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

IMPORTANT NOTICE

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

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

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

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

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

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

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

Ref. CESR/03-134

Correspondence Table on Standards for Investor Protection **(Ref. CESR/01-014d and CESR/02-098b)**

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

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

³ Ref. CESR/02-086b, July 2002.

SPAIN

A CONDUCT OF BUSINESS RULES FOR THE “RETAIL REGIME”

1. STANDARDS AND RULES OF GENERAL APPLICATION

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Standard /Rule	Implementing authority(ies)	Implementing measure ⁴	Comments
<i>1. An investment firm must at all times act honestly, fairly and professionally in accordance with the best interests of its customers and the integrity of the market.</i>	Parliament/Government/ Ministry of Economy / CNMV	Law 24/1988, Securities Markets Act. Title VII “Conduct of Business Rules”. Article 79 a) and c). Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex “General Code of Conduct for the Securities Markets”.	
<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>	Parliament/Ministry of Economy / CNMV	Law 24/1988, Securities Markets Act. Title VII “Conduct of Business Rules”. Article 79 d). Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex “General Code of Conduct for the Securities Markets”. Article 3 “Resources and Capacities” CNMV Circular 3/1993 Ministerial Order of 25 October 1995 CNMV Circular 1/1998 Rule 7 th	

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

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.	Government/Ministry of Economy / CNMV	Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. "Annex General Code of Conduct for the Securities Markets". Article 7 "Refusal to trade and duty to refrain "	The implementing measure also mentions that the investment firms must reject deals with unauthorised intermediaries and those which they know may involve a breach of the applicable regulations.
4. Investment firm that outsources functions retains full responsibility for the outsourced activity and must ensure that the providers of such outsourcing are able to perform these functions reliably, professionally and in the best interests of its customers.⁵.	Ministry of Economy / CNMV	CNMV Circular 1/1998, dated June 10, about Internal Control Systems, Monitoring and Assessment of risks. Rule 6 ^a	

1.2. CONFLICTS OF INTEREST AND INDUCEMENTS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
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.	Parliament/Ministry of Economy / CNMV	Law 24/1988, Securities Markets Act. Title "Conduct of Business Rules". Article 79 b) f) h). Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex "General Code of Conduct for the Securities Markets". Articles 1 and 6 "Impartiality and Good practices" and "Conflicts of interest" respectively .	
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.	Parliament/Ministry of Economy /CNMV	Law 24/1988, Securities Markets Act. Title "Conduct of Business Rules". Article 79 h). Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex "General Code of Conduct for the Securities Markets" CNMV Circular 1/1998 Rule 11 th	Article 79 h) states that "conflicts of interest" must be disclosed to the costumers.

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

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.	Government/Ministry of Economy /CNMV	Royal Decree 629/1993, of 3 may, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex “General Code of Conduct for the Securities Markets”. Article 1.7 “Impartiality and Good Practices Obligatory Internal Conduct Rules CNMV Circular 1/1998 related to the Internal Control Unit	Articles 1.7 points out that unjustified incentives can not be requested or accepted.
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.	Parliament/Ministry of Economy /CNMV	Law 24/1988, Securities Markets Act. Title “Conduct of Business Rules”. Article 79 h). Arts. 5.6 and 5.7 b	In more general terms, article 79 h) states that conflicts of interest must be disclosed to the costumers. Supervisory practice is to check inducements policy and, in the case of portfolio management they have to inform in writing about kick-back commissions.

1.3 COMPLIANCE AND CODE OF CONDUCT

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
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.	Parliament/Ministry of Economy / CNMV	Law 24/1988 Securities Markets Act Title VII “Conduct of Business Rules”. Articles 78 c), 79 a) and 79 d). Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex “General Code of Conduct for the Securities Markets”. Article 3.5 “Resources and capacities”. CNMV Circular 1/1998, dated June 10, About Internal Control Systems, Monitoring and Assessment of risks. Rule 4 ^a .	
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.	CNMV	CNMV Circular 1/1998, dated June 10, About Internal Control Systems, Monitoring and Assessment of risks.	

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.	CNMV	CNMV Circular 1/1998, dated June 10, About Internal Control Systems, Monitoring and Assessment of risks.	
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.	CNMV	CNMV Circular 9/1989, dated December 20, about audit of <i>Sociedades de Valores</i> (Broker-dealers) and <i>Agencias de Valores</i> (Dealers). Rule 4 ^a .	Circular 9/1989 states that auditors must inform to the supervisors over the relevant weakness detected in the monitoring of the compliance of the conduct of business rules.
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.	CNMV	CNMV Circular 1/1998, dated June 10, About Internal Control Systems, Monitoring and Assessment of risks. Rule 4 ^a .	Circular 1/1998 does not state explicitly that the compliance function must provide advisory assistance and support. In our supervisory practice it can be demonstrated that the compliance officer provides advisory assistance and it is in the internal code of conduct of all companies. Those internal codes are supervised by the competent authority (the CNMV)
<i>10. An investment firm must be able to demonstrate that it has not acted in breach of the conduct of business rules and the internal code of conduct and that its organization, policies and procedures facilitate such compliance.</i>	Government/Ministry of Economy / CNMV	Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Article 6 "Record of Transactions". Ministerial Order 25 October 1995	
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 Economy / CNMV	Ministerial Order 25 October 1995 Article 11 th CNMV Circular 3/1993, Dated 29 December, Regarding the Record of Transactions and Order Support Archive. Rule 2.5 "Order Support Archive" and Rule 4 ^a "Keeping the record of transactions and generating computer files".	An investment firm must keep tape recordings for a period of three months. Only in case of a customer claim, the tapes have to be kept as long as the process continues.
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.	Parliament/	Law 44/2002, of 22 November, Implementing Measures that Reform the Financial System. Article 29 "Department of Customer Service and Client Ombudsman "	

<p>17. An investment firm must establish a code of conduct for members of the board, directors, partners, employees and tied-agents. The code of conduct must contain:</p> <ul style="list-style-type: none"> a) the rules and procedure to meet the obligation to protect data of a confidential nature; b) the rules and procedures for carrying out personal transactions involving financial instruments; c) the rules and procedures governing the business relationship with customers in order to ensure that the persons referred to above, in particular where a conflict of interest may arise, always act in the best interests of customers, and that such persons do not take advantage of any confidential information; d) the investment firm's policy on conflicts of interest and inducements. 	Government/ Ministry of Economy / CNMV	Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Article 3 « Internal Rules of Conduct” CNMV Circular 1/1998, dated June 10, About Internal Control Systems, Monitoring and Assessment of risks	
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1.4. COLD CALLING ⁶

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<i>18. For the purpose of protecting customers from undue pressure to enter into a contract, cold calls can only be made to potential customers in accordance with the rules set out below.</i>			This standard is not implemented in the Spanish regulation. Nevertheless this practice is not usual in the Registered Entities
19. Cold calls may only be made by persons employed by, or appointed as tied-agent ⁷ by an investment firm. Responsibility for the competence and activities of such persons rests with the firm.			This rule is not implemented in the Spanish regulation. Nevertheless this practice is not usual in the Registered Entities
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.			This rule is not implemented in the Spanish regulation. Nevertheless this practice is not usual in the Registered Entities
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.			This rule is not implemented in the Spanish regulation. Nevertheless this practice is not usual in the Registered Entities
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.			This rule is not implemented in the Spanish regulation. Nevertheless this practice is not usual in the Registered Entities

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

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

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.			This rule is not implemented in the Spanish regulation. Nevertheless this practice is not usual in the Registered Entities
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.			This rule is not implemented in the Spanish regulation. Nevertheless this practice is not usual in the Registered Entities

2. INFORMATION TO BE PROVIDED TO CUSTOMERS

2.1) BASIC REQUIREMENTS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<i>25. An investment firm must pay due regard to the information needs of its customers and communicate information to them that is fair, clear, and not misleading.</i>	Government/Ministry of Economy / CNMV	Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex "General Code of Conduct for the Securities Markets". Article 5 "Information to clients" Ministerial Order 25 October 1995. Ministerial Order 7 October 1999 CNMV Circular 1/1996 dated 27 th March 1996 CNMV Circular 2/2000 dated 30 th May 2000	
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.	Government/Ministry of Economy / CNMV	Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex "General Code of Conduct for the Securities Markets". Article 5 "Information to clients". Ministerial Order 25 October 1995. Ministerial Order 7 October 1999 CNMV Circular 1/1996 dated 27 th March 1996 CNMV Circular 2/2000 dated 30 th May 2000	

<i>26. An investment firm must supply its customers on a timely basis with the information that enables them to make informed investment decisions.</i>	Parliament/ Government/Ministry of Economy / CNMV	Law 24/1988 Securities Markets Act Title VII "Conduct of Business Rules". Article 79 e). Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex "General Code of Conduct for the Securities Markets". Ministerial Order 25 October 1995. Ministerial Order 7 October 1999 CNMV Circular 1/1996 dated 27 th March 1996 CNMV Circular 2/2000 dated 30 th May 2000	
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.	Government/Ministry of Economy / CNMV	Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Article 16.2 "Information to clients regarding transactions which have been performed" and article 5.1 "Information to clients" of the Annex "General Code of Conduct for the Securities Markets".	

2.2.) MARKETING COMMUNICATIONS ⁸

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>	Parliament/	Law 24/1988 Securities Markets Act. Article 94 Art. 3 of Royal Decree 629/1993, the consumers' law and the law on publicity and advertising.	
<i>30. The promotional purpose of marketing communications issued by an investment firm must not be disguised.</i>	Parliament/Ministry of Economy	Law 24/1988 Securities Markets Act. Article 94 Art. 3 of Royal Decree 629/1993, the consumers' law and the law on publicity and advertising.	Article 94 establishes that the Ministry of Economy and Finance is empowered to issue the special rules that marketing communications must follow.

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

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.	Government/Ministry of Economy / CNMV	Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Article 13.3 “Disclosure of commissions”	Article 13 of Royal Decree 629/1993 only makes reference to the Disclosure of commissions
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.	Government/	Royal Decree 867/2001, July 20th 2001, about Investment Firms legal Statutory	
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.			Not implemented
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.			This rule is not specifically implemented

2.3) INFORMATION ABOUT THE INVESTMENT FIRM

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<i>35. Before providing investment services an investment firm must supply adequate information about itself and the services it provides.</i>	Government/Ministry of Economy / CNMV	Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Ministerial Order 25 October 1995. Ministerial Order 7 October 1999 CNMV Circular 1/1996 dated 27 th March 1996 CNMV Circular 2/2000 dated 30 th May 2000	

<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"> a) the identity of the investment firm, the (financial) group to which the investment firm belongs, its postal address and telephone number; b) the fact that the investment firm is authorised and/or registered and the name of the competent authority that has authorised and/or registered it; c) the functions that the investment firm performs so that the customer is able to assess the scope of the firm's responsibilities; d) the relevant compensation scheme(s); e) where such a procedure exists, a description of the mechanism(s) for settling disputes between the parties such as an out-of-court complaint and redress mechanism; f) an outline of the firm's policies in relation to conflicts of interest and inducements; g) the languages in which the customer can communicate with the investment firm. 	Government/Ministry of Economy / CNMV	<p>Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping.</p> <p>Ministerial Order 25 October 1995.</p> <p>Ministerial Order 7 October 1999</p> <p>CNMV Circular 1/1996 dated 27th March 1996</p> <p>CNMV Circular 2/2000 dated 30th May 2000</p>	
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2.4) INFORMATION ON FINANCIAL INSTRUMENTS AND INVESTMENT SERVICES

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
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<p>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.</p>	<p>Government/Ministry of Economy / CNMV</p>	<p>Royal Decree 629/1993, of 3 may, governing rules of action in the securities markets and obligatory record-keeping Article 16.1 Information to clients regarding transactions which have been performed. Section five information to clients. Ministerial Order 25 October 1995. Ministerial Order 7 October 1999 CNMV Circular 1/1996 dated 27th March 1996 CNMV Circular 2/2000 dated 30th May 2000</p>	
<p>40. The information provided to customers can be delivered using standard documentation but must include the following as a minimum:</p> <ul style="list-style-type: none"> a) a description of the main characteristics ⁹ of the instrument/service, including the nature of the financial commitment, whether the instruments involved are traded on a regulated market or not and the risks involved; b) price, including commissions, fees and other charges, relating to the transaction, the instrument or service; c) arrangements for payment and performance; d) details on any cancellation rights or rights of reflection that may apply. 	<p>Ministry of Economy / CNMV</p>	<p>Ministerial Order dated 25 October 1995, section five. Information on transactions. Section four.4: contractual documents CNMV Circular 2/2000 dated 30th May 2000</p>	
<p>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.</p>	<p>Government/Ministry of Economy / CNMV</p>	<p>Royal Decree 629/1993, of 3 may, governing rules of action in the securities markets and obligatory record-keeping Article 16.2 Information to clients regarding transactions which have been performed. Section five: information to clients.</p>	
<p>41. The information to be disclosed to customers on commissions, charges and fees must contain:</p> <ul style="list-style-type: none"> a) the basis or amount of the charges for transactions, products or services, detailing, where appropriate, the percentage or rate applicable, the frequency with which it is applied, any maximum or fixed minimum fees and, where the commission or fee must be paid in foreign currency, the currency involved; b) if various investment firms are to be involved in a transaction or service, an estimate of the other fees that will be payable. 	<p>Government/Ministry of Economy / CNMV</p>	<p>Royal Decree 629/1993, of 3 may, governing rules of action in the securities markets and obligatory record-keeping Article 16.1 Information to clients regarding transactions which have been performed. Section five: information to clients. Ministerial Order dated 25 October 1995, section five. information on transactions Nine.- Rules</p>	

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

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.	Government/Ministry of Economy / CNMV	Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex "General Code of Conduct for the Securities Markets". Article 1.5 "Impartiality and good faith" and article 5.3 "Information to clients".	
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.			Not implemented
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.		This rule is implemented for UCITS.	
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.			Not implemented
<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>	Government/Ministry of Economy / CNMV	Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex "General Code of Conduct for the Securities Markets". Article 5 "Information to 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.	Government/Ministry of Economy / CNMV	Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex "General Code of Conduct for the Securities Markets". Article 5 "Information to clients".	

<p>47. The use of simulated returns is prohibited. If the information refers to actual returns based on past performance:</p> <ul style="list-style-type: none"> a) the reference period must be stated and must not be less than one year; b) where returns relate to more than one year, they must either be reduced to a compound annual rate or stated separately as annual returns; c) where a compound annual return is presented for more than one year, a reference period of five years must be used provided the relevant data are available. If the relevant data are not available over a reference period of five years (e.g. because the financial instrument or the investment portfolio has not existed for such a period), the returns may be measured from the issue date or the date on which the portfolio was established; d) where a benchmark is used to compare returns, it must be identified and its reference period must be relevant, clear and sufficient to provide a fair and balanced indication of performance of the investment service or financial instrument being promoted; e) if the return figures are not denominated in local currency, the currency used must be stated and reference shall be made to the currency risk for the return in local currency; f) the information for the comparison should be based on net performances or if it is based on gross performances commissions, fees or other charges have to be disclosed. 		This rule is implemented for UCITS.	
<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>		This rule is implemented for UCITS.	
<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>	Government/Ministry of Economy / CNMV	Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex "General Code of Conduct for the Securities Markets". Article 5.4 "Information to clients".	
<p>50. If information provided contains comparisons, the requirement of being fair, clear and not misleading means that the comparisons must:</p> <ul style="list-style-type: none"> a) be based either on data from attributed sources or disclosed assumptions; b) be presented in a fair and balanced way; c) take reasonable steps not to omit any fact that is material to the comparison. 	Government/Ministry of Economy / CNMV	Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex "General Code of Conduct for the Securities Markets". Article 5.4 "Information to clients".	

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>	Government/Ministry of Economy/ CNMV	Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex "General Code of Conduct for the securities markets". Article 5 "Information to clients".	The General Code of Conduct provide that when the transaction involves high-risk financial products, the firm must inform the client about the possible effects of the transaction being arranged.
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: <ul style="list-style-type: none"> - financial instruments not traded on a regulated market; - transactions in illiquid financial instruments; - leveraged transactions; - financial instruments subject to high volatility in normal market conditions; - securities repurchase agreements or securities lending agreements; - transactions which involve credit, margin payments or the deposit of collateral; - transactions involving foreign exchange risk. 			Not implemented

53. The investment firm must also, where necessary, inform the customer of risks associated with: a) clearing house protections (e.g. that although the performance of a transaction is sometimes 'guaranteed' by the exchange or clearing house this guarantee will not necessarily protect the customer in the event of default by the investment firm or another counterparty); b) suspension of trading or listing (e.g. that under certain trading conditions it may be impossible to liquidate a position); c) insolvency (e.g. that in the event of default of an investment firm involved with the customer's transaction, positions may be liquidated automatically and actual assets lodged as collateral may be irrecoverable).			Not implemented
<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>	Government/	Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex "General Code of Conduct for the Securities Markets Section fifth Article 16 and article 5 of the Annex mentioned	
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.		MEFF, the Spanish Official Exchange for Financial Futures and Options, uses standards contracts which include these provisions.	

2.6. CUSTOMER REPORTING

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
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<p>55. An investment firm must ensure that a customer is provided promptly with the essential information concerning the execution of his order.</p>	<p>Government/Ministry of Economy/ CNMV</p>	<p>Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Article 16 “Information to clients regarding transactions which have been performed”. Ministerial Order, dated 25 October 1995, Partially Implementing Royal Decree 629/1993. Section Five “Information on transactions”. Article 9 “Rules”</p>	
<p>58. No later than the first business day following the execution of the transaction or receipt of confirmation of execution by a third party, an investment firm must send to the customer¹⁰, by fax, mail or electronic means (provided the firm reasonably believes that the customer can store it on a permanent medium), a contract note or confirmation notice which includes the following information:</p> <ul style="list-style-type: none"> a) the name of the firm; b) the name of the customer account; c) the time of execution, if available, or a statement that the time of execution will be supplied on request; d) date of execution; e) the type of transaction; e.g. buy, sell, subscription etc.; f) the market on which the transaction was carried out or the fact that it was carried out off-market; g) the financial instrument and the quantities involved in the transaction; h) the unit price applied and the total consideration; i) whether the customer’s counterparty was the investment firm itself or any related party; j) the commissions and expenses charged; k) the time limit and procedure for the settlement of the transaction, e.g. details (name and number) of the bank account and securities account. <p>If a transaction is not executed within one business day of receipt of the customer order, an investment firm must send a written confirmation of the order to the customer. The confirmation notice must include customer order details, date and time of reception and, where applicable, date and time of transmission.</p>	<p>Government/Ministry of Economy/ CNMV</p>	<p>Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Article 16 “Information to clients regarding transactions which have been performed”. CNMV Circular 1/1996, dated 27 March, Governing Rules of Action, Transparency and Identification of Clients in Securities Market Transactions.</p>	

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

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.	Government/Ministry of Economy/ CNMV	Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex "General Code of Conduct for the Securities Markets". Article 5 "Information to clients".	
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.	Ministry of Economy/ CNMV	Ministerial Order, dated 25 October 1995, Partially Implementing Royal Decree 629/1993. Section Five "Information on transactions". Rule 9 "Rules".	
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: <ul style="list-style-type: none"> a) identify assets which have been pledged to the firm or any third parties as collateral; b) identify assets which have been lent; c) clearly and consistently show movement of assets based on either trade date or settlement date. 	Ministry of Economy/ CNMV	CNMV Circular 1/1996, dated 27 March, Governing Rules of Action, Transparency and Identification of Clients in Securities Market Transactions. Rule 13 "Information to clients on long-term or indefinite contracts".	Circular 1/1996 states that firms must send their clients <u>clear and specific</u> information about the status of the portfolio at least once per quarter, if there have been <u>alterations</u> in the portfolio composition, or annually in any event.
57. An investment firm that operates customer accounts, which include uncovered open positions, must provide regular statements of such positions.	Ministry of Economy/ CNMV	Ministerial Order, dated 25 October 1995, Partially Implementing Royal Decree 629/1993. Section Five "Information on transactions". Rule 9 "Rules".	
61. Where an account includes uncovered open positions ¹¹ , an investment firm must send to its customer a monthly statement, which includes the following: <ul style="list-style-type: none"> a) information about the options contract, e.g. market price, date of exercise, exercise price, as well as any incidental costs connected with the exercise; b) each payment made by the customer as a result of the margin requirements in respect of the open positions and the amount of the unrealised profit or loss attributable to open positions; c) the resulting profit or loss arising from positions closed during the period. 		It is required to inform of every transaction and of every settlement	

¹¹ Examples of uncovered open positions include:

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

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> <ul style="list-style-type: none"> <i>a. to determine whether the investment services envisaged are appropriate for the customer¹² and</i> <i>b. to meet any duties owing to the customer in respect of the services to be provided.</i> 	Government/Ministry of Economy/ CNMV	<p>Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex “General Code of Conduct for the securities markets”. Article 4 “Information about clients”.</p> <p>Ministerial Order, dated 25 October 1995, Partially Implementing Royal Decree 629/1993. Section Five “Information on transactions”. Rule 9 “Identification of clients”.</p> <p>CNMV Circular 1/1996, dated 27 March, Governing Rules of Action, Transparency and Identification of Clients in Securities Market Transactions.</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>	Government/Ministry of Economy/ CNMV	<p>Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex “General Code of Conduct for the Securities Markets”. Article 4 “Information about clients”.</p>	

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

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.	Ministry of Economy/ CNMV	Ministerial Order, dated 25 October 1995, Partially Implementing Royal Decree 629/1993. Section Five “Information on transactions”. Rule 10 “Identification of clients”. CNMV Circular 1/1996, dated 27 March, Governing Rules of Action, Transparency and Identification of Clients in Securities Market Transactions. Rule 14 “Identification of clients”.	
65. An investment firm must seek to obtain information on the customer’s knowledge and experience ¹³ in the investment field, his investment objectives and risk profile, ¹⁴ his financial situation/capacity and any trading restrictions applicable to the customer. The extent of the information required will vary according to the standards laid down in paragraph 62, second subparagraph.	Ministry of Economy/ CNMV	Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex “General Code of Conduct for the securities markets”. Article 4 “Information about clients”.	
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.	Government/Ministry of Economy/ CNMV	Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex “General Code of Conduct for the securities markets CNMV Circular 1/1996, dated 27 March, Governing Rules of Action, Transparency and Identification of Clients in Securities Market Transactions	
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.	Government/Ministry of Economy/ CNMV	Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex “General Code of Conduct for the securities markets Ministerial Order, dated 7 October 1999. CNMV Circular 2/2000, dated 30 May about form models of standard customer agreement for discretionary and individual portfolio management and other developments of Ministerial Order, dated 7 October 1999.	Circular 2/2000 only applies to portfolio management contracts. Circular 2/200 only states the obligation to keep information about costumers updated.

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

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

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.	Government/Ministry of Economy/ CNMV	Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex "General Code of Conduct for the securities markets Ministerial Order, dated 7 October 1999. CNMV Circular 2/2000, dated 30 May about form models of standard customer agreement for discretionary and individual portfolio management and other developments of Ministerial Order, dated 7 October 1999.	
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 Economy/ CNMV	Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex "General Code of Conduct for the securities markets Ministerial Order, dated 7 October 1999. CNMV Circular 2/2000, dated 30 May about form models of standard customer agreement for discretionary and individual portfolio management and other developments of Ministerial Order, dated 7 October 1999.	
70. The customer should not be invited not to provide information.		CNMV Circular 1/1996, dated 27 March, Governing Rules of Action, Transparency and Identification of Clients in Securities Market Transactions. Rule 14 "Identification of clients".	

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

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

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.	Government/Ministry of Economy/CNMV	Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex "General Code of Conduct for the securities markets Ministerial Order, dated 25 October 1995. CNMV Circular 1/1996	
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.	Government/Ministry of Economy/CNMV	Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex "General Code of Conduct for the securities markets Ministerial Order, dated 25 October 1995.	
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 ¹⁶ 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.	Government/Ministry of Economy/CNMV	Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex "General Code of Conduct for the securities markets Ministerial Order, dated 25 October 1995. CNMV Circular 1/1996	
74. An investment firm must take reasonable care to verify that the customer has sufficient financial resources to settle the proposed transaction.	Government/Ministry of Economy/CNMV	Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex "General Code of Conduct for the securities markets Ministerial Order, dated 25 October 1995. CNMV Circular 1/1996	
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.	Government/Ministry of Economy/CNMV	Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex "General Code of Conduct for the securities markets Ministerial Order, dated 25 October 1995. CNMV Circular 1/1996	

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

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.	Government/Ministry of Economy/CNMV	Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex "General Code of Conduct for the securities markets Ministerial Order, dated 25 October 1995. CNMV Circular 1/1996	
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4. CUSTOMER AGREEMENTS

4.1) BASIC CUSTOMER AGREEMENT

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<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>	Ministry of Economy/ CNMV	Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Article 14 "Standard contracts" and article 15 "Delivery of contractual documentation". Ministerial Order, dated 25 October 1995, Implementing Royal Decree 629/1993. Section Five "Information on transactions". Rule 7 "Delivery of contractual documentation" and Rule 8 "Standard contract".	

<p><i>79. The customer agreement must be clear and easily understandable by the customer.</i></p>	<p>Ministry of Economy/ CNMV</p>	<p>Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Article 14 "Standard contracts" and article 15 "Delivery of contractual documentation". Ministerial Order, dated 25 October 1995, Implementing Royal Decree 629/1993. Section Five "Information on transactions". Rule 7 "Delivery of contractual documentation" and Rule 8 "Standard contract".</p>	
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<p>80. The customer agreement must contain the following items as a minimum:</p> <ul style="list-style-type: none"> a) the identity, postal address and telephone number of each of the parties; b) the names of any persons authorised to represent the customer for the purposes of the agreement, in particular the names of the natural persons authorised to represent the customer who is a legal entity; c) the investment firm's general terms of business for investment services and any particular terms agreed between the parties concerning, e.g. margin requirements or potential obligations where securities may be purchased on credit d) a general description of the investment services, including custody, offered by the investment firm and the types of financial instruments to which such services relate; e) the types of orders and instructions that the customer may place with the investment firm, the medium/media for sending them (e.g. by telephone, E-mail or post) and the alternative medium to be used when normal media are unavailable; f) the information to be given by the investment firm to the customer regarding the performance of services including the medium/media for sending the information and the type, frequency and rapidity of the information to be given e.g. regarding order execution or portfolio evaluation; g) details of the investment firm's fees and prices for investment services, including information on how they are to be calculated, the frequency with which they are to be charged and the manner of payment; h) the name of the competent authority which has authorised the investment firm; i) the law applicable to the contract, as ascertained to the best of the knowledge of the firm or as agreed between the parties; j) the duration of the agreement and the procedures for amending, renewing, terminating or withdrawing from it; k) where such a procedure exists, a description of the mechanism for settling disputes between the parties such as an out-of-court complaint and redress mechanism; l) the actions that the investment firm shall or may take in the event the customer does not honour his obligations (e. g. payment of money due to the investment firm), in particular whether the investment firm is allowed to dispose of any of the customer's assets, the timeframe for doing so and the information to be given to the customer in such circumstances; m) the languages in which the customer can communicate with the investment firm. 	<p>Ministry of Economy/ CNMV</p>	<p>Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping</p> <p>Ministerial Order, dated 25 October 1995, Implementing Royal Decree 629/1993. Section Five "Information on transactions". Rule 7 "Delivery of contractual documentation". Ministerial Order 7 October 1999</p> <p>CNMV Circular 2/2000, dated 30 May about form models of standard customer agreement for discretionary and individual portfolio management and other developments of Ministerial Order, dated 7 October 1999.</p> <p>Mercantile Law</p>	<p>Ministerial Order, dated 25 October 1995, states that contractual documents must include the following four points: a) The parties which are bound by them. b) The set of obligations to which the parties bind themselves. c) The description and, where appropriate, frequency of the investment firm's fees. d) The information which the firm must send to its client, the frequency and form of transmission.</p> <p>Circular 2/2000 only applies to portfolio management contracts.</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 Economy/ CNMV	Ministerial Order, dated 25 October 1995, Partially Implementing Royal Decree 629/1993. Section Five "Information on transactions". Rule 7 "Delivery of contractual documentation".	
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.		Corporate Law	
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 Economy/ CNMV	Ministerial Order, dated 25 October 1995, Partially Implementing Royal Decree 629/1993. Section Five "Information on transactions". Rule 7 "Delivery of contractual documentation".	
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 Economy/ CNMV	Ministerial Order, dated 25 October 1995, Partially Implementing Royal Decree 629/1993. Section Five "Information on transactions". Rule 7 "Delivery of contractual documentation".	

4.2) CUSTOMER AGREEMENT INVOLVING TRADING IN DERIVATIVES

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<i>85. Prior to providing the services of reception/transmission and/or execution of orders involving derivatives, a customer agreement containing the relevant provisions of the basic customer agreement as well as certain additional provisions specific to trading in derivatives must be signed between the parties.</i>	Government/CNMV	RD 1814/1991 on regulations concerning Futures and Options Official Markets MEFF, the Spanish Official Exchange for Financial Futures and Options, uses standards contracts which include these provisions.	

86. In addition to the relevant items of the basic customer agreement, where the firm provides services involving derivatives, the customer agreement must contain: <ul style="list-style-type: none"> - the type(s) of instruments and transactions envisaged, - the obligations of the investment firm with respect to the transactions envisaged, in particular its reporting and notice obligations to the customer, - the obligations of the customer with respect to the transactions envisaged, in particular his financial commitments toward the investment firm and the time allowed for honouring such commitments, - an appropriate warning calling to the customer's attention the risks involved in the transactions envisaged. 	Government/CNMV	RD 1814/1991 on regulations concerning Futures and Options Official Markets MEFF, the Spanish Official Exchange for Financial Futures and Options, uses standards contracts which include these provisions.	
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.	Government/CNMV	RD 1814/1991 on regulations concerning Futures and Options Official Markets MEFF, the Spanish Official Exchange for Financial Futures and Options, uses standards contracts which include these provisions.	
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.	Government/CNMV	RD 1814/1991 on regulations concerning Futures and Options Official Markets MEFF, the Spanish Official Exchange for Financial Futures and Options, uses standards contracts which include these provisions.	
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.	Government/CNMV	RD 1814/1991 on regulations concerning Futures and Options Official Markets MEFF, the Spanish Official Exchange for Financial Futures and Options, uses standards contracts which include these provisions.	

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.	Government/CNMV	RD 1814/1991 on regulations concerning Futures and Options Official Markets MEFF, the Spanish Official Exchange for Financial Futures and Options, uses standards contracts which include these provisions.	
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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 Economy / C.N.M.V.	ROYAL DECREE 629/1993, OF 3 MAY, GOVERNING RULES OF ACTION IN THE SECURITIES MARKETS AND OBLIGATORY RECORD-KEEPING. Article 6. Record of Transactions. And ANNEX: GENERAL CODE OF CONDUCT FOR THE SECURITIES MARKETS. Article 2. Care and diligence.	
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 Economy / C.N.M.V.	COMISIÓN NACIONAL DEL MERCADO DE VALORES CIRCULAR 3/1993, DATED 29 DECEMBER, REGARDING THE RECORD OF TRANSACTIONS AND ORDER SUPPORT ARCHIVE Rule 5. File content.	

94. An investment firm must record orders immediately, documenting and verifying all relevant items of proper execution.	Government/Ministry of Economy / C.N.M.V.	ROYAL DECREE 629/1993, OF 3 MAY, GOVERNING RULES OF ACTION IN THE SECURITIES MARKETS AND OBLIGATORY RECORD-KEEPING. Article 6. Record of Transactions. And Article 8. Order Support Archive.	.
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.	Government/ Ministry of Economy / C.N.M.V.	ROYAL DECREE 629/1993, OF 3 MAY, GOVERNING RULES OF ACTION IN THE SECURITIES MARKETS AND OBLIGATORY RECORD-KEEPING. Article 8. Order Support Archive. And COMISIÓN NACIONAL DEL MERCADO DE VALORES CIRCULAR 3/1993, DATED 29 DECEMBER, REGARDING THE RECORD OF TRANSACTIONS AND ORDER SUPPORT ARCHIVE Rule 2. Order Support Archive.	
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.	Government/ Ministry of Economy / C.N.M.V.	ROYAL DECREE 629/1993, OF 3 MAY, GOVERNING RULES OF ACTION IN THE SECURITIES MARKETS AND OBLIGATORY RECORD-KEEPING. ANNEX: GENERAL CODE OF CONDUCT FOR THE SECURITIES MARKETS. Article 1.3 "Impartiality and good faith".	Spanish regulation do not establish that orders must be pre-assign. However, orders must be assigned following an objective system.
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.	Government/Ministry of Economy / C.N.M.V.	ROYAL DECREE 629/1993, OF 3 MAY, GOVERNING RULES OF ACTION IN THE SECURITIES MARKETS AND OBLIGATORY RECORD-KEEPING. Article 5. Periods for transmission and execution. And ANNEX: GENERAL CODE OF CONDUCT FOR THE SECURITIES MARKETS. Article 2. Care and diligence.	
<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>	Government/Ministry of Economy / C.N.M.V.	ROYAL DECREE 629/1993, OF 3 MAY, GOVERNING RULES OF ACTION IN THE SECURITIES MARKETS AND OBLIGATORY RECORD-KEEPING. ANNEX: GENERAL CODE OF CONDUCT FOR THE SECURITIES MARKETS. Article 1. Impartiality and good faith. and Article 4. Information about clients.	

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").	Government/Ministry of Economy / C.N.M.V.	ROYAL DECREE 629/1993, OF 3 MAY, GOVERNING RULES OF ACTION IN THE SECURITIES MARKETS AND OBLIGATORY RECORD-KEEPING. ANNEX: GENERAL CODE OF CONDUCT FOR THE SECURITIES MARKETS. Article 1. Impartiality and good faith.	
99. An investment firm, which aggregates orders, must pre-assign such orders prior to transmitting them.	Government/Ministry of Economy / C.N.M.V.	ROYAL DECREE 629/1993, OF 3 MAY, GOVERNING RULES OF ACTION IN THE SECURITIES MARKETS AND OBLIGATORY RECORD-KEEPING. ANNEX: GENERAL CODE OF CONDUCT FOR THE SECURITIES MARKETS. Article 1.3 "Impartiality and good faith".	Spanish regulation does not establish that orders must be pre-assign. However, orders must be assigned following an objective system.
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.	Government/Ministry of Economy / C.N.M.V.	ROYAL DECREE 629/1993, OF 3 MAY, GOVERNING RULES OF ACTION IN THE SECURITIES MARKETS AND OBLIGATORY RECORD-KEEPING. ANNEX: GENERAL CODE OF CONDUCT FOR THE SECURITIES MARKETS. Article 1. Impartiality and good faith.	
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.	Government/Ministry of Economy / C.N.M.V.	ROYAL DECREE 629/1993, OF 3 MAY, GOVERNING RULES OF ACTION IN THE SECURITIES MARKETS AND OBLIGATORY RECORD-KEEPING. Article 16. Information to clients regarding transactions which have been performed. Point 2. second paragraph.	

5.2) EXECUTION OF ORDERS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
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102. <i>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>	Government/Ministry of Economy / C.N.M.V.	of	ROYAL DECREE 629/1993, OF 3 MAY, GOVERNING RULES OF ACTION IN THE SECURITIES MARKETS AND OBLIGATORY RECORD-KEEPING. ANNEX: GENERAL CODE OF CONDUCT FOR THE SECURITIES MARKETS. Article 1. Impartiality and good faith. and Article 2. Care and diligence.	
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.	Parliament/Ministry of Economy / C.N.M.V.		LAW 24/1988, 28 th of July, SECURITIES MARKETS ACT, Article 40.	
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”).	Parliament/Government/Ministry of Economy / C.N.M.V.		ROYAL DECREE 629/1993, OF 3 MAY, GOVERNING RULES OF ACTION IN THE SECURITIES MARKETS AND OBLIGATORY RECORD-KEEPING. ANNEX: GENERAL CODE OF CONDUCT FOR THE SECURITIES MARKETS. Article 1. Impartiality and good faith. and LAW 24/1988, 28 th of July, SECURITIES MARKETS ACT, Article 80.	
103. <i>An investment firm must ensure that orders are executed in accordance with the instructions from the customer.</i>	Government/Ministry of Economy / C.N.M.V.	of	ROYAL DECREE 629/1993, OF 3 MAY, GOVERNING RULES OF ACTION IN THE SECURITIES MARKETS AND OBLIGATORY RECORD-KEEPING. ANNEX: GENERAL CODE OF CONDUCT FOR THE SECURITIES MARKETS. Article 2. Care and diligence.	
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.	Government/Ministry of Economy / C.N.M.V.	of	ROYAL DECREE 629/1993, OF 3 MAY, GOVERNING RULES OF ACTION IN THE SECURITIES MARKETS AND OBLIGATORY RECORD-KEEPING. Article 5. Periods for transmission and execution. And ANNEX: GENERAL CODE OF CONDUCT FOR THE SECURITIES MARKETS. Article 2. Care and diligence.	

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.	Government/Ministry Economy / C.N.M.V.	of	ROYAL DECREE 629/1993, OF 3 MAY, GOVERNING RULES OF ACTION IN THE SECURITIES MARKETS AND OBLIGATORY RECORD-KEEPING. ANNEX: GENERAL CODE OF CONDUCT FOR THE SECURITIES MARKETS. Article 2 “Care and diligence”.	
108. If an investment firm aggregates orders, it must pre-assign such orders prior to executing them.	Government/Ministry Economy / C.N.M.V.	of	ROYAL DECREE 629/1993, OF 3 MAY, GOVERNING RULES OF ACTION IN THE SECURITIES MARKETS AND OBLIGATORY RECORD-KEEPING. ANNEX: GENERAL CODE OF CONDUCT FOR THE SECURITIES MARKETS. Article 1.3 “Impartiality and good faith”.	Orders must be assigned following an objective system.
109. The price received or paid by the customer shall be identified separately from the fees and costs to the customer.	Government/Ministry Economy / C.N.M.V.	of	ROYAL DECREE 629/1993, OF 3 MAY, GOVERNING RULES OF ACTION IN THE SECURITIES MARKETS AND OBLIGATORY RECORD-KEEPING. Article 16. Information to clients regarding transactions which have been performed. And MINISTERIAL ORDER DATED 25 OCTOBER 1995, PARTIALLY IMPLEMENTING ROYAL DECREE 629/1993, DATED 3 MAY, GOVERNING RULES OF ACTION IN THE SECURITIES MARKETS AND OBLIGATORY RECORD-KEEPING Nine.- Rules.	

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.	Ministry of Economy / C.N.M.V.	ROYAL DECREE 629/1993, OF 3 MAY, GOVERNING RULES OF ACTION IN THE SECURITIES MARKETS AND OBLIGATORY RECORD-KEEPING. Article 16. Information to clients regarding transactions which have been performed. And ANNEX: GENERAL CODE OF CONDUCT FOR THE SECURITIES MARKETS. Article 5. Information to clients. And MINISTERIAL ORDER DATED 25 OCTOBER 1995, PARTIALLY IMPLEMENTING ROYAL DECREE 629/1993, DATED 3 MAY, GOVERNING RULES OF ACTION IN THE SECURITIES MARKETS AND OBLIGATORY RECORD-KEEPING Nine.- Rules.	
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5.3) POST- EXECUTION OF ORDERS

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<i>111. An investment firm must ensure the proper and speedy recording, allocation and distribution of executed transactions.</i>		Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Article 5 “Periods for transmission and executions”.	
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 Economy / C.N.M.V.	COMISION NACIONAL DEL MERCADO DE VALORES CIRCULAR 3/1993, DATED 29 DECEMBER, REGARDING THE RECORD OF TRANSACTIONS AND ORDER SUPPORT ARCHIVE. Rule 3. General rules regarding the record of transactions.	
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 Economy / C.N.M.V.	Ministerial Order, dated 25 October 1995, Partially Implementing Royal Decree 629/1993. Section Five “Information on transactions”. Article 6	

112. <i>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 Economy / C.N.M.V.	ROYAL DECREE 629/1993, OF 3 MAY, GOVERNING RULES OF ACTION IN THE SECURITIES MARKETS AND OBLIGATORY RECORD-KEEPING. ANNEX: GENERAL CODE OF CONDUCT FOR THE SECURITIES MARKETS. Article 1. Impartiality and good faith. and Article 6. Conflicts of interest. and LAW 24/1988, 28 th of July, SECURITIES MARKETS ACT, Article 79.	
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.	Ministry of Economy / C.N.M.V.	ROYAL DECREE 629/1993, OF 3 MAY, GOVERNING RULES OF ACTION IN THE SECURITIES MARKETS AND OBLIGATORY RECORD-KEEPING. ANNEX: GENERAL CODE OF CONDUCT FOR THE SECURITIES MARKETS. Article 1. Impartiality and good faith. and Article 6. Conflicts of interest. and LAW 24/1988, 28 th of July, SECURITIES MARKETS ACT, Article 79.	

6. INDIVIDUAL DISCRETIONARY PORTFOLIO MANAGEMENT

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

6.1. CUSTOMER AGREEMENTS FOR DISCRETIONARY PORTFOLIO MANAGEMENT

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
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<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 Economy/CNMV</p>	<p>Ministerial Order, dated 7 October 1999, implementing the General Code of Conduct and rules of action for portfolio management: Art 2. Principles and duties of General conduct. Art 4. Customer Agreement for portfolio management</p> <p>Circular 2/2000 about form models of standard customer agreement for discretionary and individual portfolio management and other development of Ministerial Order, dated 7 October 1999, implementing the General Code of Conduct and rules of action for portfolio management. Annex</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"> a) the management objective(s) and any specific constraints on discretionary management, b) the types of financial instruments that may be included within the portfolio and the types of transactions that may be carried out in such instruments, including any related limits. <p>In addition to the above, the customer agreement must contain:</p> <ul style="list-style-type: none"> c) without prejudice of paragraph 121, the benchmark against which performance will be compared, d) the basis on which the instruments are to be assessed at the date of valuation, e) details regarding the delegation of the management function where this is permitted. 	<p>Ministry of Economy/CNMV</p>	<p>Ministerial Order, dated 7 October 1999, implementing the General Code of Conduct and rules of action for portfolio management: Art 4. Customer Agreement for portfolio management</p> <p>Circular 2/2000 about form models of standard customer agreement for discretionary and individual portfolio management and other development of Ministerial Order, dated 7 October 1999, implementing the General Code of Conduct and rules of action for portfolio management. Annex .</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 Economy/CNMV</p>	<p>Ministerial Order, dated 7 October 1999, implementing the General Code of Conduct and rules of action for portfolio management: Art 2. Principles and duties of General conduct. Art 4. Customer Agreement for portfolio management</p> <p>Circular 2/2000 about form models of standard customer agreement for discretionary and individual portfolio management and other development of Ministerial Order, dated 7 October 1999, implementing the General Code of Conduct and rules of action for portfolio management. Annex</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: <ul style="list-style-type: none"> - financial instruments not traded on a regulated market, - illiquid or highly volatile financial instruments, - leveraged transactions, - securities repurchase agreements or securities lending agreements, - transactions involving credit, margin payments or deposit of collateral, - transactions involving foreign exchange risk. 	Ministry of Economy/CNMV	Ministerial Order, dated 7 October 1999, implementing the General Code of Conduct and rules of action for portfolio management: Art 2. Principles and duties of General conduct. Art 4. Customer Agreement for portfolio management Circular 2/2000 about form models of standard customer agreement for discretionary and individual portfolio management and other development of Ministerial Order, dated 7 October 1999, implementing the General Code of Conduct and rules of action for portfolio management. Annex	
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.	Ministry of Economy/CNMV	Ministerial Order, dated 7 October 1999, implementing the General Code of Conduct and rules of action for Circular 2/2000 about form models of standard customer agreement for discretionary and individual portfolio management and other development of Ministerial Order, dated 7 October 1999, implementing the General Code of Conduct and rules of action for portfolio management. Annex portfolio management	
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.			This standard is not implemented in the Spanish regulation
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 Economy/CNMV	Circular 2/2000 about form models of standard customer agreement for discretionary and individual portfolio management and other development of Ministerial Order, dated 7 October 1999, implementing the General Code of Conduct and rules of action for portfolio management. Annex	

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 Economy/CNMV	Ministerial Order, dated 7 October 1999, implementing the General Code of Conduct and rules of action for portfolio management: Art 2. Principles and duties of General conduct. Art 4. Customer Agreement for portfolio management Circular 2/2000 about form models of standard customer agreement for discretionary and individual portfolio management and other development of Ministerial Order, dated 7 October 1999, implementing the General Code of Conduct and rules of action for portfolio management. Annex	The terms for describing the management fee are similar for mix and variable fees.
<p>125. The contract must provide:</p> <ul style="list-style-type: none"> - that the customer may terminate the agreement with immediate effect, subject only to the completion of all transactions already commenced and the time necessary to liquidate the portfolio where this is required by the customer; - that the investment firm may terminate the agreement subject to a two-week notice, provided however that where the portfolio cannot be liquidated (where required by the customer) within this timeframe, the agreement may be extended for the necessary additional period, and provided that where the customer so agrees after being informed of the firm's intention to terminate, the agreement may be terminated in the timeframe agreed between the parties. <p>In both cases, the termination must take place on terms that are fair and reasonable for both parties.</p>	Ministry of Economy/CNMV	<p>Ministerial Order, dated 7 October 1999, implementing the General Code of Conduct and rules of action for portfolio management: Art 5. Unilateral termination by the customer</p> <p>Circular 2/2000 about form models of standard customer agreement for discretionary and individual portfolio management and other development of Ministerial Order, dated 7 October 1999, implementing the General Code of Conduct and rules of action for portfolio management</p>	
<i>117. Where the conditions for delegating management of the portfolio are met and the contract allows the investment firm to delegate this function, the contract must state that the delegator retains full responsibility for the protection of the customer's interests.</i>	Ministry of Economy/CNMV	<p>Ministerial Order, dated 7 October 1999, implementing the General Code of Conduct and rules of action for portfolio management: Art 5. Unilateral termination by the customer</p> <p>Circular 2/2000 about form models of standard customer agreement for discretionary and individual portfolio management and other development of Ministerial Order, dated 7 October 1999, implementing the General Code of Conduct and rules of action for portfolio management</p>	

<p>126. If an investment firm is mandated to delegate management of any or all of the customer's assets, this must be stated in the contract and adequate information must be supplied in this regard, both to the customer and to the competent authority. The contract must also provide that the customer will be informed prior to any significant change regarding delegation of portfolio management.</p>	<p>Ministry of Economy/CNMV</p>	<p>Ministerial Order, dated 7 October 1999, implementing the General Code of Conduct and rules of action for portfolio management: Art 5. Unilateral termination by the customer</p> <p>Circular 2/2000 about form models of standard customer agreement for discretionary and individual portfolio management and other development of Ministerial Order, dated 7 October 1999, implementing the General Code of Conduct and rules of action for portfolio management</p>	
<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>Ministerial Order, dated 7 October 1999, implementing the General Code of Conduct and rules of action for portfolio management</p>	

<p>128. The delegation agreement, in writing:</p> <ul style="list-style-type: none"> a) must be revocable with immediate effect by the delegator; b) must provide for sufficient notice to be given to the delegator by the delegatee of termination of the agreement; c) must be in conformity with the indications contained in the customer agreement with the delegator; d) must require, where the execution of transactions is not subject to the prior consent of the delegator, the delegatee to observe the investment guidelines, including investment allocation criteria, laid down from time to time by the delegator; e) must be formulated so as to avoid conflicts of interest between the delegator and the delegatee; f) must provide for the delegator to receive a continuous flow of information on the transactions carried out by the delegatee permitting it to monitor effectively at any time the activity of the delegatee and to reconstruct the assets under management belonging to each customer of the delegator. 		Ministerial Order, dated 7 October 1999, implementing the General Code of Conduct and rules of action for portfolio management	
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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 Economy/CNMV	<p>Ministerial Order, dated 7 October 1999, implementing the General Code of Conduct and rules of action for portfolio management: Art 3. Information about conflict of interest</p> <p>Circular 2/2000 about form models of standard customer agreement for discretionary and individual portfolio management and other development of Ministerial Order, dated 7 October 1999, implementing the General Code of Conduct and rules of action for portfolio management. Annex</p>	

<p>130. Periodic statements for portfolio management customers must contain:</p> <ul style="list-style-type: none"> a) a statement of the contents and valuation of the portfolio, including details of each investment held, its market value and the performance of the portfolio and the cash balance, at the beginning and at the end of the reporting period; b) a management report on the strategy implemented (to be provided at least yearly); c) the total amount of fees and charges incurred during the period and an indication of their nature; d) information on any remuneration received from a third party and details of its calculation basis; e) the total amount of dividends, interest and other payments received during the period. 	Ministry of Economy/CNMV	<p>Ministerial Order, dated 7 October 1999, implementing the General Code of Conduct and rules of action for portfolio management: Art 3. Information about conflict of interest</p> <p>Circular 2/2000 about form models of standard customer agreement for discretionary and individual portfolio management and other development of Ministerial Order, dated 7 October 1999, implementing the General Code of Conduct and rules of action for portfolio management. Annex</p>	
<p>131. If the basis for valuing any of the assets in the portfolio has changed with respect to the methods described in the portfolio management agreement, these changes must be indicated in the statement along with their impact on profits and/or losses.</p>	Ministry of Economy/CNMV	<p>Circular 2/2000 about form models of standard customer agreement for discretionary and individual portfolio management and other development of Ministerial Order, dated 7 October 1999, implementing the General Code of Conduct and rules of action for portfolio management. Annex</p>	
<p>132. Periodic statements must include full information on any remuneration received by the investment firm or the manager from a third party that is attributable to services performed for the customer by the manager of the portfolio.</p>	Ministry of Economy/CNMV	<p>Ministerial Order, dated 7 October 1999, implementing the General Code of Conduct and rules of action for portfolio management: Art 3. Information about conflict of interest</p> <p>Circular 2/2000 about form models of standard customer agreement for discretionary and individual portfolio management and other development of Ministerial Order, dated 7 October 1999, implementing the General Code of Conduct and rules of action for portfolio management. Annex</p>	
<p>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.</p>	Ministry of Economy/CNMV	<p>Circular 2/2000 about form models of standard customer agreement for discretionary and individual portfolio management and other development of Ministerial Order, dated 7 October 1999, implementing the General Code of Conduct and rules of action for portfolio management. Annex</p>	
<p>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.</p>			<p>This standard is not implemented in the Spanish regulation</p>

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 Economy/CNMV	Ministerial Order, dated 7 October 1999, implementing the General Code of Conduct and rules of action for portfolio management: Art 3. Information about conflict of interest	
138. The structure of the investment firm, its policies and procedures must seek to ensure the independence of the portfolio management function.	Ministry of Economy/CNMV	Law 24/1988 Security Market Act, article 83.	
<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>	Ministry of Economy/CNMV	Ministerial Order, dated 7 October 1999, implementing the General Code of Conduct and rules of action for portfolio management: Art 2. Principles and duties of General conduct. Art 4. Customer Agreement for portfolio management Circular 2/2000 about form models of standard customer agreement for discretionary and individual portfolio management and other development of Ministerial Order, dated 7 October 1999, implementing the General Code of Conduct and rules of action for portfolio management. Annex	
139. The investment firm must maintain records of its investment strategies, as well as the analyses and forecasts underlying them.	Ministry of Economy/CNMV		This standard is not implemented in the Spanish regulation

<p><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></p>	<p>Ministry of Economy/CNMV</p>	<p>Ministerial Order, dated 7 October 1999, implementing the General Code of Conduct and rules of action for portfolio management: Art 2. Principles and duties of General conduct. Art 4. Customer Agreement for portfolio management Circular 2/2000 about form models of standard customer agreement for discretionary and individual portfolio management and other development of Ministerial Order, dated 7 October 1999, implementing the General Code of Conduct and rules of action for portfolio management. Annex</p>	
<p>140. The investment firm must ensure that its orders are executed as efficiently as possible and in particular that:</p> <ul style="list-style-type: none"> a) orders issued are immediately recorded by the firm; b) transactions executed are recorded and the portfolios affected are adjusted as quickly as possible; c) the portfolios affected and the relevant amounts are determined, or objectively determinable, no later than the time at which the order is issued and cannot be changed, except for the purposes of rectifying an error, after the execution of the order, regardless of whether the order relates to one or more accounts. 	<p>Ministry of Economy/CNMV</p>	<p>Circular 3/1993 dated 29 December regarding the record of transactions and order support archive. Art 2 Order Support archive. Art 3 General rules regarding the record of transactions.</p>	

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

1. STANDARDS OF GENERAL APPLICATION

Standard /Rule	Implementing authority(ies)	Implementing measure ¹⁷	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 Economy / CNMV	Law 24/1988, Securities Markets Act. Title VII “Conduct of Business Rules”. Article 79 a) and c).	
<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 Economy / CNMV	Law 24/1988, Securities Markets Act. Title VII “Conduct of Business Rules”. Article 79 d). Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex “General Code of Conduct for the Securities Markets”. Article 3 “Resources and Capacities”	
<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 Economy / CNMV	Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. “Annex General Code of Conduct for the Securities Markets”. Article 7 “Refusal to trade and duty to refrain “	
<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.¹⁸</i>	Ministry of Economy / CNMV	CNMV Circular 1/1998, dated June 10, About Internal Control Systems, Monitoring and Assessment of risks. Rule 6 ^a	

1.2. CONFLICTS OF INTEREST AND INDUCEMENTS

¹⁷ Any derogation to the application of the implementing measures should be mentioned.

¹⁸ This standard is not intended to interfere with relevant provisions on civil liability, applicable at national level.

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<i>5. An investment firm must take all reasonable steps to ensure that conflicts of interest between itself and its customers and between one customer and another are identified and then prevented or managed in such a way that the interests of customers are not adversely affected. For these purposes the investment firm must establish an internal independence policy, including Chinese walls as appropriate.</i>	Ministry of Economy / CNMV	Law 24/1988, Securities Markets Act. Title “Conduct of Business Rules”. Article 79 b) f) h). Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex “General Code of Conduct for the Securities Markets”. Article 6 “Conflicts of interest”.	
<i>6. An investment firm, its members of the board, directors, partners, employees and tied-agents may offer or receive inducements only if they can reasonably assist the firm in the provision of services to its customers. Where inducements are received disclosure of such inducements must be made to the customer.</i>	Ministry of Economy /CNMV	Royal Decree 629/1993, of 3 may, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex “General Code of Conduct for the Securities Markets”. Article 1.7 “Impartiality and Good Faith”.	
<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>	Ministry of Economy / CNMV	Law 24/1988 Securities Markets Act Title VII “Conduct of Business Rules”. Articles 78 c), 79 a) and 79 d). Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex “General Code of Conduct for the Securities Markets”. Article 3.5 “Resources and capacities”. CNMV Circular 1/1998, dated June 10, About Internal Control Systems, Monitoring and Assessment of risks. Rule 4 ^a .	
<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>	Ministry of Economy / CNMV	Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Article 6 “Record of Transactions”.	

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.	Ministry of Economy / CNMV	CNMV Circular 1/1998, dated June 10, About Internal Control Systems, Monitoring and Assessment of risks. Rule 4 ^a . Control function	
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.	Ministry of Economy / CNMV	CNMV Circular 1/1998, dated June 10, about Internal Control Systems, Monitoring and Assessment of risks. Rule 11 ^a . Circular CNMV 5/1990, 28 November.	Reporting to senior management.
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.	Ministry of Economy / CNMV	CNMV Circular 9/1989, dated December 20, about audit of <i>Sociedades de Valores</i> (Broker-dealers) and <i>Agencias de Valores</i> (Dealers). Rule 4 ^a .	Circular 9/1989 states that auditors must inform to the supervisors over the relevant weakness detected in the monitoring of the compliance of the conduct of business rules.
12. 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.	Ministry of Economy / CNMV	CNMV Circular 1/1998, dated June 10, About Internal Control Systems, Monitoring and Assessment of risks. Rule 4 ^a .	Circular 1/1998 do not states explicitly that the compliance function must provide advisory assistance and support.
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.	Ministry of Economy / CNMV	CNMV Circular 3/1993, Dated 29 December, Regarding the Record of Transactions and Order Support Archive. Rule 2.5 "Order Support Archive" and Rule 4 ^a "Keeping the record of transactions and generating computer files".	An investment firm must keep tape recordings for a period of three months. Only in case of a customer claim, the tapes have to be kept as long as the process continues.
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.	Ministry of Economy / CNMV	Law 44/2002, of 22 November, Implementing Measures that Reform the Financial System. Article 29 "Department of Customer Service and Client Ombudsman "	

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: e) the rules and procedure to meet the obligation to protect data of a confidential nature; f) the rules and procedures for carrying out personal transactions involving financial instruments; g) 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; h) the investment firm's policy on conflicts of interest and inducements.	Ministry of Economy / CNMV	Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Article 3 « Internal Rules of Conduct»	
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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 Economy/CNMV	LAW 24/1988 SECURITY MARKETS ACT Article 79, e :Title VII of Conduct of Business Rules	
<i>17. If an investment firm provides information in a marketing communications it must be fair, clear and not misleading.</i>	Ministry of Economy/CNMV	LAW 24/1988 SECURITY MARKETS ACT Article 94 Art. 3 of Royal decree 629/1993 and the law on publicity and advertising.	
<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 Economy/CNMV	Royal Decree 629/1993, of 3 May, governing rules of action in the Securities Markets and Obligatory Record-Keeping. Article 16 "Information to clients regarding transactions which have been performed" Annex "General Code of Conduct for the Securities Markets" Article 5 "Information to clients" Ministerial Order, dated 25 October 1995, Partially Implementing Royal Decree 629/1993. Section Five "Information on transactions". Article 9 "Rules"	

<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 Economy/CNMV	Ministerial Order, dated 25 October 1995, Implementing Royal Decree 629/1993. Section Five "Information on transactions". Article 9 "Rules"	
<i>20. An investment firm that operates customer accounts, which include uncovered open positions, must provide regular statements of such positions.</i>	Ministry of Economy/CNMV	Ministerial Order, dated 25 October 1995, Implementing Royal Decree 629/1993. Section Five "Information on transactions". Article 9 "Rules"	

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

Standard	Implementing authority(ies)	Implementing measure	Comments
<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>	Ministry of Economy/CNMV	of Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex "General Code of Conduct for the securities markets". Article 4 "Information about clients". Ministerial Order, dated 25 October 1995, Implementing Royal Decree 629/1993. Section Five "Information on transactions". Rule 10 "Identification of clients".	
<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>		Art. 79 Securities Market Act; although this duty is not specifically established.	

4. CUSTOMER AGREEMENTS

Standard	Implementing authority(ies)	Implementing measure	Comments
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<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>	Ministry of Economy/CNMV	Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Article 14 “Standard contracts” and article 15 “Delivery of contractual documentation”. Ministerial Order, dated 25 October 1995, Implementing Royal Decree 629/1993. Section Five “Information on transactions”. Rule 7 “Delivery of contractual documentation” and Rule 8 “Standard contract”.	
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5.- DEALING REQUIREMENTS

5.1) RECEPTION AND TRANSMISSION OF CUSTOMER ORDERS

Standard	Implementing authority(ies)	Implementing measure	Comments
<i>24. An investment firm must record and process customer orders in accordance with the customer’s instructions and in such a way as to facilitate best execution.</i>	Ministry of Economy/CNMV	Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Article 6 “Record of Transactions” Annex “General Code of Conduct for the securities markets”. Article 2 “Care and diligence”.	
<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>	Parliament /Ministry of Economy/CNMV	Art. 79 Securities Market Act, Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex “General Code of Conduct for the securities markets”. Article 1 “Impartiality and good faith” Article 4.2 “Information about clients”.	
<i>26. An investment firm must record orders immediately, documenting and verifying all relevant items of proper execution.</i>	Ministry of Economy/CNMV	Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Article 6 “Record of Transactions”	

<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 Economy/CNMV	Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Article 8 “Order Support Archive” Circular 3/1993, dated 29 December, regarding the record of transaction and order support archive. Rule 2 “Order Support Archive”	
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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 Economy/CNMV	Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex “General Code of Conduct for the securities markets”. Article 1 “Impartiality and good faith”. Article 2 “Care and diligence”.	
<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>			

<i>30. An investment firm must ensure that orders are executed in accordance with the instructions from the customer.</i>	Ministry of Economy/CNMV	Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex “General Code of Conduct for the securities markets”. Article 2 “Care and diligence”.	
<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 Economy/CNMV	LAW 24/1988 SECURITY MARKETS ACT Article 80 :Title VII of Conduct of Business Rules Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex “General Code of Conduct for the securities markets”. Article 1 “Impartiality and good faith”.	

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>			

<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 Economy/CNMV	<p>LAW 24/1988 SECURITY MARKETS ACT Article 79 f :Title VII of Conduct of Business Rules</p> <p>Royal Decree 629/1993, of 3 May, Governing Rules of Action in the Securities Markets and Obligatory Record-Keeping. Annex “General Code of Conduct for the securities markets”. Article 1 “Impartiality and good faith”. Article 6 “Conflicts of interest”.</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.

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 Economy/CNMV	<p>Ministerial Order, dated 7 October 1999, implementing the General Code of Conduct and rules of action for portfolio management. Article 2. Principles and duties of General Conduct. Article 4. Customer Agreement for portfolio management.</p> <p>Circular 2/2000 about form models of standard customer agreement for discretionary and individual portfolio management and other development of Ministerial Order, dated 7 October 1999, implementing the General Code of Conduct and rules of action for portfolio management. Annex.</p>	

<p><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></p>	<p>Ministry of Economy/CNMV</p>	<p>Ministerial Order, dated 7 October 1999, implementing the General Code of Conduct and rules of action for portfolio management. Article 3. Information about conflict of interest.</p>	
<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 Economy/CNMV</p>	<p>Ministerial Order, dated 7 October 1999, implementing the General Code of Conduct and rules of action for portfolio management. Article 3. Information about conflict of interest.</p> <p>Circular 2/2000 about form models of standard customer agreement for discretionary and individual portfolio management and other development of Ministerial Order, dated 7 October 1999, implementing the General Code of Conduct and rules of action for portfolio management. Annex.</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"> <i>a) orders issued are immediately recorded by the firm;</i> <i>b) transactions executed are recorded and the portfolios affected are adjusted as quickly as possible;</i> <i>c) the portfolios affected and the relevant amounts are determined, or objectively determinable, no later than the time at which the order is issued and cannot be changed, except for the purposes of rectifying an error, after the execution of the order, regardless of whether the order relates to one or more accounts.</i> 	<p>Ministry of Economy/CNMV</p>	<p>Circular 3/1993, dated 29 December, regarding the record of transaction and order support archive. Rule 2 "Order Support Archive" Rule 3 "General rules regarding the record of transactions"</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">- transactions executed in regulated markets or other trading venues (which do not give rise to any provision of investment service to the customer) between any member admitted to trade in these markets;- transactions executed directly (over-the-counter) between investment firms or credit institutions, authorised to provide the service of dealing, and dealing either as principal or as agent;- transactions executed directly (over-the-counter) between investment firms or credit institutions and other authorised or regulated financial intermediaries, including non-ISD firms, such as commodity dealers, insurance companies, but not including collective investment schemes and management companies of such schemes, pension funds and management companies of such funds.			This standard is not implemented in the Spanish regulation
<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>			This standard is not implemented in the Spanish regulation

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.			This standard is not implemented in the Spanish regulation
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.			This standard is not implemented in the Spanish regulation

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 Economy/CNMV	This standard is not implemented in the Spanish regulation as a specific category, it is implemented as a general rule in Law 24/19888 Security Markets Act Art 79, a, c, f and the Royal Degree 629/1993 of 3 May governing rules of action in the securities markets and obligatory record-keeping. Annex. Art 1.Imparitality and good faith and Art 2 Care and diligence	

<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 Economy/CNMV	This standard is not implemented in the Spanish regulation as a specific category, it is implemented as a general rule in Law 24/19888 Security Markets Act Art 79, d and the Royal Degree 629/1993 of 3 May governing rules of action in the securities markets and obligatory record-keeping. Annex. Art 1.Imparitality and good faith and Art 2 Care and diligence Art 3 Resources and capacities	
<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 Economy/CNMV	This standard is not implemented in the Spanish regulation as a specific category, it is implemented as a general rule in the Royal Degree 629/1993 of 3 May governing rules of action in the securities markets and obligatory record-keeping. Annex. Art 3 Resources and capabilities	
<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 Economy/CNMV	This standard is not implemented in the Spanish regulation as a specific category, it is implemented as a general rule in the Royal Degree 629/1993 of 3 May governing rules of action in the securities markets and obligatory record-keeping. Annex. Art 3 Resources and capabilities	
<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 Economy/CNMV	This standard is not implemented in the Spanish regulation as a specific category, it is implemented as a general rule in the Royal Degree 629/1993 of 3 May governing rules of action in the securities markets and obligatory record-keeping. Annex. Art 3 Resources and capabilities	The implementing measure does not mention that the investment firm must demonstrate that it has not acted in the breach of the conduct of business rules

<i>The firm must keep records of all transactions executed for a period of five years.</i>	Ministry of Economy/CNMV	This standard is not implemented in the Spanish regulation as a specific category, it is implemented as a general rule in Royal Decree 629/1993 3 May governing rules of action in the securities markets and obligatory record-keeping Art 6 Operations archive, Art 7 General Rules regarding operations archive and Circular 3/1993 dated 29 December regarding the record of transactions and order support archive. Art 2 Order Support archive. Art 3 General rules regarding the record of transactions.	The implementing measure states that the documents should be kept until 6 years after the relation with the clients conclude
<i>The firm must keep record of telephone conversations concerning the transactions executed on a counterparty relationship.</i>	Ministry of Economy/CNMV	This standard is not implemented in the Spanish regulation as a specific category, it is implemented as a general rule in Royal Decree 629/1993 3 May governing rules of action in the securities markets and obligatory record-keeping Art 8 Support orders archive and Circular 3/1993 dated 29 December regarding the record of transactions and order support archive. Art 2 Order Support archive.	
<i>The firm must adopt and take all reasonable steps to ensure compliance with an appropriate internal code of conduct.</i>	Ministry of Economy/CNMV	This standard is not implemented in the Spanish regulation as a specific category, it is implemented as a general rule in the Royal Decree 629/1993 of 3 May governing rules of action in the securities markets and obligatory record-keeping. Annex. Art 3 Resources and capabilities	

<i>The information provided in a marketing communications must be clear and not misleading.</i>	Ministry of Economy/CNMV	This standard is not implemented in the Spanish regulation as a specific category, it is implemented as a general rule in Law 24/1988 Security Markets Act Art 94	
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Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
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Ref. CESR/03/423

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

D. CRITERIA FOR DEFINING PROFESSIONAL INVESTORS

STANDARD 10A

SPAIN	Ministry of Economy/CNMV	Securities Market Act. Art 64 y 71 Royal Decree 629/1993 of 3 May governing rules of action in the securities markets and obligatory record-keeping. Art 1.Scope Royal Decree 291/1992 Issues and public offers of securities	The Royal Decree 291/1992 regarding issues and public offers of securities establishes that pension funds, collective investment schemes, insurance companies, credit institutions and investment firms should be treated as institutional investors regarding the requirement of issues of securities directed only to them
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STANDARD 10 b)

b) Large companies ⁽¹⁹⁾ and other institutional investors: <ul style="list-style-type: none"> large companies and partnerships meeting two of the following size requirements on a company basis: <div> <div></div> <div>EUR</div> </div> balance sheet total : <div> <div></div> <div>EUR</div> </div> net turnover : <div> <div></div> <div>EUR</div> </div> own funds: <div> <div></div> <div>EUR</div> </div> Other institutional investors whose corporate purpose is to invest in financial instruments. 	Ministry of Economy/CNMV	Circular 1/96 dated 27 March governing rules of action, transparency and identification of clients in securities market transactions, Art 9, Need of a standard contract.	The implementing measure only regards to the need of standard contract for the deposit of securities represented by certificates or administration of securities represented by book entries when the following conditions are met: the nominal value of securities deposited or administered is less than 24.040 euros and the client is not a financial institution
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Standard 11

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.	Ministry of Economy/CNMV	Royal Decree 291/1992, 27 March. Issues and offers for sale. Arts. 5-7. Circular 1/1996. Arts. 9-12	In certain cases there is no need of standard contract.
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STANDARD 12

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.	Ministry of Economy/CNMV	Royal Decree 291/1992, 27 March. Issues and offers for sale. Arts. 5-7. Circular 1/1996. Arts. 9-12	(see Standard 11)
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STANDARD 13

⁽¹⁹⁾ 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.

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.	Ministry of Economy/CNMV	Royal Decree 291/1992, 27 March. Issues and offers for sale. Arts. 5-7. Circular 1/1996. Arts. 9-12	(see standard 11)
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2. Categories of investors who may be treated as professionals on request

2.1. Identification criteria

Standard	Implementing authority(ies)	Implementing measure	Comments
14. The members of CESR consider that investors other than those mentioned in § 10, including public sector bodies ⁽²⁰⁾ 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.			This standard is not implemented in the Spanish regulation

⁽²⁰⁾ It should be noted that public sector bodies are subject to specific regulations that might prevent them from entering into certain types of transactions or opting for the professional conduct of business regime.

<p>15. Any such waiver of the protection afforded by the standard conduct of business regime shall be considered valid only if an adequate assessment of the expertise, experience and knowledge of the client, undertaken by the investment firm, gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making his own investment decisions and understanding the risks involved.</p> <p>The fitness test applied to managers and directors of entities licensed under European Directives in the financial field could be regarded as an example of the assessment of expertise and knowledge. In the case of small entities, the person subject to the above assessment should be the person authorised to carry out transactions on behalf of the entity.</p>			This standard is not implemented in the Spanish regulation
<p>16. In the course of the above assessment, as a minimum, two of the following criteria should be satisfied:</p> <ul style="list-style-type: none"> • The investor has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters; • The size of the investor's financial instrument portfolio, defined as including cash deposits and financial instruments exceeds 0,5 million Euro; <p>The investor works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.</p>	Ministry of Economy/CNMV	This standard is not implemented in the Spanish regulation	This standard is not implemented in the Spanish regulation

2.2. Procedure

Standard	Implementing authority(ies)	Implementing measure	Comments
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<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>This standard is not implemented in the Spanish regulation</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>This standard is not implemented in the Spanish regulation</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>This standard is not implemented in the Spanish regulation</p>