

Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (Text with EEA relevance)

CHAPTER III

OPERATING CONDITIONS FOR INVESTMENT FIRMS

SECTION 4

**Reporting to clients**

*Article 40*

**(Article 19(8) of Directive 2004/39/EC) Reporting obligations in respect of execution of orders other than for portfolio management**

1 Member States shall ensure that where investment firms have carried out an order, other than for portfolio management, on behalf of a client, they take the following action in respect of that order:

- a the investment firm must promptly provide the client, in a durable medium, with the essential information concerning the execution of that order;
- b in the case of a retail client, the investment firm must send the client a notice in a durable medium confirming execution of the order as soon as possible and no later than the first business day following execution or, if the confirmation is received by the investment firm from a third party, no later than the first business day following receipt of the confirmation from the third party.

Point (b) shall not apply where the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the retail client by another person.

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

2 In addition to the requirements under paragraph 1, Member States shall require investment firms to supply the client, on request, with information about the status of his order.

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

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

- a the reporting firm identification;

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

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

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

#### *Article 41*

#### **(Article 19(8) of Directive 2004/39/EC) Reporting obligations in respect of portfolio management**

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

2 In the case of retail clients, the periodic statement required under paragraph 1 shall include, where relevant, the following information:

- a the name of the investment firm;
- b the name or other designation of the retail client's account;
- c a statement of the contents and the valuation of the portfolio, including details of each financial instrument held, its market value, or fair value if market value is unavailable and the cash balance at the beginning and at the end of the reporting period, and the performance of the portfolio during the reporting period;
- d the total amount of fees and charges incurred during the reporting period, itemising at least total management fees and total costs associated with execution, and including, where relevant, a statement that a more detailed breakdown will be provided on request;

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- e a comparison of performance during the period covered by the statement with the investment performance benchmark (if any) agreed between the investment firm and the client;
- f the total amount of dividends, interest and other payments received during the reporting period in relation to the client's portfolio;
- g information about other corporate actions giving rights in relation to financial instruments held in the portfolio;
- h for each transaction executed during the period, the information referred to in Article 40(4)(c) to (l) where relevant, unless the client elects to receive information about executed transactions on a transaction-by-transaction basis, in which case paragraph 4 of this Article shall apply.

3 In the case of retail clients, the periodic statement referred to in paragraph 1 shall be provided once every six months, except in the following cases:

- a where the client so requests, the periodic statement must be provided every three months;
- b in cases where paragraph 4 applies, the periodic statement must be provided at least once every 12 months;
- c where the agreement between an investment firm and a retail client for a portfolio management service authorises a leveraged portfolio, the periodic statement must be provided at least once a month.

Investment firms shall inform retail clients that they have the right to make requests for the purposes of point (a).

However, the exception provided for in point (b) shall not apply in the case of transactions in financial instruments covered by Article 4(1)(18)(c) of, or any of points 4 to 10 of Section C in Annex I to, Directive 2004/39/EC.

4 Member States shall require investment firms, in cases where the client elects to receive information about executed transactions on a transaction-by-transaction basis, to provide promptly to the client, on the execution of a transaction by the portfolio manager, the essential information concerning that transaction in a durable medium.

Where the client concerned is a retail client, the investment firm must send him a notice confirming the transaction and containing the information referred to in Article 40(4) no later than the first business day following that execution or, if the confirmation is received by the investment firm from a third party, no later than the first business day following receipt of the confirmation from the third party.

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

#### *Article 42*

#### **(Article 19(8) of Directive 2004/39/EC) Additional reporting obligations for portfolio management or contingent liability transactions**

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

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where the threshold is exceeded on a non-business day, the close of the next business day.

### *Article 43*

#### **(Article 19(8) of Directive 2004/39/EC) Statements of client financial instruments or client funds**

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

The first subparagraph shall not apply to a credit institution authorised under Directive 2000/12/EC in respect of deposits within the meaning of that Directive held by that institution.

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

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

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

3 Member States shall permit investment firms which hold financial instruments or funds and which carry out the service of portfolio management for a client to include the statement of client assets referred to in paragraph 1 in the periodic statement it provides to that client pursuant to Article 41(1).