

CENTRAL BANK OF CYPRUS

**DIRECTIVE FOR THE CONDITIONS OF OFFERING OF INVESTMENT OR
ANCILLARY SERVICES AND THE PERFORMANCE OF INVESTMENT
ACTIVITIES BY BANKS**

December 2007

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The official, legally binding text is in the Greek language.*

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CENTRAL BANK OF CYPRUS

DIRECTIVE FOR THE CONDITIONS OF OFFERING OF INVESTMENT OR ANCILLARY SERVICES AND THE PERFORMANCE OF INVESTMENT ACTIVITIES BY BANKS

The Central Bank of Cyprus, in accordance with the powers vested to it by virtue of section 120 for the implementation of sections 20, 29(3) and 156 of the Investment Services and Activities and Regulated Markets Law of 2007 and for the purposes of harmonisation with the actions of the European Community entitled:

Official Journal of
the EU: L 145
30.4.2004, p. 1

(a) “Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC”;

Official Journal of
the EU: L 114
27.4.2006, p. 60

(b) “Directive 2006/31/EC of the European Parliament and of the Council of 5 April 2006 amending Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments, as regards certain deadlines”; and

Official Journal of
the EU: L 241
2.9.2006, p. 26

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

issues the following Directive on the conditions of offering of investment or ancillary services and the performance of investment activities by banks.

PART I

INTRODUCTORY PROVISIONS

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|---|---|
| Short title | 1. This Directive will be cited as the Directive for the Conditions of Offering of Investment or Ancillary Services and the Performance of Investment Activities by Banks. |
| Purpose and scope of application
144(I)/2007 | 2. The present Directive defines and specifies the provisions of sections 18(2) and 29(3) of the Investment Services and Activities and Regulated Markets Law of 2007 and applies to all banks in possession of a banking licence from the Central Bank of Cyprus and to the Cyprus branches of banks licenced in a third country, during the offering of investment or ancillary services and the performance of investment activities. |
| Definitions | 3. For the purposes of this Directive, unless the context shall prescribe otherwise: |

«qualifying money market fund» means a collective investment undertaking authorised under the Law Regulating the Structure, Organisation and Operation of Open-Ended Undertakings for Collective Investment in Transferable Securities (UCITS) and Related Issues, or which is subject to supervision and, if applicable, authorised by an authority under the national law of a Member State, and which satisfies the following conditions:

(a) its primary investment objective must be to maintain the net asset value of the undertaking either constant at par (net of earnings), or at the value of the investors' initial capital plus earnings;

(b) it must, with a view to achieving that primary investment objective, invest exclusively in high quality money market instruments with a maturity or residual maturity of no more than 397 days, or regular yield adjustments consistent with such a maturity, and with a weighted average maturity of 60 days. It may also achieve this objective by investing on an ancillary basis in deposits with credit institutions;

(c) it must provide liquidity through same day or next day settlement;

«a competent rating agency» means the agency which issues credit ratings in respect of money market funds regularly and on a professional basis and is an eligible External Credit Assessment Institution (ECAI) within the meaning of paragraph 25(1) of Unit A of the Central Bank of Cyprus

Directive for the Calculation of the Capital Requirements and Large Exposures of Banks;

116(I) of 2005

«marketing communication» means the recommendation covered in section 26 the Insider Dealing and Market Manipulation (Market Abuse) Law, relating to financial instruments as defined in Part III of the Third Annex of the Law, and does not meet the conditions set by the definition of investment research;

66(I)/1997
74(I)/1999
94(I)/2000
119(I)/2003
4(I)/2004
151(I)/2004
231(I)/2004
235(I)/2004
20(I)/2005

«manager» means 'manager' as defined in section 2 of the Banking Law;

«investment research» means research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers of financial instruments, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public, and in relation to which the following conditions are met:

(a) it is labelled or described as investment research or in similar terms, or is otherwise presented as an objective or independent explanation of the matters contained in the recommendation;

(b) if the recommendation in question were made by a bank to a client, it would not constitute the provision of

investment advice for the purposes of the Law;

«distribution channel» means distribution channel within the meaning of section 2 of the Insider Dealing and Market Manipulation (Market Abuse) Law;

144(l)/2007

«the Law» means the Investment Services and Activities and Regulated Markets Law of 2007;

«critical or important operational function» means an operational function that should there be a defect or failure in its performance, it would materially impair the continuing compliance of a bank with the conditions and obligations of its authorisation or its other obligations under the Law and the Banking Laws, or its financial performance, or the soundness or the continuity of its investment services and activities;

Without prejudice to the status of any other function, the following functions shall not be considered as critical or important for the purposes of this definition:

(a) the provision to the bank of advisory services, and other services which do not form part of the business of the bank, including the provision of legal advice to the bank, the training of personnel of the bank, billing services and the security of the bank's premises and personnel;

(b) the purchase of standardised services, including market information services and the provision of price

feeds;

«durable medium» means any instrument which enables a client to store information addressed personally to that client in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

«securities financing transaction» has the meaning given to this term in Commission Regulation (EC) No 1287/2006;

«related financial instrument» means a financial instrument the price of which is closely affected by price movements in another financial instrument which is the subject of investment research, and includes a derivative on that other financial instrument;

«high quality money market instrument» means the money market instrument that it has been awarded the highest available credit rating by each competent rating agency which has rated that instrument. An instrument that is not rated by any competent rating agency shall not be considered to be of high quality;

«financial analyst» means a relevant person who produces the substance of investment research;

Without prejudice of the abovementioned provisions, terms used in the present Directive that are not interpreted differently shall have the meaning given to them by the Law.

Where in the present Directive reference is made to the Law, this includes the Regulatory Administrative Decisions issued under the Law.

PART II ORGANISATION

General
organisational
requirements

4. (1) A bank is required to comply with the following organisational requirements:

(a) to establish, implement and maintain decision-making procedures and an organisational structure which clearly and in documented manner specifies reporting lines and allocates functions and responsibilities;

(b) to ensure that its relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities;

(c) to establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the bank;

(d) to employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them;

(e) to establish, implement and maintain effective internal reporting and communication of information at

all relevant levels of the bank;

(f) to maintain adequate and orderly records of its business and internal organisation;

(g) to ensure that the performance of multiple functions by its relevant persons does not and is not likely to prevent those persons from discharging any particular function soundly, honestly, and professionally.

(2) In complying with the abovementioned requirements, a bank shall take into account the nature, scale and complexity of the business of the bank, and the nature and range of investment services and activities undertaken in the course of that business.

(3) Banks are required to monitor and on a regular basis, to evaluate the adequacy and effectiveness of their systems, internal control mechanisms and arrangements established in accordance with subparagraphs (1) and (2) of this paragraph and of paragraphs 10 to 12, and to take appropriate measures to address deficiencies.

Compliance
function

- 5.** (1) A bank is required to establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the bank to comply with its obligations under the Law, as well as the associated risks, and put in place adequate measures and procedures designed to minimise such risk and to enable the Central Bank of Cyprus to exercise its powers effectively under the Law and the present Directive.

For these purposes, a bank takes into account the nature, scale and complexity of the business of the bank, and the nature and range of investment services and activities undertaken in the course of that business.

(2) A bank is required to establish and maintain a permanent and effective compliance function which operates independently and which has the following responsibilities:

(a) to monitor and to assess the adequacy and effectiveness of the measures and procedures put in place in accordance with the subparagraph (1), and the actions taken to address any deficiencies in the bank's compliance with its obligations under the Law and the present Directive;

(b) to advise and assist the relevant persons responsible for carrying out investment services and activities to comply with the bank's obligations under the Law and the present Directive.

(3) In order to enable the compliance function to discharge its responsibilities properly and independently, a bank is required to ensure that the following conditions are satisfied:

(a) the compliance function has the necessary authority, resources, expertise and access to all relevant information;

(b) a compliance officer has been appointed and is

responsible for the compliance function and for any reporting as to compliance required by paragraph 9(2);

(c) the relevant persons involved in the compliance function are not be involved in the performance of services or activities they monitor;

(d) the method of determining the remuneration of the relevant persons involved in the compliance function does not compromise their objectivity and is not likely to do so.

However, a bank is not required to comply with point (c) or point (d) if it is able to demonstrate that, in view of the nature, scale and complexity of its business, and the nature and range of its investment services and activities, the requirement under that point is not proportionate and that its compliance function continues to be effective.

Risk management **6.** (1) A bank is required:

(a) to establish, implement and maintain adequate risk management policies and procedures which identify the risks relating to the bank's activities, processes and systems, and where appropriate, set the level of risk tolerated by the bank;

(b) to adopt effective arrangements, processes and mechanisms to manage the risks relating to the bank's activities, processes and systems, in light of that level of risk tolerance;

(c) to monitor the following:

(i) the adequacy and effectiveness of the bank's risk management policies and procedures;

(ii) the level of compliance by the bank and its relevant persons with the arrangements, processes and mechanisms adopted in accordance with point (b);

(iii) the adequacy and effectiveness of measures taken to address any deficiencies in those policies, procedures, arrangements, processes and mechanisms, including failures by the relevant persons of the bank to comply with such arrangements, processes and mechanisms or follow such policies and procedures.

(2) A bank is required, where appropriate and proportionate in view of the nature, scale and complexity of its business and the nature and range of the investment services and activities undertaken in the course of that business, to establish and maintain a risk management function that operates independently and carries out the following tasks:

(a) to implement the policy and procedures referred to in subparagraph (1);

(b) to provide the reports and advice to managers according to paragraph 9 (2).

Where a bank is not required under the abovementioned subparagraph to establish and maintain a risk management function that functions independently, it must nevertheless be able to demonstrate that the policies and procedures that it has adopted in accordance with subparagraph (1), satisfy the requirements of that subparagraph and are consistently effective.

(3) In the case of a bank which operates in Cyprus in the form of a subsidiary or as a member of a banking group, the Central Bank of Cyprus may, on application by the bank concerned, exempt it from the obligation of establishing a separate risk management unit, provided that the relevant risk management functions are performed at the group level, by a corresponding unit, and in a manner which adequately covers the bank's operations in Cyprus.

The Central Bank of Cyprus, in examining the said application, may request the bank to provide supporting evidence.

Performance of operations by the same person

7. Risk management and compliance functions may, taking into account the principle of proportionality, be performed by the same person without necessarily jeopardising the independent functioning of each function, only if the bank, in accordance with the Central Bank of Cyprus Directive on the Framework of Principles of Operation and Criteria of Assessment of Banks' Organisational Structure, Internal Governance and Internal Control Systems, is not required to have a compliance unit.

8. (1) A bank is required to establish and maintain an internal audit function which is separate and independent from the other functions and activities of the bank and which has the following responsibilities:

(a) to establish, implement and maintain an internal audit plan to examine and evaluate the adequacy and effectiveness of the bank's systems, internal control mechanisms and arrangements;

(b) to issue recommendations based on the result of work carried out in accordance with point (a);

(c) to verify compliance with the recommendations of point (b);

(d) to report in relation to internal audit matters in accordance with paragraph 9(2).

(2) In the case of a bank which operates in the Republic in the form of a subsidiary or as a member of a banking group, the Central Bank of Cyprus may, on application by the bank concerned, exempt it from the obligation of establishing a separate internal audit unit, provided that the relevant internal audit functions are performed at the group level by a corresponding unit and in a manner which adequately covers the bank's operations in Cyprus.

The Central Bank of Cyprus, in examining the said application, may request the bank to provide supporting

evidence.

Responsibility of
managers and of
the board of
directors

9. (1) A bank is required to, when allocating functions internally, to ensure that its managers, and its board of directors, are responsible for ensuring that the bank complies with its obligations under the Law.

In particular, its managers and its board of directors are required to assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations under the Law and the present Directive and to take appropriate measures to address any deficiencies.

(2) A bank is required to ensure that its managers receive on a frequent basis, and at least annually, written reports on the matters covered by paragraphs 5, 6 and 8, indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies.

(3) A bank is required to ensure that its board of directors receives on a regular basis and at least on an annual basis, written reports on the same matters referred to in subparagraph (2).

(4) A bank is required to submit to the Central Bank of Cyprus no later than 30 April of each year, the reports of subparagraph (2) together with the respective assessments of the relevant Committees of its board of directors and the relevant extracts from the minutes of the meetings of the

board of directors, during which the reports were discussed.

PART III

OTHER GENERAL ORGANISATIONAL REQUIREMENTS

Safeguard of the bank's information

- 10.** A bank is required to establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question.

Bank's business continuity policy

- 11.** A bank is required to establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to its systems and procedures, the preservation of essential data and functions, and the maintenance of the provision of investment services and activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of its investment services and investment activities.

Accounting policies, procedures and submission of reports to the Central Bank of Cyprus

- 12.** (1) Without prejudice to the provisions of section 24(1) of the Banking Law, which refers to the obligation of the bank to submit audited financial statements, a bank is required to establish, implement and maintain accounting policies and procedures that enable it, at the request of the Central Bank of Cyprus, to deliver in a timely manner to the Central Bank of Cyprus financial reports which reflect a true and fair view of its financial position and which comply with all applicable accounting standards and rules.

(2) Banks ensure that their external auditors, report at least annually to the Central Bank of Cyprus on the adequacy of the bank's arrangements under Part VI of the present Directive and points (i) and (j) of subsection (2) of section 18 of the Law.

Complaints
handling

13. A bank is required to establish, implement and maintain effective and transparent procedures for the reasonable and prompt handling of complaints received from retail clients or potential retail clients, and to keep a record of each complaint and the measures taken for the complaint's resolution.

Internal operations
manual

14. (1) A bank is required to to establish, implement and maintain an internal operations manual, which will include all policies, procedures, regulations and mechanisms that the bank is required to establish, implement and maintain in compliance with the Law and the Directives issued pursuant to the Law.

(2) The internal operations manual of the bank is notified to all of its personnel and to the members of its board of directors and its provisions are followed literally.

PART IV

PERSONAL TRANSACTIONS

Personal
transactions

15. (1) A bank is required to establish, implement and maintain adequate arrangements aimed at preventing the following activities, in the case of any relevant person who is involved in activities that may give rise to a conflict of interest, or who has

access to inside information within the meaning of section 5 of the Insider Dealing and Market Manipulation (Market Abuse) Law or to other confidential information relating to clients or transactions with or for clients, by virtue of an activity carried out by him on behalf of the bank:

(a) entering into a personal transaction which meets at least one of the following criteria:

(i) that person is prohibited from entering into it under the abovementioned law;

(ii) it involves the misuse or improper disclosure of that confidential information;

(iii) it conflicts or is likely to conflict with an obligation of the bank under the Law;

(b) advising or procuring, other than in the proper course of his employment or contract for services, any other person to enter into a transaction in financial instruments which, if a personal transaction of the relevant person, would be covered by point (a) of this subparagraph or paragraph 28(2)(a) or (b) of this Directive or paragraph 26(3) of the Directive for the Professional Conduct of Banks during the Provision of Investment or Ancillary Services and during the Performance of Investment Activities;

(c) without prejudice to section 9(1)(b) of the Insider Dealing and Market Manipulation (Market Abuse) Law,

disclosing, other than in the normal course of his employment or contract for services, any information or opinion to any other person if the relevant person knows, or reasonably ought to know, that as a result of that disclosure that other person will or would be likely to take either of the following steps:

(i) to enter into a transaction in financial instruments which, if a personal transaction of the relevant person, would be covered by point (a) of this subparagraph, or paragraph 27(2)(a) or (b) of this Directive or paragraph 26(3) of the Directive for the Professional Competence of banks during the provision of investment or ancillary services and during the performance of investment activities;

(ii) to advise or procure another person to enter into such a transaction.

(2) The arrangements required under subparagraph (1) must in particular be designed to ensure that:

(a) each relevant person covered by subparagraph (1) is aware of the restrictions on personal transactions, and of the measures established by the bank in connection with personal transactions and disclosure, in accordance with subparagraph (1);

(b) the bank is informed promptly of any personal transaction entered into by a relevant person, either by notification of that transaction or by other procedures

enabling the bank to identify such transactions;

In the case of entering into outsourcing arrangements, the bank must ensure that the firm to which the activity is outsourced maintains a record of personal transactions entered into by any relevant person and provides that information to the bank promptly on request;

(c) a record is kept of the personal transaction notified to the bank or identified by it, including any authorisation or prohibition in connection with such a transaction.

(3) Subparagraphs (1) and (2) are not applied to the following kinds of personal transaction:

(a) personal transactions effected under a portfolio management service where there is no prior communication in connection with the transaction between the portfolio manager and the relevant person or other person for whose account the transaction is executed;

(b) personal transactions in units in collective undertakings that comply with the conditions necessary to enjoy the rights conferred by the Law Regulating the Structure, Organisation and Operation of Open-Ended Undertakings for Collective Investment in Transferable Securities (UCITS) and Related Issues or are subject to supervision under the law of a Member State which

requires an equivalent level of risk spreading in their assets, where the relevant person and any other person for whose account the transactions are effected are not involved in the management of that undertaking.

PART V OUTSOURCING

Conditions for outsourcing critical or important operational functions or investment services or activities

16. (1) A bank that outsources critical or important operational functions or any investment services or activities, remains fully responsible for discharging all of its obligations under the Law and complies, in particular, with the following conditions:

(a) the outsourcing must not result in the delegation by the managers of their responsibility;

(b) the relationship and obligations of the bank towards its clients under the Law must not be altered;

(c) the conditions with which the bank must comply in order to be authorised in accordance with the Banking Law, and to remain so, must not be undermined;

(d) none of the other conditions subject to which the bank's authorisation was granted must be removed or modified.

(e) the bank submits to the Central Bank of Cyprus, at least 30 days prior to signing any outsourcing

agreement, a notification when outsourcing investment or ancillary services to a third party in a Member State.

(2) In the case that outsourcing would result to the critical delegation of functions of the bank, this is considered to undermine the conditions for authorisation of a bank, according to Part III of the Law and of the Banking Law.

(3) A bank is required to exercise due skill, care and diligence when entering into, managing or terminating any arrangement for the outsourcing to a service provider of critical or important operational functions or of any investment services or activities.

In particular, a bank should take the necessary steps to ensure that the following conditions are satisfied:

(a) the service provider must have the ability, capacity, and any authorisation required by law to perform the outsourced functions, services or activities reliably and professionally;

(b) the service provider must carry out the outsourced services effectively, and to this end the bank must establish methods for assessing the standard of performance of the service provider;

(c) the service provider must properly supervise the carrying out of the outsourced functions, and adequately manage the risks associated with the outsourcing;

(d) appropriate action must be taken if it appears that the service provider may not be carrying out the functions effectively and in compliance with applicable laws and regulatory requirements;

(e) the bank must retain the necessary expertise to supervise the outsourced functions effectively and manage the risks associated with the outsourcing and must supervise those functions and manage those risks;

(f) the service provider must disclose to the bank any development that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with applicable laws and regulatory requirements;

(g) the bank must be able to terminate the arrangement for outsourcing where necessary without detriment to the continuity and quality of its provision of services to clients;

(h) the service provider must cooperate with the Central Bank of Cyprus in connection with the activities outsourced by the bank;

(i) the bank, its auditors and the Central Bank of Cyprus must have effective access to data related to the outsourced activities, as well as to the business premises of the service provider;

(j) the service provider must protect any confidential information relating to the bank and its clients;

(k) the bank and the service provider must establish, implement and maintain a contingency plan for disaster recovery and periodic testing of backup facilities, where that is necessary having regard to the function, service or activity that has been outsourced.

(4) The respective rights and obligations of the bank and of the service provider to be clearly allocated and set out in a written agreement.

(5) Where the bank and the service provider are members of the same group, the bank may, for the purposes of complying with this paragraph and paragraph 17, take into account the extent to which the bank controls the service provider or has the ability to influence its actions.

(6) A bank is required to make available on request to the Central Bank of Cyprus all information necessary to enable the Central Bank of Cyprus to supervise the compliance of the performance of the outsourced activities with the requirements of this Directive.

Service providers
of investment
services and
activities
located in third
countries

17. (1) In addition to the requirements set out in paragraph 16, where a bank outsources any investment services or activities, to a service provider located in a third country, the bank ensures that the following conditions are satisfied:

(a) the service provider must be authorised or registered in its home country to provide that service and must be subject to prudential supervision;

(b) there must be an appropriate cooperation agreement between the Central Bank of Cyprus and the supervisory authority of the service provider.

(2) A bank may outsource services to a service provider located in a third country only if it gives about the outsourcing arrangement prior notification to the Central Bank of Cyprus and the Central Bank of Cyprus gives its prior written approval.

(3) Without prejudice to subparagraph (2), the Central Bank of Cyprus publishes a policy statement in relation to outsourcing covered by subparagraph (2). That statement sets out examples of cases where the Central Bank of Cyprus would not, or would be likely not to, object to an outsourcing under subparagraph (2). It also includes a clear explanation as to why the Central Bank of Cyprus considers that in such cases outsourcing would not impair the ability of banks to fulfil their obligations under paragraph 16.

(4) Nothing in this paragraph limits the obligations of the bank to comply with the requirements in paragraph 16.

(5) The Central Bank of Cyprus publishes a list of the supervisory authorities in third countries with which it has cooperation agreements that are appropriate for the purposes of subparagraph 1(b).

PART VI
SAFEGUARDING OF CLIENTS' ASSETS

Safeguarding of
clients' financial
instruments and
funds

18. (1) For the purposes of safeguarding clients' rights in relation to financial instruments and funds belonging to them, a bank is required to comply with the following requirements:

(a) it must keep such records and accounts as are necessary to enable it at any time and without delay, to distinguish assets held for one client from assets held for any other client, and from its own assets;

(b) it must maintain its records and accounts in a way that ensures their accuracy, and in particular their correspondence to the financial instruments and funds held for clients;

(c) it must conduct, on a regular basis, reconciliations between its internal accounts and records and those of any third parties by whom those assets are held;

(d) it must take the necessary steps to ensure that any client financial instruments deposited with a third party, in accordance with paragraph 19, are identifiable separately from the financial instruments belonging to the bank and from financial instruments belonging to that third party, by means of differently titled accounts on the books of the third party or other equivalent measures that achieve the same level of protection;

(e) it must take the necessary steps to ensure that

client funds deposited, in accordance with paragraph 20, in a central bank, a bank, a credit institution, or a credit institution authorised in a third country or a qualifying money market fund are held in an account or accounts identified separately from any accounts used to hold funds belonging to the bank;

(f) it must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of client assets, or of rights in connection with those assets, as a result of misuse of the assets, fraud, poor administration, inadequate record-keeping or negligence.

(2) If, for reasons of the applicable law, including in particular the law relating to property or insolvency, the arrangements made by the bank in compliance with the requirements of subparagraph (1) to safeguard clients' rights are not sufficient to satisfy the requirements of section 18(2) (i) and (j) of the Law, the Central Bank of Cyprus prescribes the measures that the bank must take in order to comply with those obligations.

(3) If the applicable law of the jurisdiction in which the client funds or financial instruments are held prevents the bank from complying with subparagraphs (1)(d) or (1)(e), the Central Bank of Cyprus prescribes requirements which have an equivalent effect in terms of safeguarding clients' rights.

Depositing client
financial
instruments

19. (1) A bank may deposit financial instruments held on behalf of its clients into an account or accounts opened with a third party provided that the bank exercises all due skill, care and diligence in

the selection, appointment and periodic review of the third party and of the arrangements for the holding and safekeeping of those financial instruments.

In particular, the bank is required to take into account the expertise and market reputation of the third party as well as any legal requirements or market practices related to the holding of those financial instruments that could adversely affect clients' rights.

(2) If the safekeeping of financial instruments for the account of another person is subject to specific regulation and supervision in a jurisdiction where the bank proposes to deposit client financial instruments with a third party, the bank does not deposit those financial instruments in that jurisdiction with a third party which is not subject to such regulation and supervision.

(3) A bank does not deposit financial instruments held on behalf of clients with a third party in a third country that does not regulate the holding and safekeeping of financial instruments for the account of another person, unless one of the following conditions is met:

(a) the nature of the financial instruments or of the investment services connected with those instruments requires them to be deposited with a third party in that third country;

(b) where the financial instruments are held on behalf of a professional client, that client requests the bank in writing to deposit them with a third party in that third

country.

Depositing client funds

20. (1) A bank is required, on receiving any client funds, promptly to place those funds into one or more accounts bearing the description 'client funds' opened with any of the following:

(a) central bank;

(b) bank or credit institution authorised in a Member State;

(c) credit institution authorised in a third country;

(d) qualifying money market fund.

Subparagraph (1) is not applicable to a bank in relation to the deposits held by the bank in accordance with the provisions of the Banking Law.

(2) A bank that does not deposit client funds with a central bank, is required to exercise all due skill, care and diligence in the selection, appointment and periodic review of the credit institution, bank or money market fund where the funds are placed and the arrangements for the holding of those funds.

A bank, in particular, takes into account the expertise and market reputation of such institutions or money market funds with a view to ensuring the protection of clients' rights, as well as any legal or regulatory requirements or market practices related to the holding of client funds that could adversely affect clients' rights.

(3) Where a bank deposits funds it holds on behalf of a client with a qualifying money market fund, the units in that money market fund should be held in accordance with the requirements for holding financial instruments belonging to clients.

(4) The clients of the bank have the right to oppose the placement of their funds in a qualifying money market fund.

Use of client
financial
instruments

21. (1) A bank is not allowed to enter into arrangements for securities financing transactions in respect of financial instruments held by it on behalf of a client, or otherwise use such financial instruments for its own account or the account of another client of the bank, unless the following conditions are met:

(a) the client must have given his prior express consent to the use of the instruments on specified terms, as evidenced, in the case of a retail client, by his signature or equivalent alternative mechanism;

(b) the use of that client's financial instruments must be restricted to the specified terms to which the client consents.

(2) A bank is not allowed to enter into arrangements for securities financing transactions in respect of financial instruments which are held on behalf of a client in an omnibus account maintained by a third party, or otherwise use financial instruments held in such an account for its own account or for the account of another client unless, in addition to the conditions set out in subparagraph (1), at least one of the following conditions is met:

(a) each client whose financial instruments are held together in an omnibus account must have given prior express consent in accordance with subparagraph (1)(a);

(b) the bank must have in place systems and controls which ensure that only financial instruments belonging to clients who have given prior express consent in accordance with subparagraph (1)(a) are so used.

(3) The records of the bank must include details of the client on whose instructions the use of the financial instruments has been effected, as well as the number of financial instruments used belonging to each client who has given his consent in accordance with subparagraph (1), so as to enable the correct allocation of any loss.

PART VII CONFLICTS OF INTEREST

Conflicts of interest potentially detrimental to a client

22. For the purposes of identifying the types of conflict of interest that arise in the course of providing investment and ancillary services or a combination thereof and whose existence may damage the interests of a client, a bank takes into account, by way of minimum criteria, the question of whether the bank or a relevant person, or a person directly or indirectly linked by control to the bank, is in any of the following situations, whether as a result of providing investment or ancillary services or investment activities or otherwise:

(a) the bank or that person is likely to make a financial gain, or avoid a financial loss, at the expense of the client;

(b) the bank or that person has an interest in the outcome of a service provided to the client or of a transaction carried out on behalf of the client, which is distinct from the client's interest in that outcome;

(c) the bank or that person has a financial or other incentive to favour the interest of another client or group of clients over the interests of the client;

(d) the bank or that person carries on the same business as the client;

(e) the bank or that person receives or will receive from a person other than the client an inducement in relation to a service provided to the client, in the form of monies, goods or services, other than the standard commission or fee for that service.

Conflicts of interest
policy

23. (1) A bank is required to establish, implement and maintain an effective conflicts of interest policy set out in writing and appropriate to the size and organisation of the bank and the nature, scale and complexity of its business.

Where the bank is a member of a group, the policy must also take into account any circumstances, of which the bank is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of

the group.

(2) The conflicts of interest policy established in accordance with subparagraph (1) includes the following content:

(a) it must identify, with reference to the specific investment services and activities and ancillary services carried out by or on behalf of the bank, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of one or more clients;

(b) it must specify procedures to be followed and measures to be adopted in order to manage such conflicts.

(3) A bank is required to ensure that the procedures and measures provided for in subparagraph (2)(b) are designed to ensure that relevant persons engaged in different business activities involving a conflict of interest of the kind specified in subparagraph (2)(a) carry on those activities at a level of independence appropriate to the size and activities of the bank and of the group to which it belongs, and to the materiality of the risk of damage to the interests of clients.

For the purposes of subparagraph (2)(b), the procedures to be followed and measures to be adopted include such of the following as are necessary and appropriate for the bank to ensure the requisite degree of independence:

(a) effective procedures to prevent or control the

exchange of information between relevant persons engaged in activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more clients;

(b) the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services to, clients whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the bank;

(c) the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;

(d) measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out investment or ancillary services or activities;

(e) measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate investment or ancillary services or activities where such involvement may impair the proper management of conflicts of interest.

If the adoption or the practice of one or more of those

measures and procedures does not ensure the requisite degree of independence, the bank is required to adopt such alternative or additional measures and procedures as are necessary and appropriate for those purposes.

Disclosure according to section 29(2) of the Law

24. (1) The disclosure to clients, pursuant to section 29(2) of the Law, with which the general nature and the conflicts of interest are clearly disclosed to the client before the bank provides any services, is made in a durable medium according to subparagraph (2) and includes sufficient detail, taking into account the nature of the client, to enable that client to take an informed decision with respect to the investment or ancillary service in the context of which the conflict of interest arises.

(2) A bank may provide that information in a durable medium other than on paper only if:

(a) the provision of that information in that medium is appropriate to the context in which the business between the bank and the client is, or is to be, carried on; and

(b) the person to whom the information is to be provided, when offered the choice between information on paper or in that other durable medium, specifically chooses the provision of the information in that other medium.

For the purposes of this paragraph, the provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the

bank and the client is, or is to be, carried on if there is evidence that the client has regular access to the internet. The provision by the client of an e-mail address for the purposes of the carrying on of that business shall be treated as such evidence.

Record of services or activities giving rise to detrimental conflicts of interest

25. A bank is required to keep and regularly to update a record of the kinds of investment or ancillary service or investment activity carried out by or on behalf of the bank in which a conflict of interest entailing a material risk of damage to the interests of one or more clients has arisen or, in the case of an ongoing service or activity, may arise.

Marketing communication

26. (1) A recommendation of the type within the definition 'recommendation' covered in section 26 of the Insider Dealing and Market Manipulation (Market Abuse) Law but relating to financial instruments as defined in the Law, that does not meet the two conditions in the definition 'investment research' shall be treated as a marketing communication for the purposes of the Law and any bank that produces or disseminates the recommendation ensures that it is clearly identified as such.

(2) The bank referred to in subparagraph (1) is required to ensure that any such recommendation contains a clear and prominent statement that (or, in the case of an oral recommendation, to the effect that) it has not been prepared in accordance with legal requirements designed to promote the independence of investment research, and that it is not subject to any prohibition on dealing ahead of the dissemination of investment research.

Additional organisational

27. (1) A bank which produces, or arranges for the production of,

requirements
where a bank
produces and
disseminates
investment
research

investment research that is intended or likely to be subsequently disseminated to clients of the bank or to the public, under its own responsibility or that of a member of their group, is required to ensure the implementation of all the measures set out in paragraph 23(3) of this Directive in relation to the financial analysts involved in the production of the investment research and other relevant persons whose responsibilities or business interests may conflict with the interests of the persons to whom the investment research is disseminated.

(2) The bank referred to in subparagraph (1) is required to have in place arrangements designed to ensure that the following conditions are satisfied:

(a) financial analysts and other relevant persons must not undertake personal transactions or trade, other than as market makers acting in good faith and in the ordinary course of market making or in the execution of an unsolicited client order, on behalf of any other person, including the bank, in financial instruments to which investment research relates, or in any related financial instruments, with knowledge of the likely timing or content of that investment research which is not publicly available or available to clients and cannot readily be inferred from information that is so available, until the recipients of the investment research have had a reasonable opportunity to act on it;

(b) in circumstances not covered by point (a), financial analysts and any other relevant persons involved in the production of investment research must not undertake

personal transactions in financial instruments to which the investment research relates, or in any related financial instruments, contrary to current recommendations, except in exceptional circumstances and with the prior approval of a member of the bank's legal or compliance function;

(c) the bank itself, financial analysts, and other relevant persons involved in the production of the investment research must not accept inducements, as these are stated in paragraph 5 of the Directive for the Professional Conduct of Banks during the Provision of Investment or Ancillary Services and during the Performance of Investment Activities, from those with a material interest in the subject-matter of the investment research;

(d) the bank itself, financial analysts, and other relevant persons involved in the production of the investment research must not promise issuers favourable research coverage;

(e) issuers, relevant persons other than financial analysts, and any other persons must not before the dissemination of investment research be permitted to review a draft of the investment research for the purpose of verifying the accuracy of factual statements made in that research, or for any other purpose other than verifying compliance with the bank's legal obligations, if the draft includes a recommendation or a target price.

(3) A bank which disseminates investment research produced by another person to the public or to clients is exempted from complying with subparagraph (1) if the following criteria are met:

(a) the person that produces the investment research is not a member of the group to which the bank belongs;

(b) the bank does not substantially alter the recommendations within the investment research;

(c) the bank does not present the investment research as having been produced by it;

(d) the bank verifies that the producer of the research is subject to requirements equivalent to the requirements under this Directive in relation to the production of that research, or has established a policy setting such requirements.

PART VIII

FINAL PROVISIONS

Application of the Directive

28. The provisions of this Directive are applicable in addition to the provisions of the Central Bank of Cyprus Directive on the Framework of Principles of Operation and Criteria of Assessment of Banks' Organisational Structure, Internal Governance and Internal Control Systems.

Entry into force

29. This Directive shall enter into force on the day of its publication in the Official Gazette of the Republic.