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 6

Client order handling

Article 47

(Articles 22(1) and 19(1) of Directive 2004/39/EC)General principles

1 Member States shall require investment firms to satisfy the following conditions when carrying out client orders:

a they must ensure that orders executed on behalf of clients are promptly and accurately recorded and allocated;

b they must carry out otherwise comparable client orders sequentially and promptly unless the characteristics of the order or prevailing market conditions make this impracticable, or the interests of the client require otherwise;

c they must inform a retail client about any material difficulty relevant to the proper carrying out of orders promptly upon becoming aware of the difficulty.

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

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

Article 48

(Articles 22(1) and 19(1) of Directive 2004/39/EC)Aggregation and allocation of orders

1 Member States shall not permit investment firms to carry out a client order or a transaction for own account in aggregation with another client order unless the following conditions are met:

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

b it must be disclosed to each client whose order is to be aggregated that the effect of aggregation may work to its disadvantage in relation to a particular order;

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

2 Member States shall ensure that where an investment firm aggregates an order with one or more other client orders and the aggregated order is partially executed, it allocates the related trades in accordance with its order allocation policy.

Article 49

(Articles 22(1) and 19(1) of Directive 2004/39/ EC)Aggregation and allocation of transactions for own account

1 Member States shall ensure that investment firms which have aggregated transactions for own account with one or more client orders do not allocate the related trades in a way that is detrimental to a client.

2 Member States shall require that, where an investment firm aggregates a client order with a transaction for own account and the aggregated order is partially executed, it allocates the related trades to the client in priority to the firm.

However, if the firm is able to demonstrate on reasonable grounds that without the combination it would not have been able to carry out the order on such advantageous terms, or at all, it may allocate the transaction for own account proportionally, in accordance with its order allocation policy referred to in Article 48(1)(c).

3 Member States shall require investment firms, as part of the order allocation policy referred to in Article 48(1)(c), to put in place procedures designed to prevent the reallocation, in a way that is detrimental to the client, of transactions for own account which are executed in combination with client orders.