

## ANNEX I

### LISTS OF SERVICES AND ACTIVITIES AND FINANCIAL INSTRUMENTS

#### SECTION A

##### **Investment services and activities**

- (1) Reception and transmission of orders in relation to one or more financial instruments;
- (2) Execution of orders on behalf of clients;
- (3) Dealing on own account;
- (4) Portfolio management;
- (5) Investment advice;
- (6) Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis;
- (7) Placing of financial instruments without a firm commitment basis;
- (8) Operation of an MTF;
- (9) Operation of an OTF.

#### SECTION B

##### **Ancillary services**

- (1) [F<sup>1</sup>Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management and excluding providing and maintaining securities accounts at the top tier level ('central maintenance service') referred to in point (2) of Section A of the Annex to the Regulation (EU) No 909/2014;]
- (2) Granting credits or loans to an investor to allow him to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction;
- (3) Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings;
- (4) Foreign exchange services where these are connected to the provision of investment services;
- (5) Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments;
- (6) Services related to underwriting.
- (7) Investment services and activities as well as ancillary services of the type included under Section A or B of Annex 1 related to the underlying of the derivatives included under points (5), (6), (7) and (10) of Section C where these are connected to the provision of investment or ancillary services.

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### Textual Amendments

- F1** Substituted by [Regulation \(EU\) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation \(EU\) No 236/2012 \(Text with EEA relevance\)](#).

## SECTION C

### Financial instruments

- (1) Transferable securities;
- (2) Money-market instruments;
- (3) Units in collective investment undertakings;
- (4) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, emission allowances or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash;
- (5) Options, futures, swaps, forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event;
- (6) Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market, a MTF, or an OTF, except for wholesale energy products traded on an OTF that must be physically settled;
- (7) Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in point 6 of this Section and not being for commercial purposes, which have the characteristics of other derivative financial instruments;
- (8) Derivative instruments for the transfer of credit risk;
- (9) Financial contracts for differences;
- (10) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event, as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Section, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market, OTF, or an MTF;
- (11) Emission allowances consisting of any units recognised for compliance with the requirements of Directive 2003/87/EC (Emissions Trading Scheme).

## SECTION D

**Data reporting services**

- (1) Operating an APA;
- (2) Operating a CTP;
- (3) Operating an ARM.

## ANNEX II

**PROFESSIONAL CLIENTS FOR THE PURPOSE OF THIS DIRECTIVE**

Professional client is a client who possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs. In order to be considered to be professional client, the client must comply with the following criteria:

## I. CATEGORIES OF CLIENT WHO ARE CONSIDERED TO BE PROFESSIONALS

The following shall all be regarded as professionals in all investment services and activities and financial instruments for the purposes of the Directive.

- (1) Entities which are required to be authorised or regulated to operate in the financial markets. The list below shall be understood as including all authorised entities carrying out the characteristic activities of the entities mentioned: entities authorised by a Member State under a Directive, entities authorised or regulated by a Member State without reference to a Directive, and entities authorised or regulated by a third country:
  - (a) Credit institutions;
  - (b) Investment firms;
  - (c) Other authorised or regulated financial institutions;
  - (d) Insurance companies;
  - (e) Collective investment schemes and management companies of such schemes;
  - (f) Pension funds and management companies of such funds;
  - (g) Commodity and commodity derivatives dealers;
  - (h) Locals;
  - (i) Other institutional investors;
- (2) Large undertakings meeting two of the following size requirements on a company basis:
 

—	:	EUR 20 000 000
balance sheet total		
— net	:	EUR 40 000 000
turnover		

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— own : EUR 2 000 000  
funds

- (3) National and regional governments, including public bodies that manage public debt at national or regional level, Central Banks, international and supranational institutions such as the World Bank, the IMF, the ECB, the EIB and other similar international organisations.
- (4) Other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financing transactions.

The entities referred to above are considered to be professionals. They must however be allowed to request non-professional treatment and investment firms may agree to provide a higher level of protection. Where the client of an investment firm is an undertaking referred to above, the investment firm must inform it prior to any provision of services that, on the basis of the information available to the investment firm, the client is deemed to be a professional client, and will be treated as such unless the investment firm and the client agree otherwise. The investment firm must also inform the customer that he can request a variation of the terms of the agreement in order to secure a higher degree of protection.

It is the responsibility of the client, considered to be a professional client, to ask for a higher level of protection when it deems it is unable to properly assess or manage the risks involved.

This higher level of protection will be provided when a client who is considered to be a professional enters into a written agreement with the investment firm to the effect that it shall not be treated as a professional for the purposes of the applicable conduct of business regime. Such agreement shall specify whether this applies to one or more particular services or transactions, or to one or more types of product or transaction.

## II. CLIENTS WHO MAY BE TREATED AS PROFESSIONALS ON REQUEST

### II.1. Identification criteria

Clients other than those mentioned in section I, including public sector bodies, local public authorities, municipalities and private individual investors, may also be allowed to waive some of the protections afforded by the conduct of business rules.

Investment firms shall therefore be allowed to treat any of those clients as professionals provided the relevant criteria and procedure mentioned below are fulfilled. Those clients shall not, however, be presumed to possess market knowledge and experience comparable to that of the categories listed in Section I.

Any such waiver of the protection afforded by the standard conduct of business regime shall be considered to be valid only if an adequate assessment of the expertise, experience and knowledge of the client, undertaken by the investment firm, gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making investment decisions and understanding the risks involved.

The fitness test applied to managers and directors of entities licensed under Directives in the financial field could be regarded as an example of the assessment of expertise and knowledge. In the case of small entities, the person subject to that assessment shall be the person authorised to carry out transactions on behalf of the entity.

In the course of that assessment, as a minimum, two of the following criteria shall be satisfied:

- the client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters,

- the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments exceeds EUR 500 000,
- the client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.

Member States may adopt specific criteria for the assessment of the expertise and knowledge of municipalities and local public authorities requesting to be treated as professional clients. Those criteria can be alternative or additional to those listed in the fifth paragraph.

## II.2. Procedure

Those clients may waive the benefit of the detailed rules of conduct only where the following procedure is followed:

- they must state in writing to the investment firm that they wish to be treated as a professional client, either generally or in respect of a particular investment service or transaction, or type of transaction or product,
- the investment firm must give them a clear written warning of the protections and investor compensation rights they may lose,
- they must state in writing, in a separate document from the contract, that they are aware of the consequences of losing such protections.

Before deciding to accept any request for waiver, investment firms must be required to take all reasonable steps to ensure that the client requesting to be treated as a professional client meets the relevant requirements stated in Section II.1.

However, if clients have already been categorised as professionals under parameters and procedures similar to those referred to above, it is not intended that their relationships with investment firms shall be affected by any new rules adopted pursuant to this Annex.

Firms must implement appropriate written internal policies and procedures to categorise clients. Professional clients are responsible for keeping the investment firm informed about any change, which could affect their current categorisation. Should the investment firm become aware however that the client no longer fulfils the initial conditions, which made him eligible for a professional treatment, the investment firm shall take appropriate action.

## ANNEX III

### PART A

#### **Repealed Directive with list of its successive amendments**

##### **(referred to in Article 94)**

Directive 2004/39/EC of the European Parliament and of the Council ([OJ L 145, 30.4.2004, p. 1](#)).

Directive 2006/31/EC of the European Parliament and of the Council ([OJ L 114, 27.4.2006, p. 60](#)).

Directive 2007/44/EC of the European Parliament and of the Council ([OJ L 247, 21.9.2007, p. 1](#)).

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Directive 2008/10/EC of the European Parliament and of the Council (OJ L 76, 19.3.2008, p. 33).

Directive 2010/78/EC of the European Parliament and of the Council (OJ L 331, 15.12.2010, p. 120).

## PART B

### List of time-limits for transposition into national law

(referred to in Article 94)

Directive 2004/39/EC

Transposition period	31 January 2007
Implementation period	1 November 2007

Directive 2006/31/EC

Transposition period	31 January 2007
Implementation period	1 November 2007

Directive 2007/44/EC

Transposition period	21 March 2009
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Directive 2010/78/EC

Transposition period	31 December 2011
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## ANNEX IV

### Correlation table referred in Article 94

Directive 2004/39/EC	Directive 2014/65/EU	Regulation (EU) No 600/2014
Article 1(1)	Article 1(1)	
Article 1(2)	Article 1(3)	
Article 2(1)(a)	Article 2(1)(a)	
Article 2(1)(b)	Article 2(1)(b)	
Article 2(1)(c)	Article 2(1)(c)	
Article 2(1)(d)	Article 2(1)(d)	
Article 2(1)(e)	Article 2(1)(f)	

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Article 2(1)(f)	Article 2(1)(g)	
Article 2(1)(g)	Article 2(1)(h)	
Article 2(1)(h)	Article 2(1)(i)	
Article 2(1)(i)	Article 2(1)(j)	
Article 2(1)(j)	Article 2(1)(k)	
Article 2(1)(k)	Article 2(1)(i)	
Article 2(1)(l)	—	
Article 2(1)(m)	Article 2(1)(l)	
Article 2(1)(n)	Article 2(1)(m)	
Article 2(2)	Article 2(2)	
Article 2(3)	Article 2(4)	
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Article 3(2)	Article 3(3)	
Article 4(1)(1)	Article 4(1)(1)	
Article 4(1)(2)	Article 4(1)(2)	
Article 4(1)(3)	Article 4(1)(3)	
Article 4(1)(4)	Article 4(1)(4)	
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Article 4(1)(15)	Article 4(1)(22)	
Article 4(1)(16)	Article 4(1)(14)	
Article 4(1)(17)	Article 4(1)(15)	
Article 4(1)(18)	Article 4(1)(44)	
Article 4(1)(19)	Article 4(1)(17)	
Article 4(1)(20)	Article 4(1)(55)	
Article 4(1)(21)	Article 4(1)(56)	

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Article 4(1)(29)	Article 4(1)(33)	
Article 4(1)(30)	Article 4(1)(35)(b)	
Article 4(1)(31)	Article 4(1)(35)	
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Article 5(1)	Article 5(1)	
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Article 8(b)	Article 8(b)	
Article 8(c)	Article 8(c)	
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Article 10(1)	Article 10(1)	
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Article 10b(1)	Article 13(1)	
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