

Pursuant to Article 209 paragraph 2, Article 237 paragraph 6, Article 252 paragraphs 1 and 2, Article 258, paragraph 6, Article 296 paragraph 2, Article 301 paragraph 5 and Article 312, paragraph 3 of the Law on Capital Market (hereinafter referred to as: the Law), the Capital Market Authority of Montenegro (hereinafter referred to as: the Authority) at its 40th session held on 18 December 2018 has issued

## **RULES**

# **ON ORGANIZATIONAL REQUIREMENTS AND RULES OF CONDUCT FOR PERFORMING INVESTMENT SERVICES AND ACTIVITIES**

**("Official Gazette of Montenegro", No. 083/18 of 25.12.2018)**

## **I GENERAL PROVISIONS**

### **Article 1**

These Rules shall govern organizational requirements the investment firm is obliged to fulfill in order to ensure proper and efficient operations and reducing risks to a minimum, while providing investment and ancillary services and performing investment activities (hereinafter referred to as: services) as a prevailing activity, and particularly:

1. general organizational requirements;
2. protection of investment firm client's assets;
3. outsourcing;
4. personal transactions;
5. measures to prevent conflict of interest;
6. keeping and maintaining business documents; and
7. supervision activities:
  - internal control activities;
  - risk management; and
  - internal audit.

These Rules shall also govern the rules of conduct of investment firm when providing services, particularly regarding the following:

1. client categorization;
2. information which the investment firm refers to clients and potential clients:
  - through marketing material;
  - prior to entry into agreements, i.e. provision of services; and
  - prior to entry into distance contracts;
3. the assessment of suitability of financial instruments, i.e. services provided to clients by the investment firm;
4. the agreement the investment firm is obliged to enter into with the client;
5. investment firm's obligations related to the execution of clients' orders; and
6. reporting clients
  - on orders executed;
  - with regard to portfolio management on the client's account;
  - on client's assets; and

- on additional inducements.

## **Application**

### **Article 2**

The provisions of Article 1 of these Rules also apply to credit institutions authorized to provide investment services and perform investment activities and ancillary services and management companies providing investment services of portfolio management and investment advisory services referred to in Article 206 paragraph 1 items 4 and 5 of the Law in the part in which they provide and/or carry out these services and activities.

The provisions referred to in Article 1 of these Rules shall apply to all persons who provide investment services and ancillary services as a prevailing activity, in accordance with Article 205 of the Law, and whose provision requires prior approval of the Authority.

In an appropriate manner, the provisions of Article 1 of these Rules shall also apply to branches of investment firms from third countries licensed by the Authority.

## **General organizational requirements**

### **Article 3**

Investment firm shall, at all times, meet the organizational requirements as prescribed by Articles 209 and 251 of the Law and these Rules, taking into account the nature, scope and complexity of operations, as well as the nature and scope of investment services and activities performed.

Investment firm shall prescribe and apply:

1. organizational chart demonstrating the method of decision-making, responsibility for these decisions and the manner of reporting;
2. to ensure that all the relevant persons are familiar with all procedures they are obliged to apply; and
3. to establish, implement and regularly update an appropriate internal control system which ensures compliance with internal decisions and procedures at all levels of investment company management.

Investment firm shall regularly keep proper records and documentation on internal organization and investment firm's operations in accordance with Articles 258 and 259 of the Law.

Investment firm may perform investment services and activities referred to in Article 206 of the Law if it meets the requirements regarding staff and organizational capacities and technical equipment prescribed by these Rules, including the possession of data processing system and if maintains continuity and regularity in the provision of these services and activities.

## **Staff capacity**

### **Article 4**

Investment firm's employees must have appropriate qualifications, knowledge and experience necessary to perform quality services provided by the investment firm.

Investment firm shall have at least two employees licensed by the Authority for performing the activities referred to Article 213 of the Law.

The management company which performs investment advisory and portfolio management activities is obliged to fulfill the requirements stipulated by this Article, other than those stipulated by the Law on Investment Funds.

## **Information systems**

### **Article 5**

The investment firm's information system must be adequate, given the scope and complexity of services provided by the firm.

The investment firm shall provide effective control and protection of information systems, which have to provide safety, integrity and confidentiality of data, and particularly:

1. protection of hardware and software from unauthorized access to data, by detailed supervision (registration procedures, analysis and control of any activity in the system), control of access through the allocation of authorizations and the user's authorization;
2. appropriate training of employees regarding the use of the system and procedures established for its protection;
3. that only authorized persons, of whom the investment firm shall keep separate records, have access to the information system and the ability to input, modify and use data;
4. that any person having access to the workstation must have a username and password and access only to functions which are necessary for performing work of that person, taking into account that a single username and password can be used by only one person;
5. that information systems include only the data that have been approved in the manner determined by the firm's bylaws;
6. that information systems include all data whose entry is authorized; and
7. that the accuracy of data entered is regularly verified.

Excerpts from information systems of the investment firm must bear the date and time of preparation and the authorized person's verification.

## **Measures to ensure continuity of operations**

### **Article 6**

Investment firm shall adopt, implement and regularly update measures which shall ensure continuity of information systems operations, and in particular:

1. protection of the system by hardware and software solutions, reliable UPS systems, backup telecommunication lines and devices; and
2. the information system reliability:
  - by simultaneous forming duplicate data on servers and providing backup servers; and
  - by making at least two copies of the data at the end of each working day, with one copy kept in the premises, and the other copy in another location.

Investment firm shall adopt, implement and regularly update measures to ensure continuity of operations in extraordinary circumstances, which include timely setting up of functions and access to information and timely continuation of services provision if, in exceptional circumstances, smooth operations are not possible.

## **Accounting procedures**

### **Article 7**

Investment firm shall prescribe, apply and regularly update accounting procedures that enable the timely submission of financial statements, which reflect a true and fair view of the financial situation of the firm and which are in accordance with the applicable accounting standards and rules.

Investment firm shall keep business books and prepare financial statements in accordance with the Law and the law governing accounting.

### **Article 8**

Investment firm shall regularly monitor and, if necessary, update and improve operations systems, internal control and policies and procedures laid down by Articles 1-8 of these rules.

## **Complaints handling**

## **Article 9**

The investment firm shall establish, implement and maintain effective and transparent policies and procedures for managing complaints for prompt handling customers', i.e. potential clients' complaints in accordance with Article 257 of the Law.

The investment firm shall keep records of complaints received and the measures taken to handle them.

Complaints management policy must provide clear, accurate and updated information on the process of handling complaints. This policy is confirmed by the managing authorities in the firm, i.e. the executive director and the Board of Directors' members.

The investment firm shall publish details of the procedure for handling complaints, which include information about complaints management policy and contact of complaints management function. Information to clients or prospective clients shall be provided at request.

The investment firm shall establish management complaints function. This function can be performed by a person referred to in Article 253, paragraph 2, item 1 of the Law. As part of the investment firm's compliance function also the complaints and data on handling complaints shall be analyzed to ensure that they identify and resolve all the risks and issues.

The investment firm shall inform clients or prospective clients about the opportunities available to them, including that they may file complaint to the ADR entity under the law governing the arbitration.

## **Remuneration policy**

### **Article 10**

The investment firm shall, in relation to Article 265 of the Law, define and implement remuneration policy within the relevant internal procedures, taking into account the interests of all firm's clients, and for the purpose of ensuring the fair treatment of clients and non-infringement of their interests.

Remuneration policy shall:

1. be in accordance with a suitable and effective risk management;
2. promote appropriate and effective risk management;
3. not encourage risk-taking that exceeds the level of acceptable risk;
4. be in accordance with the business strategy, objectives, values and long-term interests of the investment firm; and
5. include measures to prevent conflicts of interest, including the conflict of interest in determining wages of workers who perform control functions.

Investment firm shall ensure that their remuneration policy apply to all relevant persons who, directly or indirectly, affect the investment or ancillary services provided by the investment firm or to its corporate behavior, regardless of the types of clients, to the extent that wages of these persons and similar inducements may create a conflict of interest.

Investment firm's managing authorities, that is the investment firm's executive director and the Board of Directors' members shall confirm remuneration policy after consulting with the chief compliance officer CCO/compliance function.

## **II PROTECTION OF CLIENT'S ASSETS**

### **General provisions on protection of client's assets**

#### **Article 11**

In order to protect the client rights, the investment firm shall act with the financial instruments and funds belonging to clients, in accordance with Articles 296-299 of the Act and these Rules.

When the investment firm holds financial instruments which belong to clients, it shall establish and implement appropriate measures to protect the client's property rights, especially in the event of the

investment firm's insolvency and prevention of use of financial instruments for the client's own account, unless express consent of the client to do so.

When the investment firm holds client funds, it shall take appropriate measures to protect the clients' rights and, except in the case of a credit institution, prevent the use of these client's funds for own account.

The investment firm shall not enter into a title transfer financial collateral arrangement with a retail client, in order to secure or cover present or future, actual, contingent or potential obligations of clients.

The investment firm which provides investment services or performs investment activities referred to in Article 206 of the Law in relation to the financial instruments referred to in Article 3, paragraph 1, item 4 of the law, and uses a leverage shall provide negative balance protection.

Negative balance protection referred to in paragraph 5 of this Article shall ensure that the investment firm does not allow the formation of a negative balance position on a client's account and cannot claim the funds from the client based on any possible negative balance position.

Negative balance position referred to in paragraph 5 of this Article implies that a client cannot lose more funds than those on the account open with the investment firm.

The leverage referred to in paragraph 5 of this Article means the use of margin in order to increase the potential return on investment which also symmetrically increases the potential loss.

Trading using the leverage means that the client can trade in an amount greater than the funds invested and which serve solely as a margin.

The Authority shall prescribe the amount of leverage for trading in financial instruments referred to in paragraph 5 of this Article.

If, due to applicable legislation, including separate legislation relating to property or insolvency, the investment firm is unable to meet the requirements referred to in Article 296 of the Law for the purpose of protection the client rights in order to meet the requirements referred to in paragraphs 2 and 3 of this Article, it shall establish mechanisms to protect the client's assets in order to meet the requirements referred to in Article 296 of the Law.

The investment firm shall provide the Authority and other competent authorities and bankruptcy administrators with access to all information and records relating to financial instruments and clients' funds.

Clients' cash and financial instruments are not the property of the investment firm, are not included in the firm's assets, liquidation and bankruptcy estate and may not be subject to charges in connection with claims against the investment firm.

Clients' funds deposited in the account of the credit institution are not included in the property, i.e. bankruptcy or liquidation estate of that credit institution.

Investment firm shall be organizationally formed in a way to reduce to a minimum the risk of misuse of clients' assets, fraud, improper administration, improper record keeping or negligence, which may result in a loss or reduction in value of clients' assets or loss of or reduction in rights relating to clients' assets.

Investment firm's internal control must ensure adequate control of the transfer of assets, so that each instruction for the transfer of client's assets to a third party in accordance with these Rules, whenever possible, must be performed by two persons with adequate powers, one of which enters the instruction, and the other approves or confirms it. In the event where the entry of the instruction is automated, it is necessary for the same to be confirmed by the person with the corresponding authorities, i.e. to ensure the system of control mechanisms of processing the instruction in any other appropriate manner.

## **Management system in terms of clients' assets protection**

### **Article 12**

The investment firm which holds clients' assets shall appoint a person who has sufficient knowledge and expertise on issues related to the protection of clients' assets and to assign to that persons the

following powers and responsibilities with regard to respect obligations of the firm relating to the protection of clients' assets:

1. supervision of investment firm's operating compliance with the provisions of Art. 296-299 of the Law and these Rules in the field of protection of clients' assets; and
2. reporting to the investment firm-s management bodies and the Authority in relation to supervision referred to in item 1 of this paragraph.

The person who is assigned the authorities and responsibilities referred to in paragraph 1 of this Article may be dedicated only to this task or may execute the above assignments along with other tasks he/she is in charge for in the investment firm, if the investment firm may ensure efficient performance of the assignments referred to in paragraph 1 of this Article, as well as full compliance with the Law and these Rules.

Investment firm shall submit to the Authority data on the person referred to in paragraph 1 of this Article, as well as data on any subsequent changes without delay.

## **Independent auditor's report**

### **Article 13**

Investment firm shall ensure that the audit report, in addition to the obligations prescribed by the Law governing the audit, by the provisions referred to in Article 300 of the Law, includes the report on the protection of client assets, which contains a brief description of measures applied for the protection of client assets in relation to each applicable requirement referred to in Articles 296-299 of the Law and this part of the Rules on the protection of client assets, general assessment of the appropriateness of measures applied, any identified shortcomings and recommendations for removal of identified shortcomings.

## **Depositing client's financial instruments**

### **Article 14**

Investment firm may deposit financial instruments held on clients' behalf on an account or accounts opened with third parties in accordance with Article 297 paragraph 1 of the Law, provided that the firm acts with due professional care while selecting, appointing and regularly checking third parties, as well as procedures for holding and storing the above mentioned financial instruments.

Investment firm must take into account the expertise and market reputation of the institutions referred to in paragraph 1 of this Article, as well as all the conditions relating to holding of financial instruments, and which could have negative effects on client rights.

Investment firm may deposit clients' financial instruments at third country's institutions where holding and keeping of financial instruments is not regulated by the Law, in the manner prescribed by Article 297, paragraph 2 of the Law.

## **Depositing client's funds**

### **Article 15**

Investment company shall, on receiving any client funds, promptly place those funds into one or more accounts opened with any of the entities referred to in Article 298, paragraph 1 of the Law.

When the investment firm fails to deposit client's funds with the Central Bank of Montenegro, it shall act with due professional care while selecting, appointing and regularly checking a credit institution, bank and/or money market fund referred to in Article 298 paragraph 1 items 2-4 of the Law, in which the client's funds are deposited as well as the procedures for holding such funds, and to consider the need for diversification of client's funds as a part of its due professional care.

Investment company firm shall ensure that clients give their explicit consent to invest their funds in a qualifying money market fund in accordance with Article 298, paragraph 6 of the Law.

The amount of funds deposited with one or more entities referred to in Article 298 of the Law which is a part of the same group as the investment firm is, must not exceed 20% of the total client's funds held by the investment firm.

Notwithstanding paragraph 4 of this Article, the investment firm is not obliged to comply with the limits referred to in paragraph 4 of this Article if it can prove that, due to the nature, scale and complexity of the investment firm business operations, the safety of the entity holding funds and the size of the balance of clients' funds held by the investment firm, the requirement referred to in paragraph 4 of this Article is not proportional.

The investment firms shall periodically, and at least annually, review the selection of institutions referred to in Article 298, paragraph 1 of the Law and the contractual arrangements relating to the holding of clients' funds which may harm clients' interests.

## **Daily calculation**

### **Article 16**

The investment firm shall, on a daily basis, ensure that the amount of client funds kept by the institution referred to in Article 298, paragraph 1 of the Law, is at a minimum equal to the amount of client funds recorded in the investment firm's internal records. These amounts shall be adjusted through daily calculations which must be completed by the end of the next working day in relation to the date for which the calculation is done.

If, by a daily calculation, it is determined that the amount of client's monetary assets kept with the institutions referred to in Article 298, paragraph 1 of the Law is less than the amount of client's monetary assets recorded in the investment firm's internal records, and it is obvious that the identified difference is a result of incorrect or incomplete investment firm's records, investment firm shall, within the period specified in paragraph 1 of this Article, provide additional funds and deposit them in the institutions referred to in Article 298, paragraph 1 of the Law a.

The investment firm shall inform the Authority about the inability to do a daily calculation referred to in paragraph 1 of this Article or the inability to obtain funds referred to in paragraph 2 of this Article, not later than the next business day following the date of occurrence of the circumstances referred to in this paragraph.

The investment firm may hold additional (own) assets in the accounts where client funds are deposited when it judges it necessary for the protection of client assets.

## **Using client's financial instruments**

### **Article 17**

The investment firm shall not enter into Agreement on financing transactions with securities for financial instruments held for the account of the client, or otherwise use financial instruments for its own account or for the account of another client unless the conditions laid down in Article 299, paragraph 1, items 1) and 2) and Article 299, paragraphs 2 and 3 of the Law have been met.

The investment firm shall take appropriate measures to prevent unauthorized use of financial instruments for its own account or for the account of the client by:

1. entry into agreement with clients about measures the investment firm shall take in the event that the client does not have sufficient funds in the account on the settlement day, lending the appropriate financial instruments on behalf of a client or closing a position;
2. closely monitoring the ability of execution on the settlement day and establishing corrective measures if this cannot be achieved; and
3. carefully monitoring and reacting quickly, demanding undelivered financial instruments outstanding at the settlement day and thereafter.

Investment firm shall take special measures for all clients in order to ensure that the person who borrows client's financial instruments provides the adequate collateral and that the firm follows the

continuing appropriateness of such collateral and takes necessary measures to maintain a balance with the value of client's instruments.

### **III OUTSOURCING**

#### **Article 18**

The investment firm may enter into the Agreement on provision of investment or ancillary services with other investment firm on behalf of a client if it meets the requirements stipulated by Articles 237, 293 and 294 of the Law, and Article 18-21 of these Rules.

The investment firm which outsources administrative tasks necessary for the smooth and orderly operation of the firm shall apply the provisions of Articles 293 and 294 of the Law and the provisions of these Rules which stipulate outsourcing.

#### **Article 19**

In the case of outsourcing of tasks to another investment firm, the investment firm shall:

1. ensure that the service provider has the knowledge, capacity, resources and necessary approvals for the professional performance of outsourced tasks;
2. enter into a written agreement with the service provider governing the mutual rights and obligations, in particular the obligations of the service provider to:
  - keep confidential information relating to the investment firm and its clients;
  - adequately supervise the execution of outsourced tasks;
  - adequately manage risks associated with the outsourced tasks;
  - keep records of its personal transactions and shall, at the request of the investment firm, deliver the same;
  - promptly inform the investment firm of any circumstances which may affect the efficient performance of outsourced tasks in accordance with the relevant regulations; and
  - co-operate fully with the auditors and the Authority or other competent authorities in connection with the outsourced tasks;
3. establish methods for assessing the service provider effectiveness in connection with outsourced tasks and take appropriate measures if it estimates that the service provider is unable to provide the outsourced tasks efficiently and in accordance with the relevant regulations;
4. together with the service provider, when necessary and considering the kind of work outsourced to the service provider, manufacture, apply and regularly update a backup plan for data retrieval in case of main system breakdown as well as periodic testing;
5. provide that the termination of the outsourcing agreement does not negatively affect the continuity and quality of services the investment firm provides to its clients; and
6. also take other measures in order to avoid other risks and ensure that outsourcing of tasks does not endanger significantly the quality of internal control and the supervision over the firm's operations in accordance with the relevant regulations.

When the investment firm outsources tasks to another person, it shall remain fully responsible for the observance of the relevant regulations.

#### **Article 20**

The investment firm shall ensure that outsourcing of tasks to another investment firm shall not result in:

1. change in conditions according to which the investment firm was licensed;
2. transfer of the head of the investment firm's responsibilities to other persons;
3. change in relationships and obligations of the investment firm towards clients;
4. creation of unnecessary additional business risks;
5. disruption of internal control quality; and



6. disruption of the possibility of implementing control over the operations of the firm in accordance with the relevant regulations.

### **Article 21**

The investment firm shall notify the Authority of outsourcing within seven days of the entry into the agreement.

The investment firm shall, upon request and within the deadline set by the Authority, submit all documents and information related to outsourcing.

## **IV PERSONAL TRANSACTIONS**

### **Article 22**

The investment firm shall establish adequate policies and procedures which ensure that the operations of the firm, its managers and employees is in accordance with the provisions of Articles 291 and 292 of the Law, which stipulate the prohibition to the relevant person referred to in Article 208 of the Law to enter into personal transactions.

The investment firm shall prohibit the relevant person to perform the following activities:

1. entry into personal transactions if:
  - a) it includes misuse or disclosure of inside information within the meaning of Article 128 of the Law or other confidential information relating to clients or transactions with the client or for client's account; and
  - b) the conclusion of such transactions is in conflict or is likely to come into conflict with the investment firm obligations;
2. to advise or induce another person to enter into transactions in financial instruments, in a manner which exceeds the relevant person's authority or is not stipulated by the contract for the provision of services; and
3. to disclose to another person any information or opinions, except within the framework of ordinary authorities or within the framework of the contract for the provision of services if the relevant person knows, or should know, that such actions would affect the other person to:
  - a) enter into transactions in financial instruments; and
  - b) advise or induce another person to enter into the above transaction.

### **Article 23**

The investment firm shall adopt, implement and regularly update the appropriate measures to prevent taking of prohibited activities, which are determined by these Rules and Article 292 of the Law, by the person who:

1. participates in activities that may lead to conflict of interest or
2. based on the activities performed on behalf of or for the account of the investment firm, has access to insider or other confidential information relating to clients or transactions with the client or for the client's account.

Investment firm shall ensure the following:

1. that all investment firm's relevant persons are familiar with the prohibited activities, and measures of the firm in relation to personal transactions and adequate notifications;
2. to be immediately informed about all personal transactions;
3. when outsourcing tasks to another person, the service provider shall keep records of personal transactions of service provider's relevant persons and, upon the request, shall immediately submit information of personal transactions to the investment firm; and
4. to keep records of all personal transactions and, which shall include all approvals or prohibitions in connection with personal transactions.

The investment firm shall adopt, implement and regularly update the appropriate measures to prevent entry into personal transactions in accordance with Article 292 of the Law.

## **V CONFLICT OF INTERESTS**

### **Article 24**

The investment firm shall organize its operations so to reduce to the minimum possible extent conflicts of interest whose existence may harm the client's interests, and which may occur in the provision of services between:

1. interests of the investment firm, the relevant person and any persons closely associated with them, on the one hand, and the interests of firm's client, on the other hand; and
2. interests of the investment firm's clients with each other.

Conflicts of interest referred to in paragraph 1 of this Article also include conflicts of interest arising from the structure of the investment firm remuneration policy and those arising from the circumstances in which the investment firm receives additional remunerations from a third party.

### **Article 25**

Investment firm shall, when determining conflicts of interest that may harm the interests of customers, assess whether the firm, due to the provision of services or for other reasons, relevant persons or persons closely associated with them:

1. may make a financial gain or avoid a financial loss at client's expense;
2. have an interest or benefit from the results of services provided to clients or transactions executed on behalf of clients, which are different from clients' interests;
3. have a financial or other motive which corresponds the interests of another client or group of clients at client's expense;
4. perform the same activity as the client; and
5. receive or will receive funds, goods or services, or other benefits associated with the service provided, in addition to the usual commission or fee for such a service from a person other than the client.

## **Conflict of interest management policy**

### **Article 26**

The investment firm shall adopt, implement and enforce an effective written policy for managing conflicts of interest in accordance with the applicable terms referred to in Articles 301 to 305 of the Law.

The investment firm shall assess and regularly review, at least annually, conflict of interest management policy established in accordance with Articles 302, 303 and 305 of the Law and to take appropriate measures in order to eliminate possible defects.

The investment firm shall, in accordance with Article 304 of the Law, maintain and regularly update the register of investment or ancillary services or investment activities provided or performed in its name, in which the conflict of interest which could lead or led to the risk of damage to client's interests arose.

## **Managing conflicts of interest when making investment research**

### **Article 27**

The investment firm which produces or prepares investment research for investment firm or the public's clients in accordance with Article 306 paragraphs 1 to 3 of the Law, shall implement measures to manage conflicts of interest referred to in Article 303, paragraph 3 of the Law, in relation to the financial analysts involved in the preparation of investment research and other relevant persons who may come into conflict of interests with persons to whom investment research is distributed.

## **VI KEEPING AND MAINTAINING BUSINESS RECORDS**

### **Keeping business records**

#### **Article 28**

The investment firm shall, in accordance with Article 258 of the Law, keep electronic records and business records of all the services, activities and transactions undertaken, under the terms, in the manner and to the extent prescribed by Articles 258-260 of the Law, which allows the Authority to carry out supervisory powers and take appropriate measures prescribed by the Law.

Records and business documents referred to in paragraph 1 of this Article shall be kept and composed in such a way sufficient to the Authority to assess compliance of the investment firm with all the obligations it has towards its clients or potential clients under the regulations referred to in paragraph 1 of this Article and whether it conforms to the provisions relating to preservation of the market integrity.

The records referred to in paragraph 1 of this Article shall also include the contract documents between the investment firm and the client with established rights and obligations of the parties and the terms under which the investment firm provides services to the client.

Rights and obligations of the parties may be an integral part of other documents or regulations.

The provisions of this Article and Articles 29 to 32 of these Rules shall apply *mutatis mutandis* in respect of the transactions made by the subsidiary of the investment firm with a registered office in a third country.

### **Updating and maintaining business records**

#### **Article 29**

The investment firm shall organize its operations and promptly draw up and keep business records and other administrative or business records in a manner which allows that, at any time, work undertaken for its own account or for the account of the client can be reconstructed.

The investment firm shall keep documentation of its business with an individual client separate from the documentation of its business with other clients and documentation of its own business.

The investment firm shall protect entire business documentation from unauthorized access and possible losses in records keeping it in a manner that ensures duration of records.

Investment firm shall keep all the documentation and information about all transactions with financial instruments performed either for its own account or for the account of the client for the period of at least five years after the year in which a particular business was concluded, i.e. five years after the end of the financial year in which the contractual relationship with the client was terminated.

In accordance with the regulations governing the protection of personal data, the investment firm shall provide data storing within the time limits determined according to the paragraph 4 of this Article.

The investment firm may exceptionally, when it is necessary to ensure the rights and to protect the interests of stakeholders or the rights and interests of investment firms or third parties, extend the storage periods referred to in paragraph 4 of this Article.

### **Specific provisions on telephone conversations and electronic communication**

#### **Article 30**

The records referred to in Article 28 of these Rules and Article 258 of the Law include, among other things, recordings of telephone communication and electronic communication related to:

1. transactions concluded by dealing on own account; and
2. the provision of services relating to handling of client orders, i.e. receipt, transmission and execution of client orders.

The obligation of keeping records referred to in paragraph 1 of this Article shall also apply to telephone and electronic communication that has been established in order to result in a transaction

referred to in paragraph 1, item 1 or service referred to in paragraph 1, item 2 of this Article, even if it does not come to the conclusion of these transactions or to provision of these services.

The investment firm shall take all reasonable steps to record the communication referred to in paragraphs 1 and 2 of this Article, which is kept, sent or received by the equipment entrusted by the investment company firm to an employee or another relevant person or whose use by the employee of other relevant person the investment firm accepted or allowed.

### **Reporting obligation of the clients as regards telephone communication**

#### **Article 31**

The investment firm shall inform new and existing customers that the telephone communication or conversation between the investment firm and its clients which has led or may lead to transaction is recorded.

The notification referred to in paragraph 1 of this Article shall be provided only once to the client before providing investment services to a new or existing client.

The investment firm shall not provide via telephone investment services and activities for the client who is not informed in advance about recording of mutual communication, if such investment services and activities relate to the receipt, transmission and execution of client orders.

The provisions of this Article shall not prevent the client to place orders via another durable medium such as email, fax, e-mail or client order documents made at the meeting.

The content of the relevant conversation from the meeting with the client in terms of paragraph 4 of this Article may be recorded so as to make written records or notes of the same. Such orders shall be considered equivalent to those which were received by the phone.

### **Recording telephone conversations and electronic communications policy**

#### **Article 32**

The investment firm shall adopt, implement and maintain an effective written policy on the recording of the communication referred to in Articles 30 and 31 of these Rules, in accordance with the requirements referred to in Article 258, paragraph 5 of the Law which stipulates that it is the investment firm shall store records it keeps in accordance with the provisions of this Law on a durable medium which ensures:

- 1) fast access to information to the CMA and reconstruction of key phases of procession of each transaction;
- 2) a simple determination of corrections or other modifications, as well as the contents of the records prior to corrections or modifications;
- 3) prevention of manipulation or change in data from the records in other manner.

The investment firm shall take all reasonable steps to prevent an employee or a contractor to realize, send or receive relevant telephone conversations and electronic communications which investment firm cannot record or copy by the means of private-owned equipment.

The records kept in accordance with Articles 28 to 32 of these Rules and in accordance with Articles 258 to 260 of the law shall be provided to clients involved at the request and stored for the period of five years following the date the record was made.

The Authority may, in accordance with Article 259, paragraphs 3, 4 and 5 of the law, impose the investment firm a period longer than the period specified in paragraph 3 of this Article, for a period of seven years following the date the record was made.

## **VII INTERNAL CONTROL, RISK MANAGEMENT AND INTERNAL AUDIT**

#### **Article 33**

When defining internal scheduling of functions, the investment firm shall, in accordance with Article 256 of the Law, define the senior managers' responsibilities.

The investment firm shall, in accordance with Article 256, paragraph 2 of the Law, provide at least annually submission of senior managers' written statements as regards the matters referred to in Articles 253, 254 and 255 of the Law.

The investment firm shall, in accordance with Article 253 of the Law, prescribe and apply as well as regularly update, evaluate and monitor the appropriate policies and procedures to ensure that the investment firm and the relevant persons of the firm act in accordance with their obligations stipulated by the Law.

The Authority may exempt the investment firm from the obligation to fulfill the conditions stipulated by Article 253, paragraph 2, items 3 and 4 of the law if the investment firm demonstrates that:

1. these obligations are not necessary, given the nature, scope and complexity of firm's operations; and
2. the function dealing with internal control may, after such a decision of the Authority, ensure compliance with the obligations stipulated in Article 253 of the Law.

The investment firm shall previously inform the Authority about the intended use of exemptions and submit evidence on the exemption from the obligation of meeting the requirements referred to in paragraph 4 of this Article.

The investment firm shall, in accordance with Article 254 of the Law, establish, implement and regularly update the risk management system in proportion to the nature, scope and complexity of firm's operations.

Systems referred to in paragraph 5 of this Article shall include:

1. strategies, policies, procedures and risk management measures;
2. organizational scheme containing defined powers and responsibilities for risk management;
3. risk management process; and
4. efficient internal control system.

The investment firm shall monitor and assess the suitability, comprehensiveness and effectiveness of the adopted strategies, policies and risk management processes, as well as the adequacy and effectiveness of the measures envisaged in order to eliminate possible shortcomings in the strategies, policies and risk management processes, including the omission of relevant persons.

At the investment firm's request, the Authority may release the investment firm from the obligation of having an independent risk management function, so that risk management is performed in addition to other tasks, if the investment firm demonstrates that the establishment of an independent risk management function is not necessary, given the nature, scope and complexity of firm's business operations.

The investment firm, where applicable and given the nature, scope and complexity of operations and the nature and scope of investment services and activities performed during its operations, shall establish and maintain an internal audit function which is separate and independent from other functions and activities of the investment firm.

An internal audit function's competences are stipulated by Article 255 of the Law.

The investment firm may delegate task and activities referred to in Article 255 of the Law to another person that does not simultaneously perform the external audit of the firm's financial statements.

## **VIII ORGANIZATIONAL REQUIREMENTS FOR INVESTMENT PRODUCTS MANAGEMENT**

### **Specific organizational requirements for investment products developers**

#### **Article 34**

The investment firm which, in accordance with Article 252, paragraphs 1 and 2 of the Law, manufactures, develops, issues or designs investment product intended for sale to clients (manufacturer) shall establish, apply and periodically review procedures by which, within the firm,

each investment product, as well as significant changes to an existing investment product are approved, before the product is placed on the market or distributed to clients (product management).

The manufacturer shall ensure that the process of product management is in accordance with the provisions of the Law and these Rules and that:

1. defines the target market for end customers within the relevant client rating category for each product in more detail;
2. contains an assessment of all risks relevant to the target market; and
3. ensures that the planned distribution strategy is in accordance with the defined target market.

The manufacturer shall provide all distributors with access to all the necessary information about the product and product management procedure, including information about the target market, in order to ensure that distribution of products is in accordance with the needs, characteristics and objectives of the established target market.

Information referred to in paragraph 3 of this Article shall contain information about the appropriate channels of product distribution, product approval procedure and evaluation of the target market, presented in a way which allows the distributor to properly understand, recommend or sell the product.

### **Manufacturer's obligations related to product management**

#### **Article 35**

The manufacturer shall, in relation to product management, abide by the requirements of these Rules to the extent appropriate and proportionate and, if applicable, given the nature of investment product, investment service and target market for each product.

Manufacturer's management shall implement effective control over the product management process.

The manufacturer shall ensure that the product management process complies with the terms of the relevant regulations pertaining to the conflicts of interest management, including remunerations to relevant persons involved.

The manufacturer shall ensure that investment product's design, including its functions, has no negative effect on end clients, and does not lead to compromising the integrity of the market in a way to enable the firm to minimize or transfer its own risks or exposure to related property of the product if the investment firm holds that related property for its own account.

The manufacturer that, in the creation, development, issuance or product design, cooperates with a person that, under the provisions of Law has no authorization to perform investment services or activities referred to in Article 206, paragraph 1 of the Law or with a person from a third country, shall enter into a written agreement regulating mutual rights and obligations.

### **Other obligations of the manufacturer**

#### **Article 36**

The manufacturer is required to analyze potential conflicts of interest for each investment product, and in particular to consider whether it may negatively affect the end client if the client:

1. takes exposure opposite of exposure previously held by the firm itself or
2. takes exposure opposite of exposure which the firm intends to keep after the sale of the product.

The manufacturer shall, before making a decision on placement of product, consider whether the product will be a threat to normal functioning and stability of financial markets.

The manufacturer shall ensure that the relevant person involved in the production process has the expertise necessary to understand the characteristics and risks of the investment product.

### **Obligations of the compliance function in the product management process**

#### **Article 37**

The manufacturer shall, in accordance with Article 253 of the Law, include the compliance function in the product management process, in a way to follow the product development process and regularly check product management processes in order to identify the risk of failure to comply with Articles 34 to 40 of these Rules.

Compliance function reports must include information about investment products, including data on the distribution strategy.

The investment firm shall submit to the Authority the report referred to in paragraph 2 of this Article in the manner and within the period prescribed in Article 256, paragraph 2 of the Law.

## **Identifying the target market and scenario analysis**

### **Article 38**

During the product management process, the manufacturer shall identify the potential target market for each product.

If the production process involves more investment firms, or if the manufacturer is also the distributor within the meaning of Article 41 of these rules only one target market shall be identified.

The target market must be identified in sufficient detail, indicating the types of clients with whose needs, characteristics and objectives the product complies, as well as all groups of clients with whose needs, characteristics and objectives the product does not comply.

If a distributor differs from the manufacturer, the manufacturer shall identify the needs and characteristics of clients with which the product complies based on theoretical knowledge and previous experience with the same or similar product, financial markets and needs, characteristics and objectives of potential end clients.

The manufacturer shall identify the needs, characteristics and objectives of the target market, among other things, based on tests whether the following conditions are met:

1. profit - risk profile of the product must be consistent with the target market; and
2. product design is led by characteristics useful for the client, and in particular it must not be based on a business model that relies on the poor results of the client in order to be profitable.

Identifying the target market should also include the remuneration structure proposed for the product, among other things, on the basis of testing the following circumstances:

1. compliance of costs and remunerations with the needs, objectives and characteristics of the target market;
2. whether the expected profit is brought into question due to remunerations (for example, If the amounts of costs and benefits are equal or exceed, or almost entirely offset the expected tax benefits associated with the product); and
3. adequate transparency of the remunerations structure for the product in relation to the target market (for example, are there any hidden remunerations).

The manufacturer shall carry out product scenario analysis, where it is required to assess the risk of possible poor results for the end client and the circumstances in which such results may occur.

Some of the adverse circumstances referred to in paragraph 6 of this Article for which the risk should be assessed are as follows:

1. deterioration in the market environment;
2. the manufacturer or a third party involved in making or functioning of an investment product faces financial problems or some other counterparty risk is materialized
3. product becomes commercially unsustainable; or
4. demand for a product exceeds the predictions, thus burdening the resources of the firm or the related product market.

## **Product reviewing**

### **Article 39**

The manufacturer shall regularly review the product, taking into account all the events that may significantly affect the potential risk of the identified target market.

Regular review referred to in paragraph 1 of this Article shall also mandatory include consideration of the circumstances and whether the product continues to comply with the needs, characteristics and objectives of the target market, whether it is distributed in the target market and comes to the client with whose needs, characteristics and objectives it does not comply.

The manufacturer shall examine the product and before any further issuance or new placement if has knowledge of any event that could significantly affect the potential investor's risk, and shall, at regular intervals, monitor whether the product works as intended.

When deciding on the frequency of product reviewing, the manufacturer shall take into account relevant factors, including factors related to the complexity or the innovative nature of the applied investment strategies.

## **Manufacturer's measures in case of key events realization**

### **Article 40**

The manufacturer shall identify key events that may affect the potential risk or expected benefit from investment products, such as:

1. exceeding the threshold which affects the product benefit profile or
2. the solvency of the issuer whose financial instruments or guarantees may affect the product results.

If the key event referred to in paragraph 1 of this Article is implemented, the manufacturer shall take the following measures and steps to:

1. provide relevant information to clients or distributors (if does not offer or sell investment product directly to clients) about the event and its consequences for the product;
2. make changes in the product approval process;
3. stop the further issue of the product;
4. modify the product in order to avoid unfair contractual terms;
5. review the adequacy of sales channels through which the product is sold if it knows that it is not sold in a previously agreed manner;
6. contact the distributor to discuss the changes to the distribution process;
7. terminate the cooperation with the distributor;
8. notify the Authority; and
9. take other measures the manufacturer deems appropriate in relation to the key event.

## **Specific organizational requirements for the distribution of investment products**

### **Article 41**

The investment firm that offers on place on the market investment products (distributor) shall regularly periodically review these products, regardless of whether it is a primary or secondary investment product market.

The review referred to in paragraph 1 of this Article shall include the review of how much the product is still in accordance with the needs of the target market, and whether the distribution strategy still remains in line with the identified target market.

The review referred to in paragraph 1 of this Article shall take into account all events that could significantly affect the potential risks for the target market.

When the distributor distributes or advising clients in relation to products it does not manufacture it shall establish appropriate mechanisms for obtaining information referred to in Article 34, paragraph 4 of these Rules from the manufacturer or persons referred to in Article 42, paragraph 2 of these Rules.



The distributor shall be organized in such a way that employees responsible for distribution or counseling in relation to a particular product understand all the key characteristics of the product and the target market for each product.

### **Managing products on distributor's behalf**

#### **Article 42**

The distributor shall comply with the requirements for distribution of investment products to the extent appropriate and proportionate and, if applicable, given the nature of the investment product, investment service and target market for each product.

The distributor which offers investment products of the person not licensed to perform investment services and activities referred to in Article 206 paragraph 1 of the Law shall comply with all applicable provisions of these Rules.

Manufacturer's management must have effective control over the product management process in order to determine the range of investment products offered or recommended and the services provided on the relevant target market.

The distributor shall establish appropriate product management mechanisms to ensure that the products and services it intends to offer or recommend comply with the needs, characteristics and objectives of the identified target market and that planned distribution strategy is aligned with a specific target market.

The distributor shall, when deciding on the range of products and services offered or recommended and the target market, apply all actions and measures in order to ensure compliance with the provisions of the Law, including requirements relating to disclosure, assessment of the appropriateness or suitability, conflict of interest management and in particular when it intends to offer or recommend new products or to introduce changes in the provision of services.

### **Identifying the target market for the distributor**

#### **Article 43**

The distributor shall identify the target market for each investment product, regardless of whether the target market was identified by the manufacturer or the person referred to in Article 42, paragraph 2 of these Rules.

As part of this process the distributor shall also identify all groups of clients with whose needs, characteristics and objectives the product or service is not aligned.

The distributor shall properly identify and assess the circumstances and clients' needs to which it intends to focus in order to ensure that clients' interests are not called into question because of commercial or financing pressures.

When determining the target market and distribution strategy, the distributor shall use information provided by the manufacturer in accordance with Article 34, paragraph 3 of these Rules and information about its clients.

The distributor shall take all reasonable measures to ensure obtaining appropriate and reliable data from persons referred to in Article 42, paragraph 2 of these Rules ensuring the distribution of these products in accordance with the characteristics, objectives and needs of the target market.

If data referred to in paragraph 4 of this Article is not available, the distributor shall take all reasonable measures to obtain data from the manufacturer or its agent.

In terms of paragraphs 3 and 4 of this Article acceptable publicly available data shall be considered data that is clear, reliable and prepared in order to meet regulatory requirements.

### **Reviewing products and product management process for the distributors**

#### **Article 44**

The distributor shall regularly review and update the product management process to ensure the stability and adequacy of this process and, if necessary, take appropriate measures.

The distributor shall regularly review investment products offered or recommended and the services provided on a regular basis, taking into account all the events that may significantly affect the potential risk of the identified target market.

In the procedure referred to in paragraph 2 of this Article, it shall be assessed whether the product or service is still aligned with the needs, characteristics and objectives of the particular target market and whether the planned distribution strategy is still adequate.

The distributor shall review the target market or product management process if it has knowledge that the targeted market has been incorrectly identified for a product or service, i.e. that product or service is no longer appropriate in the circumstances at the identified target market (for example, if the product has become insolvent or characterized by great volatility due to changes in the market).

## **Compliance function obligations in the product management process**

### **Article 45**

The manufacturer shall, in accordance with Article 253 of the Law, include the compliance function in the product management process, in a way to follow the product development process and regularly check product management processes in order to identify the risk of failure to comply with Articles 34 to 46 of these Rules.

Compliance function reports must include information about investment products offered or recommended by the distributor as well as information about the services it provides.

The investment firm shall submit to the Authority the report referred to in paragraph 2 of this Article in the manner and within the period prescribed in Article 256, Paragraph 2 of the Law.

## **Other obligations of the distributor**

### **Article 46**

The distributor shall ensure that relevant persons have necessary expertise in order to understand the characteristics and risks of the products they intend to offer or recommend, as well as the needs, characteristics and objectives of a particular target market.

The distributor shall submit to the manufacturer sales data and, where appropriate, information on the reports referred to in Article 28, paragraph 3 of these Rules in order to fulfill its obligations referred to in Articles 41 to 46 of these Rules.

If different organizations cooperate in the distribution of products or services, the ultimate responsibility for fulfilling the obligations laid down for the distributor lies with the distributor having direct relationship with the client. Other distributors in the supply chain shall:

1. ensure that relevant information about the product are forwarded from the producer to the end distributor in the supply chain;
2. allow the manufacturer, if he so requests, obtaining information about the sale of products to meet its obligations in the field of product management; and
3. apply, if applicable, the obligations related to the manufacturer in the field of product management in relation to services provided.

## **IX INVESTMENT FIRM'S RULES OF CONDUCT**

### **Article 47**

When providing investment services to clients, the investment firm shall, in accordance with Article 263 of the Law, put their clients' interests ahead of its own interests and operate fairly, honestly and professionally, in accordance with the best interests of clients respecting the principles established in the provisions of the Law.

When contracting services by using a means of distance communication, as well as in relation to the conditions and manner of exercising and protecting the rights of clients of distance contracts, the investment firm shall act in accordance with the law governing protection of users of financial services at distance contracting.

## **Client categorization**

### **Article 48**

The investment firm shall, before providing services, categorize the client under the category of a retail client, a professional client or an eligible counterparty.

The investment firm shall perform categorization referred to in paragraph 1 of this Article in accordance with internal rules and procedures of the firm, and on the basis of information available to him in connection with the client's:

1. investment objectives;
2. knowledge and experience; and
3. financial position.

When it determines that a client does not belong to the established initial category of clients, the investment firm shall take appropriate measures to change client category.

Professional clients shall timely inform investment firms whose services they use of all the facts that might affect the change in client category.

The investment firm shall, when addressing the client for the conclusion of distance contract and the use of services, determine whether it is a category of distant contracts client.

The investment firm shall, when ensuring investment in financial instruments, perform customer identification in accordance with the law governing prevention of money laundering and terrorist financing, in order to prevent illegal actions on the capital market.

## **Eligible counterparty**

### **Article 49**

Eligible counterparty in terms of Article 48 paragraph 1 of these Rules is the person for whose account or with which the investment firm executes orders and/or receives and transmits orders and/or trades for its own account and/or provides to it ancillary services directly related to those transactions.

Each of the following is a per se eligible counterparty:

1. an investment firm;
2. a credit institution;
3. an insurance company;
4. a collective investment scheme (UCITS) or its management company;
5. a voluntary pension fund or its management company;
6. other financial institution subject to the obligation to request the license according to special regulations or regulated under EU legislation;
7. a national government or its corresponding office, including a public body that deals with public debt at a national level and the central bank; and
8. a supranational organization.

When performing services and activities referred to in paragraph 1 of this Article, the investment firm is not obliged to comply with rules on conduct referred to in the Law in relation to those services and activities, except for Articles 309, 317, 269, 273 and Articles included in part VI (Articles 150, 151 and 156) of the Law.

The investment firm shall, in business relationship with an eligible counterparty, act professionally and in accordance with the rules of the professional conduct and taking into account the nature and

subject matter of eligible counterparty operations, and to have a clear, fair and not misleading communication with it.

## **Higher level of protection**

### **Article 50**

An eligible counterparty referred to in Article 49, paragraph 2 of these Rules may require from the investment firm to be treated as a professional or a retail client.

The investment firm may, when executing transaction with a prospective counterparty established in a third country, recognize the status of an eligible counterparty to a prospective counterparty if it is prescribed by the law or third country measures.

In the case referred to in paragraph 2 of this Article, the investment firm shall request a prospective counterparty's confirmation that it agrees to be treated as an eligible counterparty.

The confirmation referred to in paragraph 3 of this Article may be either in the form of a general agreement or in respect of each individual transaction.

The investment firm may recognize the status of an eligible counterparty to prospective counterparties from third countries which are equivalent to persons referred to in Article 49, paragraph 2 of these Rules.

### **Article 51**

The investment firm shall, in accordance with Article 308 of the Law, notify each client via durable medium, about the following:

1. the category of the client to which it is classified;
2. the level of protection of interests which will be provided to the client; and
3. the possibility to request categorization to a different client category, as well as any changes in the level of protection resulting from such a decision.

## **Request of a professional client to change client category**

### **Article 52**

A professional client that deems itself unable to properly assess, i.e. manages the risks that characterize a particular investment may in writing request the investment firm a higher level of protection of its interests in respect of all or individual service, type of transaction, i.e. financial instrument.

In the case of the request referred to in paragraph 1 of this Article, the investment firm and the client shall enter into agreement, or annex to the agreement which will specify services, i.e. transactions, i.e. financial instruments with respect to which the client does not want to be treated as a professional client.

## **Request for categorization into the category of professional clients**

### **Article 53**

A retail client who wants to be treated as a professional client may in writing request the investment firm a lower level of protection of its interests in respect of all or individual service, type of transaction, i.e. financial instrument.

In the case of the request referred to in paragraph 1 of this Article:

1. the investment firm shall:
  - unequivocally give the client a clear written warning of the protections and investor compensation rights the client may lose;
  - assess whether the client has sufficient knowledge and experience for making his own independent investment decisions and understands the risks associated with investments;and

- enter into agreement, i.e. annex to the agreement with the client which will specify services, i.e. transactions, i.e. financial instruments with respect to which the client wants to be treated as a professional client or refuse to recognize the client the status of a professional client;

2. the client must state in writing, in a separate document from the contract, that it is aware of the consequences of losing such protections.

The assessment referred to in paragraph 2, item 1), indent 2 of this Article presumes that the client meets at least two of the following conditions:

1. the client has carried out transactions, in significant size, on the relevant market at an average frequency of ten per quarter over the previous four quarters; or;
2. the size of the client's financial instrument portfolio defined as including cash deposits and financial instruments, exceeds EUR 500 000; and
3. the client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the provision of services envisaged.

## **X INFORMATION TO BE SUBMITTED TO CLIENTS AND PROSPECTIVE CLIENTS**

### **Information which must be provided before the entry into agreement, i.e. provision of services**

#### **Article 54**

The investment firm shall provide information referred to in Articles 311-314 of the Law to clients and prospective clients as required by Article 309 of the Law.

The investment firm shall provide clients and prospective clients the access to the business rules, tariff rulebook and amendments thereto:

1. in business premises where works with clients or
2. by publication on the firm's website.

The investment firm shall provide clients the access to amendments to documents referred to in paragraph 1 of this Article within the period of seven days prior to the implementation of these amendments, in a manner stipulated in paragraph 2 of this Article.

### **Information provided to clients**

#### **Article 55**

The investment firm shall, in accordance with Article 309 of the Law, prior to entry into the agreement, i.e. provision of services to the client or a prospective client, provide information about:

1. the investment firm and the services provided by the firm referred to in Article 311 of the Law;
2. financial instruments as well as the proper guidance, i.e. warnings regarding the risk of investing into the same in accordance with Article 312 of the Law;
3. order execution venues; and
4. costs and charges referred to in Article 314 of the Law.

In the case of distance contracts, the investment firm shall, in addition to information referred to in paragraph 1 of this Article, provide the client or potential client information about:

1. distance contract; and
2. the manner of solving disputes.

Information referred to in this Article must be clear, easy to understand, and in the case of distance communication also adequate to means of communication used, and the investment firm shall clearly indicate its business purpose.

In order to enter into distance contracts on behalf and for the account of a legally incapacitated person and when submitting information referred to in this Article, the investment firm shall act with due care necessary to adequately protect the rights and interests of these persons.

The investment firm shall timely inform the client and prospective client of any material changes in information referred to in this Article.

The investment firm shall deliver information referred to in this Article and the proposed text of a distance contract, to the client or prospective client in due time before conclusion of the contract, in writing, either on paper or in another durable medium available to the client.

If it is about a distance contract, information about the investment firm and its services shall also include:

1. business name and address of a registered office, i.e. business name and address of the subsidiary, or any other person who takes certain actions related to distance contracts on the basis of business relationships established with the investment firm (if such a person exists), his relationship with the service provider and the capacity in which he acts towards the user, as well as any address of that other person where the client, i.e. prospective client may discuss issues with respect to distance contract, including his e-mail address;
2. a description of the main characteristics of investment service;
3. a warning that the financial service is associated with the instruments involving special risks arising from the specific nature of these instruments and activities to be carried out, i.e. whose price or results (yields) depend on fluctuations in financial markets which the service provider cannot influence, and historically data are not an indicator of future price movements - if the financial service is associated with these instruments;
4. a description of fees and expenses referred to in Article 265 of the Law;
5. information about the additional costs that may arise from the use of certain means of distance communication, which are borne by the user if such costs are charged, i.e. information that such costs are not charged; and
6. the offer validity period, i.e. information defined by this Article.

## **Information related to financial instruments**

### **Article 56**

Information on financial instruments include a general view of the nature and risks specific to financial instruments.

A description of the risks referred to in paragraph 1 of this Article, taking into account the specific type of financial instrument, generally contains:

1. risks associated with a specific type of financial instrument, including explanation of financial leverage and its effects, as well as the risk of losing the entire investment;
2. volatility of financial instrument price, as well as any restriction on the existing markets for such instruments;
3. an explanation that the transaction in this instrument, in addition to the acquisition cost of the instrument, could also include additional financial and other liabilities, including contingent liabilities; and
4. each condition which arises from the loan based on which the instrument was bought or similar liabilities applicable to the particular type of instrument.

The investment firm shall, when providing information about the financial instrument:

1. which is the subject matter of an ongoing public offer and for which the prospectus has been issued - familiarize the client and prospective client with the manner in which the prospectus is available;

2. which includes a third party guarantee - provide enough details to the client and prospective client about the guarantor and the guarantee on the basis of which he can make a fair assessment of the guarantee; and
3. consisting of two or more different instruments or services and for which it is obvious that the risk associated with that instrument will be greater than the risks associated with each individual component of that instrument - provide the client and prospective client an adequate description of the individual components of such an instrument, and the manner in which mutual influence increases the risk.

## **Distance contract**

### **Article 57**

Prior to the conclusion of distance contract, the investment firm shall provide the client the following information:

1. the client's right to withdraw from distance contract in accordance with the law governing the protection of users of financial services at distance contracting, including:
  - terms and conditions for the exercise of this right;
  - legal consequences of withdrawal from the contract;
  - the instruction on the manner of exercising this right;
  - information on the address to which the client delivers a statement of withdrawal; and
  - consequences that occur if the client does not exercise his right of withdrawal;
2. duration of distance contract, if the subject matter of a distance contract is permanent or occasional provision of financial services;
3. contracting parties' right to unilaterally terminate or cancel the distance contract before the expiry of its duration, in accordance with the Law and provisions of the contract, as well as information on a possible obligation to pay fines, fees and other costs in this case;
4. regulations applicable to distance contract and/or jurisdiction of the court for the settlement of disputes under that agreement;
5. the procedure and manner of entry into distance contract; and
6. information on the language in which the distance contract can be entered into and in which communication during the contractual relationship would be performed, if the user requires entry into this agreement and performance of communication in a language other than Montenegrin.

Prior to entry into distance contracts, the investment firm shall provide the following information about:

1. user's right to protest or file a complaint to the investment firm and/or the Authority, the manner and conditions of filing a complaint;
2. whether there is a possibility of settling the dispute under the distance contract out of court, as well as the manner and conditions for the amicable settlement of the dispute; and
3. whether the fund has been established or other organized way of securing the obligations of the service provider towards the customer in connection with the provision of financial services.

The investment firm may use the following means of distance communication only if the client, i.e. the prospective client has given prior consent to their use:

1. automated calling system which operate without human intervention (for example, automated call system); and
2. fax machines (fax).

Means of distance communication which allow individual communication with the client, i.e. the prospective client, in addition to means referred to in paragraph 3 of this Article may be used only if the person gave prior approval for their use or explicitly does not oppose their use.

Means of distance communication referred to in paragraphs 3 and 4 of this Article may not be used in a manner which causes additional costs for the client.

The client under the distance contract has the right to request, during the contractual relationship, the investment firm to be promptly provided with a copy of the distance contract concluded in paper form.

The client under the distance contract can, during the contractual relationship, change means of distance communication, if it is in accordance with these Rules and is not incompatible with the distance contract or the nature of the investment service which is the subject matter of this contract.

## **XI AGREEMENT WITH THE CLIENT**

### **Article 58**

The investment firm shall enter into agreement with the client either in writing on paper or another permanent medium containing:

1. the rights and obligations of the parties, wherein the same can be defined by reference to other documents, which are available to the client;
2. other conditions under which the investment firm provides services to the client; and
3. the client's statement that before entry into the agreement he was familiar with the content of rules of operation, the tariff rulebook of the investment firm, information referred to in Article 50 of these Rules that include warnings about the risk of investing in financial instruments in accordance with Article 312 of the Law and a warning for the risk of loss of the complete investment, as well as the manner of resolving disputes in accordance with Article 9 of the Rules.

If the investment firm recommends or sells services to the client provided by another investment firm, before entry into the agreement, in addition to the information referred to in Article 265 of the Law, the investment firm shall submit to the client or prospective client information on the total costs in a way to add costs and fees for its services to costs and service fees provided by another investment firm.

### **Distance contract**

#### **Article 59**

The investment firm shall ensure that the content of distance contracts entered into with the client or prospective client corresponds to information forwarded to him before entry into this contract.

### **Obligations of third parties acting on behalf of the investment firm**

#### **Article 60**

The provisions of these Rules relating to distance contracts shall be also applied by persons through which an investment firm provides services, the person who was entrusted by the investment firm to provide these services, or the person undertaking certain actions related to the distance contract based on business relationships established with the investment firm.

The investment firm shall ensure that the persons referred to in paragraph 1 of this Article fulfill their obligations in accordance with these Rules and is directly responsible to clients for treatment of such persons in accordance with these Rules.

## **XII EXECUTING CLIENT ORDERS**

### **Procedure of executing orders on terms most favorable to the client**

#### **Article 61**

When executing orders, the investment firm shall, in accordance with Article 269, and in conjunction with Articles 273 to 278 of the Law, take all reasonable steps to obtain the best possible result for their clients taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order and to act in accordance with client's instructions.



## **Reporting obligations in respect of execution of orders**

### **Article 62**

In accordance with Article 317 of the Law, the investment firm shall promptly provide the client in a durable medium and after the execution of orders on client's behalf, the essential information concerning the execution of the order.

## **XIII ADDITIONAL INDUCEMENTS**

### **Additional inducements feasibility criteria**

#### **Article 63**

In terms of these Rules and Article 265 of the Law, additional inducements means any fee, commission, monetary or non-monetary benefit associated with the services provided to the client, and which the investment firm provides or receives from a third party or a person acting on behalf of a third party.

Notwithstanding paragraph 1 of this Article, additional inducements shall not be considered payments which enable or are necessary for the provision of an investment service, such as custody costs, settlement and exchange fees, regulatory levies or legal fees and which, by its nature, cannot give rise to conflicts with the firm's duty to act honestly, fairly and professionally in the best interests of the client.

The investment firm may give or receive additional inducements only if all the following conditions are met:

1. additional inducement is designed to enhance the quality of related service provided to the client;
2. additional inducement does not affect the obligation of the investment firm to act in the best interest of the client, correctly and in accordance with the rules of professional conduct; and
3. prior to the provision of services to the client, the client was told in a manner that is comprehensive, accurate and understandable that there is an additional inducement related to a particular service, the nature and the amount of additional inducements, and if the amount cannot be determined, the method of determining additional inducements.

If applicable, the investment firm shall inform the client of the mechanisms for transferring to the client the fee, commission, monetary or non-monetary benefit received in relation to the provision of the relevant investment or ancillary service.

If additional inducements are given or received contrary to the provisions of this Article and Articles 64 and 65 of these Rules, it shall be deemed that the investment firm does not manage conflicts of interest in accordance with the provisions of the Law and these Rules and fails to act in the best interest of the client.

### **Conditions for enhancing the quality of service**

#### **Article 64**

A fee, commission or non-monetary benefit is designed to enhance the quality of the relevant service to a client only if all the following conditions are met:

1. it is justified by the provision of an additional or higher level service to the client and is proportional to the level of inducements received;
2. it does not directly benefit the recipient firm, its shareholders or employees without tangible benefit to the client; and
3. it is justified by the provision of an ongoing benefit to the client in relation to an ongoing inducement.

Fees, commissions or non-monetary benefits which cause biased or distorted provision of a relevant service to the client are prohibited.

The conditions referred to in paragraph 1 must be fulfilled as long as the firm continues to pay or receive the fee, commission or non-monetary benefit.

The investment firm shall keep records of all fees, commissions and non-monetary benefit that the investment firm received from a third party in connection with the provision of investment or ancillary services.

The investment firm shall provide adequate information to the client in accordance with Article 309 of the Law in respect of each payment or charging from third party or any service provided or acquired non-monetary benefit from a third party.

During the period in which the investment firm provides or receives additional inducements related to services provided to clients, it shall, at least once a year notify each particular client of the amount or quantity of additional inducements received, other than those referred to in Article 63, paragraph 2 of these Rules.

If the distribution channel involves several investment firms, each investment firm that provides investment or ancillary services shall fulfill its reporting obligations it has in relation to its clients.

## **Inducements relating to the provision of portfolio management and independent advice services**

### **Article 65**

When the investment firm, in accordance with Articles 264 and 278 of the Law, provides independent advice services and when providing the service referred to in Article 206, paragraph 1, item 4 of the Law, it shall not accept or maintain additional inducements in respect of those services.

If the investment firm, in the case referred to in paragraph 1 of this Article, receives an additional inducement, it shall transfer the same in full to the client.

The investment firm shall establish and implement a policy to ensure that any additional inducements received in the case referred to in paragraph 1 of this Article are allocated and transferred to the client and that the client is appropriately informed about the same.

The prohibition referred to in paragraph 1 of this Article shall not apply to minor non-monetary benefits which meet the requirements of Article 69 of these Rules, and which can enhance the quality of services provided to the client if they are in scope and nature such that they cannot be considered to threaten the obligation of the investment firm to act in the best interests of the client.

The investment firm shall timely inform the client of minor non-monetary benefits referred to in paragraph 4 of this Article, prior to providing relevant investment or ancillary service.

## **Research-related inducements**

### **Article 66**

When the third party provides research to the investment firm which manages a portfolio or provides other investment or ancillary services to clients, this research shall not be considered as additional inducement in terms of these Rules, if provided in exchange for:

1. direct payments for which the investment firm uses its own funds, or
2. payments via a separate account for research which is controlled by the investment firm, provided that in connection with maintaining the account the requirements referred to in Article 70 of these Rules are met.

If the account is used for the research referred to in paragraph 1, item 2 of this Article, the investment firm shall provide the following information to the client:

1. before the client is provided investment service, information on the amount of the research budget and the estimated amount of compensation for the research that will be charged to each client; and
2. annual information about the overall costs incurred due to research conducted by a third party.

In terms of this Article, the research involves investment research and any material or service related to one or more financial instruments, other assets, the issuer or the potential issuer of financial instruments, comprising the implicit or explicit reference or suggestion about the investment strategy and supported opinion on the current or future value or price of such instruments or assets.

## **Inducements related to packaged products**

### **Article 67**

When the investment firm offers investment service together with another service or product as a part of the package or as a condition for the same agreement or package, the investment firm shall inform the client about whether it is possible to buy the different components separately and provide separate overview of charges and fees for each component.

If it is likely that the risks arising from a contract or the package referred to in paragraph 1 of this Article, offered to a retail client are different than the risks associated with a particular component, the investment firm shall provide an adequate description of the various components of the contract or the package and the manner in which their interaction affects the risk.

## **Reporting the client on additional inducements**

### **Article 68**

With respect to each given or received additional inducement, the investment firm shall, before providing the relevant investment or ancillary service, provide the client with information about the relevant additional inducement, in accordance with obligations referred to in Article 314 of the Law.

The investment firm shall specifically provide the client with information on non-monetary benefits given or received in connection with the provided investment service and to express the price, i.e. value of such non-monetary benefits. When providing information, minor non-monetary benefits referred to in Article 69 of these Rules may be described in a generic way.

In the event that the investment firm is not able to pre-determine the amount of additional inducement that will be paid or received and state the information on the method for calculating the amount of additional inducements, it shall provide the client on the exact amount paid or received, i.e. the price or value of the benefit provided or acquired.

If the investment firm receives or gives current additional inducements related to investment services provided to the client to which the services relates in respect of which the current inducement is received or given it shall notify that client at least once a year of the actual amount provided or received additional inducements. Minor non-monetary benefits can be shown in the report in generic way.

If the investment firm has transferred additional inducements to the client, it shall notify the client thereof.

The report on additional inducements in accordance with this Article may be submitted to the client separately or as part of other regular reports the investment firm is obliged to deliver to the client.

## **Acceptable minor non-monetary benefits**

### **Article 69**

Minor non-monetary benefits referred to in Article 264 paragraph 1 item 2 of the Law, which may enhance the quality of service provided to the client shall be considered only those referred to in paragraph 2 of this Article, provided that they are in the scope and nature reasonable, proportionate and in scope such that they do not affect the investment firm in such a way that it, due to received minor non-cash benefits, acts in a way that could adversely affect the interests of the relevant client and that information about them is disclosed to the client prior to the provision of the relevant investment or ancillary service to the client.

An acceptable minor non-monetary benefit shall be considered only:

1. information or documentation relating to a financial instrument or an investment service, that is generic in nature or personalized to reflect the circumstances of an individual client;

2. written material from a third party that is commissioned and paid for by a corporate issuer or potential issuer to promote a new issuance by the company, or where the third party firm is contractually engaged and paid by the issuer to produce such material on an ongoing basis, provided that the relationship is clearly disclosed in the material and that the material is made available at the same time to any firms wishing to receive it, or to the general public;
3. participation in conferences, seminars and other training events on the benefits and features of a specific financial instrument or an investment service;
4. hospitality of a reasonable de minimis value, such as food and drink during a business meeting or a conference, seminar or other training events mentioned under item 3 of this paragraph; and
5. Macroeconomic analysis and other publications produced by the third party, if the same does not constitute investment research as defined by Article 305 of the Law.

In accordance with Article 68, paragraph 2 of these Rules minor non-monetary benefits may be described in the report for the client in a generic way.

## **Research-related inducements**

### **Maintaining research account**

#### **Article 70**

Research account which is controlled by the investment firm and through which payments for research are made must be conducted so as to continuously meet the requirements of this Article.

When opening an investment research account, the investment firm shall, in the form of written internal procedure, establish and regularly evaluate the research budget.

The investment firm is unconditionally responsible for the research account and shall maintain that account independently.

Research account must be financed by a special research fee which is separately charged to the client, where the total amount of fees received does not exceed the research budget established in accordance with paragraph 2 of this Article.

The investment firm shall choose research purchased out of funds held on the research account on the basis of rigorous qualitative criteria and possibilities of this research to contribute to better investment decisions based on them.

The investment firm shall regularly access the quality of research which, in accordance with this Article, is paid out of funds held on the research account.

#### **Article 71**

If the investment firm has a research account, it shall, at the Authority or client's request, submit the following information:

1. summary information on the suppliers that make payments out of such account,
2. the total amount paid during the period for which the information is requested,
3. information on benefits and services the investment firm has received,
4. comparison of the budget spent from the research account and the budget the firm envisaged for that period in accordance with Article 63, paragraph 2 of these Rules,
5. details of any discounts or transfer of funds in case of account surplus.

Special fee for research in terms of Article 70, paragraph 4 of these Rules must be based on the research budget established by the investment firm in accordance with Article 70 paragraph 2 of these Rules and must not be associated with the value of transactions executed on clients' behalf.

In all operational arrangements for charging special fees for research of clients - if it is not charged separately, but with a transaction fee - research fee shall be presented separately.

The investment firm shall, in agreement entered into with the client or in general business conditions, agree the research fee in accordance with the planned research budget and the frequency of

billing the amount of that fees out of that client's funds during the year. Increase in the research budget shall be possible only after providing clear information to the client about that intention.

If, at the end of the period, a surplus in the research account is recorded, the firm must adopt a procedure for the return of such funds to the client or to offset the amount of research and a fee charged for the next period.

## **Establishing research budget**

### **Article 72**

Research budget shall be established according to a reasonable assessment of the need for research.

In order to ensure that the budget management and the use of funds are in accordance with the best interests of investment firm's clients, the investment firm shall appoint at least one person from senior management to control and monitor the distribution of funds from the budget for the purchase of research conducted by a third party.

Monitoring and control referred to in paragraph 2 of this Article shall include a clear audit trail of payments to research service providers and the manner of payment of these amounts with regard to the qualitative criteria referred to in Article 71, paragraph 1, item 4 of these Rules.

The investment firm shall not use the budget and research account for the purpose of funding internal research.

For the purposes of Article 70, paragraph 3 of these Rules, the investment firm may delegate the administrative management of the research account to a third party only if this arrangement facilitates the purchase of research conducted by a third party and payment to service providers for the account of the investment firm without undue delay and in accordance with the instructions of the investment firm.

For the purposes of Article 70, paragraph 5 of these Rules, the investment firm shall determine all the necessary elements in writing in the policy delivered to its clients.

The investment firm shall also describe, in a written policy referred to in paragraph 6 of this Article, the percentage change in which the research purchased via the research account contributes to client's portfolio, among others, taking into account, where appropriate, investment strategies applicable to different types of portfolio and approaches that the firm takes in the aim of fair allocation of expenses to different clients' portfolios.

The investment firm which has established the research account in terms of these Rules, and also provides other services, shall comply with the following conditions:

1. if it provides investment services of receiving and transmitting orders and execution on behalf of clients, it shall determine fees for these services separately, and the same exclusively reflect costs of executing the transaction;
2. if it provides other benefits and services to other investment firms with registered office in the European Union, fees for these benefits and services shall be separately defined; and
3. provision of benefits and services referred in item 2 of this paragraph and charging fees for these benefits and services may not affect the amount of service fees referred to in item 1 of this paragraph nor to condition them.

## **FINAL PROVISION**

### **Article 73**

These Rules shall enter into force on the eighth day following its publication in the "Official Gazette of Montenegro".

**Number: 01/9-1990/2-18**

**Podgorica, 18.12.2018**

**Capital Market Authority**

**President of the Capital Market Authority,**

**Zoran Đikanović PhD, m.p.**