investment firms established in Luxembourg are required to take to satisfy the requirements of Article 37-3(8) of the amended law of 5 April 1993 on the financial sector.

Article 47. Reporting obligations to clients in respect of execution of orders other than for portfolio management.

(1) Credit institutions and investment firms that have carried out an order, other than for portfolio management, on behalf of a client, must take the following action in respect of that order:

a) they must promptly provide the client, in a durable medium, with the essential information relating to the execution of that order;

b) in the case of a retail client, they 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 credit institution or investment firm from a third party, no later than the first business day following receipt of the confirmation from the third party.

Point b) shall not apply where the confirmation from the credit institution or investment firm would contain the same information as a confirmation that is to be promptly dispatched to the retail client from another person.

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

(2) In addition to the requirements under paragraph (1), credit institutions and investment firms must supply the client, on request, with information about the status of his order.

(3) In the case of orders for retail clients relating to units in a collective investment undertaking which are executed periodically, credit institutions and investment firms either take the action specified in paragraph (1), point b) 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 referred to in paragraph (1), point b) must 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) identification of the reporting credit institution or firm;

b) the name or other designation of the client;

c) the trading day;

d) the trading time;

e) the type of 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 responsibilities and details have not previously been notified to the client;

o) if the client's counterparty is the credit institution or investment firm itself or any person in the group to which the credit institution or investment firm belongs or another client of the credit institution or investment firm, the fact that this is the case unless the order was executed through a trading system that facilitates anonymous trading.

For the purposes of point k), where the order is executed in tranches, credit institutions and investment firms may supply the client with information about the price of each tranche or the average price. Where the average price is provided, credit institutions and investment firms must supply the retail client with information about the price of each tranche upon request.

(5) Credit institutions and investment firms may provide clients with the information referred to in paragraph (4) using standard codes provided that they also provide an explanation of the codes used.

Article 48. Reporting obligations to clients in respect of portfolio management.

(1) Credit institutions and investment firms that provide the service of portfolio management to clients must 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 credit institution or 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, 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 credit institution or 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 actions by the issuer giving rights in relation to financial instruments held in the client's portfolio;

h) for transactions executed during the period covered, the information referred to in Article 47(4)c) to l) where relevant, unless the client elects to receive information about executed transactions on a transaction-by-transaction basis, in which case paragraph (4) of this Article shall apply.

(3) In the case of retail clients, the periodic statement required under paragraph (1) must be provided to them once every six months, except in the following cases:

a) where the client so requests, the periodic statement must be provided to him every three months;

b) in cases where paragraph (4) applies, the periodic statement must be provided to the client at least once every 12 months;

c) where the agreement between the credit institution or investment firm and a retail client for a portfolio management service authorises a leveraged portfolio, the periodic statement must be provided to the client at least once a month.

Credit institutions and investment firms must inform their retail clients that they have the right to make the request provided for in point a).

However, the exception provided for in point b) shall not apply in the case of transactions in financial instruments covered by Article 1, point 33) c) of the amended law of 5 April 1993 on the financial sector or by any of points 4 to 10 of Section B of Annex II to that law.

(4) Where the client elects to receive information about executed transactions on a transaction-by-transaction basis, credit institutions and investment firms must 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, credit institutions and investment firms must send him a notice confirming the transaction and containing the information referred to in Article 47(4) no later than the first business day following the execution of the transaction or, if the confirmation of the execution of the transaction is received by the credit institution or investment firm from a third party, no later than the first business day following receipt of the confirmation from that third party.

The previous subparagraph shall not apply where the confirmation from the credit institution or investment firm would contain the same information as a confirmation that is to be promptly dispatched to the retail client from another person.

Article 49. Additional reporting obligations to retail clients in respect of portfolio management or contingent liability transactions.

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

Article 50. Statements of client financial instruments or client funds.

(1) Credit institutions and investment firms that hold client financial instruments or client funds must send at least once a year, to each client concerned, a statement in a durable medium of the financial instruments and funds held on the client's behalf, unless this information has been provided in a periodic statement.

The previous subparagraph shall not apply to credit institutions in respect of client cash deposits.

(2) The statement of client assets referred to in paragraph (1) shall include the following information:

a) details of all the financial instruments and funds held by the credit institution or investment firm for the client in question 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 during the period covered by the statement;

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.

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.

(3) Credit institutions and investment firms that hold client financial instruments or client funds and provide that client with the service of portfolio management may include the statement of client assets referred to in paragraph (1) in the periodic statement that they provide to that client pursuant to Article 48(1).

Section 5. Best execution

Article 51. Subject matter and scope.

This section sets out the measures that credit institutions and investment firms established in Luxembourg are required to take to satisfy the requirements of Article 37-3(1) and Article 37-5(1), (3) and (4) of the amended law of 5 April 1993 on the financial sector.

Article 52. Best execution criteria.

(1) This Article sets out the measures that credit institutions and investment firms are required to take to comply with the requirements of Article 37-3(1) and Article 37-5(1) of the amended law of 5 April 1993 on the financial sector.

(2) In order to determine the relative importance of the factors referred to in Article 37-5(1) of the amended law of 5 April 1993 on the financial sector, credit institutions and investment firms, when executing client orders, must take into account the following criteria:

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 systems to which that order can be directed.

For the purposes of this article and of Article 54, “execution system” means a regulated market, an MTF, a systematic internaliser, or a market maker or other liquidity provider or an entity that performs a function similar to any of the foregoing functions in a third country.

(3) Credit institutions and investment firms satisfy their obligation under Article 37-5(1) of the amended law of 5 April 1993 on the financial sector to take all reasonable steps to obtain the best possible result for a client to the extent that they execute 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.

(4) Where a credit institution or 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 system fees, clearing and settlement fees and any other fees paid to third parties involved in the execution of the order.

For the purposes of delivering best execution where there is more than one competing execution system to execute an order for a financial instrument, credit institutions and investment firms shall assess and compare the results for the client that would be achieved by executing the order on each of the execution systems listed in the credit institution’s or investment firm’s order execution policy that is capable of executing that order; in that assessment the credit institutions and investment firms shall take into account their own commissions and costs for executing the order on each of the eligible execution systems.

(5) Credit institutions and investment firms shall not structure or charge their commissions in such a way as to discriminate unfairly between execution systems.

Article 53. Duty of credit institutions and investment firms providing the service of portfolio management or reception and transmission of orders to act in the best interests of the client.

(1) Credit institutions and investment firms must comply with the obligation under Article 37-3(1) of the amended law of 5 April 1993 on the financial sector to act in accordance with the best interests of their clients when placing with other entities, with regard to the provision of the service of portfolio management, orders for execution that are based on their decisions to deal in financial instruments on behalf of their clients.

(2) Credit institutions and investment firms must comply with the obligation under Article 37-3(1) of the amended law of 5 April 1993 on the financial sector to act in accordance with the best interests of their clients when transmitting to other entities, with regard to the provision of the service of reception and transmission of orders, client orders for execution.

(3) In order to comply with paragraphs (1) or (2), credit institutions and investment firms must take the actions mentioned in paragraphs (4) to (6).

(4) Credit institutions and investment firms must take all reasonable steps to obtain the best possible result for their clients taking into account the factors referred to in Article 37-5(1) of the amended law of 5 April 1993 on the financial sector. The relative importance of these factors shall be determined by reference to the criteria set out in Article 52(2) and, for retail clients, to the requirement under Article 52(4).

Credit institutions and investment firms satisfy their obligations under paragraph (1) or (2) and are not required to take the steps mentioned in this paragraph to the extent that they follow specific instructions from a client when placing an order with, or transmitting an order to, another entity for execution.

(5) Credit institutions and investment firms must establish and implement a policy to enable them to comply with the obligation in paragraph (4). The policy shall identify, in respect of each class of financial instruments, the entities with which the credit institution or investment firm places the orders for execution or to which it transmits orders for execution. The entities identified must have execution arrangements that enable the credit institution or investment firm placing or transmitting orders to that entity for execution to comply with its obligations under this article.

Credit institutions and investment firms must provide appropriate information to their clients on the policy established in accordance with this paragraph.

(6) Credit institutions and investment firms must monitor on a regular basis the effectiveness of the policy that they established in accordance with paragraph (5) and, in particular, the execution quality of the entities identified in that policy and, where appropriate, correct any deficiencies.

In addition, credit institutions and investment firms shall review their policy annually. They must also carry out such a review whenever a material change occurs that affects the ability of the credit institution or investment firm to continue to obtain the best possible result for its clients.

(7) This article shall not apply when the credit institution or investment firm that provides the service of portfolio management 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 37-5 of the amended law of 5 April 1993 on the financial sector applies.

Article 54. Execution policy.

(1) This article sets out the measures that credit institutions and investment firms established in Luxembourg are required to take to comply with the requirements of Article 37-5(3) and (4) of the amended law of 5 April 1993 on the financial sector.

(2) Credit institutions and investment firms must review annually the execution policy established in accordance with Article 37-5(2) of the amended law of 5 April 1993 on the financial sector, as well as their order execution arrangements.

Such a review shall also be carried out whenever a material change occurs that affects the ability of the credit institution or investment firm to continue to obtain the best possible result for the execution of its client orders on a consistent basis using the execution systems included in its execution policy.

(3) Credit institutions and investment firms must 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 credit institution or investment firm assigns, in accordance with the criteria specified in Article 52(2), to the factors referred to in Article 37-5(1) of the amended law of 5 April 1993 on the financial sector or an account of the process by which the credit institution or investment firm determines the relative importance of those factors;

b) a list of the execution systems on which the credit institution or investment firm relies 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 credit institution or investment 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.

That information shall be provided in a durable medium or on a website provided that the conditions specified in Article 3(2) are satisfied.

Section 6. Client order handling

Article 55. Subject matter and scope.

This section sets out the measures that credit institutions and investment firms established in Luxembourg are required to take to satisfy the requirements of Article 37-3(1) and Article 37-6(1) of the amended law of 5 April 1993 on the financial sector.

Article 56. General principles.

(1) Credit institutions and investment firms must 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) A credit institution or investment firm that is responsible for overseeing or arranging the settlement of an executed order shall take all reasonable steps to ensure that the 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) Credit institutions and investment firms shall not misuse information relating to pending client orders. They must take all reasonable steps to prevent the misuse of such information by any of its relevant persons.

Article 57. Aggregation and allocation of orders.

(1) Credit institutions and investment firms shall not be permitted to carry out a client order in aggregation with another client order or a transaction for own account 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;

c) an order allocation policy must be established and effectively implemented; it must provide in sufficiently precise terms for the fair allocation of aggregated orders and transactions, including in particular how the volume and price of orders determines allocations and the treatment of partial executions.

(2) Where credit institutions and investment firms aggregate a client order with one or more other client orders and the aggregated order is partially executed, they must allocate the related trades in accordance with their order allocation policy.

Article 58. Aggregation and allocation of transactions for own account.

(1) Credit institutions and investment firms that 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 credit institutions and investment firms aggregate a client order with a transaction for own account and the aggregated order is partially executed, they must allocate the related trades to the client in priority to the credit institution or investment firm.

However, if the credit institution or investment 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.

(3) Credit institutions and investment firms, as part of their order allocation policy, must 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.

Section 7. Eligible counterparties

Article 59. Eligible counterparties.

(1) For the purposes of the application of Article 37-7(3) of the amended law of 5 April 1993 on the financial sector, eligible counterparties are undertakings that fall within a category of clients who are to be considered professional clients in accordance with points (1), (2) and (3) of Section A of Annex III of the amended law of 5 April 1993 on the financial sector, without prejudice to the categories which are explicitly mentioned in Article 37-7(2) of that law.

The Commission may also recognise as eligible counterparties, on their request, undertakings that fall within a category of clients who are to be considered professional clients in accordance with Section B of Annex III of the amended law of 5 April 1993 on the financial sector. In such cases, however, the undertaking concerned shall be recognised as an eligible counterparty only in respect of the services or transactions for which it could be treated as a professional client.

(2) Where, pursuant to the second subparagraph of paragraph (2) of Article 37-7 of the amended law of 5 April 1993 on the financial sector, an eligible counterparty requests treatment as a client whose business with a credit institution or investment firm is subject to Articles 37-3, 37-5 and 37-6 of that law, but does not expressly request treatment as a retail client, and the credit institution or investment firm agrees to that request, the credit institution or investment firm shall treat that eligible counterparty as a professional client.

However, where that eligible counterparty expressly requests treatment as a retail client, the provisions in respect of requests of non-professional treatment specified in the second, third and fourth subparagraphs of Section A of Annex III of the amended law of 5 April 1993 on the financial sector shall apply.

Section 8. Record-keeping

Article 60. Subject matter and scope.

This section sets out the measures that credit institutions and investment firms incorporated in Luxembourg, as well as the Luxembourg branches of credit institutions and investment firms having their registered office in a third country, are required to take in order to satisfy the organisational requirements defined in Article 37-1(6) of the amended law of 5 April 1993 on the financial sector.

Article 61. Retention of records.

(1) Credit institutions and investment firms must retain all the records required under Article 37-1(6) of the amended law of 5 April 1993 on the financial sector for a period of at least five years.

Additionally, credit institutions and investment firms must retain, for at least the duration of the relationship with the client, documents that set out the respective rights and obligations of the credit institution or investment firm and the client under an agreement to provide services or the terms on which the credit institution or investment firm provides services to the client.

However, the Commission may, in exceptional circumstances, require credit institutions and investment firms to retain any or all of those records for such longer period as is justified by the nature of the instrument or transaction, if that is necessary to enable the Commission to exercise its supervisory functions under the amended law of 5 April 1993 on the financial sector.

Following the termination of the authorisation of a credit institution or investment firm, the Commission may require the credit institution or investment firm concerned to retain records for the outstanding term of the five year period required under the first subparagraph.

(2) The records must be retained in a medium that allows the storage of information in a way accessible for future reference by the Commission and in such a form and manner that the following conditions are met:

a) the Commission must be able to access them readily and to reconstitute each key stage of the processing of each transaction;

b) it must be possible for any corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained.

c) it must not be possible for the records otherwise to be manipulated or altered.

(3) The Commission shall draw up and maintain a list of the minimum records credit institutions and investment firms are required to keep under the law of 13 July 2007 on markets in financial instruments.

(4) The Commission may require credit institutions and investment firms to record telephone conversations or electronic communications involving client orders in order to comply with the applicable legal provisions.

Chapter IV: Final provisions

Article 62. Date of entry into force.

This regulation shall enter into force on 1 November 2007.

Article 63. Reference in abbreviated form.

Reference may be made to this regulation using the abbreviated title “Grand-Ducal regulation relating to organisational requirements and rules of conduct in the financial sector”.

Article 64. The Minister of Treasury and Budget shall be responsible for the execution of this regulation, which will be published in the *Mémorial*.