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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 States<sup>1</sup> (Ref. CESR/03-497b);*
- *the explanatory notes and caveats attached to the Tables.*

*The Tables were produced by the Members of CESR<sup>1</sup> 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 Protection<sup>2</sup> and the CESR Standards for Alternative Trading Systems<sup>3</sup> 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).*

<sup>1</sup> 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.

<sup>2</sup> “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).

<sup>3</sup> Ref. CESR/02-086b, July 2002.

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

**THE NETHERLANDS**

**ABBREVIATIONS USED:**

Wte = Wet toezicht effectenverkeer 1995 (Act on the Supervision of the Securities Trade 1995)  
 Bte = Besluit toezicht effectenverkeer 1995 (Decree on the Supervision of the Securities Trade 1995)  
 NR2002 = Nadere Regeling toezicht effectenverkeer 2002 (Further Regulations to the Securities Act 2002)

**GENERAL REMARK**

In some instances it is indicated in the “comments”- column that AFM has no legislative authority for a particular rule. In these cases AFM have drawn up rules in the past which are in accordance with the CESR conduct of Business Rules. However, these rules were inappropriately implemented in secondary legislation and it appears that they lack a legislative basis in primary legislation. Negotiations with the Ministry of Finance are currently underway in order to make corrections.

**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 <sup>4</sup>	Comments

<sup>4</sup> Any derogation to the application of the implementing measures should be mentioned.

<p><b>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.</b></p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented. Measure is uncertain: depends on outcome of deliberations with ministry of finance</p> <p>The Further Regulations state that investment firms must act in the interests of clients and that they must treat clients fairly, reasonably and as equally as possible. Actions may not damage the efficient, fair and orderly operation of the securities market or investor's confidence in such an operation.</p>	<p>Standard can be considered as not implemented, as, although there are rules concerning this subject, these appear not to have a legal base in legislation. Negotiations with the ministry of Finance are under way.</p> <p>Regulations do not yet state that actions must be in accordance with the integrity of the market.</p>
<p><b>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.</b></p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>Section 17 Bte 1995: A firm must have a good accounting and effective related internal controls and reliable recording systems for the services it has performed.</p> <p>Specific requirements are written down in the NR2002.</p>	
<p><b>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.</b></p>		<p>Dutch securities law provides for similar provision (art 41 Further regulations)</p>	
<p><b>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.<sup>5</sup></b></p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>not implemented</p>	<p>no legislative authority for AFM as liability of delegates is regulated in the Dutch Civil Code. We are deliberating whether a provision should be included in securities law or whether a reference would suffice.</p>

## 1.2. CONFLICTS OF INTEREST AND INDUCEMENTS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments

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

<p><b>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.</b></p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>Measure uncertain: depending on outcome of deliberations with ministry of finance Regulations regarding conflicts of interests are present.</p>	<p>However, they are limited to the extent that they only oblige a firm to avoid conflicts of interest by having in place an appropriate structure. Rules are also limited to conflicts of interests as a result of the combination of a variety of activities within one group.</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>Ministry of Finance or AFM: deliberations are pending</p>	<p>uncertain: depending on outcome of deliberations with ministry of finance</p>	<p>Regulations only state that clients must be informed about conflicts of interests. They do not oblige a firm not to undertake business for or on behalf of the client.</p>
<p><b>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.</b></p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented  the Further Regulations prescribe that firms must act in the interest of the client.</p>	<p>Regulations do not contain provisions regarding inducements.</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>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented  uncertain: depending on outcome of deliberations with ministry of finance</p>	

### 1.3 COMPLIANCE AND CODE OF CONDUCT

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
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<p><b>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.</b></p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented.</p>	<p>Standard can be considered as not implemented, as, although there are rules concerning this subject, these appear not to have a legal base in legislation. Negotiations with the ministry of Finance are under way.</p> <p>Although the rules implicitly state that a compliance function must be installed, there is no explicit reference.</p> <p>Also, there is no reference to acting in the interest of the integrity of the market.</p> <p>no legislative authority for AFM</p>
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<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>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented uncertain: depending on outcome of deliberations with ministry of finance</p>	<p>Although there is a (limited) definition of “compliance officer” in the regulations, duties, activities etc., are not prescribed with respect to codes of conduct in general (there is only reference to private investments of employees).</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>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented uncertain: depending on outcome of deliberations with ministry of finance</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>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented uncertain: depending on outcome of deliberations with ministry of finance</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>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented Uncertain: depending on outcome of deliberations with ministry of finance</p>	

<b>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.</b>	Ministry of Finance or AFM: deliberations are pending	Not implemented uncertain: depending on outcome of deliberations with ministry of finance	
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.	Ministry of Finance or AFM: deliberations are pending	A securities firm must keep all information relating to its activities for at least 5 years (art. 30 Bte)	The rules do not refer to tape recordings.
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.	Ministry of Finance or AFM: deliberations are pending	Investment firms must keep a systematic and orderly complaints administration (annex 4, 4.14 NR 2002)	Rules do not explicitly impose regular verification of the processing of complaints. However, in practice it is enforced that firms must ensure that complaints are handled satisfactorily.
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: 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.	Ministry of Finance or AFM: deliberations are pending	Not implemented. Regulations impose codes for dealing with price-sensitive information or other confidential market information and private investment transactions. (art 22, 23 NR 2002). Also rules regarding the handling of client information uncertain: depending on outcome of deliberations with ministry of finance	Standard can be considered as not implemented, as, although there are rules concerning this subject, these appear not to have a legal base in legislation. Negotiations with the ministry of Finance are under way.  Although there are rules with regard to CESR standard 17, a code of conduct is not in all instances imposed:  Dutch rules lack the obligation for a code of conduct with regard to the handling of confidential information

#### 1.4. COLD CALLING <sup>6</sup>

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
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<sup>6</sup> 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.

<b>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.</b>	Ministry of Finance or AFM: deliberations are pending	art 26 NR 2002 Under Dutch law cold calling is prohibited at all times.	
19. Cold calls may only be made by persons employed by, or appointed as tied-agent <sup>7</sup> by an investment firm. Responsibility for the competence and activities of such persons rests with the firm.	Ministry of Finance or AFM: deliberations are pending	Not implemented	(see under 18)
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.	Ministry of Finance or AFM: deliberations are pending		(see under 18)
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.	Ministry of Finance or AFM: deliberations are pending		(see under 18)
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.	Ministry of Finance or AFM: deliberations are pending		(see under 18)
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.	Ministry of Finance or AFM: deliberations are pending		(see under 18)
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.	Ministry of Finance or AFM: deliberations are pending		(see under 18)

## **2. INFORMATION TO BE PROVIDED TO CUSTOMERS**

### **2.1) BASIC REQUIREMENTS**

<b>Standard /Rule</b>	<b>Implementing authority(ies)</b>	<b>Implementing measure</b>	<b>Comments</b>
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<sup>7</sup> This is without prejudice to the applicability of professional requirements, imposed at national level.

<p><b>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.</b></p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>not Implemented</p>	<p>Standard can be considered as not implemented, as, although there are rules concerning this subject, these appear not to have a legal base in legislation. Negotiations with the ministry of Finance are under way.</p> <p>Whereas the Bte and NR do not literally state that information must be fair, clear and misleading, information requirements in the Dutch regulations are more detailed and specific than standard 25.</p>
<p>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.</p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented</p> <p>Securities firms must provide clients in an appropriate manner with the information and documents that are necessary for a proper assessment of the provided services. The regulations list specific requirements for the content of the provided information (art 33 NR 2002)</p>	<p>Standard can be considered as not implemented, as, although there are rules concerning this subject, these appear not to have a legal base in legislation. Negotiations with the ministry of Finance are under way.</p> <p>Dutch regulations are more specific than the CESR standard.</p>
<p><b>26. An investment firm must supply its customers on a timely basis with the information that enables them to make informed investment decisions.</b></p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>Partly implemented</p> <p>The NR 2002 says that information shall be provided on time and in such a form that its meaning and implications can be reasonably understood (art 38 NR 2002)</p>	<p>The meaning of the Dutch regulations seems to be more narrow than the CESR standard.</p>
<p>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.</p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented</p>	<p>Dutch regulations require timely provision of information, but do not specify.</p>

**2.2.) MARKETING COMMUNICATIONS** <sup>8</sup>

<sup>8</sup> 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>	Ministry of Finance or AFM: deliberations are pending	Not implemented Annex 7 to the Further Regulations state that regulations must be correct, not misleading and clear.	Standard can be considered as not implemented, as, although there are rules concerning this subject, these appear not to have a legal base in legislation. Negotiations with the ministry of Finance are under way.
<i>30. The promotional purpose of marketing communications issued by an investment firm must not be disguised.</i>	Ministry of Finance or AFM: deliberations are pending	Not implemented	Ibid.
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.	Ministry of Finance or AFM: deliberations are pending	Not implemented. Implicit to Annex 7 NR 2002: The picture that the public may form of the offer of a firm based upon the information provided shall not deviate fundamentally from the picture that may be created in accordance with the information that is required to be provided in according with Dutch rules	Ibid.
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.	Ministry of Finance or AFM: deliberations are pending	Not implemented	Ibid. NR2002 lists only a few of the CCSR-requirements
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.	Ministry of Finance or AFM: deliberations are pending		This is not written down explicitly in Dutch law. However, in practice referring to the AFM in this way is not endorsed.
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.	Ministry of Finance or AFM: deliberations are pending	Not implemented Listed requirements in NR 2002 and CBR differ	

### 2.3) INFORMATION ABOUT THE INVESTMENT FIRM

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p><i>35. Before providing investment services an investment firm must supply adequate information about itself and the services it provides.</i></p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented.</p>	<p>no legislative authority for AFM: NAFM has written rules on this matter (NR), but these do not have a legislative base in the Decree.</p> <p>NR2002 regulates the provision of information to clients (art 33), but is not clear on the provision of information to potential clients</p>
<p>36. An investment firm must provide customers with the following information prior to the commencement of provision of investment services:</p> <ul style="list-style-type: none"> <li>a) the identity of the investment firm, the (financial) group to which the investment firm belongs, its postal address and telephone number;</li> <li>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;</li> <li>c) the functions that the investment firm performs so that the customer is able to assess the scope of the firm's responsibilities;</li> <li>d) the relevant compensation scheme(s);</li> <li>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;</li> <li>f) an outline of the firm's policies in relation to conflicts of interest and inducements;</li> <li>g) the languages in which the customer can communicate with the investment firm.</li> </ul>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented</p>	<p>no legislative authority for AFM</p> <p>Provision of information is required (art 27 and 33), but the regulations lack some of the CBR-requirements.</p>

**2.4) INFORMATION ON FINANCIAL INSTRUMENTS AND INVESTMENT SERVICES**

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<b>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.</b>	Ministry of Finance or AFM: deliberations are pending	NR2002 (art 33) states that investment firms must provide clients with information necessary for a proper assessment of services and financial instruments that are offered.	
40. The information provided to customers can be delivered using standard documentation but must include the following as a minimum: a) a description of the main characteristics <sup>9</sup> 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.	Ministry of Finance or AFM: deliberations are pending	A firm must inform a client in such a way that he can adequately judge the services that are offered. This includes among others risks, cost and arrangements (art 33 NR2002).	
<b>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.</b>	Ministry of Finance or AFM: deliberations are pending	A securities firm must inform the client of the types of costs that will be charged and the calculation on which such costs are based (art 33 NR 2003)	
41. The information to be disclosed to customers on commissions, charges and fees must contain: 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.	Ministry of Finance or AFM: deliberations are pending	NR2002 states that costs should be clear to clients at all times (arts 27, 33, 34, 35, 37 NR 2002)	The regulations do not mention fixed maximum or minimum fees, the mentioning of currencies and an estimate of others payable fees.
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.	Ministry of Finance or AFM: deliberations are pending	Not implemented	no legislative basis in the Decree

<sup>9</sup> 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).

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.	Ministry of Finance or AFM: deliberations are pending	Not implemented	Although AFM has specific regulations regarding the provision of information which are similar to the CESR-standards, these are directed to potential clients, not clients.
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.	Ministry of Finance or AFM: deliberations are pending	Not implemented	Ibid.
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.	Ministry of Finance or AFM: deliberations are pending	Not implemented	Ibid.
<b><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></b>	Ministry of Finance or AFM: deliberations are pending	Not implemented	Rule lacks legislative base in Decree. Rule is directed to the provision of information to potential clients.
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.	Ministry of Finance or AFM: deliberations are pending	NR2003 prescribes exact sentences, eg.: “the value of your investment may fluctuate. Results achieved in the past are no guarantee for future results”.	

<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"> <li>a) the reference period must be stated and must not be less than one year;</li> <li>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;</li> <li>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;</li> <li>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;</li> <li>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;</li> <li>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.</li> </ul>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented NR2002 provides for most of these requirements</p>	<p>Dutch rules differ slightly. Large difference is that simulated returns are not prohibited.  (also: No legislative authority for AFM)</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>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented Rules state that returns should be assessed by an accountant (art 7.8 annex 7 NR2002)</p>	<p>Rules do not state that forecasts must be based on objective, realistic assumptions of investment returns.  (also: no legislative authority for AFM)</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>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented</p>	<p>Although implicit, provisions such as these are not explicitly taken up in the regulations.</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"> <li>a) be based either on data from attributed sources or disclosed assumptions;</li> <li>b) be presented in a fair and balanced way;</li> <li>c) take reasonable steps not to omit any fact that is material to the comparison.</li> </ul>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented</p>	<p>no legislative authority for AFM</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>	Ministry of Finance or AFM: deliberations are pending	In the client agreement a client declares that he is aware of the risks associated with investing, based on information that has been provided by he firm. (25, 36 Bte, 33 NR2002)	Dutch rules lack the provision that firms should have regard to the client's knowledge, experience, investment objectives and risk profile.
<p>53. 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:</p> <ul style="list-style-type: none"> <li>- financial instruments not traded on a regulated market;</li> <li>- transactions in illiquid financial instruments;</li> <li>- leveraged transactions;</li> <li>- financial instruments subject to high volatility in normal market conditions;</li> <li>- securities repurchase agreements or securities lending agreements;</li> <li>- transactions which involve credit, margin payments or the deposit of collateral;</li> <li>- transactions involving foreign exchange risk.</li> </ul>	Ministry of Finance or AFM: deliberations are pending	Not implemented	

<p>53. The investment firm must also, where necessary, inform the customer of risks associated with:</p> <ul style="list-style-type: none"> <li>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);</li> <li>b) suspension of trading or listing (e.g. that under certain trading conditions it may be impossible to liquidate a position);</li> <li>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).</li> </ul>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented</p>	<p>no legislative authority for AFM</p>
<p><b><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></b></p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented</p>	<p>There are no rules regarding the representation of the warning.</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>Ministry of Finance or AFM: deliberations are pending</p>	<p>Clients should be given information about the characteristics of the financial instruments to which the services relate, including the specific investment risks attached to the financial instruments.(art 33 NR2002)</p>	<p>There are no rules regarding the substance of the information.</p>

## 2.6. CUSTOMER REPORTING

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
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<p><b>55. An investment firm must ensure that a customer is provided promptly with the essential information concerning the execution of his order.</b></p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>Following the execution of a transaction a firm must issue a contract note to the client without delay. (art 35 (1) NR2002)</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 customer<sup>10</sup>, 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"> <li>a) the name of the firm;</li> <li>b) the name of the customer account;</li> <li>c) the time of execution, if available, or a statement that the time of execution will be supplied on request;</li> <li>d) date of execution;</li> <li>e) the type of transaction; e.g. buy, sell, subscription etc.;</li> <li>f) the market on which the transaction was carried out or the fact that it was carried out off-market;</li> <li>g) the financial instrument and the quantities involved in the transaction;</li> <li>h) the unit price applied and the total consideration;</li> <li>i) whether the customer's counterparty was the investment firm itself or any related party;</li> <li>j) the commissions and expenses charged;</li> <li>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.</li> </ul> <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>Ministry of Finance or AFM: deliberations are pending</p>	<p>Art 34 NR 2002 lists the requirements for a contract note, which must be issued following the transaction, without delay.</p>	<p>Dutch rules lack some of the requirements of standard 38.</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>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented</p>	<p>Standard can be considered as not implemented, as, although there are rules concerning this subject, these appear not to have a legal base in legislation. Negotiations with the ministry of Finance are under way.</p>

<sup>10</sup> The reference to "send to the customer" includes to a tied-agent, other than the firm, nominated by the customer in writing.



<p><b>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.</b></p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented A firm that carries out portfolio management must provide a client a statement that provides true, fair and complete information about the portfolio (art. 29 Bte, art 25 NR 2002).</p>	<p>Standard can be considered as not implemented, as, although there are rules concerning this subject, these appear not to have a legal base in legislation. Negotiations with the ministry of Finance are under way.</p>
<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"> <li>a) identify assets which have been pledged to the firm or any third parties as collateral;</li> <li>b) identify assets which have been lent;</li> <li>c) clearly and consistently show movement of assets based on either trade date or settlement date.</li> </ul>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented art 37 NR2002 states that a firm must provide a client with a statement once a year that gives the information about securities given in custody.</p>	<p>Standard can be considered as not implemented, as, although there are rules concerning this subject, these appear not to have a legal base in legislation. Negotiations with the ministry of Finance are under way.</p> <p>Requirements 60 a to c are not regulated.</p>
<p><b>57. An investment firm that operates customer accounts, which include uncovered open positions, must provide regular statements of such positions.</b></p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented If a client takes positions that involve financial liabilities, the firm must provide him with a position statement once a month. This statement includes open positions</p>	<p>Standard can be considered as not implemented, as, although there are rules concerning this subject, these appear not to have a legal base in legislation. Negotiations with the ministry of Finance are under way.</p>
<p>61. Where an account includes uncovered open positions<sup>11</sup>, an investment firm must send to its customer a monthly statement, which includes the following:</p> <ul style="list-style-type: none"> <li>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;</li> <li>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;</li> <li>c) the resulting profit or loss arising from positions closed during the period.</li> </ul>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented A firm must provide clients with open positions at least once a month (art 36 NR 2002)</p>	<p>Standard can be considered as not implemented, as, although there are rules concerning this subject, these appear not to have a legal base in legislation. Negotiations with the ministry of Finance are under way.</p> <p>Art. 36 lacks provisions regarding the requirements concerning information about the options contract, each payment made by the client and resulting profit or loss.</p>

<sup>11</sup> 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.

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

#### 3.1 INFORMATION FROM THE CUSTOMER

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 customer<sup>12</sup> and</i></p> <p><i>b. to meet any duties owing to the customer in respect of the services to be provided.</i></p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented</p> <p>The Bte specifies that a firm must take not, in the interest of the client, of their financial position, experience and investment objectives (art 24 Bte, art 28 NR)</p> <p>Annex 4, art 4.12 gives rules about the recording (and keeping of those recordings) of the client profile</p>	<p>no legislative authority for AFM</p> <p>The rules do not specify points a and b.</p>
<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>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented</p>	

<sup>12</sup> This is not considered to be investment advice according to the definition of the paper.

<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>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>uncertain: depending on outcome of deliberations with ministry of finance Not implemented</p>	
<p>65. An investment firm must seek to obtain information on the customer's knowledge and experience<sup>13</sup> in the investment field, his investment objectives and risk profile,<sup>14</sup> 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>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>A firm must take note of financial position etc. of client (art 24 Bte)</p>	
<p>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.</p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented</p>	
<p>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.</p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented</p>	<p>Standard can be considered as not implemented, as, although there are rules concerning this subject, these appear not to have a legal base in legislation. Negotiations with the ministry of Finance are under way.</p>
<p>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.</p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>Client records must be systematic and accessible and include client profile and agreements and documents proving the identity (annex 4, art. 4.12 NR2002)</p>	<p>No rules regarding updating data of clients</p>

<sup>13</sup> 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.

<sup>14</sup> 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.

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.	Ministry of Finance or AFM: deliberations are pending	Not implemented	Standard can be considered as not implemented, as, although there are rules concerning this subject, these appear not to have a legal base in legislation. Negotiations with the ministry of Finance are under way.
70. The customer should not be invited not to provide information.	Ministry of Finance or AFM: deliberations are pending	Not implemented	

### 3.2 THE INVESTMENT FIRM'S DUTY TO CARE FOR THE CUSTOMER <sup>15</sup>

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<i>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.</i>	Ministry of Finance or AFM: deliberations are pending	Not implemented	Rules are limited to the rule that firms must act in the interest of clients and that they must give priority to these interest over their own (art. 25(1) NR2002).

<sup>15</sup> 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><b>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.</b></p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented</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 suitable<sup>16</sup> 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>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented</p>	
<p><b>74. An investment firm must take reasonable care to verify that the customer has sufficient financial resources to settle the proposed transaction.</b></p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>Art 28 (1) and (2) NR2002 say that a firm must obtain information concerning the financial position of the clients and that a firm shall not carry out a transaction is account balances are insufficient.</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>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented</p>	

<sup>16</sup> 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>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>In the client agreement a firm and a client agree on the services to be rendered.</p> <p>This rule has not been written down in regulations in its entirety, but most of it is enforced in practice</p>	<p>A firm does not unilaterally determine services to be provided. No specific rules are provided for cases where clients deviate from the advice of a firm. However, in practice a firm may allow a client to deviate from its advice, but should demonstrate that the client is doing so and that the firm does not deviate from the customer-care provisions.</p>
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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>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>A client agreement should be concluded with all clients (art 25 Bte, art 27 NR2002)</p>	
<p><i>79. The customer agreement must be clear and easily understandable by the customer.</i></p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented</p>	<p>There are no rules concerning the form of the agreement.</p>

<p>80. The customer agreement must contain the following items as a minimum:</p> <ul style="list-style-type: none"> <li>a) the identity, postal address and telephone number of each of the parties;</li> <li>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;</li> <li>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</li> <li>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;</li> <li>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;</li> <li>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;</li> <li>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;</li> <li>h) the name of the competent authority which has authorised the investment firm;</li> <li>i) the law applicable to the contract, as ascertained to the best of the knowledge of the firm or as agreed between the parties;</li> <li>j) the duration of the agreement and the procedures for amending, renewing, terminating or withdrawing from it;</li> <li>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;</li> <li>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;</li> <li>m) the languages in which the customer can communicate with the investment firm.</li> </ul>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>These requirements are listed in art 27 NR2002</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.	Ministry of Finance or AFM: deliberations are pending	Not implemented	no legislative authority for AFM with regard to the method of the agreement.  In the rules there are no requirements or possibilities for references.
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.	Ministry of Finance or AFM: deliberations are pending	Asset separation rules are implemented. They include the provision that separate agreements must be concluded by the firm where assets are held and the client (art 12 and further NR2002)	Agreements not taken up in the client agreement itself.
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.	Ministry of Finance or AFM: deliberations are pending	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.	Ministry of Finance or AFM: deliberations are pending	Not implemented NR2002 states that agreements must be filed in a systematic and accessible manner (annex 4 art 4.12 NR2002)	However, no legislative authority for AFM.

**4.2) CUSTOMER AGREEMENT INVOLVING TRADING IN DERIVATIVES**

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
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<p><b>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.</b></p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>No additional requirements are implemented regarding derivatives. However, it is clear that risks etc. concerning <b>all</b> securities must be indicated.</p>	
<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"> <li>- the type(s) of instruments and transactions envisaged,</li> <li>- the obligations of the investment firm with respect to the transactions envisaged, in particular its reporting and notice obligations to the customer,</li> <li>- 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,</li> <li>- an appropriate warning calling to the customer's attention the risks involved in the transactions envisaged.</li> </ul>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>not implemented</p>	<p>No additional requirements for derivatives</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>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented</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>Ministry of Finance or AFM: deliberations are pending</p>	<p>not implemented</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>Ministry of Finance or AFM: deliberations are pending</p>	<p>not implemented</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.	Ministry of Finance or AFM: deliberations are pending	not implemented	
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**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>	Ministry of Finance or AFM: deliberations are pending	A securities firm must execute orders at the best possible price, unless instructed otherwise (art 30(2) NR2002). Order processing and order administration is regulated in annex 4, art. 4.15 NR 2002.	It is not stated that order processing and recording is in accordance with the client's instructions.
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.	Ministry of Finance or AFM: deliberations are pending	Requirements of 93 are in line with art 4.15 NR2002	

94. An investment firm must record orders immediately, documenting and verifying all relevant items of proper execution.	Ministry of Finance or AFM: deliberations are pending	Data shall be recorded without delay upon receipt of an order. Requirements are in line with 93/94.	
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.	Ministry of Finance or AFM: deliberations are pending	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.	Ministry of Finance or AFM: deliberations are pending	Annex 4, art. 4.16 states that in case of a block order, all the names and account numbers of the clients/principals concerned shall be recorded and the numbers shall be specified for each client. Art 4.15 (1) states that the primary recording of orders must at all times be detectable.	
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.	Ministry of Finance or AFM: deliberations are pending	Orders must be transmitted as soon as possible (art 30 NR2002) , and shall be executed at the best possible price (art 30(2) NR2002)	Rules do not state that transmission must be sequential and that all relevant details of the process must be taken into account.
<b><i>92. 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></b>	Ministry of Finance or AFM: deliberations are pending	art. 24 Bte: A firm must try to avoid conflicts of interest and must ensure that clients are treated fairly	
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").	Ministry of Finance or AFM: deliberations are pending	Rules regarding private securities transaction (art 23 NR 2002) state that in private securities transactions members of staff may not carry out a transaction further to or in anticipation of orders from clients (annex 3, art 3.3 NR2002).	
99. An investment firm, which aggregates orders, must pre-assign such orders prior to transmitting them.	Ministry of Finance or AFM: deliberations are pending	There are no specific rules regarding pre-assignment of block orders. In practice, however AFM's policy is that block orders must be pre-assigned.	
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.	Ministry of Finance or AFM: deliberations are pending	The rules do not prohibit these orders. However, interests of clients must prevail (art 30 NR 2002).	

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.	Ministry of Finance or AFM: deliberations are pending	Not implemented	Rules only indicate that a firm must not cooperate with the implementation and settlement of a public offer that does not include the publication of a prospectus. Rules do not state that firms must active provision to clients of prospectus.
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## 5.2) EXECUTION OF ORDERS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<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>	Ministry of Finance or AFM: deliberations are pending	Not implemented  A firm must act in the best interests of its clients (art 25 NR2002). Orders must be executed at the best possible price (art 30 NR2002).	Requirements do not entail results regarding costs, size, nature etc. No definition/reference to “relevant market”.
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.	Ministry of Finance or AFM: deliberations are pending	Not implemented	
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”).	Ministry of Finance or AFM: deliberations are pending	Rules regarding private securities transaction (art 23 NR 2002) state that in private securities transactions members of staff may not carry not a transaction further to or in anticipation of orders from clients (annex 3, art 3.3 NR2002).	

<p><b>103. An investment firm must ensure that orders are executed in accordance with the instructions from the customer.</b></p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>When processing an order, there must be authorisation that agreements made with clients are complied with.(annex 4, art 4.15(1)b NR2002)</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>Ministry of Finance or AFM: deliberations are pending</p>	<p>art 30 NR2002: A firm must execute client orders following the receipt of the orders asap, and shall notify its clients of any developments relating to the securities that have a direct effect on the current order.</p>	<p>No reference to sequence.</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>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented</p>	<p>Internalisation at this moment not allowed.</p>
<p>108. If an investment firm aggregates orders, it must pre-assign such orders prior to executing them.</p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>Annex 4, art. 4.16 states that in case of a block order, all the names and account numbers of the clients/principals concerned shall be recorded and the numbers shall be specified for each client. Art 4.15 (1) states that the primary recording of orders must at all times be detectable.</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>Ministry of Finance or AFM: deliberations are pending</p>	<p>Following the execution of a securities transaction, a client must be provided with information regarding the price at which the transaction was executed and all categories of costs that will be charged to the client (art 34 NR2002). In case of a portfolio management agreement, the firms issues a quarterly statement which includes the management and other costs charged. (art 35 NR2002).</p>	
<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.</p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented A firm must notify its clients of any developments relating to the securities that have a direct effect on the current order</p>	<p>no legislative authority for AFM Existing rules also lack the requirement that a client is duly informed asap.</p>

### 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>	Ministry of Finance or AFM: deliberations are pending	Not implemented  Order tickets must be transferred as soon as possible following processing from the front office to the back office (annex 4, art 4.15 NR 2002).  All transactions and the resulting liabilities shall be systematically processed in the records (annex 4, art. 4.16 NR2002)	no legislative authority for AFM
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.	Ministry of Finance or AFM: deliberations are pending	The following data shall be recorded immediately when an order is executed: The price and the capacity in which the securities institutions has acted for the client, namely as agent or principal (annex 4, art. 4.15 (3) NR2002  A firm must set up procedures relating to the order processing which include the primary recording of orders and the transfer of order tickets	No mention of recording transactions for own account.
114. An investment firm must ensure that once a transaction is executed it is promptly allocated to the account of the relevant customer(s).	Ministry of Finance or AFM: deliberations are pending	Not implemented	
<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>	Ministry of Finance or AFM: deliberations are pending	A securities firm shall act in the interest of its clients, shall give priority to the interests of clients over its own interests when executing client orders (art. 25 NR 2002)	

<p>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.</p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented</p>	<p>Rules only state that prices at which parts of the order were executed are recorded. No information-requirements</p>
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## **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**

<b>Standard /Rule</b>	<b>Implementing authority(ies)</b>	<b>Implementing measure</b>	<b>Comments</b>
<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>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>A firm must conclude an agreement with a client and, in case of offering portfolio services, this agreement must contain additional provisions (art 25 Bte).</p>	

<p>118. Instead of the items referred to in paragraph 80.e) , the customer agreement must contain:</p> <ul style="list-style-type: none"> <li>a) the management objective(s) and any specific constraints on discretionary management,</li> <li>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.</li> </ul> <p>In addition to the above, the customer agreement must contain:</p> <ul style="list-style-type: none"> <li>c) without prejudice of paragraph 121, the benchmark against which performance will be compared,</li> <li>d) the basis on which the instruments are to be assessed at the date of valuation,</li> <li>e) details regarding the delegation of the management function where this is permitted.</li> </ul>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>The agreement must include:</p> <ul style="list-style-type: none"> <li>- The client's objectives</li> <li>- Details of any qualitative and quantitative restrictions</li> </ul> <p>(art 25(3) Bte)</p>	<p>The rules do not include requirements concerning c, d and e.</p>
<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>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>A portfolio agreement must include details of any qualitative and quantitative restrictions on the securities or categories of securities in which investment may be made (art 25(3) Bte)</p>	<p>No requirements concerning level of risk or references concerning constraints resulting from personal circumstances.</p>
<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"> <li>- financial instruments not traded on a regulated market,</li> <li>- illiquid or highly volatile financial instruments,</li> <li>- leveraged transactions,</li> <li>- securities repurchase agreements or securities lending agreements,</li> <li>- transactions involving credit, margin payments or deposit of collateral,</li> <li>- transactions involving foreign exchange risk.</li> </ul>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented.</p>	
<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>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented</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.	Ministry of Finance or AFM: deliberations are pending	Not implemented	
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.	Ministry of Finance or AFM: deliberations are pending	uncertain: depending on outcome of Not implemented	
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.	Ministry of Finance or AFM: deliberations are pending	An agreement stipulates the types of costs that the client will be charged and the method by which the said costs are to be calculated (art 25(2)d Bte.	
125. The contract must provide: <ul style="list-style-type: none"> <li>- 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;</li> <li>- 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.</li> </ul> <p>In both cases, the termination must take place on terms that are fair and reasonable for both parties.</p>	Ministry of Finance or AFM: deliberations are pending	Not implemented	The rules only state that the agreement stipulates the circumstances under which the agreement will be terminated, the circumstances under which it may be dissolved and the manner in which any current transactions are to be settled on or after the date of termination.
<b><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></b>	Ministry of Finance or AFM: deliberations are pending	Not implemented	Outsourcing is not delegated.
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.	Ministry of Finance or AFM: deliberations are pending	Not implemented	no legislative authority for AFM

<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>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented</p>	<p>no legislative authority for AFM</p>
<p>128. The delegation agreement, in writing:</p> <ul style="list-style-type: none"> <li>a) must be revocable with immediate effect by the delegator;</li> <li>b) must provide for sufficient notice to be given to the delegator by the delegatee of termination of the agreement;</li> <li>c) must be in conformity with the indications contained in the customer agreement with the delegator;</li> <li>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;</li> <li>e) must be formulated so as to avoid conflicts of interest between the delegator and the delegatee;</li> <li>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.</li> </ul>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>not implemented</p>	

**6.2 PERIODIC INFORMATION**

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<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>	Ministry of Finance or AFM: deliberations are pending	A firm that carries out portfolio mgt shall provide each client with whom it has concluded a portfolio mgt agreement a statement that provides true, fair and complete information about the composition of the portfolio managed, at least once a quarter (art. 35(1) NR2002).	
130. Periodic statements for portfolio management customers must contain: 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.	Ministry of Finance or AFM: deliberations are pending	Statement must include: - details of market value and composition, including breakdown by type of instrument - analysis of changes in assets components - calculation of realised and unrealised losses/gains - method of valuation - management and other costs - (Art 35 NR2002)	Rules lack management report on strategy, information from a third party and payments received.
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.	Ministry of Finance or AFM: deliberations are pending	Not implemented	Rules are limited to statement which method of valuation is used.
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.	Ministry of Finance or AFM: deliberations are pending	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.	Ministry of Finance or AFM: deliberations are pending	Not implemented	Rules do state that: If the client notifies the manager that he does not wish to receive the statement, then the client must have been made aware of the risk that a reduction in the amount of information provided entails.

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.	Ministry of Finance or AFM: deliberations are pending	If the client takes positions that involve financial liabilities, the firm shall provide a position statement at least once a month (art 36 NR2002)	Rules are limited to “financial liabilities”. Do not contain requirements for the assessments of the risks.
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### 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>	Ministry of Finance or AFM: deliberations are pending	<p>A firm shall be so structured that it avoids the risk of the interests of its clients being prejudiced through conflicts of interests between the firm and its clients (art 15 Bte)</p> <p>A firm shall make such arrangements in respect of the securities and monies of clients that the rights of those clients are adequately protected. (art 12 NR2002).</p> <p>In case of a combination of activities all measures should be taken in order to operate independently in the market. Measures should be taken as regards physical separation of activities (art 19 NR2002)</p>	

<p>138. The structure of the investment firm, its policies and procedures must seek to ensure the independence of the portfolio management function.</p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>A firm shall be so structured that it avoids the risk of the interests of its clients being prejudiced through conflicts of interests between the firm and its clients (art 15 Bte)</p> <p>In case of a combination of activities all measures should be taken in order to operate independently in the market. Measures should be taken as regards physical separation of activities (art 19 NR2002)</p>	
<p><b><i>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.</i></b></p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented</p>	<p>No explicit references to strategies.</p>
<p>139. The investment firm must maintain records of its investment strategies, as well as the analyses and forecasts underlying them.</p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>Not implemented</p>	
<p><b><i>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.</i></b></p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>A securities firm shall act in the interests of the clients (art 25 NR2002)</p> <p>The client agreement forms the sole basis for the services provided. This agreement includes restrictions.</p>	<p>No explicit references to management objectives</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"> <li>a) orders issued are immediately recorded by the firm;</li> <li>b) transactions executed are recorded and the portfolios affected are adjusted as quickly as possible;</li> <li>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.</li> </ul>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<ul style="list-style-type: none"> <li>a) Orders must be recorded without delay upon receipt of the order (annex 4, art. 4.15(2) NR2002)</li> <li>b) Data on orders must be recorded immediately when an order is executed (annex 4, art. 4.15 (3) NR2002)</li> <li>c) Procedures must be in place for the primary recording of orders, including all amendments to existing orders in the order records, on consecutively pre-numbered order tickets. All details of the order concerned, including the client for whom the order was placed, shall be recorded immediately.</li> </ul>	<p>Rules do not explicitly state that orders can only be changed for purposes of rectifying an error.</p>
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## B. CONDUCT OF BUSINESS RULES FOR THE “PROFESSIONAL REGIME”

### GENERAL REMARK

The Wte95 and the Bte do not yet make a distinction between professional and retail parties. Therefore, although the NR2002 does state which rules of conduct are also binding for professional parties, all standards for the professional regime can be considered as “not implemented”. Negotiation with the Ministry of Finance are under way.

### 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>	Ministry of Finance or AFM: deliberations are pending	uncertain: depending on outcome of deliberations with ministry of finance	no legislative authority for AFM
<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>	Ministry of Finance or AFM: deliberations are pending	uncertain: depending on outcome of deliberations with ministry of finance	
<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>	Ministry of Finance or AFM: deliberations are pending	uncertain: depending on outcome of deliberations with ministry of finance	
<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.<sup>17</sup></i>	Ministry of Finance or AFM: deliberations are pending	uncertain: depending on outcome of deliberations with ministry of finance	no legislative authority for AFM

#### 1.2. CONFLICTS OF INTEREST AND INDUCEMENTS

<sup>17</sup> This standard is not intended to interfere with relevant provisions on civil liability, applicable at national level.

Standard	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. 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>Ministry of Finance or AFM: deliberations are pending</p>	<p>uncertain: depending on outcome of deliberations with ministry of finance</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>Ministry of Finance or AFM: deliberations are pending</p>	<p>uncertain: depending on outcome of deliberations with ministry of finance</p>	<p>no legislative authority for AFM</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>Ministry of Finance or AFM: deliberations are pending</p>	<p>uncertain: depending on outcome of deliberations with ministry of finance</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>Ministry of Finance or AFM: deliberations are pending</p>	<p>uncertain: depending on outcome of deliberations with ministry of finance</p>	



<p><b>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.</b></p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p><i>uncertain: depending on outcome of deliberations with ministry of finance</i></p>	
<p><b>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.</b></p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>uncertain: depending on outcome of deliberations with ministry of finance</p>	<p>no legislative authority for AFM</p>
<p><b>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.</b></p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>uncertain: depending on outcome of deliberations with ministry of finance</p>	<p>no legislative authority for AFM</p>
<p><b>12. The compliance function must:</b>  - 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>Ministry of Finance or AFM: deliberations are pending</p>	<p>uncertain: depending on outcome of deliberations with ministry of finance</p>	
<p><b>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.</b></p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>uncertain: depending on outcome of deliberations with ministry of finance</p>	
<p><b>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.</b></p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>uncertain: depending on outcome of deliberations with ministry of finance</p>	
<p><b>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:</b>  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>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>uncertain: depending on outcome of deliberations with ministry of finance</p>	<p>no legislative authority for AFM</p>

## 2. INFORMATION TO BE PROVIDED TO CUSTOMERS

Standard	Implementing authority(ies)	Implementing measure	Comments
<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>	Ministry of Finance or AFM: deliberations are pending	uncertain: depending on outcome of deliberations with ministry of finance	no legislative authority for AFM
<i>17. If an investment firm provides information in a marketing communications it must be fair, clear and not misleading.</i>	Ministry of Finance or AFM: deliberations are pending	uncertain: depending on outcome of deliberations with ministry of finance	
<i>18. An investment firm must ensure that a customer is provided promptly with the essential information concerning the execution of his order.</i>	Ministry of Finance or AFM: deliberations are pending	uncertain: depending on outcome of deliberations with ministry of finance	
<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>	Ministry of Finance or AFM: deliberations are pending	uncertain: depending on outcome of deliberations with ministry of finance	
<i>20. An investment firm that operates customer accounts, which include uncovered open positions, must provide regular statements of such positions.</i>	Ministry of Finance or AFM: deliberations are pending	uncertain: depending on outcome of deliberations with ministry of finance	

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

Standard	Implementing authority(ies)	Implementing measure	Comments
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<p><i>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.</i></p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>uncertain: depending on outcome of deliberations with ministry of finance</p>	<p>no legislative authority for AFM</p>
<p><i>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.</i></p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>uncertain: depending on outcome of deliberations with ministry of finance</p>	<p>no legislative authority for AFM</p>

#### 4. CUSTOMER AGREEMENTS

Standard	Implementing authority(ies)	Implementing measure	Comments
<p><i>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.</i></p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>uncertain: depending on outcome of deliberations with ministry of finance</p>	

#### 5.- DEALING REQUIREMENTS

##### 5.1) RECEPTION AND TRANSMISSION OF CUSTOMER ORDERS

Standard	Implementing authority(ies)	Implementing measure	Comments
<p><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></p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>uncertain: depending on outcome of deliberations with ministry of finance</p>	

<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>	Ministry of Finance or AFM: deliberations are pending	uncertain: depending on outcome of deliberations with ministry of finance	
<i>26. An investment firm must record orders immediately, documenting and verifying all relevant items of proper execution.</i>	Ministry of Finance or AFM: deliberations are pending	uncertain: depending on outcome of deliberations with ministry of finance	
<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>	Ministry of Finance or AFM: deliberations are pending	uncertain: depending on outcome of deliberations with ministry of finance	

## 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>	Ministry of Finance or AFM: deliberations are pending	uncertain: depending on outcome of deliberations with ministry of finance	
<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>	Ministry of Finance or AFM: deliberations are pending	uncertain: depending on outcome of deliberations with ministry of finance	
<i>30. An investment firm must ensure that orders are executed in accordance with the instructions from the customer.</i>	Ministry of Finance or AFM: deliberations are pending	uncertain: depending on outcome of deliberations with ministry of finance	

<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>	Ministry of Finance or AFM: deliberations are pending	uncertain: depending on outcome of deliberations with ministry of finance	
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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>	Ministry of Finance or AFM: deliberations are pending	uncertain: depending on outcome of deliberations with ministry of finance	no legislative authority for AFM
<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>	Ministry of Finance or AFM: deliberations are pending	uncertain: depending on outcome of deliberations with ministry of finance	

### 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>	Ministry of Finance or AFM: deliberations are pending	uncertain: depending on outcome of deliberations with ministry of finance	
<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>	Ministry of Finance or AFM: deliberations are pending	uncertain: depending on outcome of deliberations with ministry of finance	no legislative authority for AFM

<p><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></p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>uncertain: depending on outcome of deliberations with ministry of finance</p>	
<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"> <li><i>a) orders issued are immediately recorded by the firm;</i></li> <li><i>b) transactions executed are recorded and the portfolios affected are adjusted as quickly as possible;</i></li> <li><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></li> </ul>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>uncertain: depending on outcome of deliberations with ministry of finance</p>	

**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"> <li>- 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;</li> <li>- 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;</li> <li>- 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 funds.</li> </ul>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>uncertain: depending on outcome of deliberations with ministry of finance</p>	<p>no legislative authority for AFM</p>
<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>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>uncertain: depending on outcome of deliberations with ministry of finance</p>	<p>no legislative authority for AFM</p>
<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>	<p>Ministry of Finance or AFM: deliberations are pending</p>		<p>no legislative authority for AFM</p>

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.	Ministry of Finance or AFM: deliberations are pending	uncertain: depending on outcome of deliberations with ministry of finance	no legislative authority for AFM
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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>	Ministry of Finance or AFM: deliberations are pending	uncertain: depending on outcome of deliberations with ministry of finance	no legislative authority for AFM
<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>	Ministry of Finance or AFM: deliberations are pending	uncertain: depending on outcome of deliberations with ministry of finance	
<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>	Ministry of Finance or AFM: deliberations are pending	uncertain: depending on outcome of deliberations with ministry of finance	
<i>Executive directors/senior management must take reasonable measures to ensure that the firm establishes and implements adequate compliance policies and procedures.</i>	Ministry of Finance or AFM: deliberations are pending	uncertain: depending on outcome of deliberations with ministry of finance	no legislative authority for AFM
<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>	Ministry of Finance or AFM: deliberations are pending	uncertain: depending on outcome of deliberations with ministry of finance	no legislative authority for AFM
<i>The firm must keep records of all transactions executed for a period of five years.</i>	Ministry of Finance or AFM: deliberations are pending	uncertain: depending on outcome of deliberations with ministry of finance	
<i>The firm must keep record of telephone conversations concerning the transactions executed on a counterparty relationship.</i>	Ministry of Finance or AFM: deliberations are pending	uncertain: depending on outcome of deliberations with ministry of finance	



<i>The firm must adopt and take all reasonable steps to ensure compliance with an appropriate internal code of conduct.</i>	Ministry of Finance or AFM: deliberations are pending	uncertain: depending on outcome of deliberations with ministry of finance	
<i>The information provided in a marketing communications must be clear and not misleading.</i>	Ministry of Finance or AFM: deliberations are pending	uncertain: depending on outcome of deliberations with ministry of finance	no legislative authority for AFM

**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
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<p>10. a) Entities which are required to be authorised or regulated to operate in the financial markets.</p> <p>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:</p> <ul style="list-style-type: none"> <li>• Credit institutions</li> <li>• Investment firms</li> <li>• Other authorised or regulated financial institutions</li> <li>• Insurance companies</li> <li>• Collective investment schemes and management companies of such schemes</li> <li>• Pension funds and management companies of such funds</li> </ul> <p>Commodity dealers.</p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>uncertain: depending on outcome of deliberations with ministry of finance</p>	
<p>b) Large companies <sup>(18)</sup> and other institutional investors:</p> <ul style="list-style-type: none"> <li>• large companies and partnerships meeting two of the following size requirements on a company basis: <ul style="list-style-type: none"> <li>• balance sheet total : EUR 20.000.000,</li> <li>• net turnover : EUR 40.000.000,</li> <li>• own funds: EUR 2.000.000.</li> </ul> </li> <li>• Other institutional investors whose corporate purpose is to invest in financial instruments.</li> </ul>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>uncertain: depending on outcome of deliberations with ministry of finance</p>	
<p>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.</p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>uncertain: depending on outcome of deliberations with ministry of finance</p>	

<sup>(18)</sup> 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.

<p>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.</p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>uncertain: depending on outcome of deliberations with ministry of finance</p>	
<p>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.</p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>uncertain: depending on outcome of deliberations with ministry of finance</p>	
<p>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.</p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>uncertain: depending on outcome of deliberations with ministry of finance</p>	

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

**2.1. Identification criteria**

Standard	Implementing authority(ies)	Implementing measure	Comments
<p>14. The members of CESR consider that investors other than those mentioned in § 10, including public sector bodies <sup>(19)</sup> 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.</p>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>uncertain: depending on outcome of deliberations with ministry of finance</p>	
<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>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>uncertain: depending on outcome of deliberations with ministry of finance</p>	
<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"> <li>• 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;</li> <li>• The size of the investor's financial instrument portfolio, defined as including cash deposits and financial instruments exceeds 0,5 million Euro;</li> </ul> <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>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>uncertain: depending on outcome of deliberations with ministry of finance</p>	

<sup>(19)</sup> 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.

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>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>uncertain: depending on outcome of deliberations with ministry of finance</p>	
<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>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>uncertain: depending on outcome of deliberations with ministry of finance</p>	
<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>	<p>Ministry of Finance or AFM: deliberations are pending</p>	<p>uncertain: depending on outcome of deliberations with ministry of finance</p>	

(1) NOTE: For determining whether or not Dutch securities law provides for a similar provision, not only the basic principle of a particular CESR provision was reviewed but also all operational modalities under such provision.