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Regarding the provisions quoted in the response below, as far as possible, hyperlinks to these provisions (in the respective language or, if available, in English) are set out in Document CESR/04-075 for each country.

IMPORTANT NOTICE

In the interest of transparency and to inform interested parties, CESR has published the following (together the “Tables”):

- *the Correspondence Tables on the CESR Standards for Investor Protection (Ref. CESR/03-416b to 423b, CESR/03-134/Country);*
- *the Correspondence Tables on the CESR Standards for Alternative Trading Systems (Ref. CESR/03-415b, CESR/03-135/Country);*
- *the Synthesis Tables (Ref. CESR/03-427b and CESR/03-432b);*
- *the List of Alternative Trading Systems currently operating in Member States¹ (Ref. CESR/03-497b);*
- *the explanatory notes and caveats attached to the Tables.*

The Tables were produced by the Members of CESR¹ within the constraints of and solely for the purposes of the CESR Review Panel process of monitoring the status of implementation of the CESR Standards for Investor Protection² and the CESR Standards for Alternative Trading Systems³ in Member States.

The Tables have no legal effect; they do not present any interpretation of, or definitive position on, existing law or regulation in any jurisdiction. The Tables should not be relied upon for any purpose other than the purpose for which they were prepared. In particular, they should not be relied upon as a substitute for, or as guidance on, any aspect of the regulatory system of any Member State or as a defence in supervisory activities or enforcement proceedings; and they cannot be used to restrict competent authorities in taking regulatory or enforcement actions.

The information set out in the Tables is the response of each Member’s self-assessment. For this reason, the content of the Tables regarding a particular Member State has been prepared solely by the relevant Member on a best-efforts basis. (In a next step, the CESR Review Panel is going to conduct a common and collective peer exercise in reviewing the responses from all Members.) In case of discrepancy between the tables containing the responses from all CESR Members and the tables containing the individual responses from a particular CESR Member, the latter should be referred to.

The Tables provide a “snap shot” and will be up-dated on a regular basis to take account of regulatory developments in Member States. Therefore, they cannot be considered as fully finalised or definitive reflections of regulatory provisions in Member States. The Tables should also be read in light of current and future developments in the formulation of the proposed Directive on Markets in Financial Instruments (“ISD2”) and the future Level 2 implementing measures, and without prejudice to the position of any Member State in those developments.

For a more detailed account of the process, methodology and first, interim results, please see the “First Interim Report” by the Review Panel (Ref. CESR/03-414b).

¹ For reasons of simplicity, the term “Member” in this context refers to all participants in the Review Panel, i.e. CESR Members, CESR Observers, and the Polish securities regulators; this applies to the term “Member State” accordingly.

² “A European Regime of Investor Protection - The Harmonization of Conduct of Business Rules” (Ref. CESR/01-014d, April 2002) and “A European Regime of Investor Protection – The Professional and the Counterparty Regimes” (Ref. CESR/02-098b, July 2002).

³ Ref. CESR/02-086b, July 2002.

CORRESPONDENCE TABLE ON STANDARDS FOR INVESTOR PROTECTION
(REF. CESR/01-014D AND CESR/02-098B)

PORTUGAL

A CONDUCT OF BUSINESS RULES FOR THE “RETAIL REGIME”

1. STANDARDS AND RULES OF GENERAL APPLICATION

1.1 GENERAL

Standard /Rule	Implementing authority(ies)	Implementing measure ⁴	Comments
<i>1. An investment firm must at all times act honestly, fairly and professionally in accordance with the best interests of its customers and the integrity of the market.</i>		article 304/1 and 2 and article 305/1 of the Portuguese Securities Code.	
<i>2. An investment firm must have and must employ effectively the resources and procedures that are necessary for the proper performance of its business activities, including back-up procedures and systems so as to reasonably ensure that investment services can be provided without interruption.</i>		article 305/1 of the Portuguese Securities Code; article 7/1 of CMVM Regulation 12/2000 and article 10 of CMVM Regulation 21/2000	
<i>3. An investment firm must ensure that any persons or entities with which it is undertaking authorisable investment business are authorised to conduct that business by the relevant regulator.</i>		article 305/1 of the Portuguese Securities Code; article 46/1 of CMVM Regulation 12/2000	
<i>4. Investment firm that outsources functions retains full responsibility for the outsourced activity and must ensure that the providers of such outsourcing are able to perform these functions reliably, professionally and in the best interests of its customers.⁵</i>		article 46/1 and article 48/1 of CMVM Regulation 12/2000	

1.2. CONFLICTS OF INTEREST AND INDUCEMENTS

⁴ Any derogation to the application of the implementing measures should be mentioned.

⁵ This standard is not intended to interfere with relevant provisions on civil liability, applicable at national level.

(*)The **Portuguese Securities Code** was approved by Decree-Law n° 486/99 dated 13 November, of the Ministry of Finance.

The CMVM issues the Regulations needed to implement the Law. Any further references to the Portuguese Securities Code will be mentioned as **SC**.

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p><i>5. An investment firm must take all reasonable steps to ensure that conflicts of interest between itself and its customers and between one customer and another are identified and then prevented or managed in such a way that the interests of customers are not adversely affected. For these purposes the investment firm must establish an internal independence policy, including Chinese walls as appropriate.</i></p>		<p>article 305/2 of the Portuguese Securities Code; article 33/2 and article 34 of CMVM Regulation 12/2000</p>	
<p>7. Where conflicts of interest cannot be reasonably avoided or managed with the internal independence policy, an investment firm must not undertake business with or on behalf of a customer where it has directly or indirectly a conflicting interest, including any such interest arising from intra-group dealings, joint provision of more than one service or other business dealings of the investment firm or any affiliated entity, unless it has previously disclosed to the customer the nature and extent of its interest, either in writing or by telephone and recorded by the firm and the customer has expressly agreed to engage in such business with the investment firm. Where possible, this disclosure must be given at the beginning of the customer relationship; otherwise it must be given prior to the customer entering into any relevant transaction.</p>		<p>Portuguese Securities Code (*) Articles 309/2, 312/1/b and 347</p>	<p>The domestic legal framework imposes to the financial intermediary the duty to act in a transparent manner towards its clients, being compelled to disclose to them any conflicts between the clients' interests and their own, whenever it can not avoid the occurrence of a conflict (articles 309/2 and 312/1/b) of the SC). This allows the client to refuse the provision of the service, on those grounds. The CMVM's supervisory practice ensures that the financial intermediary complies with the requirements of this Rule.</p>
<p><i>6. An investment firm, its members of the board, directors, partners, employees and tied-agents may offer or receive inducements only if they can reasonably assist the firm in the provision of services to its customers. Where inducements are received disclosure of such inducements must be made to the customer.</i></p>		<p>article 312/1/b of the Portuguese Securities Code</p>	
<p>8. Where inducements are permitted an investment firm must act in the best interest of the customer and inform the customer at the beginning of the relationship, which may give rise to conflicts of interest between itself and its customers, about the investment firm's policy on inducements and at least once a year in writing of the relevant details of such inducements.</p>		<p>article 312/1/b of the Portuguese Securities Code</p>	

1.3 COMPLIANCE AND CODE OF CONDUCT

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p><i>9. An investment firm must take all reasonable measures to ensure that the firm and its members of the board, directors, partners, employees and tied-agents at all time act in accordance with the best interests of its customers and the integrity of the market by establishing and implementing adequate compliance policies and procedures, including an independent compliance function and an internal code of conduct.</i></p>		<p>SC Art 304/1 and 304/5, 312/1/b CMVM Reg. n° 12/2000, articles 19, 32/a, 33/3, 36 and 37</p>	<p>As to the means that should be used by financial intermediaries to ensure the protection of their clients' interests and the market's efficiency, Rule 9 entails some of the said means, which concern, on the one hand, to the adoption of internal policy control, which is provided for in sub-para. a), article 32 and article 36 of CMVM Regulation 12 /2000. The content of the intermediary rules is integrated in article 37 of the same Regulation. With regard to several financial intermediation activities, its article 19 imposes a requirement of registration of the persons who carry out functions of supervision and control, whose mission is the monitoring of compliance with applicable rules and procedures.</p>
<p>11. The persons responsible for the compliance function must have the necessary expertise, resources, authority and must have full access to all relevant information enabling them to perform their duties. They must perform their monitoring duties independently of all persons and activities subject to their monitoring.</p>	<p>CMVM</p>	<p>article 19 of CMVM Regulation 12/2000</p>	
<p>12. A summary of the results of the monitoring must be reported to the senior management of the investment firm and to the internal or external auditors. The investment firm must report these results, together with remedies adopted, to the competent authority at least once a year.</p>			<p>Not Implemented</p>
<p>13. An investment firm must ensure that the competent authority is informed, without undue delay, of serious breaches of the conduct of business rules. In assessing whether the breaches are serious, an investment firm must take into account the impact on regulatory goals and on the capacity to provide services, their frequency, the damages suffered by customers.</p>		<p>article 317 of the Portuguese Securities Code</p>	
<p>14. The compliance function must: - regularly verify the adequacy of policies and procedures to ensure compliance with the regulations on investment services; - provide advisory assistance and support to the various business areas of the investment firm on problems concerning compliance with the regulations on investment services.</p>			<p>Not Implemented</p>

<p><i>10. An investment firm must be able to demonstrate that it has not acted in breach of the conduct of business rules and the internal code of conduct and that its organization, policies and procedures facilitate such compliance.</i></p>		<p>SC Art 304, 305 and 314/2</p>	<p>Implemented through article 305 of the SC. On issues of civil accountability, article 314/2 of the SC establishes an inversion of the burden of proof whenever damages are caused to clients. Hence, further to the duty of appreciation of the conduct of the financial intermediary in pursuance of high standards of increasing demand (article 305/1 of the SC), for accountability purposes, it is incumbent on the intermediary to demonstrate that it acted without guilt, and not on the client, as required in general terms. Within the scope of supervisory actions, the intermediary must demonstrate that it is acting in accordance with the applicable rules of conduct (e.g. that it delivered to its client a document on general investment risks or that a price list was made available prior to the provision of the service).</p>
<p>15. An investment firm must keep records relevant for the purpose of demonstrating compliance with the conduct of business rules, for a period of five years in order to enable the competent authority to verify compliance with these rules. Tape recording of orders must be kept for a period of one year.</p>		<p>SC art. 307 and 308</p>	<p>The tape recording of orders is considered as a register related with the securities operations and therefore must be kept for at least five years, according to art. 308/1 of the SC</p>
<p>16. An investment firm must keep a register of customer complaints related to the provision of the investment services and the measures taken for their resolution and must regularly verify whether complaints are adequately processed.</p>		<p>CMVM Regulation 12/2000 – art. 35</p>	<p>No specific rule applies to the monitoring of compliance of these duties of financial intermediaries. There are proceedings of general control for all the duties of financial intermediaries. Issues on investors' complaints are fully provided for in article 35 of CMVM Regulation 12/2000. Within the scope of supervisory actions carried out to financial intermediaries it is evaluated whether the intermediary rules and internal proceedings are indeed complied with or not.</p>
<p>17. An investment firm must establish a code of conduct for members of the board, directors, partners, employees and tied-agents. The code of conduct must contain:</p> <ul style="list-style-type: none"> a) the rules and procedure to meet the obligation to protect data of a confidential nature; b) the rules and procedures for carrying out personal transactions involving financial instruments; c) the rules and procedures governing the business relationship with customers in order to ensure that the persons referred to above, in particular where a conflict of interest may arise, always act in the best interests of customers, and that such persons do not take advantage of any confidential information; d) the investment firm's policy on conflicts of interest and inducements. 		<p>CMVM Regulation n° 12/2000 – art 37 SC art 316</p>	<p>This Rule is set forth in article 316 of the SC, which states that financial intermediaries are required to put in place internal rules that provide for the codes of conduct to be complied with, within the course of their activity. Article 37 of CMVM Regulation 12/2000 defines the minimum content of the said rules.</p>

1.4. COLD CALLING ⁶

⁶ These rules are without prejudice to any provisions of EU law governing the means whereby or conditions under which an investment firm or its tied-agent may initiate unsolicited contacts with a prospective customer.

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<i>18. For the purpose of protecting customers from undue pressure to enter into a contract, cold calls can only be made to potential customers in accordance with the rules set out below.</i>		article 322 of the Portuguese Securities Code.	

19. Cold calls may only be made by persons employed by, or appointed as tied-agent ⁷ by an investment firm. Responsibility for the competence and activities of such persons rests with the firm.		SC arts. 292 and 324 CMVM Reg. 12/2000, Arts. 50 and article 50-A CMVM Reg. 21/2000art 10	
20. An investment firm cold calling customers may do so only between the hours of 9.00 a.m. and 9.00 p.m. Monday to Saturday (local time for the customer) and excluding local national holidays.			Not Implemented
21. The identity of the person making the cold call, the investment firm on whose behalf the person is acting, and the commercial purpose of the cold call must be explicitly identified at the beginning of any conversation with the consumer. The caller must also make reference to the frozen period (see par. 24) during which orders may not be executed.		SC arts. 305/1 and 322/2 CMVM Reg. Art. 50/c	
22. The person making the cold call is also required to establish whether the potential customer wishes the cold call to proceed or not. An investment firm must abide by a request from the customer either to end the cold call and/or not to cold call again.		SC art. 304/2	–
23. An investment firm must not exert undue pressure on a potential customer during the course of a cold call and must be able to demonstrate that this is not the case, for example, by recording any such telephone calls.			Not implemented
24. During the period for which the customer benefits from a right of withdrawal from the contract (as determined by Article 4.a of the Distance Marketing Directive), an investment firm shall not execute any customer orders in respect of financial instruments under the contract.		article 322 of the Portuguese Securities	

2. INFORMATION TO BE PROVIDED TO CUSTOMERS

⁷ This is without prejudice to the applicability of professional requirements, imposed at national level.

2.1) BASIC REQUIREMENTS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<i>25. An investment firm must pay due regard to the information needs of its customers and communicate information to them that is fair, clear, and not misleading.</i>		article 7 and article 312/3 of the Portuguese Securities Code	
27. The firm must ensure that information provided to customers is clear and comprehensible. The content and purpose of the information should be easily understood and key items should be given due prominence. The method of presentation of the information must not disguise, diminish or obscure important warnings or statements.		article 312 of the Portuguese Securities Code	
<i>26. An investment firm must supply its customers on a timely basis with the information that enables them to make informed investment decisions.</i>		SC articles 7, 85/4/a), 312/3 and 332/2/f) CMVM Regulation n° 12/2000, arts. 40, 42 and 71	Financial intermediaries must provide to their clients all periodic information that allows them to make informed investment decisions. This principle is implemented under article 312 of the SC. For the several intermediation activities, it is also implemented through the rules that require the sending of extracts of accounts of the securities' portfolio (article 85/4/a) of the SC), of the financial position (article 71 of CMVM Regulation 12/2000, the reporting of completed transactions /articles 40 and 42 of CMVM Regulation 12/2000) or the portfolio composition (article 332/2/f of the SC).
28. In supplying information on a timely basis the investment firm must take into consideration: a) the urgency of the situation and b) the time necessary for a customer to absorb and react to the information provided and c) the terms of business agreed with the customer.		SC articles 7, 304/1 and 2, article 312/3 and 323/ b), c) and d)	This Rule is implemented into the domestic legal framework by the established in articles 7 and 312 of the SC, which state the general requirements to be observed in the provision of information by financial intermediaries to their clients. On the other hand, it also stems from the general duties of conduct of financial intermediaries, namely those provided for in paragraphs 1 and 2, article 304 of the SC. In relation to any investment service, namely reception and transmission of orders, further to the duties of periodic information to the client and to the above-mentioned general duties of information, the financial intermediary is specifically compelled to inform the client of any extraordinary events (article 323/c) and d) of the SC). In any case, the intermediary is always compelled by stricter duties than it may have agreed with its client.

2.2.) MARKETING COMMUNICATIONS ⁸

⁸ This is without prejudice of EU or national provision requiring authorisation and/or other requirements affecting the provision of marketing services.

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<i>29. If an investment firm provides information in a marketing communication it must be fair, clear and not misleading.</i>		article 7 and article 312/3 of the Portuguese Securities Code	
<i>30. The promotional purpose of marketing communications issued by an investment firm must not be disguised.</i>		article 8/1 and 9 of the Portuguese Publicity Code	
31. The information provided by an investment firm in a marketing communication must be consistent with the information it provides to its customers in the course of the provision of the investment services.		article 7/2 and article 312/3 of the Portuguese Securities Code	
32. Any marketing communication must contain at least the information about the investment firm defined in points a) and b) of paragraph 36. In case of a cross border marketing communication, the information provided must in addition state that information about the firm can also be obtained from or through the competent authority of the Member State where the customer resides.			Not implemented
33. An investment firm must not use the name of the competent authority in such a way that would indicate endorsement or approval of its services.		SC articles 7, 118/3, 296, 312/3 and 365/1	The CMVM holds legality powers, not of merit. Authorisations, approvals or registrations are acts the purpose of which is the assessment of legality, not involving any judgement of merit, neither of the quality of the services provided, nor of the financial instruments, which are traded (e.g., articles 296 and 365/1 of the SC). Pursuant to articles 7 and 312/3 of the SC all information provided by financial intermediaries must be, in particular: complete, truthful and lawful. As such, the financial intermediary cannot make believe that its services or products are recommendable because it is registered with the CMVM. In addition the CMVM has already intervened in situations of this kind, by ordering the financial intermediary not to make use of the (mandatory) information on its register, as a way of making investors believe that, underlying the register, any type of appreciation on the quality of the service provided would exist. The specific area of public offers is ruled by an individual legal provision: article 118/3 of the SC.
34. Where a marketing communication refers to a financial instrument or an investment service it must contain at least the information referred to in points a) and d) of paragraph 40.		SC arts. 305/1 and 312/1 CMVM Reg. 12/2000 art. 39	

2.3) INFORMATION ABOUT THE INVESTMENT FIRM

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<i>35. Before providing investment services an investment firm must supply adequate information about itself and the services it provides.</i>		article 38 of CMVM Regulation 12/2000	
36. An investment firm must provide customers with the following information prior to the commencement of provision of investment services: a) the identity of the investment firm, the (financial) group to which the investment firm belongs, its postal address and telephone number; b) the fact that the investment firm is authorised and/or registered and the name of the competent authority that has authorised and/or registered it; c) the functions that the investment firm performs so that the customer is able to assess the scope of the firm's responsibilities; d) the relevant compensation scheme(s); e) where such a procedure exists, a description of the mechanism(s) for settling disputes between the parties such as an out-of-court complaint and redress mechanism; f) an outline of the firm's policies in relation to conflicts of interest and inducements; g) the languages in which the customer can communicate with the investment firm.		Decree-Law n° 222/99 dated 22 June, art. 14 CMVM Reg. 12/2000 art 38 and 39/1/d.	

2.4) INFORMATION ON FINANCIAL INSTRUMENTS AND INVESTMENT SERVICES

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<i>37. An investment firm must inform customers of the key features of investment services and financial instruments envisaged, according to the nature of such instruments and services.</i>		article 312 of the Portuguese Securities Code; article 39/1/a of CMVM Regulation 12/2000	

<p>40. The information provided to customers can be delivered using standard documentation but must include the following as a minimum:</p> <ul style="list-style-type: none"> a) a description of the main characteristics ⁹ of the instrument/service, including the nature of the financial commitment, whether the instruments involved are traded on a regulated market or not and the risks involved; b) price, including commissions, fees and other charges, relating to the transaction, the instrument or service; c) arrangements for payment and performance; d) details on any cancellation rights or rights of reflection that may apply. 		<p>article 312/1/a and article 312/1 of the Portuguese Securities Code; article 39/1/a/b/c of CMVM Regulation 12/2000</p>	
<p><i>38. An investment firm must communicate clearly and precisely to the customer all the charges relating to the services or instruments envisaged and how the charges are calculated.</i></p>		<p>article 312/1/d of the Portuguese Securities Code; article 44 of CMVM Regulation 12/2000</p>	
<p>41. The information to be disclosed to customers on commissions, charges and fees must contain:</p> <ul style="list-style-type: none"> a) the basis or amount of the charges for transactions, products or services, detailing, where appropriate, the percentage or rate applicable, the frequency with which it is applied, any maximum or fixed minimum fees and, where the commission or fee must be paid in foreign currency, the currency involved; b) if various investment firms are to be involved in a transaction or service, an estimate of the other fees that will be payable. 		<p>SC art 312/1/d CMVM Regulation 12/2000 art 44</p>	<p>Although the Portuguese law does not expressly refer the minimum fees, if the financial intermediary is using them, it must expressly include such in their price list. In any case, article 44 of Regulation 12/2000 entails a clear principle: the intermediary not only has to include in the price list all expenses to be paid by the respective clients, either prices owed by the provision of the service or expenses of any other nature - taxes, fees or market fees, e.g., but it cannot also charge higher amounts than those resulting from the criteria foreseen in the price list or expenses not foreseen in the price list.</p>
<p>42. In order to give a fair and adequate description of the investment service or financial instrument, an investment firm must avoid accentuating the potential benefits of an investment service or financial instrument without also giving a fair indication of the risks.</p>		<p>SC 312/1/a CMVM Reg. 12/2000 art. 38, 39/1/a and 44</p>	<p>Although the Portuguese law does not expressly refer the minimum fees, if the financial intermediary is using them, it must expressly include such in their price list. In any case, article 44 of Regulation 12/2000 entails a clear principle: the intermediary not only has to include in the price list all expenses to be paid by the respective clients, either prices owed by the provision of the service or expenses of any other nature - taxes, fees or market fees, e.g., but it cannot also charge higher amounts than those resulting from the criteria foreseen in the price list or expenses not foreseen in the price list. The CMVM's supervisory practice ensures that the financial intermediary complies with the requirements of this Rule.</p>

⁹ If the customer envisages undertaking transactions in derivatives, the information provided must include an explanation of their characteristics (especially the leverage effect, the duration of the contract, the liquidity and volatility of the market), a description of their underlying parameters (e.g. equities/interest rates/currencies), and the method to be used to execute the customer's transactions (in particular, whether on a regulated market or not).

<p>43. The fair and adequate description of a compound product must contain all the relevant characteristics of the composite instruments including, for example, the different services involved, the duration of the product, whether the instrument involves credit, the interest due, etc.</p>		<p>Public offer prospectus CMVM Reg 12/2000 art 38, 39, 40 and 41</p>	<p>Information concerning the specific features of structured products, guaranteed income, tax information, past performance, prospects of future performance of financial instruments is subject to specific European regulation, when it entails public offers or marketing of UCITS. Whenever it entails the exercise of other activities based on financial advice to private customers no other rules apply, but those laid down in articles 38 to 41 of CMVM Regulation 12 /2000.</p>
<p>44. The information on financial instruments and investment services must not state or imply that the performance of services or of the investment is guaranteed unless there is a legally enforceable arrangement to meet in full an investor's claim under the guarantee. Sufficient detail about the guarantor and the guarantee must be provided to enable the investor to make a fair assessment of the guarantee.</p>		<p>Public offer prospectus SC arts 7, 312 Reg 12/2000 art 38/2, Reg 10/2000 art. 11° Reg 20/2000</p>	<p>Please refer to the notes to Rule 39. The CMVM's supervisory practice ensures that the financial intermediary complies with the requirements of this Rule.</p>
<p>45. When information provided refers to a particular tax treatment the investment firm must advise the customer that the tax treatment depends on his personal situation and is subject to change and that he may wish to obtain independent tax advice.</p>		<p>Public offer prospectus SC art. 7 and 312 CMVM Reg 12/2000 art 38/2 up to 41</p>	<p>Please refer to the notes to Rule 39. In most cases, under the domestic legal framework, taxes applicable to securities investment services does not depend on the individual situation of the investor. Information on this type of tax duties must be part of the price list of the intermediary or of prospectuses of UCITS' marketing, or of public issues of securities. By imposition of the principle of completion of information, within the scope of consultancy services, the intermediary must advise the client to look for investments which are, in terms of taxes, more efficient, in pursuance of his/her profile, (i) that the intermediary is not providing tax consultancy services and (ii) that tax duties are dependent on the specific global assets of the client.</p>

<p><i>39. If information provided by an investment firm refers either to the past performance or to a forecast of the future performance of a financial instrument or investment service, this information must be relevant to the instrument or service being promoted and the source of the information must be stated.</i></p>		<p>SC articles 7, 135/2 and 312 CMVM Reg. 12/2000 article 38/2, Reg. 10/2000, art. 11° Reg. 20/2000 Reg. 4/2002 CMVM Recommendations on Research</p>	<p>On the subject of UCITS, the terms and conditions under which income may be disclosed are fully established under CMVM Regulation 20/2000. The regime applicable to guaranteed UCITS is fully provided for in CMVM Regulation 4/2002. With regard to the public placement of securities, article 135/2 of the SC rules the forecasts on the evolution of prices of securities which are the subject of an offer and article 11 of CMVM Regulation 10/2000 defines the rules for securities which benefit from a guarantee from a third party. Within the scope of registration of general contractual clauses of contracts of individual portfolio management, the CMVM verifies the clauses of contracts in which it is guaranteed a minimum income of the portfolio, not being allowed the use of these models if the guarantee is not an effective one. Outside the scope of public placement of securities or of UCITS' marketing, general rules of articles 312 of the SC and 38/2 of CMVM Regulation 12/2000 (past performance) establish the rules applicable to advise related with the service of reception and execution of orders or with individual management of portfolios.</p> <p>All information provided must be, under article 7 of the SC, complete and accurate. This means, in particular, that the financial intermediary which provides information on past performance or on the prospects of future evolution of a given security listed on the market or, of portfolios under its management, it must take into account (i) representative time periods, (ii) make an objective assessment of the evolution of the quotation or of the results achieved in portfolios under its management, (iii) to be able to demonstrate its research and to disclose the corresponding grounds (as required by the CMVM, in relation to financial research reports, as per "CMVM Recommendations on research", II , 5.1., 5.2. and 6) and (iv) to inform the client on the (uncertain) nature of forecasts on the future evolution.</p>
<p>46. If a reference to historical performance of investment services or financial instruments is made, it must be clearly expressed that the figures refer to the past, and that they may not constitute reliable guidance as to the performance of these services and instruments in the future.</p>		<p>Public offer prospectus, SC arts 7, 135/2 and 312 and CMVM Reg 12/2000 art 38/2, up to 41</p>	<p>Please refer to the notes to Rule 39</p>

<p>47. The use of simulated returns is prohibited. If the information refers to actual returns based on past performance:</p> <ul style="list-style-type: none"> a) the reference period must be stated and must not be less than one year; b) where returns relate to more than one year, they must either be reduced to a compound annual rate or stated separately as annual returns; c) where a compound annual return is presented for more than one year, a reference period of five years must be used provided the relevant data are available. If the relevant data are not available over a reference period of five years (e.g. because the financial instrument or the investment portfolio has not existed for such a period), the returns may be measured from the issue date or the date on which the portfolio was established; d) where a benchmark is used to compare returns, it must be identified and its reference period must be relevant, clear and sufficient to provide a fair and balanced indication of performance of the investment service or financial instrument being promoted; e) if the return figures are not denominated in local currency, the currency used must be stated and reference shall be made to the currency risk for the return in local currency; f) the information for the comparison should be based on net performances or if it is based on gross performances commissions, fees or other charges have to be disclosed. 		<p>Public offer prospectus SC arts 7, 135/2, 312 CMVM Reg 12/2000 art 38/2 up to 41</p>	<p>Please refer to the notes to Rule 39 The CMVM's supervisory practice ensures that the financial intermediary complies with the requirements of this Rule.</p>
<p>48. The relevant provisions on actual returns shall apply to the method of calculating and presenting any future returns. Information on estimated future returns must state that these future returns are forecasts. Such forecasts must in turn be based on objective, realistic assumptions of investment returns.</p>		<p>Public offer prospectus SC arts 7, 135/2, 312 CMVM Reg 12/2000 art 38/2 up to 41</p>	<p>Please refer to the notes to Rule 39 The CMVM's supervisory practice ensures that the financial intermediary complies with the requirements of this Rule.</p>
<p>49. Any estimate, forecast or promise contained in the information on financial instruments and investment services must be clearly expressed, must state the assumptions on which it is based, must be relevant and must not mislead the customer.</p>		<p>Public offer prospectus SC arts 7, 135/2, 312 CMVM Reg 12/2000 art 38/2 up to 41</p>	<p>Please refer to the notes to Rule 39 The CMVM's supervisory practice ensures that the financial intermediary complies with the requirements of this Rule.</p>
<p>50. If information provided contains comparisons, the requirement of being fair, clear and not misleading means that the comparisons must:</p> <ul style="list-style-type: none"> a) be based either on data from attributed sources or disclosed assumptions; b) be presented in a fair and balanced way; c) take reasonable steps not to omit any fact that is material to the comparison. 		<p>Public offer prospectus SC art. 7</p>	

2.5) RISK WARNINGS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<i>51. An investment firm must provide its customers with risk statements that warn of the risks associated with financial instruments and transactions having regard to the customer's knowledge, experience, investment objectives and risk profile.</i>		article 304/3 and article 312/1/a and 312/2 of the Portuguese Securities Code; article 39/1/a and b of CMVM Regulation 12/2000	
53 (1) - An investment firm must provide its customers with risk warnings as appropriate. Instances where the type of instrument or transaction envisaged makes specific risk warnings necessary include: <ul style="list-style-type: none"> - financial instruments not traded on a regulated market; - transactions in illiquid financial instruments; - leveraged transactions; - financial instruments subject to high volatility in normal market conditions; - securities repurchase agreements or securities lending agreements; - transactions which involve credit, margin payments or the deposit of collateral; - transactions involving foreign exchange risk. 		SC art 7 REG 12/2000 art 39/1/b and c)	Article 7 of the SC refers to the quality and disclosure of information complemented with CMVM Regulation 12/2000, article 39/1/c).
53 (2) - The investment firm must also, where necessary, inform the customer of risks associated with: a) clearing house protections (e.g. that although the performance of a transaction is sometimes 'guaranteed' by the exchange or clearing house this guarantee will not necessarily protect the customer in the event of default by the investment firm or another counterparty); b) suspension of trading or listing (e.g. that under certain trading conditions it may be impossible to liquidate a position); c) insolvency (e.g. that in the event of default of an investment firm involved with the customer's transaction, positions may be liquidated automatically and actual assets lodged as collateral may be irrecoverable).		SC art 312/1/a and 312/2; REG 12/2000 art 39/1/c	Please refer to the notes above – Rule 53 (1)

<p><i>52. Risk warnings must be given due prominence. They must not be concealed or masked in any way by the wording, design or format of the information provided.</i></p>		<p>SC art 7; CMVM Reg. 12/2000 art 39/1/b and c) Reg. 21/2000 art 3/a</p>	<p>As per article 7 of the SC, all information regarding financial intermediation activities must be complete and accurate. Additionally, it is the intermediary's duty to demonstrate that it complied with all its duties to inform. Within the scope of on-site supervision of where investment services are provided, the CMVM supervises the adequate visibility of the information provided (article 3/a) of Regulation 21/2000,e.g.), specifically the information needed to comply with this standard.</p>
<p>54. Risk warnings about derivatives must disclose that the instrument can be subject to sudden and sharp falls in value. Where the investor may not only lose his entire investment but may also be required to pay more later, he must also be warned about this fact and the possible obligation to provide extra funding.</p>		<p>SC arts. 2, 7 and 312/1/a CMVM Reg 12/2000 art 39/1/a, b and c). REG 5/2000, art. 15/ 1/c</p>	<p>.Article 312/1/a) and article 2 of the SC and article 39/1/a) of CMVM Regulation 12/2000 already establish the duty of the intermediary to provide the client with complete and accurate information (article 7 of the SC) on the risks entailed by the service to be provided, requiring that due account is taken as to the nature of the service and to the expertise and knowledge of the client. Article 15/1/c of CMVM Regulation 5/2000 also imposes, to the financial intermediary, the duty to inform the client about the risks inherent to the carrying out of transactions on the derivatives market. Namely, the intermediary must inform the client on the volatility of derivatives financial instruments, on high risks associated with investment, including the total loss of capital, or the delivery of additional funds. This type of information must also be included, in general terms, in the document on general investment risks that the financial intermediary must deliver to the client, before providing the service (article 39/1/b) of CMVM Regulation 12/2000).</p>

2.6. CUSTOMER REPORTING

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p><i>55. An investment firm must ensure that a customer is provided promptly with the essential information concerning the execution of his order.</i></p>		<p>article 323/a of the Portuguese Securities Code</p>	

<p>58. No later than the first business day following the execution of the transaction or receipt of confirmation of execution by a third party, an investment firm must send to the customer¹⁰, by fax, mail or electronic means (provided the firm reasonably believes that the customer can store it on a permanent medium), a contract note or confirmation notice which includes the following information:</p> <ul style="list-style-type: none"> a) the name of the firm; b) the name of the customer account; c) the time of execution, if available, or a statement that the time of execution will be supplied on request; d) date of execution; e) the type of transaction; e.g. buy, sell, subscription etc.; f) the market on which the transaction was carried out or the fact that it was carried out off-market; g) the financial instrument and the quantities involved in the transaction; h) the unit price applied and the total consideration; i) whether the customer's counterparty was the investment firm itself or any related party; j) the commissions and expenses charged; k) the time limit and procedure for the settlement of the transaction, e.g. details (name and number) of the bank account and securities account. <p>If a transaction is not executed within one business day of receipt of the customer order, an investment firm must send a written confirmation of the order to the customer. The confirmation notice must include customer order details, date and time of reception and, where applicable, date and time of transmission.</p>		<p>CMVM Reg. 12/2000 art. 42/1</p>	
<p>59. The investment firm must notify the customer immediately if it refuses to accept or transmit an order. The firm must inform customers as soon as possible if it is unable to transmit their orders.</p>		<p>article 323/b and 326/4 of the Portuguese Securities Code</p>	
<p><i>56. Where an investment firm has control of, or is holding assets belonging to a customer, it must arrange for proper identification and regular confirmation of such assets to the customer.</i></p>		<p>article 306/1 and 307 of the Portuguese Securities Code</p>	

¹⁰ The reference to “send to the customer” includes to a tied-agent, other than the firm, nominated by the customer in writing.

<p>60. An investment firm must send to its customer at least once a year or as often as agreed with the customer a statement of all assets held in custody on behalf of each customer. The statement must also:</p> <ul style="list-style-type: none"> a) identify assets which have been pledged to the firm or any third parties as collateral; b) identify assets which have been lent; c) clearly and consistently show movement of assets based on either trade date or settlement date. 		<p>article 85/4/a and 307 of the Portuguese Securities Code; article 7/5/c and 71 of CMVM Regulation 12/2000</p>	
<p><i>57. An investment firm that operates customer accounts, which include uncovered open positions, must provide regular statements of such positions.</i></p>		<p>article 41 of CMVM Regulation 12/2000</p>	
<p>61. Where an account includes uncovered open positions¹¹, an investment firm must send to its customer a monthly statement, which includes the following:</p> <ul style="list-style-type: none"> a) information about the options contract, e.g. market price, date of exercise, exercise price, as well as any incidental costs connected with the exercise; b) each payment made by the customer as a result of the margin requirements in respect of the open positions and the amount of the unrealised profit or loss attributable to open positions; c) the resulting profit or loss arising from positions closed during the period. 		<p>article 41 of CMVM Regulation 12/2000</p>	

3. THE “KNOW-YOUR-CUSTOMER STANDARD” AND THE DUTY TO CARE

3.1 INFORMATION FROM THE CUSTOMER

¹¹ Examples of uncovered open positions include:

- (1) short positions on cash instruments;
- (2) selling a call option on an investment not held in the portfolio;
- (3) unsettled sales of call options on currency in amounts greater than the portfolio’s holding of that currency in cash or in readily realisable securities denominated in that currency;
- (4) transactions having the effect of ‘selling’ an index to an amount greater than the portfolio’s holdings of designated investments included in that index.

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p><i>62. Prior to providing any investment service to a customer for the first time and throughout the business relationship, an investment firm must be in possession of adequate documentation on the identity of the customer, as well as the identity and legal capacity of any representative of the customer.</i></p> <p><i>In addition, prior to providing any investment service the investment firm must seek to obtain from the customer information enabling an investment firm</i></p> <p><i>a. to determine whether the investment services envisaged are appropriate for the customer¹² and</i></p> <p><i>b. to meet any duties owing to the customer in respect of the services to be provided.</i></p>		article 304/1 and 3 of the Portuguese Securities Code	
<p>63. The “know-your-customer” standard applies to each investment firm having a direct business relationship with the customer with respect to investment services. However, where two or more investment firms are involved in providing an investment service and each has a direct relationship with the customer, an investment firm may rely on the information received from another of such investment firms.</p>			Not implemented
<p>64. An investment firm must obtain evidence of the identity of its customers in accordance with national laws and regulations implementing the provisions of Council Directive 91/308 on the prevention of the use of the financial system for the purpose of money laundering. Until such evidence is obtained, an investment firm must not provide any investment services to the customer concerned.</p>		Decree-Law 325/95, December 2	
<p>65. An investment firm must seek to obtain information on the customer’s knowledge and experience¹³ in the investment field, his investment objectives and risk profile,¹⁴ his financial situation/capacity and any trading restrictions applicable to the customer. The extent of the information required will vary according to the standards laid down in paragraph 62, second subparagraph.</p>		SC Art. 304/1 and 304/3	

¹² This is not considered to be investment advice according to the definition of the paper.

¹³ Information on the customer’s investment knowledge and experience includes the types of services, transactions and products the customer is familiar with and his trading history, i.e. the nature, volume, frequency and timeframe of his transactions.

¹⁴ Information on the customer’s investment objectives and risk profile includes the temporal horizon of the customer’s future investments, as well as his preferences regarding risk-taking and recurrent income.

66. An investment firm shall be entitled to rely on the information provided by the customer, unless it is manifestly inaccurate or incomplete or the firm is aware that the information is inaccurate or incomplete. In this case paragraph 69 applies.		SC art 304/2	Trust in the information provided by the client embodies the resulting from the principles of good faith and loyalty, provided for in article 304/2 of the SC. The CMVM's supervisory practice ensures that the financial intermediary complies with the requirements of this Rule.
67. An investment firm must take reasonable care to keep the customer profile under review, also taking into consideration the development of the relationship between the investment firm and the customer. The customer must be advised that he should inform the investment firm of any major changes affecting his investment objectives, risk profile, financial situation/capacity, trading restrictions, or the identity or capacity of his representative. Should the firm become aware of a major change in the situation previously described by the customer, it must request additional information.		article 304/3 of the Portuguese Securities Code	
68. An investment firm must draw up and implement appropriate written internal policies and procedures to keep and update all documents required for customer identification and profile, as well as records of customer addresses and telephone/fax numbers.			Not implemented
69. An investment firm must warn the customer that any refusal to supply information may adversely affect the ability of the investment firm to act in the best interest of the customer. If a customer refuses to supply information the investment firm must warn him in writing that this may adversely affect the ability of the investment firm to act in his best interest.			Not implemented
70. The customer should not be invited not to provide information.		SC art 304/1	This stems from the principle of protection of legitimate interests of the client and of the "Know your Customer" principle, provided for in article 304/1 of the SC. The CMVM's supervisory practice ensures that the financial intermediary complies with the requirements of this Rule.

3.2 THE INVESTMENT FIRM'S DUTY TO CARE FOR THE CUSTOMER ¹⁵

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments

¹⁵ After having obtained the information from the customer according to chapter 3.1., the extent of an investment firm's duty to care for the customer depends on the nature of the investment service to be provided: where the service to be provided is a full hand-holding service of transmission or execution of order par. 72-76 apply; where the service to be provided is the pure transmission or execution of orders (This implies that no investment advice is provided and that suitability will not be tested on a transaction-by-transaction-basis) par. 74, 76 and 77 apply.

<p>72. When an investment firm provides investment advice to the customer, it must have reasonable grounds to believe, in light of the information disclosed to it by the customer and the information available to it, including the information arising from the customer relationship, that this investment advice is suitable for him. The investment firm must communicate the reasons why the advice is considered to be in the best interest of the customers at the time the advice is given.</p>		<p>SC art 304 and 312/3</p>	<p>The CMVM's supervisory practice ensures that the financial intermediary complies with the requirements of this Rule.</p>
<p>73. Before accepting an order an investment firm must take reasonable care to verify that the order is suitable for the customer in light of the information disclosed to it by the customer and the information available to it, including the information arising from the customer relationship.</p>		<p>article 304 and 326/1 b) of the Portuguese Securities Code</p>	
<p>75. Where an investment firm receives an order regarding a transaction that it considers – in the light of the information disclosed to it by the customer and the information available to it, including the information arising from the customer relationship – not suitable¹⁶ for the customer, it must advise the customer accordingly and provide appropriate information on the transaction, including any necessary risk warning. The investment firm may transmit or execute the order only if the customer nonetheless confirms his intention to proceed with the transaction in writing or by telephone and recorded, and provided that such confirmation contains an explicit reference to the warning received.</p>		<p>SC art 326/1/b</p>	<p>Implemented in the referred rules, although in more general terms. The CMVM's supervisory practice ensures that the financial intermediary complies with the requirements of this Rule.</p>
<p>74. An investment firm must take reasonable care to verify that the customer has sufficient financial resources to settle the proposed transaction.</p>		<p>article 304 and 326/2 c) of the Portuguese Securities Code</p>	
<p>76. An investment firm may accept an order without having taken reasonable steps to verify the immediate availability of the funds (securities) necessary for carrying out the related purchase (sale) only if an adequate credit facility has been agreed on beforehand.</p>		<p>SC arts 306/3 and 5 and art 326/2 c)</p>	<p>Financial intermediaries can only accept orders from their clients that do not provision accounts neither of cash nor of securities, for the purpose of settlement of transactions, should they be authorised to grant credit and if they hold, for that purpose, a contract with the client or, if a third intermediary has entered into a contract with the client. In any other situations, the financial intermediary cannot allow clients not to have their accounts duly provisioned for settlement purposes- once that could endanger the principle of segregation of assets between clients (article 306/3 and 5 of the SC). The CMVM has been acting in pursuance of this understanding, when, within the scope of supervisory actions, it identifies situations where accounts of clients lack provision for the purpose of settlement of transactions, without being demonstrated that an adequate contract of granting of credit is in place.</p>

¹⁶ A transaction may be considered unsuitable for a customer, *inter alia*, because of the instrument involved (e.g. derivatives), because of the type of transaction (e.g. sale of options), because of the characteristics of the order (e.g. size or price specifications) or because of the frequency of the customer's trading.

<p>77. Where the service to be provided is the pure transmission or execution of orders (either through a special distribution channel, in individual cases or generally) the customer must be made aware of this fact prior to the transaction taking place for the first time. On the basis of the information obtained from the customer on opening the account, the investment firm will define an appropriate service including investment parameters, i.e. types of instruments, types of transactions and types of orders, and inform the customer accordingly. Where the investment firm receives an order regarding a transaction, which is not in line with the defined investment parameters, it must warn the customer accordingly and provide appropriate information on the transaction, including any necessary risk warning(s). The investment firm may transmit or execute the order only if the customer nonetheless confirms his intention to proceed with the transaction in writing or by telephone and recorded, and provided that such confirmation contains an explicit reference to the warning received.</p>			Not implemented
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4. CUSTOMER AGREEMENTS

4.1) BASIC CUSTOMER AGREEMENT

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p><i>78. Prior to providing any investment service, an investment firm must enter into a signed written agreement with the customer setting out the rights and obligations of the parties, a description of the services to be provided, and all other items of information necessary for the proper understanding and performance of the agreement.</i></p>			Not implemented
<p><i>79. The customer agreement must be clear and easily understandable by the customer.</i></p>			Not implemented

<p>80. The customer agreement must contain the following items as a minimum:</p> <ul style="list-style-type: none"> a) the identity, postal address and telephone number of each of the parties; b) the names of any persons authorised to represent the customer for the purposes of the agreement, in particular the names of the natural persons authorised to represent the customer who is a legal entity; c) the investment firm's general terms of business for investment services and any particular terms agreed between the parties concerning, e.g. margin requirements or potential obligations where securities may be purchased on credit d) a general description of the investment services, including custody, offered by the investment firm and the types of financial instruments to which such services relate; e) the types of orders and instructions that the customer may place with the investment firm, the medium/media for sending them (e.g. by telephone, E-mail or post) and the alternative medium to be used when normal media are unavailable; f) the information to be given by the investment firm to the customer regarding the performance of services including the medium/media for sending the information and the type, frequency and rapidity of the information to be given e.g. regarding order execution or portfolio evaluation; g) details of the investment firm's fees and prices for investment services, including information on how they are to be calculated, the frequency with which they are to be charged and the manner of payment; h) the name of the competent authority which has authorised the investment firm; i) the law applicable to the contract, as ascertained to the best of the knowledge of the firm or as agreed between the parties; j) the duration of the agreement and the procedures for amending, renewing, terminating or withdrawing from it; k) where such a procedure exists, a description of the mechanism for settling disputes between the parties such as an out-of-court complaint and redress mechanism; l) the actions that the investment firm shall or may take in the event the customer does not honour his obligations (e. g. payment of money due to the investment firm), in particular whether the investment firm is allowed to dispose of any of the customer's assets, the timeframe for doing so and the information to be given to the customer in such circumstances; m) the languages in which the customer can communicate with the investment firm. 		<p>article 39 CMVM Regulation 12/2000</p>	
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81. Rather than containing all the above items itself, the contract may refer to other documents containing certain of them, e.g. the general terms of business, the types of investment services offered, the types of orders and information to be sent by the parties and the fee schedule, provided that all the contractual documents so referred to are provided to the customer prior to the signing of the contract.		contract definition	
82. Where a custody service related to the other services provided by the firm to the customer is provided, either directly by the investment firm party to the contract with the customer or indirectly by another investment firm, the contract must contain at least a brief indication of the rights and obligations of the parties, including the provisions relating to the exercise of voting rights attaching to the securities held.		article 343 of the Portuguese Securities Code	
83. The contract must state that any modification of the agreement by the investment firm, e.g. regarding fees, requires the prior notification of the customer, and the contract must provide a sufficient opportunity for the customer to terminate the agreement.			Not implemented
84. A copy of the agreement signed by the customer (and any related contractual documents) must be kept by the investment firm for the duration of the customer relationship and for at least five years after the end of the relationship; a copy must be provided to the customer immediately after signing, and at any time subsequently on request.		article 308 of the Portuguese Securities Code	

4.2) CUSTOMER AGREEMENT INVOLVING TRADING IN DERIVATIVES

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<i>85. Prior to providing the services of reception/transmission and/or execution of orders involving derivatives, a customer agreement containing the relevant provisions of the basic customer agreement as well as certain additional provisions specific to trading in derivatives must be signed between the parties.</i>		SC arts 312 and 321 CMVM Reg. 5/2000, art. 15°.	Partially implemented through article 321 of the SC and article 15 of Regulation 5/2000. The later imposes that a written contract is signed, prior to commencement of provision of the service of reception and execution of orders over derivative financial instruments. The same article also establishes the minimum content.

<p>86. In addition to the relevant items of the basic customer agreement, where the firm provides services involving derivatives, the customer agreement must contain:</p> <ul style="list-style-type: none"> - the type(s) of instruments and transactions envisaged, - the obligations of the investment firm with respect to the transactions envisaged, in particular its reporting and notice obligations to the customer, - the obligations of the customer with respect to the transactions envisaged, in particular his financial commitments toward the investment firm and the time allowed for honouring such commitments, - an appropriate warning calling to the customer's attention the risks involved in the transactions envisaged. 		<p>SC art 312/1/a REG 12/2000 art 39/1/b), d), and e). REG 5/2000 Art. 15/1.</p>	
<p>87. The contract must mention the types of transactions envisaged, in particular whether the customer intends to undertake transactions giving rise to contingent liabilities, the types of instruments envisaged, in particular whether they are traded on a regulated market or not, and it must refer to the documentation on such instruments provided by the investment firm to the customer for information purposes.</p>		<p>CMVM Reg. 12/2000 art 39</p>	
<p>88. The contract must provide for the immediate confirmation of derivatives transactions and the immediate notice to the customer of his payment obligations as they arise, as well as the procedures to be used for such confirmation and notice.</p>		<p>CMVM Reg. 12/2000 arts. 40 e 41</p>	<p>The carrying out of transactions on derivatives must be reported to clients on the same day. If the defence of the client's interests so justifies, transactions must be reported with an inferior extension of time limits in relation to the realization of the transaction.</p>
<p>89. The contract, or the documentation referred to in the contract, must provide adequate information on any margin requirements or similar obligations, regardless of the source of such rules and requirements, e.g. an exchange or clearing house, or the investment firm itself. This document must indicate how margin will be calculated and charged, the assets (cash, securities, etc.) accepted as margin, the frequency of margin calls and the timetable for the delivery or payment of margin by the customer to the investment firm. The contract must require immediate notification to the customer of any change in margin rules.</p>		<p>article 41 of Regulation 12/2000.</p>	
<p>90. The warning given to the customer should reflect the transactions envisaged, in particular where potential losses may exceed the amounts invested, as well as the experience, knowledge and financial situation/capacity of the customer or type of customer involved, and should be given due prominence in the contract.</p>		<p>CMVM Reg. 12/2000 art 39/1/a</p>	

5.- DEALING REQUIREMENTS

5.1) RECEPTION AND TRANSMISSION OF CUSTOMER ORDERS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<i>91. An investment firm must record and process customer orders in accordance with the customer's instructions and in such a way as to facilitate best execution.</i>		article 330 of the Portuguese Securities Code	
93. An investment firm must ensure that, prior to their transmission for execution, orders given by customers are clear and precise and include the following: a) the name of the customer and of any person acting on his behalf, b) the date and time of the order, c) the financial instrument to be traded, d) the size of the order, e) the nature of the order, e.g., subscription, buy, sell, exercise etc., f) any other relevant details and particular instructions from the customer for the order to be properly transmitted and executed, e.g. limit orders, validity period and market of execution; g) the account for which the order has to be executed.		article 53 e 54 of Regulation 12/2000, CMVM.	
94. An investment firm must record orders immediately, documenting and verifying all relevant items of proper execution.		article 327 of the Portuguese Securities Code and article 52 of Regulation 12/2000, CMVM	
95. An investment firm must keep a record of telephone orders on magnetic tape or an equivalent medium. Investment firms must duly inform the customer that the conversation will be recorded.			Not implemented
96. Before transmitting orders on behalf of several beneficiaries on an aggregated basis, an investment firm must pre-assign such orders in order to ensure that they can identify and match the orders with the relevant customer at any time.		article 328/4 of the Portuguese Securities Code.	
97. An investment firm must transmit orders promptly and sequentially and must take all reasonable care to transmit orders in a way to facilitate their best execution, taking into account all relevant details of the process of transmission, e.g. the size and characteristics of the order.		article 328/2 of the Portuguese Securities Code	

92. <i>An investment firm must ensure that the firm and its members of the board, directors, partners, employees and tied-agents do not use the information they possess on customers orders to the disadvantage of customers' interest.</i>		article 304/5 of the Portuguese Securities Code	
98. An investment firm must take all reasonable steps to refrain from transmitting orders for its own account or the account of its members of the board, directors, partners, employees and tied-agents before those of customers in identical or better conditions than the latter ("front running").		article 347/1 b) of the Portuguese Securities Code.	
99. An investment firm, which aggregates orders, must pre-assign such orders prior to transmitting them.		article 328/4 of the Portuguese Securities Code.	
100. An investment firm may transmit orders for its own account and for its customers account on an aggregated basis when it is clearly in accordance with the best interest of the customer and provided that the best execution standard is respected.		article 347/1 a) of the Portuguese Securities Code.	
101. In the case of orders in connection with public offers of securities, an investment firm may transmit such orders provided that they offer the relevant prospectus to the customer or informs the customer where it is available.		SC arts 140/1/b), 312, 323 and 327/2. CMVM Reg. 10/2000, art. 27.	It stems from the general information duties imposed by the SC on intermediaries, as well as from the provided for in article 140/1/b, which imposes that the public offer prospectus is made available "at the head office and agencies of the financial intermediaries in charge of gathering the addressee's declarations". Article 27 of CMVM Regulation 10/2000 provides that in the bulletin of reception of investment intentions - to be transmitted in writing, under the established in article 327/2 of the SC -, a reference is made to the documents of the public offer. In supervision terms, when, e.g., an intermediary intends to receive orders for the public offer through the Internet, the CMVM verifies whether the intermediary makes the prospectus available on the respective site

5.2) EXECUTION OF ORDERS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
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<p><i>102. An investment firm must take all care to obtain the best possible result for the customer with reference to price, costs born by the customer, size, nature of the transactions, time of reception of order, speed and likelihood of execution and trading venue taking into account the state of the relevant market(s). The relevant market(s) shall be deemed to be the market(s) offering the most favourable trading conditions also in terms of transparency, liquidity and clearing and settlement arrangements in connection with the envisaged transaction. If the investment firm executes in another trading venue, it must be able to demonstrate to the customer that this was done in accordance with his best interest.</i></p>		<p>SC art. 330/2</p>	
<p>104. An investment firm acting as principal in relation to a customer order must inform the customer accordingly beforehand and must be in a position to justify the price at which the transaction is executed, with reference to the prices and volumes in the relevant market(s), where appropriate, or the presumed value determined on the basis of objective elements, e.g. mark-to-market.</p>		<p>SC arts 330 and 346/1 CMVM Reg. 12/2000 art. 42</p>	<p>Implemented, based on legal provisions already referred to.</p>
<p>105. An investment firm must take all reasonable steps to refrain from executing orders for its own account or the account of its members of the board, directors, partners, employees and tied-agents before those of customers in identical or better conditions than the latter (“front running”).</p>		<p>article 347/1 b) and c) of the Portuguese Securities Code.</p>	
<p><i>103. An investment firm must ensure that orders are executed in accordance with the instructions from the customer.</i></p>		<p>article 330./1 of the Portuguese Securities Code</p>	
<p>106. An investment firm must execute orders promptly and sequentially, unless the characteristics of the order and/or prevailing market conditions make this impossible or require otherwise in the interest of the customer.</p>		<p>article 330/1 and 2 328./2 of the Portuguese Securities Code.</p>	
<p>107. Customer orders may be matched internally only if such offsetting is clearly in accordance with the best interest of the customers involved and provided that the best execution standard is respected.</p>		<p>SC arts 330, 304/1 and 309/3</p>	<p>This standard is already implemented through the mentioned rules. According to article 330(4) of the SC, orders relating to securities admitted to trading on a given market must be executed in that market, except when there are express and written indications from the client. According to article 330/2 of the SC orders must be executed in the best conditions of the market (even in case of internalization). When acting also as counterpart on the operation, the financial intermediary must obtain a written consent from the client (Articles 304/1 and 309/3 of the SC). During on site supervision, the CMVM confirms the existence of situations related with conflict of interests.</p>
<p>108. If an investment firm aggregates orders, it must pre-assign such orders prior to executing them.</p>		<p>SC arts 328/4 and 330/5</p>	
<p>109. The price received or paid by the customer shall be identified separately from the fees and costs to the customer.</p>		<p>CMVM Reg. 12/2000 art. 42/1 e) and h)</p>	

110. An investment firm must inform customers of relevant risks or impediments for the proper execution of the orders. If, due to market conditions, or for any other reason, an order cannot be executed according to the instructions given by the customer, an investment firm must ensure that the customer is duly informed as soon as possible.		SC arts. 312/1 a) and 323 b)	
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5.3) POST- EXECUTION OF ORDERS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<i>111. An investment firm must ensure the proper and speedy recording, allocation and distribution of executed transactions.</i>		CMVM Regulation 12/2000art. 74 ss.	
113. An investment firm must record the essential elements of transactions, including those carried out for its own account, immediately after their execution. An investment firm must record in an analogous manner the orders they give and the transactions they carry out for the purpose of remedying errors made in recording, transmitting or executing orders.		article 59 of the Regulation 12/2000, CMVM	
114. An investment firm must ensure that once a transaction is executed it is promptly allocated to the account of the relevant customer(s).		article 77/1 of the Regulation 12/2000, CMVM.	
<i>112. Where orders for own and customer accounts have been aggregated, the investment firm must not allocate the related trades in any way that is detrimental to any customer. If such an aggregated order is only partially executed, allocation to customers must take priority over allocation to the investment firm.</i>		SC art. 328/4	
115. Where an order has been executed in several tranches, the investment firm must inform the customer about the price of execution of each tranche, unless the customer requests an average price. If customer orders have been aggregated and such an aggregated order has been partially executed, the investment firm must allocate the related trade on a proportional basis, unless the firm has a different allocation policy and the customers involved have been informed accordingly prior to the execution. An investment firm must have procedures in place to prevent that reallocation of principal transactions executed along with customers transactions on an aggregated basis give unfair preference to the investment firm or to any of its customers for whom it deals.		article 330/3 and 328/4 of the Portuguese Securities Code.	

6. INDIVIDUAL DISCRETIONARY PORTFOLIO MANAGEMENT

In addition to the foregoing standards and rules, additional provisions apply to the service of individual portfolio management.

6.1. CUSTOMER AGREEMENTS FOR DISCRETIONARY PORTFOLIO MANAGEMENT

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p><i>116. Prior to the provision of any discretionary portfolio management service, a customer agreement containing the relevant provisions of the basic customer agreement mentioned above, as well as certain additional provisions specific to portfolio management must be signed between the parties.</i></p>		SC art 335	The CMVM verifies if the general contractual clauses to be adopted by the financial intermediary are complying with the regulations not only during the registration procedures, but also during the on-site supervisions.
<p>118. Instead of the items referred to in paragraph 80.e) , the customer agreement must contain:</p> <ul style="list-style-type: none"> a) the management objective(s) and any specific constraints on discretionary management, b) the types of financial instruments that may be included within the portfolio and the types of transactions that may be carried out in such instruments, including any related limits. <p>In addition to the above, the customer agreement must contain:</p> <ul style="list-style-type: none"> c) without prejudice of paragraph 121, the benchmark against which performance will be compared, d) the basis on which the instruments are to be assessed at the date of valuation, e) details regarding the delegation of the management function where this is permitted. 		SC art. 332	
<p>119. The contract must indicate the objectives and the level of risk agreed upon, and any particular constraints on discretionary management resulting from the customer's personal circumstances as referred to in paragraph 62 or his request to exclude certain types of investments (certain business sectors for example).</p>		SC art. 332	
<p>120. If an investment firm is mandated to invest in any of the following types of instruments or to undertake any of the following types of transactions, the contract must state so explicitly and provide adequate information on the scope of the investment firm's discretionary authority regarding these instruments and transactions:</p> <ul style="list-style-type: none"> - financial instruments not traded on a regulated market, - illiquid or highly volatile financial instruments, - leveraged transactions, - securities repurchase agreements or securities lending agreements, - transactions involving credit, margin payments or deposit of collateral, - transactions involving foreign exchange risk. 		SC art. 332	

<p>121. For information purposes with respect to the customer, the contract must indicate an appropriate benchmark, based on financial indicators produced by third parties and in common use, that is consistent with management objectives and against which the future results are to be compared. Where it is not feasible to establish such a benchmark in view of specific customer objectives, this must be stated clearly in the contract and an alternative measure of performance must be indicated.</p>		<p>SC art. 332</p>	
<p>122. The contract must state whether the financial instruments are to be valued at bid/ask or offer or mid-market price, including any relevant currency exchange rates, and, where relevant, by reference to indicators such as yield curves or other pricing models or the methodology to be used to value unlisted equities.</p>			<p>Not implemented</p>
<p>123. The contract must define a specific reporting requirement in the event of losses, defined as a marked-to-market decrease in the value of the portfolio as compared to the value of the portfolio as stated in the most recent periodic report (after neutralisation of any contributions or withdrawals). The contract must set a percentage threshold and a time period to warn the customer accordingly.</p>			<p>Not implemented</p>
<p>124. If the contract provides for a variable management fee based on the performance of the management service, the method of calculation must be clearly defined in the contract.</p>		<p>SC Art. 7, 312/1/d and 332/2/h CMVM Reg 12/2000 art 44</p>	<p>The criterion used to calculate the fees (fixed, variable or mixed) owed to the financial intermediary must be mentioned in the portfolio management contract article 332/2/h of the SC. Both the criterion used in the calculation of variable fees relating to the profitability of the portfolio as well as the method used in calculating the value of the portfolio itself, must be clear and objective (article 7 of the SC). Article 312/1/d of the SC applies to all the financial intermediation activities and obliges the intermediary to disclose adequate information on the price of the service to be rendered. Regarding the prior registration which is covered by obligatory general contractual clauses in management portfolio contracts, the CMVM controls the clarity and transparency of the method used to calculate the variable fees relating to the profitability of the portfolio so as to allow investors to easily control the correct application of the fees. In certain situations, the CMVM has requested that alterations be made to the contractual clauses as the latter did not meet the necessary clarity requirements (in other cases the CMVM has declined the registration of the progressive variable fees (by platforms) when it has considered them excessive. During the CMVM's supervisory actions, it has verified whether the correct application of fees are being performed by the IFs and also whether the transparency of the respective calculation criteria are being used.</p>

<p>125. The contract must provide:</p> <ul style="list-style-type: none"> - that the customer may terminate the agreement with immediate effect, subject only to the completion of all transactions already commenced and the time necessary to liquidate the portfolio where this is required by the customer; - that the investment firm may terminate the agreement subject to a two-week notice, provided however that where the portfolio cannot be liquidated (where required by the customer) within this timeframe, the agreement may be extended for the necessary additional period, and provided that where the customer so agrees after being informed of the firm's intention to terminate, the agreement may be terminated in the timeframe agreed between the parties. <p>In both cases, the termination must take place on terms that are fair and reasonable for both parties.</p>			Not implemented
<p><i>117. Where the conditions for delegating management of the portfolio are met and the contract allows the investment firm to delegate this function, the contract must state that the delegator retains full responsibility for the protection of the customer's interests.</i></p>		CMVM Reg. 12/2000 article 45 ss.	
<p>126. If an investment firm is mandated to delegate management of any or all of the customer's assets, this must be stated in the contract and adequate information must be supplied in this regard, both to the customer and to the competent authority. The contract must also provide that the customer will be informed prior to any significant change regarding delegation of portfolio management.</p>		SC art. 332/2/e CMVM Reg. 12/2000 Art 48/1/d and 48/2	
<p>127. An investment firm may delegate the portfolio management function to another investment firm only if such delegatee firm is authorised in its home country to provide portfolio management services on an individual basis and is qualified and capable of undertaking the function in question. The mandate shall not prevent the effectiveness of supervision over the delegator, and in particular, it must not prevent the delegator from acting in the best interests of its customers. In no case the investment firm may delegate its functions to the extent that it becomes a letter box entity. Furthermore, it may so delegate to a non-EEA investment firm so authorised in its home country only if an appropriate formal arrangement between regulators enables them to exchange material information concerning both cross-border delegations and the delegatee.</p>		CMVM Reg. 12/2000 Art. 46	

<p>128. The delegation agreement, in writing:</p> <ul style="list-style-type: none"> a) must be revocable with immediate effect by the delegator; b) must provide for sufficient notice to be given to the delegator by the delegatee of termination of the agreement; c) must be in conformity with the indications contained in the customer agreement with the delegator; d) must require, where the execution of transactions is not subject to the prior consent of the delegator, the delegatee to observe the investment guidelines, including investment allocation criteria, laid down from time to time by the delegator; e) must be formulated so as to avoid conflicts of interest between the delegator and the delegatee; f) must provide for the delegator to receive a continuous flow of information on the transactions carried out by the delegatee permitting it to monitor effectively at any time the activity of the delegatee and to reconstruct the assets under management belonging to each customer of the delegator. 		<p>CMVM Reg. 12/2000 art. 46 ss.</p>	
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6.2 PERIODIC INFORMATION

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p><i>129. An investment firm must send periodic statements to its portfolio management customers so as to enable them to assess the performance of the service.</i></p>		<p>CMVM Reg. 12/2000 art. 71</p>	
<p>130. Periodic statements for portfolio management customers must contain:</p> <ul style="list-style-type: none"> a) a statement of the contents and valuation of the portfolio, including details of each investment held, its market value and the performance of the portfolio and the cash balance, at the beginning and at the end of the reporting period; b) a management report on the strategy implemented (to be provided at least yearly); c) the total amount of fees and charges incurred during the period and an indication of their nature; d) information on any remuneration received from a third party and details of its calculation basis; e) the total amount of dividends, interest and other payments received during the period. 		<p>CMVM Reg. 12/2000 art. 71</p>	
<p>131. If the basis for valuing any of the assets in the portfolio has changed with respect to the methods described in the portfolio management agreement, these changes must be indicated in the statement along with their impact on profits and/or losses.</p>			<p>Not implemented</p>

132. Periodic statements must include full information on any remuneration received by the investment firm or the manager from a third party that is attributable to services performed for the customer by the manager of the portfolio.			Not implemented
133. In case the customer has elected – in derogation to rule 58 - not to receive information on each transaction in due course carried out by the portfolio manager, the periodic statement containing details of each transaction must be provided at least every three months. Where the details of each transaction are notified after each transaction to the customer, the periodic statement may be provided only every six months.		CMVM Reg. 12/2000 art 71	During on-site supervisions upon financial intermediaries that perform individual portfolio management, the CMVM confirms if the financial intermediary sends a statement of movements to its clients at least once a month. If procedures are not in compliance with the existing rules, the CMVM stipulates the necessary corrections. The same procedure is applied when the CMVM has to register the general clauses of the portfolio management contracts.
134. Where the contract authorises a leveraged portfolio, the customer must receive a periodic statement at least once a month, including an assessment of the risks.		CMVM Reg. 12/2000 art. 71	Partial implementation

6.3. MANAGEMENT REQUIREMENTS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<i>135. An investment firm must take all reasonable steps necessary to ensure the independence of the portfolio management function and mitigate the risk of customers' interests being harmed by any conflict of interest, in particular by providing for the strict separation of functions within the investment firm and its group.</i>		SC art. 304 ss.	
138. The structure of the investment firm, its policies and procedures must seek to ensure the independence of the portfolio management function.		SC arts 304, 305 307 CMVM Reg. 12/2000 arts. 13/4, 20, 32/c and 33	This standard is already implemented through the mentioned rules. The Portuguese legal framework considers the general duty for investment firms to separate each of their financial activities. The existing rules are applicable to all financial activities, thus including portfolio management on behalf of a third party. During on-site supervisions, the CMVM confirms if the financial intermediary is acting accordingly, mainly on issues related with the necessary separation of human resources, materials and technical support. If procedures are not in compliance with the existing rules, the CMVM stipulates the necessary corrections, verifying afterwards if the instructions given were implemented.

<p>136. An investment firm must define investment strategies for its portfolio management services and carry out transactions in accordance with such strategies, taking into account the terms of the customer agreement.</p>		<p>SC arts. 304, 332 e 335</p>	<p>During on-site supervisions, the CMVM will confirm if the financial intermediary has the capacity to define his own strategies and to act accordingly. The CMVM also confirms if the investment strategies adopted are adequate to investors and also if those strategies are in accordance with the contracts signed with the clients.</p>
<p>139. The investment firm must maintain records of its investment strategies, as well as the analyses and forecasts underlying them.</p>		<p>SC art 305/2</p>	
<p>137. The transactions carried out by the portfolio manager, both individually and as a whole, must be exclusively motivated by the interests of the customer and in accordance with agreed management objectives.</p>		<p>SC art. 304 ss.</p>	
<p>140. The investment firm must ensure that its orders are executed as efficiently as possible and in particular that:</p> <ul style="list-style-type: none"> a) orders issued are immediately recorded by the firm; b) transactions executed are recorded and the portfolios affected are adjusted as quickly as possible; c) the portfolios affected and the relevant amounts are determined, or objectively determinable, no later than the time at which the order is issued and cannot be changed, except for the purposes of rectifying an error, after the execution of the order, regardless of whether the order relates to one or more accounts. 		<p>SC arts. 304 and 307</p>	

B. CONDUCT OF BUSINESS RULES FOR THE “PROFESSIONAL REGIME”

1. STANDARDS OF GENERAL APPLICATION

1.1 GENERAL

Standard	Implementing authority(ies)	Implementing measure	Comments
<i>1. An investment firm must at all times act honestly, fairly and professionally in accordance with the best interests of its customers and the integrity of the market.</i>		SC art. 304/1 and 2 and art. 305/1	
<i>2. An investment firm must have and must employ effectively the resources and procedures that are necessary for the proper performance of its business activities, including back-up procedures and systems so as to reasonably ensure that investment services can be provided without interruption.</i>		SC art. 305/1 CMVM Reg. 12/2000 art. 7/1 CMVM Reg. 21/2000 art 10	
<i>3. An investment firm must ensure that any persons or entities with which it is undertaking authorisable investment business are authorised to conduct that business by the relevant regulator.</i>		article 305/1 of the Portuguese Securities Code; article 46/1 of CMVM Regulation 12/2000	
<i>4. Investment firm that outsources functions retains full responsibility for the outsourced activity and must ensure that the providers of such outsourcing are able to perform these functions reliably, professionally and in the best interests of its customers.¹⁷</i>		article 46/1 and article 48/1 of CMVM Regulation 12/2000	

1.2. CONFLICTS OF INTEREST AND INDUCEMENTS

Standard	Implementing authority(ies)	Implementing measure	Comments
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¹⁷ This standard is not intended to interfere with relevant provisions on civil liability, applicable at national level.

<p><i>5. An investment firm must take all reasonable steps to ensure that conflicts of interest between itself and its customers and between one customer and another are identified and then prevented or managed in such a way that the interests of customers are not adversely affected. For these purposes the investment firm must establish an internal independence policy, including Chinese walls as appropriate. Where conflicts of interest cannot be reasonably avoided or managed with the internal independence policy, the conflict of interest must be disclosed to the customer.</i></p>		<p>SC art. 305/2 CMVM Reg. 12/2000 art. 33/2 and article 34</p>	
<p><i>6. An investment firm, its members of the board, directors, partners, employees and tied-agents may offer or receive inducements only if they can reasonably assist the firm in the provision of services to its customers. Where inducements are received disclosure of such inducements must be made to the customer on his request.</i></p>		<p>SC art. 312/1/b</p>	

1.3 COMPLIANCE AND CODE OF CONDUCT

Standard	Implementing authority(ies)	Implementing measure	Comments
<p><i>7. An investment firm must take all reasonable measures to ensure that the firm and its members of the board, directors, partners, employees and tied-agents at all time act in accordance with the best interests of its customers and the integrity of the market by establishing and implementing adequate compliance policies and procedures, including an independent compliance function and an internal code of conduct..</i></p>		<p>SC art. 312/1/b</p>	

<p><i>8. An investment firm must be able to demonstrate that it has not acted in breach of the conduct of business rules and the internal code of conduct and that its organization, policies and procedures facilitate such compliance.</i></p>		<p>SC Art 304, 305 and 314/2</p>	<p>Implemented through article 305 of the SC. On issues of civil accountability, article 314/2 of the SC establishes an inversion of the burden of proof whenever damages are caused to clients. Hence, further to the duty of appreciation of the conduct of the financial intermediary in pursuance of high standards of increasing demand (article 305/1 of the SC), for accountability purposes, it is incumbent on the intermediary to demonstrate that it acted without guilt, and not on the client, as required in general terms. Within the scope of supervisory actions, the intermediary must demonstrate that it is acting in accordance with the applicable rules of conduct (e.g. that it delivered to its client a document on general investment risks or that a price list was made available prior to the provision of the service).</p>
<p><i>9. The persons responsible for the compliance function must have the necessary expertise, resources, authority and must have full access to all relevant information enabling them to perform their duties. They must perform their monitoring duties independently of all persons and activities subject to their monitoring.</i></p>		<p>CMVM Reg. 12/2000 article 19</p>	
<p><i>10. A summary of the results of the monitoring must be reported to the senior management of the investment firm and to the internal or external auditors. The investment firm must report these results, together with remedies adopted, to the competent authority at least once a year.</i></p>			<p>Not implemented</p>
<p><i>11. An investment firm must ensure that the competent authority is informed, without undue delay, of serious breaches of the conduct of business rules. In assessing whether the breaches are serious, an investment firm must take into account the impact on regulatory goals and on the capacity to provide services, their frequency, the damages suffered by customers.</i></p>		<p>SC art. 317</p>	
<p><i>12. The compliance function must:</i> - regularly verify the adequacy of policies and procedures to ensure compliance with the regulations on investment services; - provide advisory assistance and support to the various business areas of the investment firm on problems concerning compliance with the regulations on investment services.</p>			<p>Not implemented</p>
<p><i>13. An investment firm must keep records relevant for the purpose of demonstrating compliance with the conduct of business rules, for a period of five years in order to enable the competent authority to verify compliance with these rules. Tape recording of orders must be kept for a period of one year.</i></p>		<p>SC art 307 and 308</p>	

<p><i>14. An investment firm must keep a register of customer complaints related to the provision of the investment services and the measures taken for their resolution and must regularly verify whether complaints are adequately processed.</i></p>		<p>CMVM Reg. 12/2000 – art. 35</p>	<p>No specific rule applies to the monitoring of compliance of these duties of financial intermediaries. There are proceedings of general control for all the duties of financial intermediaries. Issues on investors' complaints are fully provided for in article 35 of CMVM Regulation 12/2000. Within the scope of supervisory actions carried out to financial intermediaries it is evaluated whether the intermediary rules and internal proceedings are indeed complied with or not.</p>
<p><i>15. An investment firm must establish a code of conduct for members of the board, directors, partners, employees and tied-agents. The code of conduct must contain:</i></p> <p><i>a) The rules and procedure to meet the obligation to protect data of a confidential nature;</i></p> <p><i>b) the rules and procedures for carrying out personal transactions involving financial instruments;</i></p> <p><i>c) the rules and procedures governing the business relationship with customers in order to ensure that the persons referred to above, in particular where a conflict of interest may arise, always act in the best interests of customers, and that such persons do not take advantage of any confidential information;</i></p> <p><i>d) the investment firm's policy on conflicts of interest and inducements.</i></p>		<p>CMVM Regulation n° 12/2000 – art 37 SC art 316</p>	<p>This Rule is set forth in article 316 of the SC, which states that financial intermediaries are required to put in place internal rules that provide for the codes of conduct to be complied with, within the course of their activity. Article 37 of CMVM Regulation 12/2000 defines the minimum content of the said rules.</p>

2. INFORMATION TO BE PROVIDED TO CUSTOMERS

Standard	Implementing authority(ies)	Implementing measure	Comments
<p><i>16. An investment firm must pay due regard to the information needs of its customers and communicate information to them that is fair, clear, and not misleading.</i></p>		<p>SC art. 7 and art. 312/3</p>	
<p><i>17. If an investment firm provides information in a marketing communications it must be fair, clear and not misleading.</i></p>		<p>SC art. 7 and art. 312/3</p>	
<p><i>18. An investment firm must ensure that a customer is provided promptly with the essential information concerning the execution of his order.</i></p>		<p>SC art. 323/a</p>	
<p><i>19. Where an investment firm has control of, or is holding assets belonging to a customer, it must arrange for proper identification and regular confirmation of such assets to the customer.</i></p>		<p>SC article 306/1 and 307</p>	

20. An investment firm that operates customer accounts, which include uncovered open positions, must provide regular statements of such positions.		article 41 of CMVM Regulation 12/2000	
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3. THE “KNOW-YOUR-CUSTOMER STANDARD” AND THE DUTY TO CARE

Standard	Implementing authority(ies)	Implementing measure	Comments
21. Prior to providing any investment service to a customer for the first time and throughout the business relationship, an investment firm must be in possession of adequate documentation of the identity of the customer, as well as the identity and legal capacity of any representative of the customer. In addition, prior to providing any investment service the investment firm must seek to obtain from the customer information enabling an investment firm a) to determine whether the investment services envisaged are appropriate for the customer and b) to meet any duties owing to the customer in respect of the services to be provided.		SC article 304/1 and 3	
22. When an investment firm provides investment advice to the customer, it must have reasonable grounds to believe, in light of the information disclosed to it by the customer and the information available to it, including the information from the customer relationship, that this investment advice is suitable for him.		SC art 304 and 312/3	The CMVM's supervisory practice ensures that the financial intermediary complies with the requirements of this Rule.

4. CUSTOMER AGREEMENTS

Standard	Implementing authority(ies)	Implementing measure	Comments
23. Prior to providing any investment service, an investment firm must enter into a signed written agreement with the customer setting out the rights and obligations of the parties.			Not implemented

5.- DEALING REQUIREMENTS

5.1) RECEPTION AND TRANSMISSION OF CUSTOMER ORDERS

Standard	Implementing authority(ies)	Implementing measure	Comments
<i>24. An investment firm must record and process customer orders in accordance with the customer's instructions and in such a way as to facilitate best execution.</i>		SC article 330	.
<i>25. An investment firm must ensure that the firm and its members of the board, directors, partners, employees and tied-agents do not use the information they possess on customers orders to the disadvantage of customers' interest.</i>		SC article 304/5	
<i>26. An investment firm must record orders immediately, documenting and verifying all relevant items of proper execution.</i>		SC art. 327; CMVM Reg. 12/2000 article 52	
<i>27. An investment firm must keep a record of telephone orders on magnetic tape or an equivalent medium. Investment firms must duly inform the customer that the conversation will be recorded.</i>			Not implemented

5.2) EXECUTION OF ORDERS

Standard	Implementing authority(ies)	Implementing measure	Comments
<i>28. An investment firm must take all care to obtain the best possible result for the customer with reference to price, costs born by the customer, size, nature of the transactions, time of reception of order, speed and likelihood of execution and trading venue taking into account the state of the relevant market(s). The relevant market(s) shall be deemed to be the market(s) offering the most favourable trading conditions also in terms of transparency, liquidity and clearing and settlement arrangements in connection with the envisaged transaction. If the investment firm executes in another trading venue, it must be able to demonstrate to the customer that this was done in accordance with his best interest.</i>		SC art 330/2	
<i>29. An investment firm acting as principal in relation to a customer order must inform the customer accordingly beforehand and must be in a position to justify the price at which the transaction is executed, with reference to the prices and volumes in the relevant market(s), where appropriate, or the presumed value determined on the basis of objective elements, e.g. mark-to-market.</i>		SC arts 330 and 346/1 CMVM Reg. 12/2000 art. 42	
<i>30. An investment firm must ensure that orders are executed in accordance with the instructions from the customer.</i>		SC article 330./1	.

<i>31. An investment firm takes reasonable steps to refrain from executing orders for its own account or the account of its members of the board, directors, partners, employees and tied-agents before those of customers in identical or better conditions than the latter (“front running”).</i>		SC article 347/1 b) and c)	
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5.3) POST- EXECUTION OF ORDERS

Standard	Implementing authority(ies)	Implementing measure	Comments
<i>32. An investment firm must ensure the proper and speedy recording, allocation and distribution of executed transactions.</i>		CMVM Regulation 12/2000 article 74 ss.	
<i>33. Where orders for own and customers accounts have been aggregated, the investment firm must not allocate the related trades in any way that is detrimental to any customer. If such an aggregated order is only partially executed, allocation to customers must take priority over allocation to the investment firm.</i>		SC art. 328/4	

6. INDIVIDUAL DISCRETIONARY PORTFOLIO MANAGEMENT

In addition to the foregoing standards and rules, additional provisions apply to the service of individual portfolio management.

Standard	Implementing authority(ies)	Implementing measure	Comments
<i>34. Prior to the provision of any discretionary portfolio management service, a customer agreement containing the relevant provisions of the basic customer agreement mentioned above, as well as certain additional provisions specific to portfolio management must be signed between the parties.</i>		SC art 335	The CMVM verifies if the general contractual clauses to be adopted by the financial intermediary are complying with the regulations not only during the registration procedures, but also during the on-site supervisions.
<i>35. An investment firm must take all reasonable steps necessary to ensure the independence of the portfolio management function and mitigate the risk of customers’ interests being harmed by any conflict of interest, in particular by providing for the strict separation of functions within the investment firm and its group.</i>		SC article 304 ss.	
<i>36. An investment firm must send periodic statements to its portfolio management customers so as to enable them to assess the performance of the service.</i>		CMVM Regulation 12/2000 article 71	

<p><i>37. The investment firm must ensure that its orders are executed as efficiently as possible and in particular that:</i></p> <ul style="list-style-type: none"> <i>a) orders issued are immediately recorded by the firm;</i> <i>b) transactions executed are recorded and the portfolios affected are adjusted as quickly as possible;</i> <i>c) the portfolios affected and the relevant amounts are determined, or objectively determinable, no later than the time at which the order is issued and cannot be changed, except for the purposes of rectifying an error, after the execution of the order, regardless of whether the order relates to one or more accounts.</i> 		<p>SC articles 304 ss and 325 ss</p>	
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C. CORE STANDARDS FOR THE “COUNTERPARTY RELATIONSHIP”

1. The “counterparty relationship”

Standard	Implementing authority(ies)	Implementing measure	Comments
<p>A « counterparty relationship » is typical of trading between investment firms and banks within themselves or with other entities which are not holding themselves out as providers of investment services but are market participants directly active in the financial market for proprietary trading. It is characterised by the absence of a “client relationship” (i.e. without any provision of service). In particular, it covers the following situations:</p> <ul style="list-style-type: none"> - transactions executed in regulated markets or other trading venues (which do not give rise to any provision of investment service to the customer) between any member admitted to trade in these markets; - transactions executed directly (over-the-counter) between investment firms or credit institutions, authorised to provide the service of dealing, and dealing either as principal or as agent; - transactions executed directly (over-the-counter) between investment firms or credit institutions and other authorised or regulated financial intermediaries, including non-ISD firms, such as commodity dealers, insurance companies, but not including collective investment schemes and management companies of such schemes, pension funds and management companies of such funds. 			Implementation proposals currently in study
<p>CESR Members are free to allow companies to be treated as “counterparties” and to define the appropriate quantitative thresholds. In case of cross-border business, if the company is located in a jurisdiction where the “counterparty regime” is not applicable to companies, the professional regime will apply to that relationship.</p>			Implementation proposals currently in study
<p>Transactions entered into by these entities and effected through the offices of an authorised intermediary would be, by default, subject to the « professional regime ». Only those transactions undertaken by these entities for which they are direct “counterparties” and for which a specific choice to enter into a “counterparty relationship” has been made, are liable to operate subject to such a regime.</p>			Implementation proposals currently in study

The entities meeting one of the above mentioned criteria and willing to enter into a « counterparty relationship » have to reciprocally confirm in the contract that the transaction is executed under a « counterparty relationship ». This confirmation may be given in master agreements, where applicable to a series of transactions of the same nature.			Implementation proposals currently in study
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1. The “counterparty regime”

Standard	Implementing authority(ies)	Implementing measure	Comments
<i>The firm must at all times act honestly, fairly and professionally in accordance with the integrity of the market.</i>		SC article 304 ss	
<i>The firm must have and must employ effectively the resources and procedures that are necessary for the proper performance of its business activities.</i>		SC articles 304 and 305	
<i>The firm must establish an independent compliance function, aimed at ensuring that its directors, partners, employees and agents behave in accordance with the integrity of the market.</i>		SC article 304 ss and 311	
<i>Executive directors/senior management must take reasonable measures to ensure that the firm establishes and implements adequate compliance policies and procedures.</i>		SC article 304 and 305	
<i>The firm must be able to demonstrate that it has not acted in breach of standards of market integrity and that its organisation, policies and procedures facilitate such compliance.</i>		SC article 304 and 311	
<i>The firm must keep records of all transactions executed for a period of five years.</i>		SC article 308/1	
<i>The firm must keep record of telephone conversations concerning the transactions executed on a counterparty relationship.</i>	Minister of Finance upon a CMVM proposal	Law	Implementation proposals currently in study
<i>The firm must adopt and take all reasonable steps to ensure compliance with an appropriate internal code of conduct.</i>		SC article 316	
<i>The information provided in a marketing communications must be clear and not misleading.</i>		SC article 304	

D. CRITERIA FOR DEFINING PROFESSIONAL INVESTORS

Professional investors are those who may be deemed to possess the experience, knowledge and expertise to make their own investment decisions and properly assess the risks they incur.

1. Categories of investors who are considered to be professionals

Standard	Implementing authority(ies)	Implementing measure	Comments
10. a) Entities which are required to be authorised or regulated to operate in the financial markets. The list below should be understood as including all authorised entities carrying out the characteristic activities of the entities mentioned: entities authorised by a Member State under a European Directive, entities authorised or regulated by a Member State without reference to a European Directive, and entities authorised or regulated by a non-Member State: <ul style="list-style-type: none">• Credit institutions• Investment firms• Other authorised or regulated financial institutions• Insurance companies• Collective investment schemes and management companies of such schemes• Pension funds and management companies of such funds Commodity dealers.		SC article 30	
b) Large companies ⁽¹⁸⁾ and other institutional investors: <ul style="list-style-type: none">• large companies and partnerships meeting two of the following size requirements on a company basis:<ul style="list-style-type: none">• balance sheet total : EUR 20.000.000,• net turnover : EUR 40.000.000,• own funds: EUR 2.000.000.• Other institutional investors whose corporate purpose is to invest in financial instruments.	Minister of Finance upon a CMVM proposal	Law	Implementation proposals currently in study

⁽¹⁸⁾ Whilst CESR acknowledges that issuers of listed financial instruments, i.e. entities whose securities (equity instruments or other) are traded on a regulated market (within the meaning of article 1.13 of the ISD), should be treated as professional investors, Members are free to implement the categorisation of these issuers in line with the thresholds applicable to large companies and partnerships.

National and regional governments, Central Banks, international and supranational institutions such as the World Bank, the IMF, the ECB, the EIB and other similar international organisations.		SC article 30	
11. The entities mentioned in §10 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 customer of an investment firm is a company or a partnership referred to in §10, the investment firm must inform it prior to any provision of services that, on the basis of the information available to the firm, the customer is deemed to be professional investor, and will be treated as such unless the firm and the customer agree otherwise. The 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.	CMVM	Regulation	Implementation proposals currently in study
12. It is the responsibility of the client considered to be a professional investor to ask for a higher level of protection when it deems it is unable to properly assess or manage the risks involved.	CMVM	Regulation	Implementation proposals currently in study
13. This higher level of protection will be provided when an investor 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 should specify whether this applies to one or more particular services or transactions, or to one or more types of product or transaction.	CMVM	Regulation	Implementation proposals currently in study

2. Categories of investors who may be treated as professionals on request

2.1. Identification criteria

Standard	Implementing authority(ies)	Implementing measure	Comments
14. The members of CESR consider that investors other than those mentioned in § 10, including public sector bodies ⁽¹⁹⁾ and private individual investors, may also be allowed to waive some of the protections afforded by the conduct of business rules. Investment firms should therefore be allowed to treat any of the above investors as professionals provided the relevant criteria and procedure mentioned below are fulfilled. These investors should not, however, be presumed to possess market knowledge and experience comparable to that of the categories listed in §10.	CMVM	Regulation	Implementation proposals currently in study

⁽¹⁹⁾ It should be noted that public sector bodies are subject to specific regulations that might prevent them from entering into certain types of transactions or opting for the professional conduct of business regime.

<p>15. Any such waiver of the protection afforded by the standard conduct of business regime shall be considered 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 his own investment decisions and understanding the risks involved.</p> <p>The fitness test applied to managers and directors of entities licensed under European 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 the above assessment should be the person authorised to carry out transactions on behalf of the entity.</p>	CMVM	Regulation	Implementation proposals currently in study
<p>16. In the course of the above assessment, as a minimum, two of the following criteria should be satisfied:</p> <ul style="list-style-type: none"> • The investor 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 investor's financial instrument portfolio, defined as including cash deposits and financial instruments exceeds 0,5 million Euro; <p>The investor 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.</p>	CMVM	Regulation	Implementation proposals currently in study

2.2. Procedure

Standard	Implementing authority(ies)	Implementing measure	Comments
<p>17. The investors defined above may waive the benefit of the detailed rules of conduct only where the following procedure is followed:</p> <p>a) they must state in writing to the investment firm that they wish to be treated as a professional investor, either generally or in respect of a particular investment service or transaction, or type of transaction or product;</p> <p>b) the investment firm must give them a clear written warning of the protections and investor compensation rights they may lose;</p> <p>c) they must state in writing, in a separate document from the contract, that they are aware of the consequences of losing such protections.</p>	CMVM	Regulation	Implementation proposals currently in study

<p>18. 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 investor meets the relevant requirements stated in Section II.1 above.</p> <p>However, if investors have already been categorised as professionals under parameters and procedures similar to those above, it is not intended that their relationships with investment firms should be affected by any new rules adopted pursuant to this paper.</p>	CMVM	Regulation	Implementation proposals currently in study
<p>19. Firms must implement appropriate written internal policies and procedures to categorise investors.</p> <p>Professional investors are responsible for keeping the firm informed about any change, which could affect their current categorisation. Should the investment firm become aware however that the investor no longer fulfils the initial conditions, which made him eligible for a professional treatment, the investment firm must take appropriate action.</p>	CMVM	Regulation	Implementation proposals currently in study